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EMN Focussed Study 2017

# The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards

# Country Report SWEDEN

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**EMN Focussed study 2017:**

**The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards – Country Report Sweden**

Report from EMN Sweden



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# Table of Contents

# EMN FOCUSSED STUDY 2017

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# Country Report SWEDEN

## Top-line "Factsheet"

*Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

A number of EMN studies and Ad-Hoc Queries address the return of irregular migrants and more precisely the impact of the Return Directive of which some will be referred to here. This study focuses not only on the impact of the Return Directive on national return policies and practices and the effectiveness on return decisions but as well the Directive in relation to the recommendations made by the Commission,[1] in order to highlight possible needs to modify current policies and practices to make return more effective. The study is divided into nine sections, starting with a national overview followed by the issuance of return decisions, risk of absconding, effective enforcement of return decisions, procedural safeguards and remedies, family life, children and state of health, voluntary departure, entry ban and then to sum up conclusions.

To study the impact of EU rules and the Return Directive and the effectiveness on return is rather challenging. The impact depends on what kind of national system that was in place before implementing the Return Directive. The impact is limited when looking at Sweden as there has been a systematic issuance of return decisions with a period of voluntary departure or an entry ban before the Return Directive. The impact of the Return Directive is above all the possibility to extend the period of voluntary departure, an entry ban applicable in the entire Schengen area, eight criteria to facilitate the assessment of the risk of absconding and the requisite of having a family member, a nominated guardian or an adequate reception in the country of return when returning an unaccompanied minor. The question to address is to what extent these alterations have increased the effectiveness of return. As there are few academic studies or reportage from NGOs this study is mostly based on other EMN studies and inputs from experts and other competent officials at the Swedish Migration Agency, the Swedish Police Authority and at the Ministry of Justice.

Return is a priority in Sweden which is pointed out in the country report of the EMN Sweden in 2016 and has become even more in focus in the aftermath of the high influx of asylum applicants in 2015 and the terror attack in Stockholm in April 2017. The need for return decisions to be effectively executed is highlighted to maintain a sustainable asylum and migration policy. The authorities responsible for issuing and enforcing return decisions (the Swedish Migration Agency, the Swedish Police Authority and the Swedish Prison and Probation Service) are tasked to intensify their interoperability and collaboration in order to increase the number of returns of individuals that have no legal right to remain in the country.

The authorities responsible for return are continuously working to achieve a fast and efficient decision process where those who have no legal right to remain in the country leave the country according to the decision and as soon as possible. The Swedish Migration Agency has for example set in place a system to facilitate the managing of cases by separating applications according to type (*processindelning*) which was described in the EMN country report of 2016[2]. For cases which are considered manifestly unfounded as well as cases handled according to the Dublin Convention are handled according to certain procedures to speed up the return.

[1] European **Recommendation on making returns more effective when implementing the Directive 2008/115/EC,** European Commission, the 2nd of March 2017

[2] The country report of EMN Sweden "The Return of Rejected Asylum Seekers: Challenges and Good Practices", p. 54 (2016:1).

There is in place, as has been outlined in earlier EMN studies a single procedure where the rejection of asylum application is issued simultaneously with the decision of return included information of voluntary departure if not an entry ban, and information of which country to return to. The return decisions have a statutory limitation period of four years and not an unlimited duration as recommended by the Commission. There is the possibility to apply for impediments of enforcement if new circumstances arise after the return decision has entered into force in order to safeguard the principle of non-refoulement. The challenge is to handle cases where there are no new circumstances in a swift manner to avoid that return is postponed.

For an effective enforcement of return decisions a number of measures are in place. Sanctions are recommended by the Commission when third-country nationals obstruct the return procedure. An example is the statutory changes in Sweden in June 2016, described in the country report of 2016.[3] Adults without minors are no longer entitled to accommodation or financial support if they have not left the country within the period of the voluntary departure.

One challenge is third-country nationals absconding. Eight criteria were introduced into the Aliens Act in 2012 when implementing the Return Directive to facilitate for the handling officer when assessing the risk of absconding. Criteria that are outlined by the Commission in their recommendations.[4] Detention is the last resort. The number of detention places have increased from 235 in 2014[5] to 357 in 2017[6]. The Swedish Migration Agency is though tasked to further increase the number. As there is a lack of detention places alternatives to detention are highlighted. The Swedish Migration Agency is currently looking at how supervision can become a more efficient measure.

A period of voluntary departure was given even before the implementation of the Return Directive. What changed in 2012 was the possibility to extend the duration of the period of voluntary departure. In March 2017 statutory changes made it possible to extend a period that had expired. As is recommended by the Commission a case officer assesses the individual circumstances of the case.[7] A period of voluntary departure is only given when there is a compliance to return.

An entry ban was in place before the implementation of the Return Directive. However, as pointed out in the country report from EMN Sweden in 2014, after the implementation of the Directive the entry ban applicable in the entire Schengen area.[8] The challenge is the mechanism to verify if and when the third-country national leaves the country, when the period of the entry ban should start. In place is a system where the third-country national is instructed to leave a proof of exit when exiting the Schengen area. As this is voluntary, it is not always done and consequently there is a number of third-country nationals that the Swedish Migration Agency do not know if they have left the country or not.

Another impact of the Return Directive was that an unaccompanied minor cannot return if there is no family member, nominated guardian or adequate reception in place in the country of return to receive the minor. When it comes to the best interest of the child, a number of evaluations have been conducted by the Swedish Migration Agency and education been offered to ensure that the rights of the child are taken into account by the Swedish Migration Agency.[9] An important and challenging task is family tracing. To return might be in the best interest of the child if the minor can be united with his or her family.

[3] The country report of EMN Sweden "The Return of Rejected Asylum Seekers: Challenges and Good Practices", p. 37 (2016:1).
[4] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agendamigration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf, 17th of August 2017.
[5] The country report of EMN Sweden "The use of detention and alternatives to detention in the context of immigration policies in Sweden" (2014:1).
[6] Statistics delivered by the Department of Detention at the Swedish Migration Agency, 18th of July 2017.
[7] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agendamigration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf, section 19, 17th of August 2017.
[8] The country report of EMN Sweden "Good practices in the return and reintegration of irregular migrants in Sweden", p. 28 (2014:2).
[9] Migrationsverket, Årsredovisning, p. 69 (2016).

## **Section 1**: Contextual overview of the national situation concerning the return of third-country nationals

**Q1.** Please provide an overview of the national measures implementing the Return Directive (including judicial practices, appointed interpretations and changes related to case law concerning the Return Directive) or equivalent standards (for Member States which are not covered by the Directive) in your Member State.

The Return Directive is as of March 2017 fully implemented in Swedish law, more specifically in the Swedish Aliens Act (2005:716). National legislation has been altered in order to harmonise with the Directive. Most importantly they include paragraphs and sections relating to grounds for assessment of the risk of absconding before making use of detention, the maximum length of detention, the suspensive effect on all return decisions issued by the Migration Agency when the returnee expresses a wish to appeal. The alterations of national legislation entered into force in May 2012.

The national measures implementing the Return Directive are the following: A Governmental Commission of Inquiry is appointed "Återvändandedirektivet och svensk rätt" (SOU 2009:60) in February 2009. The Government Official Report is circulated for comment. The Government Bill "Genomförande av återvändandedirektivet" (2011/12:60) is presented to Parliament in February 2012. The alterations of national legislation enter into force the 1st of May 2012.

A memorandum to evaluate the practical application is appointed in February 2016 "Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning" (Ds 2016:3). The Government Official Report is circulated for comments. The Government Bill "Uppföljning av återvändandedirektivet och direktivet om varaktigt bosatta tredjelandsmedborgares ställning" (2016/17:61) is presented to Parliament in December 2016. The alterations of national legislation enter into force the 1st of March 2017.

**Q2.** *[EC Recommendation (8)]* Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?[10] *Yes/No*

Please briefly elaborate on <u>important exceptions</u> to the general rule stated above

Yes. (2.2 a) Third country nationals that are refused entry do not receive an entry ban. (2.2 b) For returnees being returned as part of a criminal law sanction there is no maximum allowance for the length of detention.

If Yes, please describe:

a) The categories of third-country nationals to whom this derogation applies (third-country nationals who are subject to a refusal of entry AND/OR third-country nationals who are apprehended or intercepted while irregularly crossing the external border AND/OR third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures);

b) How the return procedure applied in such cases differs from standard practice (*e.g., a period for voluntary departure is not granted, appeals have no suspensive effect, etc.)*

a) Article 2.2 (a): Third country nationals who are being refused entry are not issued with an entry ban. An entry ban is in national legislation named a "re-entry ban" and since the returnee has not formally entered the country there can be no ban on re-entry according to Swedish legal interpretation. On the other hand returnees who have entered the country receive re-entry bans if there are grounds for it.

Article 2.2 (b): Returnees who by a criminal court have received a decision to return as part of their sentence are not included in the legislation stating a maximum length of detention that otherwise applies to returnees who have received a return decision in an administrative process (from the Migration Agency and/or the Migration Courts).

[10] Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b).

b) Returnees who are either refused entry or intercepted/apprehended receive an expulsion order issued by the Police Authority. The execution of such an expulsion order is not suspended in case an appeal is lodged. If the returnee expresses a need for international protection (i.e. anything interpreted as a claim for asylum, the execution of the decision is suspended and the case turned over to the Migration Agency). In neither case is a voluntary period for departure given.

A returnee being returned as part of a criminal conviction is exempted from the Directive as a whole. He or she is not granted a voluntary time for departure, the time in detention in preparation for return has no formal time limit and a re-entry ban is issued by the criminal court and carries no maximum time limit (i.e. a ban can be for life).

**Q3.** Please indicate any recent changes in the legal and/or policy framework (i.e., as a result of the migration situation in 2015-2016 or the European Commission Recommendation issued in March 2017).

A number of measures have been implemented recently such as an increased budget for return related measures and legislative reforms and amendments, as well as increased efforts towards countries of origin. For example: Temporary residence permits are the norm as opposed to permanent ones. In order to increase the incentives for voluntary departure, adult persons without minor children are no longer entitled to accommodation and financial support when their return decision has become final; the number of places in detention has been substantially increased; a number of return liaison officers have been deployed in countries of origin and a bilateral memorandum of understanding on readmission has been reached with Afghanistan and reintegration support is offered via the ERIN program to returnees to certain third countries, including Afghanistan and Iraq. In the 2016 appropriation directives to the Police Authorities, the Migration Agency and the Prison and Probation Service, the authorities mainly involved in enforcing return decisions, were tasked to carry out pilot schemes with the purpose to make returns more efficient and submit a joint plan to this end.

Further measures that are currently being prepared and planned to enter into force 2017-2019 include increased possibilities for the Police Authorities to conduct workplace inspections based on risk assessments. A public inquiry has been tasked to look into increased possibilities for the Police Authorities to take fingerprints and confiscate passports or identification documents when a person is encountered in relation to an internal control of aliens. Also, legislative and regulatory changes are prepared which aim to streamline the co-operation between the competent authorities responsible for voluntary return (the Swedish Migration Agency) and forced return (the Police Authorities) and to clarify their respective tasks and responsibilities.

**Q4**. Is the return of irregularly staying third-country nationals a priority in your Member State? *Yes/No*

If Yes, please provide a brief overview of the national debate on return in your Member State. Please indicate key points of discussion and players involved in this debate, and reference the information provided. Sources of national debate to include may be national media reports, parliamentary debates, and statements or reports of NGO/civil society organisations or International Organisations (IOs).

In general, there is a broad consensus among the political parties represented in the Swedish Parliament about the importance of a well-functioning and efficient system on return as a prerequisite for a long term sustainable asylum- and migration system. Following the high influx of asylum seekers to Sweden in 2015, return and the need to enhance the efficiency of the return policies have been featured as a clear political priority and has become subject to political debate more frequently and in more detail. A change has as well been identified in the national debate, focus is not so much on the rights and the entitlements of the migrant or to safeguard the right to asylum but more on the capacity of the member state to receive asylum applicants.[11] This shift took place in the end of 2015 when authorities and municipalities were stressed in how to meet the needs of the asylum applicants.

The national debate with calls for measures to enhance the enforcement of return decisions was further intensified in the aftermath of the terror attack in central Stockholm in April 2017, which left five persons dead and fourteen injured. The suspect perpetrator, a rejected asylum seeker from Uzbekistan, had absconded from the return procedure. This led to requests for more intervening and monitoring measures to prevent that persons

[11] See for example media reports such as ”Fri debatt – utan demonisering: Flyktingfrågan måste få vara så komplex som den är”, Dagens Nyheter, 4th of August 2017, http://www.dn.se/ledare/signerat/susanne-nystrom-debatten-ar-fri-men-demonisera-inte-utsatta-manniskor/, 17th of August 2017 and Viktor Banke, ”Andrum: om stölden av en flyktingkris och om de bestulna, Stockholm (2017).

that have been issued a final return decision go into hiding and hampering a swift enforcement of the return.[12] In the debate that followed upon the attack, there were also voices raised that warned of more repressive measures and the stigmatization of the entire group of rejected asylum seekers.[13]

The return of unaccompanied minors and young adults, in particular to Afghanistan, has also been subject to national debate. For example, a large lobbying network that consists of professionals and volunteers, who in one way or another meet and are engaged in this group of asylum seekers as well as NGOs and political organisations etc., has become actively involved in the public debate arguing inter alia for a stop of returns of unaccompanied minors and young adults.[14]

## **Section 2**: Systematic issuance of return decisions

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q5.** Who are the competent authorities to issue a return decision in your Member State?

The Swedish Migration Agency and the Swedish Police Authority. The Swedish Migration Agency is responsible when the third-country national has applied for asylum or has a close family member who is applying for asylum in Sweden or if the third-country national has stayed in the country for more than three months. The Swedish Police Authority is responsible in all other cases except when there is a doubt as to whether the third-country national should be refused entry the case is handed over to the Migration Agency.

**Q6a.** *[EC Recommendation (5)]* Does your Member State refrain from issuing a return decision to irregularly-staying third-country nationals if?

a) The whereabouts of the third-country national concerned are unknown; *Yes/No*

b) The third-country national concerned lacks an identity or travel document; *Yes/No*

c) Other *(please describe)*

A return decision can always be issued to irregularly-staying third-country nationals. But usually the whereabouts and the identity of the irregularly-staying third-country national are examined first and then a return decision is issued later

a) It depends on when in the process of investigating the asylum application the third-country national absconds. If it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds and the whereabouts of the third-country national are unknown a return decision might be taken. However if the case has not been fully investigated the case will be written off if the whereabouts are unknown.
b) No.
c) N/a.

**Q6b.** In connection with Q6a a) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown? *Yes/No*

If Yes, please elaborate on the type of measures.

The possibility for the police to locate and apprehend irregularly-staying third-country nationals is that there is the duty of an alien staying in Sweden, on request from a police officer, to present a passport or other documents

[12] See for example media reports such as "Löfven: "Frustrerande att 39-åringen inte utvisades", Svenska dagbladet, 9 April 2017: https://www.svd.se/lofven-frustrerande-att-39-aringen-inte-utvisades and "Polischef: "Svårt att utvisa till Uzbekistan": https://www.svd.se/polischef-finns-just-nu-12-500-andra-avvikare/om/terrordadet-i-stockholm and "Kinberg Batra kräver åtgärder mot avvisade som stannar", Dagens Industri, 10 April 2017: http://www.di.se/nyheter/kinberg-batra-kraver-atgarder-mot-avvisade-som-stannar/.

[13] See for example media reports such as "Papperslösa blir måltavla i terrorjakten", ETC, 12 april 2017: https://www.etc.se/inrikes/papperslosa-blir-maltavla-i-terrorjakten.

[14] Se for example; http://vistarinteut.org/ and "Riksorganisationer NGOs, församlingar och politiska partier på riks-, läns- och distriktsnivå som ställt sig bakom kravet på amnesti": https://www.mynewsdesk.com/se/number-vistaarinteut/blog_posts/organisationer-foereningar-och-partidistrikt-som-staellt-sig-bakom-kravet-paa-amnesti-57423.

showing that he or she has the right to remain in Sweden. It is also the duty of the alien, when summoned by the Swedish Migration Agency or the police authority, to visit the Agency or the Police and provide information about his or her stay in this country. If the alien does not do so he or she may be collected by the police authority. If, in view of an alien's personal circumstances or for some other reason, it can be assumed that the alien will not obey the summons, he or she may be collected without prior summons. Controls like the one mentioned above may only be undertaken if there is good reason to assume that the alien lacks the right to remain in this country or there is otherwise special cause for controls.

**Q6c.** *[EC Recommendation (24)(d)]* Does your Member State issue a return decision when irregular stay is detected on exit?

*Yes/No*

Please briefly elaborate on <u>important exceptions</u> to the general rule stated above

The issue is a matter of legal interpretation with some but not all Police regions issuing such a decision. A return decision should be given to an irregularly-staying third-country national, even when the person is detected upon the exit. The main reason for not happening is that the time to issue a return decision and the departure of an aircraft is too short. It considers better that the irregularly-staying third-country national leaves the country as planned than issuing a return decision and consequently having the person in Sweden for an additional time maybe spanning over several days.

**Q7**. *[EC Recommendation (5) (c)]* In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national? *Yes/No*

If No, when is the return decision issued? *Please specify.*

Yes Sweden uses a single procedure, Article 6:6.

**Q8.** Does the legislation in your Member State foresee the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on their territory? *Yes/No*

If Yes, please elaborate on the type of permit/ authorisation granted and to which type of third-country national it is granted.

In cases where the circumstances change after the return decision has entered into force, impediments to enforcement can be tried. If there is an obstacle to enforce the return decision the decision might be suspended or withdrawn. A temporary authorisation might be granted according to a temporary Act that entered into force the 20th of July 2016, an act which will be in effect for three years. Those who are given refugee status will be granted a three-year permit. Persons eligible for subsidiary protection will be granted a 13-month residence permit. When the permits expire, they will be extended if grounds for protection still exist.

**Q9a.** *[EC Recommendation (6)]* In your Member State, do return decisions have unlimited duration? *Yes/No*

**Q9b**. If No, for how long are return decisions valid?

No, return decisions have a four year statutory limitation period. In cases where there is a re-entry ban for a longer period of time this will hinder the third-country national to re-enter the country.

**Q10.** Does your Member State have any mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of *refoulement* before enforcing a removal? *Yes/No*

If Yes, please describe such mechanism:

Yes the mechanism in place is impediments to enforcement. After the return decision has entered into force and before the removal, the authorities responsible for the enforcement examine if there are any obstacle to enforce the return decision. If the obstacles are due to reasons beyond the third-country national's control a residence

permit might be granted, for example if the country in question do not readmit the person or due to serious health condition.

**Q11.** *[EC Recommendation (7)]* Does your Member State systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country? *Yes/No*

Please briefly elaborate on important exceptions to the general rule stated above

Yes, the information to which country the third-country national has to leave to is given in the decision of return. If the third-country national wants to return to a third country it is possible given that the country in question accepts it. The responsibility to arrange this is upon the third-country national.

## **Section 3**: Risk of absconding

*This section will examine Member States' practices and criteria to determine the risk of absconding posed by third-country nationals who have been issued a return decision (to the extent that it has not been covered in previous EMN studies/outputs), as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q12.** *[EC Recommendation (15)]* In your Member State, are the following elements/behaviours considered as a rebuttable presumption that a risk of absconding exists?

Table 1: Assessment of the risk of absconding

| Elements/ behaviours | Yes/No | Comments |
|---|---|---|
| **Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints** | Yes | Already in place |
| **Violent or fraudulent opposition to the enforcement of return** | Yes | Already in place |
| **Explicit expression of the intention of non-compliance with a return decision** | Yes | Already in place |
| **Non-compliance with a period for voluntary departure** | Yes | Already in place |
| **Conviction for a serious criminal offence in the Member States** | Yes | Already in place |
| **Evidence of previous absconding** | Yes | Already in place |
| **Provision of misleading information** | Yes | Already in place |
| **Non-compliance with a measure aimed at preventing absconding** | Yes | Already in place |

| | | |
|---|---|---|
| **Non-compliance with an existing entry ban** | Yes | Already in place |
| **Lack of financial resources** | No | |
| **Unauthorised secondary movements to another Member State** | Yes | Already in place |
| **Other (please describe)** | N/a | |

**Q13**. What measures are in place in your Member State to avoid the risk of absconding for the duration of the period for voluntary departure?

a) Regular reporting to the authorities; *Yes/No*

b) Deposit of an adequate financial guarantee; *Yes/No*

c) Submission of documents; *Yes/No*

d) Obligation to stay at a certain place; *Yes/No*

e) Other (please describe)

a) Yes, supervision in place either with the police or with Swedish Migration Board.

b) No

c) National law permits the Swedish Migration Board to seize any documents concerning identity during the period of investigation up until departure or permit to stay

d) No

e) Mandatory visits at the Swedish Migration Board with assignments to secure tickets or other necessary actions to show proof of will to return on a voluntary basis.

**Q14**. Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

Sweden do not experience any challenges as there is an exhausted list of objective criteria.

**Q15**. Please describe any examples of good practice in your Member State's determination of the existence of a risk of absconding, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Not applicable because of lack of evaluations.

## **Section 4**: Effective enforcement of return decisions

**Q16.** *[EC Recommendation (11)]* Does national legislation in your Member State foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes*? Yes/No*

If Yes, please specify to whom such sanctions apply and their content

| |
|---|
| Yes a re-entry ban is issued if the third-country national has not left the country within the period of voluntary departure. Another sanction although not related to EU-rules, adult persons without minor children are no longer entitled to accommodation and financial support when their return decision has become final. |

### **SECTION 4.1**: MUTUAL RECOGNITION

**Q17.** *[EC Recommendation (9) (d)]* Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory? *Yes/No*

Please briefly elaborate on your practice and any exception to the general rule stated above.

| |
|---|
| No. |

If Yes, does your Member State:

a) Initiate proceedings to return the third-country national concerned to a third country; *Yes/No*

b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision; *Yes/No*

c) Other *(please specify)*

| |
|---|
| N/a |

If No, please specify the reasons why your Member State does not recognise return decisions issued by another Member State

| |
|---|
| Sweden does not have mutual recognition in place. |

### **SECTION 4.2**: TRAVEL DOCUMENTS

**Q18.** *[EC Recommendation (9) (c)]* Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?[15] *Yes/No*

If Yes, in which cases do you issue these documents?

| |
|---|
| The Swedish Migration Agency still uses the old European travel documents for return in accordance with Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals. The Swedish Migration Agency has not begun issuing the new European travel documents in accordance with regulation 2016/1953. In order to issue the new documents with the required technical specifications and security features, the Swedish Migration Agency will require to enter into a contract with an external service provider. The tendering process for this contract has not yet begun.<br><br>European travel documents for return in accordance with Council Recommendation of 30 November 1994 are issued for various returnees after a written readmission request has been submitted and accepted by the competent authority in the third country of return. For example they are issued to:<br>• Returnees to Kosovo and Serbia<br>• Returnees to Albania returning to Albania from Sweden by charter flight<br>• Returnees to Jordan |

[15] Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994, OJ L 311, 17.11.2016

- Those who have a residence permit in the country of return but who are not nationals of that country (this applies only in respect of some countries where there is a readmission agreement in place)

These documents are also issued in some cases without any prior written readmission request. For example, they can be issued for Ukrainian citizens in possession of a domestic passport (in terms of article 5, paragraph 2 of the readmission agreement between the European Union and Ukraine).

If Yes, are these documents generally accepted by third countries? *Yes/No*

Please briefly elaborate on important exceptions to the general rule stated above

Yes – no important exceptions.

**Q19**. In your Member State, what is the procedure followed to request the third country of return to deliver a valid travel document/ to accept a European travel document? Please briefly describe the authorities responsible for carrying out such requests (where relevant, for each type of document, e.g. laissez-passer, EU travel documents…) and the timeframe within which these are lodged before third countries.

The Swedish Migration Agency is responsible for submitting these requests to third countries of return for voluntary returnees. The Swedish Police are responsible for submitting these requests in the case of non-voluntary returnees. Generally, a written readmission request is submitted either to the embassy of the third country of return in Sweden or directly to the competent authority in the third country. A copy of the available evidence of the returnee's identity and citizenship is attached to the request. If the third country confirms the returnee's identity and citizenship, the Swedish Migration Agency or the Swedish Police, either issues a European travel document (see answer to Q. 18 above) or submits a written request for the issuance of a travel document to the third country's embassy in Stockholm.

The timeframe for the lodging of readmission requests varies, depending on the circumstances of the case. Voluntary returnees are normally given the opportunity to make their own arrangements to obtain a travel document after their expulsion decision has gained legal force. If they fail to do so or are unable to do so then the Swedish Migration Agency at that stage submits a readmission request. Generally these requests are submitted within a month or within a few months from the date the expulsion decision gained legal force. In the case of non-voluntary returnees, it can take slightly longer for the Swedish Police to submit a readmission request since cases are only transferred to the police once all efforts to effect a voluntary return have been exhausted.

## **SECTION 4.3**: USE OF DETENTION IN RETURN PROCEDURES

Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law.

**Q20a.** *[EC Recommendation (10) (a)]* In your Member State, is it possible to detain a third-country national within the context of the return procedure? *Yes/No*

Please briefly elaborate on any exceptions to the general rule stated above

Yes, no exceptions.

**Q20b.** If Yes, please specify the grounds on which a third-country national may be detained (select all that apply)

a) If there is a risk of absconding; *Yes/No*

b) If the third-country national avoids or hampers the preparation of a return or removal process; *Yes/No*

c) Other *(please specify).*

a) Yes

b) Yes

c) Engaged in criminal activity or if there is a need to investigate the identity of the person and in cases where there is a high probability of denial of entry or expulsion.

**Q21**. How often does your Member State make use of detention for the purpose of removal? Please complete the table below for each reference year (covering a 12-month period, from 1st January to 31st December).

Table 2: Third-country nationals placed in detention 2012-2016

| | 2012 | 2013 | 2014 | 2015 | 2016 | Comments |
|---|---|---|---|---|---|---|
| **Total number of third-country nationals placed in detention** | 2 550 | 2 864 | 3 201 | 3 959 | 3 606 | Number of stays in detention, some might have more than one stay in detention. One period of detention is the general norm and several is an exception. |
| **Number of third-country nationals placed in detention (men)** | 2 232 | 2 479 | 2 841 | 3 496 | 3 187 | See above |
| **Number of third-country nationals placed in detention (women)** | 276 | 338 | 335 | 378 | 419 | See above |
| **Number of families in detention** | N/A | N/A | N/A | N/A | N/A | The Swedish Migration Agency has no statistics concerning family groups. All statistics are built around the gender of the person. |
| **Number of UAMs in detention** | 16 | 10 | 2 | N/A | N/A | Statistics only maintained up to 2014. |

**Q22a.** *[EC Recommendation (10) (b)]* In your Member State, what is the overall maximum authorised length of detention (as provided for in national law or defined in national case law)?

12 months if not expulsion order in conjunction with a criminal verdict, in that case there is no limit

**Q22b.** Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded? *Yes/No*

Please elaborate under which circumstances:

No.

**Q23a**. In your Member State, is detention ordered by administrative or judicial authorities?

a) Judicial authorities; *please specify*

Migration court, Migration court of appeal

b) Administrative authorities; *please specify*

The Swedish Migration Agency, The Swedish Police Authority, the Swedish Security Service.

c) Both judicial and administrative authorities; *please specify*

In general the detention order is issued by the Swedish Migration Agency and the Swedish Police Authority. However the Migration Courts and the Migration Court of Appeal have the possibility to issue detention orders. The detention order can be reviewed by the court but only if the detention order is appealed.

**Q23b**. If detention is ordered by administrative authorities, please provide more detailed information on the procedure for reviewing the lawfulness of the detention and the timeframe applicable to such a review:

a) The lawfulness of detention is reviewed by a judge ex officio: *Yes/No*

If Yes, how long after the start of detention?

a) No

b) The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention; *Yes/No*

If Yes, how long after the initiation of such proceedings by the third-country national?

Yes as soon as possible, usually within days of appeal, due to the fact that they are deprived of liberty.

**Q24a.** In your Member State, is the duration of the stay of a third-country national in detention reviewed upon application by the third-country national concerned or ex officio? *Please note that whereas Q23b above refers to the review of the lawfulness of the decision to detain, t Q24a and Q24b and 24c below refer to the review of the duration of the stay of the third-country national in detention.*

Ex officio.

**Q24b**. In your Member State, how often is the stay of a third-country national in detention reviewed (*e.g. every two weeks, every month, etc.)?*

The time limits differ depending on reason for detention. In the case of investigation of identity or probable refusal of entry the time limit is two weeks. In case of refused application the time limit is two months.

**Q24c.** In your Member State, is the stay of a third-country national in detention reviewed by judicial or administrative authorities*?*

a) Judicial authorities; *please specify*

The detention order will only be reviewed by a judicial authority if the third-country national appeals the detention order.

b) Administrative authorities; *please specify*

The detention order is reviewed by either the Swedish Migration Agency or the Swedish Police Authority depending on which authority that is responsible for the case.

c) Both judicial and administrative authorities; *please specify*

For example: detention is in general reviewed by administrative authorities but will be reviewed by a judge in cases of prolonged detention (over one month).

**Q25.** *[EC Recommendation (10) (c)]* How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31st December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors. If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

Table 3: Detention capacity as of 31st December 2016

| | | Situation as of 31st December 2016 | Comments |
|---|---|---|---|
| **Number of detention centres** | | 5 | |
| **Number of places available in detention centres per category of third-country nationals** | **Men** | 315 | |
| | **Women** | 39 | Children are usually kept with their mothers in the same wing. |
| | **Families** | | No specific wings for families. Certain rooms are better suited for families. |
| | **Unaccompanied minors** | | Seldom detained. Handled on case by case basis. |
| | **Total** | 357 | |

**Q26.** How does your Member State measure the number of detention places? *(e.g. in terms of the number of beds, the square meters available per detainee, etc.)*

Number of beds.

**Q27** *[EC Recommendation (21) (c)]***.** In your Member State, are third-country nationals subject to return procedures detained in specialised detention facilities (i.e. a facility to keep in detention third-country nationals who are the subject of a return procedure)? *Yes/No*

Please briefly elaborate on <u>important exceptions</u> to the general rule stated above

In general they are kept in specialised detention facilities. If they pose a serious risk to order and safety within the facility, they can be transferred to a remand centre or correctional facility. Third country nationals detained because of an expulsion order in conjunction with a criminal verdict are usually detained in a correctional facility

If No, please specify the kind of facilities which are used to detain third-country nationals.

N/a.

**Q28a.** Has your Member State faced an emergency situation where an <u>exceptionally large number of third-country nationals to be returned</u> placed an <u>unforeseen heavy burden</u> on the capacity of the detention facilities or on the administrative or judicial staff? *Yes/No*

Please elaborate on the circumstances in which this happened:

No.

**Q28b.** Has your Member State's capacity to guarantee the standards for detention conditions, as defined in Article 16 of the Return Directive, been affected due to an exceptionally large number of other categories of third-country nationals (e.g. Dublin cases) being placed in detention facilities? *Yes/No*

No.

**Q28c.** If Yes to Q28a, please describe the situation(s) in additional detail and provide information on any derogations that your Member State may have decided to apply with respect to general detention conditions and standard periods of judicial review (e.*g. during the emergency situation, third-country nationals had to be detained in prison accommodation in order to increase the detention capacity, the detention was reviewed once a month instead of once a week, etc*.)

N/a.

## **SECTION 4.4**: USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

**Q29.** Please indicate whether any alternatives to detention for third-country nationals are available in your Member State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 4: Alternatives to detention

| Alternatives to detention | Yes/ No (If yes, please provide a short description) |
|---|---|
| **Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)** | Yes report regularly to police or immigration authorities at regular intervals. |
| **Obligation to surrender a passport or a travel document** | Yes |
| **Residence requirements (e.g. residing at a particular address)** | No but contact details are always asked for. |
| **Release on bail (with or without sureties)**<br>***If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)*** | No |
| **Electronic monitoring (e.g. tagging)** | No |
| **Guarantor requirements**<br>***If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)*** | No |
| **Release to care worker or under a care plan** | No |
| **Community management programme** | No |
| **Other alternative measure available in your (Member) State. Please specify.** | N/a |

**Q30**. Please indicate any challenges associated with the implementation of detention and/ or alternatives to detention in your Member State.

In replying to this question please note for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law).

Lack of capacity is a challenge and alternatives to detention are rarely used and are therefore an area for improvement. Challenges regarding assessments procedures refer to the Swedish EMN report EMN Sweden Report 2014:1 The use of detention and alternatives to detention in the context of immigration policies in Sweden. Question 3.2.

**Q31.** Please describe any examples of good practice in your Member State's implementation of detention and alternatives to detention, identifying as far as possible by whom the practice in question is considered successful, its relevance, since when the practice has been in place and whether its effectiveness has been proved through an

(independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

A dissertation at the Faculty of Medicine, University of Uppsala looks at the health of detainees in Sweden and compares the findings with the situation in Belgium, Netherlands and Luxembourg. There is a negative effect on health when detained. The aim of the research is to explore and identify what can be done to mitigate these negative effects. According to Swedish law the only medical care given is the one who cannot be deferred. The access to medical care is therefore limited which is pointed out in the dissertation as an area of improvement.[16] However the access to medical care has improved after the dissertation was published. There is now a qualified nurse in all detention centres in Sweden. A positive effect on health is the support from the staff. The Swedish Migration Agency is currently looking into how to improve the training and the support for the staff. Compared to the three other EU member states Sweden has lesser restrictions which had a positive effect according to the researcher.[17] The detainees have unlimited access to Internet, mobile phones and are not locked up during the night.

## **Section 5**: Procedural safeguards and remedies

*This section will study Member States practices on the interpretation and implementation of EU rules relating to appeal deadlines and suspensive effect of appeals (as per Articles 13 of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q32.** *[EC Recommendation (12) (d)]* Is the application of the principle of *non-refoulement* and/or of Article 3 European Convention on Human Rights systematically assessed as part of the procedure to take a return decision? *Yes/No*

Please briefly elaborate on important exceptions to the general rule stated above

Yes.

If No, under which circumstances is it assessed?

a) It is never assessed as part of the return procedure; *Ys/No*

b) It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure; *Yes/No*

c) Other *(please specify)*

N/a.

**Q33.** In your Member State, before which authority can a return decision be challenged?

a) Judicial authority; *Yes/No*

b) Administrative authority; *Yes/No*

c) Competent body composed of members who are impartial and who enjoy safeguards of independence. *Yes/No*

If Yes to c), please specify

a) Yes

b) Yes

c) No

[16] Soorej Jose Puthoopparambil, "Life in Immigration Detention Centers: An exploration of health of immigrant detainees in Sweden and three other EU member states", p. 50, Uppsala (2016).

[17] Soorej Jose Puthoopparambil, "Life in Immigration Detention Centers: An exploration of health of immigrant detainees in Sweden and three other EU member states", p. 36, Uppsala (2016).

**Q34.** *[EC Recommendation (12) (b)]* Is there a deadline for the third-country national concerned to appeal the return decision? *Yes/No*

If Yes, please specify whether the deadline is:

a) Less than a week;

b) Two weeks;

c) One month;

d) As long as the return decision has not been enforced.

e) Other (please specify)

| |
|---|
| Yes. e) three weeks. |

**Q35**. *[EC Recommendation (12) (c)]* In your Member State, does the appeal against a return decision have a suspensive effect? *Yes/No*

If Yes, under which conditions? Are there cases where the appeal is not suspensive (please describe)?

| |
|---|
| Yes, as the Court has to review the case before removal. |

**Q36.** Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? *Yes/No*

Please briefly elaborate on <u>important exceptions</u> to the general rule stated above

| |
|---|
| No. |

**Q37.** [*EC Recommendation (12) (a)*] In your Member States, is there a possibility to hold the return hearing together with hearings for different purposes? *Yes/No*

If Yes, which ones (e.g. hearings for the granting of a residence permit or detention)?

| |
|---|
| N/a. |

**Q38.** Is there an obligation for the third-country national concerned to attend the hearing in person? *Yes/No*

If No, please describe what alternatives can be used *(e.g. phone, videoconference…)*

| |
|---|
| N/a. |

## **Section 6**: Family life, children and state of health

*This section will study Member States' practices on the interpretation and implementation of EU rules relating to: the assessment of the best interest of the child; the assessment of family life; the assessment of the state of health of the third-country national concerned; irregularly staying unaccompanied minors; and the use of detention in the case of minors, as per Articles 3, 10 and 17 of the Return Directive. Questions referring to children below refer both to accompanied and unaccompanied minors, unless specified*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q39.** In your Member State, which categories of persons are considered vulnerable in relation to return/ detention (e.g. minors, families with children, pregnant women or persons with special needs)?

Please differentiate between return and detention if applicable

| |
|---|
| The same as the ones enumerated under Article 3 (9) minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, |

rape or other serious forms of psychological, physical or sexual violence. Not applicable to differentiate between return and detention.

**Q40.** *[EC Recommendation (13)]* In order to ensure that the best interest of the child is taken into account, how and by whom is it assessed before issuing a return decision?

According to Swedish law the Migration Agency has to specifically consider a child's best interests during the whole process, from the stage of lodging an asylum application to the stage of leaving the country. A method in place to consider the best interest of the child which has to be performed in all decisions regarding children, is to analyse the consequences for the child. Regarding the return decision it is the Asylum Officer who analyses the consequences of the decision.

All children have the right to have their say and be listened to. Their reasons for seeking asylum are to be examined individually, as a child may have other reasons for seeking asylum than the parents. When the child's reasons for seeking asylum are examined, the Migration Agency official must adapt the examination as much as possible to the child's age, health, and maturity. The child has the right to be accompanied by an adult during the examination. It can be a parent or other legal guardian, a custodian, and/or public counsel.

**Q41.** In your Member State, what elements are taken into account to determine the best interest of the child when determining whether a return decision should be issued against an irregularly staying minor (aside from the assessment of the *non-refoulement* principle)?

Table 5: Elements considered in determining the best interest of the child

| Elements considered | Yes/No | Comments |
|---|---|---|
| **Child's identity** | Yes | Looking at whether there has been an adjustment to the Swedish society and which significance this has for the well-being of the child. |
| **Parents' (or current caregiver's) views** | Yes | |
| **Child's views** | Yes | Depending on the age of the children and the maturity. |
| **Preservation of the family environment, and maintaining or restoring relationships** | Yes | |
| **Care, protection and safety of the child** | Yes | |
| **Situation of vulnerability** | Yes | |
| **Child's right to health** | Yes | |
| **Access to education** | Yes | |
| **Other (please describe)** | | |

**Q42**. In the event a return decision against an unaccompanied minor cannot be carried out, does your Member State grant the minor a right to stay? *Yes/No*

If Yes, please describe any relevant practice/case law.

If there are practical reasons to why a return decision cannot be enforced a permit can be granted. Matters of importance are the age of the minor and the duration of the obstacle that prevents the enforcement. If the obstacles are temporary a temporary authorisation for 12 months is granted until the age of 18. However if the minor is 17 years and six months a decision of rejection with postponed removal is issued. If the obstacles are lasting and the minor is 16 years and younger a temporary authorisations for 13 months is granted. Temporary authorisations are the norm according to the temporary Act that entered into force the 20th of July 2016, an act which will be in effect for three years. However if the state of health of the minor is continuously failing a permanent residence is issued.

**Q43.** *[EC Recommendation (13) (c)]* Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors? *Yes/No*

If Yes, please describe such policies

Reintegration policies are available when returning to certain countries but not specially targeted to unaccaompanied minors.

**Q44.** In your Member State, can the enforcement of the return decision be postponed on the grounds of health issues? Yes/No

If Yes, please describe any relevant practice/case law.

Yes but only if conditions are life-threatening.

**Q45.** In your Member State, how is the assessment of the state of health of the third-country national concerned conducted?

a) The third-country national brings his/her own medical certificate; *Yes/No*

b) The third-country national must consult with a doctor appointed by the competent national authority; *Yes/No*

c) Other *(please describe)*

a) Yes.
b) No.
c) A health assessment is offered.

**Q46.** When returnees suffer from health problems does your Member State take into account the accessibility of medical treatment in the country of return? *Yes/No*

If Yes, which authority is responsible for this assessment of the accessibility?

Yes, the Swedish Migration Agency assesses what medical service is available in the country in question. The state of health is taken into consideration when examining the asylum application as well if the circumstances change after the return decision is final.

**Q47.** When returnees suffer from health problems, does your Member States make provision for the supply of the necessary medication in the country of return? *Yes/ No*

If Yes, for how long is the medication provided?

Yes to ensure that the person will not be without medication upon arrival and a short time after that.

**Q.48.** Does your Member State postpone return if the third-country national concerned is pregnant? Please specify *(e.g. pregnancy as such is not a cause for postponement, but can be if pregnancy is already advanced, e.g. after eight months)*

Yes when pregnancy is advanced but depending on the regulations of the airline company.

**Q49a.** *[EC Recommendation (14)]* In your Member State, is it possible to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Refer to the EMN Sweden Report 2014:1 The use of detention and alternatives to detention in the context of immigration policies in Sweden. Only as a last resort and therefore it is rare that vulnerable persons or minors are put in detention.

**Q49b.** If applicable, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

No legal obstacles for minors to be detained no matter accompanied or unaccompanied, but seldom implemented.

**Q50**. Please indicate any challenges associated with the implementation of the return of vulnerable persons in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

A research project at Umeå University in Sweden, partly financed by the European Return Fund,[18] highlights the need of more research regarding the implementation of return and unaccompanied minors, how officials take into account the best interest of the child. There is a dilemma between interpreting the best interest of the child and what can be done with regard to rules and resources. The latter became a problem in 2015 when a high number of unaccompanied minors applied for asylum in Sweden. Authorities and municipalities had problems to meet the needs of the asylum applicants. Another challenge which is pointed out in the country report of EMN Sweden[19] is to ensure there is a family member, a nominated guardian or acceptable reception in the country of return. Over all there is a lack of studies and evaluations regarding the implementation of return.

**Q51**. Please describe any examples of good practice in your Member State concerning the return of vulnerable persons, identifying as far as possible by whom the practice in question is considered successful, since when has the practice been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

See above about the lack of studies and evaluations. The Red Cross has published two reports regarding return projects from 2008 to 2015 co-funded by the European Return Fund. There is no independent evaluation but they highlight the need of support before, during and in the country of return not only for vulnerable persons but then it is more essential, and as well the need of good cooperation between NGOs and relevant authorities.[20]

[18] Polisutbildningens skriftserie, "Ensamkommande flyktingbarns återvändande – Om förutsättningar samt centrala aktörers roller och ansvar", p. 25, Umeå universitet (2014 nr 2).
[19] The country report of EMN Sweden "The Return of Rejected Asylum Seekers: Challenges and Good Practices", p. 30 (2016:1).
[20] Röda Korset, "Avslag på asylansökan Återvändande: Resultat och utmaningar, Klippan (2015) and Genusperspektiv i asylprocessen och vid återvändande", Klippan (2015).

## **Section 7**: Voluntary departure

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q52a.** *[EC Recommendation (17)]* In your Member State, is a period of voluntary departure granted:

a) Automatically with the return decision? *Yes/No*

OR

b) Only following an application by the third-country national concerned for a period for voluntary departure? *Yes/No*

Please briefly elaborate on important exceptions to the general rule stated above

| |
|---|
| a) Yes. |

**Q52b.** If Yes to b), how does your Member State inform the third-country nationals concerned of the possibility of submitting such an application? Please specify:

a) The legal/ policy provisions regulating the facilitation of such information;

b) The actors involved / responsible;

c) The content of the information provided (e.g. the application procedure, the deadlines for applying, the length of the period for voluntary departure, etc.);

d) The timing of the information provision (e.g. on being issued a decision ending legal stay/return decision);

e) The tools of dissemination (in person (written), in person (oral), via post, via email, in a telephone call, in public spaces, etc.),

f) The language(s) in which the information must be given and any accessibility / quality criteria (visual presentation, style of language to be used, etc.),

g) Any particular provisions for vulnerable groups (e.g. victims of trafficking, unaccompanied minors, elderly people) and other specific groups (e.g. specific nationalities).

| |
|---|
| N/a. |

**Q53.** In your Member State is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?[21]

a) Yes, to refrain from granting a period of voluntary departure;

b) Yes, to grant a period for voluntary departure shorter than seven days;

c) No.

If Yes, when does your Member State refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days? Please select all that apply:

a) When there is a risk of absconding; *Yes/No*

b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent; *Yes/No*

c) When the person concerned poses a risk to public policy, public security or national security; *Yes/No*

d) Other *(please specify)*

| |
|---|
| a) Yes to refrain from granting a period of voluntary departure a) when there is a risk of absconding.<br>b) Yes when an application for a legal stay has been dismissed as manifestly unfounded or fraudulent.<br>c) Yes when the person concerned poses a risk to public policy, public security or national security. |

[21] Article 7(4) of the Return Directive reads: 'If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days'.

d) N/a.

**Q54.** *[EC Recommendation (18)]* In your Member State, how long is the period granted for voluntary departure?

Two or four weeks.

**Q55**. *[EC Recommendation (19)]* In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case? *Yes/No*

If Yes, which circumstances are taken into consideration in the decision to determine the duration of the period for voluntary departure? Please indicate all that apply:

a) The prospects of return; *Yes/No*

b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; *Yes/No*

*c)* Other *(please specify)*

Yes.

a) No

b) No

c) Other – depending on the length of stay in Sweden.

**Q56**. Is it part of your Member State's policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? *Yes/No*

If Yes, which circumstances are taken into consideration in the decision to extend the period for voluntary departure? Please indicate all that apply:

a) The length of stay; *Yes/No*

b) The existence of children attending school; *Yes/No*

c) The existence of other family and social links; *Yes/No*

d) Other *(please specify)*

Yes.

a) Yes

b) Yes

c) Yes

d) Other - obtaining traveling documents

**Q57**. *[EC Recommendation (24)(b)]* In your Member State, is there a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure? *Yes/No*

If Yes, please describe:

Yes a proof of exit, a document that aliens is instructed to leave when exiting Schengen area.

**Q58.** Please indicate whether your Member State has encountered any of the following challenges associated to the provision of a period for voluntary departure and briefly explain how they affect the ability of the period for voluntary departure to contribute to effective returns.

Table 6: Challenges associated with the period for voluntary departure

| Challenges associated with the period for voluntary departure | Yes/No/In some cases | Reasons |
|---|---|---|
| **Insufficient length of the period for voluntary departure** | Yes | Time-consuming administration – the time it takes to register that decisions have entered into force – time is short for information about AVR and for counselling and to give the third-country national time to organize the return. Obtaining travel documents from third countries can take some time and often results in the period for voluntary departure having to be extended. |
| **Absconding during the period for voluntary departure** | Yes | No compliance to return. |
| **Verification of the departure within the period of voluntary departure** | In some cases | Depending on if the alien provide the proof of exit. |
| **Other challenges (please specify and add rows as necessary)** | N/a | |

**Q59**. Please describe any examples of good practice in your Member State in connection with the period of voluntary departure, identifying as far as possible by whom the practice in question is considered successful, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

N/a.

## **Section 8**: Entry bans

*This section of the Synthesis Report will study Member States' practices on the interpretation and implementation of EU rules relating to the conditions to impose an entry ban (as per Article 11 of the Return Directive), including as regards the reasons to refrain from issuing, withdraw or suspend an entry ban (Article 11(3) Return Directive).*

*Please note that similar information was requested in the EMN 2014 Study on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'. Please review your Member State contribution to this Study (if completed) and provide only updated information here.*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law**

**Q60.** In your Member State, which scenario applies to the imposition of entry bans?

a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted; *Yes/*

b) Entry-bans are automatically imposed on all return decisions other than under a);N*o*

c) Entry bans are issued on a case by case basis on all return decisions other than a); *Yes*

**Q61.** What are according to national legislation in your Member State the grounds for imposing entry bans? Please answer this question by indicating whether the grounds defined in national law include the following listed in the table below.

Table 7: Grounds for imposing an entry ban

Refer to the EMN Sweden Report 2014:2: Good practices in the return and reintegration of irregular migrants in Sweden.

| Grounds for imposing entry bans | Yes/No | Comments |
|---|---|---|
| **Risk of absconding**[22] | Yes | The following eight criteria are considered when assessing the risk of absconding: if the third-country national has previously stayed away, gone into hiding, has stated no intention to leave the country in accordance with the removal order, has occurred during any identity that has been false/incorrect, has not cooperated to clarify identity and therefore hampered the examination of the asylum application, deliberately given false information or withheld material information, previously been in violation of a re-entry ban, been convicted of an offence punishable by imprisonment, been expelled following a criminal conviction by a court. |
| **The third-country national concerned poses a risk to public policy, public security or national security**[23]**.** | Yes | |
| **The application for legal stay was dismissed as manifestly unfounded or fraudulent**[24] | Yes | |
| **The obligation to return has not been complied with**[25] | Yes | |
| **Other (e.g. please indicate and add rows as appropriate)** | N/a | |

**Q62a.** In your Member State, which is the maximum period of validity of an entry ban?

Five years but if risk to public policy, public security or national security a longer validity of an entry ban can be given.

**Q62b**. Does legislation in your Member State provide for different periods of validity for the entry bans? *Yes/ No*

If Yes, what is the most common period of validity?

Yes, one year.

**Q62c** Does national legislation and case law in your Member State establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry? *Yes/No*

If Yes, please specify (*for example, if the third-country national concerned poses a threat to public order or national security a five-year entry ban is imposed; if the third-country national concerned has not complied with the obligation to return a three-year entry ban is imposed, etc. ):*

Yes, in cases where no period of voluntary departure is granted the time limit of the entry ban is two years but if the obligation of return has not been complied with, within the period of voluntary departure, the validity of an entry ban is one year.

[22] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
[23] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
[24] As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).
[25] As stipulated in the Return Directive Article 11(1)(b).

**Q63.** *[EC Recommendation (24)(a)]* In your Member State, when does an entry ban start applying?

a) On the day the return decision is issued; *Yes/No*

b) On the day in which the third-country national leave the EU; *Yes/No*

c) Other *(please specify)*

| |
|---|
| Entry ban starts applying when the decision enter into legal force which is three weeks after decision has been taken unless the applicant appeals the decision. |

**Q64.** *[EC Recommendation (24)(c)]* Does your Member State enter an alert into the Schengen Information System (SIS) when an entry ban has been imposed on a third-country national? (e.g. see Article 24 (3) of Regulation No 1987/2006 – SIS)? *Yes/No*

Please specify whether;

a) Alerts are entered into the SIS systematically; *Yes/No*

b) Alerts are entered into the SIS on a regular basis; *Yes/No*

c) Alerts are entered into the SIS on a case-by-case basis; *Yes/No*

*d)* Other *(please specify)*

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|---|
| d) Other as reported in the country report from EMN Sweden in 2014.[26]-Alerts are entered as standard practice as soon as they have entered into force by the Police Authority into the SIS. |

**Q65.** *[EC Recommendation (24)(d)]* If a return decision is issued when irregular stay is detected on exit (see Q4c above), does your Member State also issue an entry ban? *Yes/No*

Please briefly elaborate on <u>important exceptions</u> to the general rule stated above

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|---|
| If the criteria for issuing an entry ban are fulfilled an entry ban should be issued in these cases. However the time gap to issue a return decision and the departure of an aircraft is too small. In order to make sure the person leaves when he or she should it can be considered better than having the person remaining in Sweden for an additional time maybe spanning over several days. |

**Q66.** If a TCN ignores an entry ban, does your Member State qualify that fact as a *misdemeanor or a criminal offence*?

a) Yes, a misdemeanor

b) Yes, a criminal offence

c) No

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|---|
| b) If the third-country national is convicted for a crime and due to that reason is issued an entry ban and thereafter returns, is seen as a criminal offence which can lead to imprisonment up to a year or in small cases a fine. |

**Q67**. Has your Member State conducted any evaluations of the effectiveness of entry bans? *No*

If Yes, please provide any results pertaining to the issues listed in Table 7 below. The full bibliographical references of the evaluations can be included in an Annex to the national report.

[26] Country report from EMN Sweden Good practise in the return and reintegration of irregular migrants in Sweden, page 12 (2014:2).

Table 8: The effectiveness of entry bans

| Aspects of the effectiveness of entry bans | Explored in national evaluations (Yes/No) | Main findings |
|---|---|---|
| **Contribute to preventing re-entry** | N/a | |
| **Contribute to ensuring compliance with voluntary return[27]** | N/a | |
| **Cost-effectiveness of entry bans** | N/a | |
| **Other aspects of effectiveness (please specify)** | N/a | |

**Q68**. Please indicate whether your Member State has encountered any of the following challenges in the implementation of entry bans and briefly explain how they affect the ability of entry bans to contribute to effective returns.

Table 9: Practical challenges for the implementation of entry bans

Please refer to the report from EMN Sweden 2014:2: Good practices in the return and reintegration of irregular migrants in Sweden

| Challenges associated with entry bans | Yes/No/In some cases | Reasons |
|---|---|---|
| **Compliance with entry bans on the part of the third-country national concerned** | Yes | Third-country nationals return despite an active entry ban |
| **Monitoring of the compliance with entry bans** | In some cases. | Monitoring is difficult as soon as someone has entered the Schengen Area. |
| **Cooperation with other Member States in the implementation of entry bans[28]** | No | |
| **Cooperation with the country of origin in the implementation of entry bans** | N/a | |
| **Other challenges (please specify and add rows as necessary)** | N/a | |

**Q69.** Please describe any examples of good practice in your Member State in relation to the implementation of entry bans, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

One impact of the Directive was that the entry ban became applicable in the entire Schengen area. An effect that was identified was that third-country nationals from Western Balkans with unfounded applications often decide not to apply or to withdraw their application due to the risk of receiving a re-entry ban.[29] There is however no evaluation made to what extent they actually left the country and if it was within the period of

[27] i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

[28] This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

[29] The country report of EMN Sweden "Good practices in the return and reintegration of irregular migrants in Sweden", p. 16 (2014:2).

voluntary departure. An outcome can as well be that the third-country national absconds and remains in the country until the entry ban has expired as the duration of the entry ban starts when it enters into force not when exiting the country. This is however now revised after the case C-225/16 from the Court of Justice of EU, Mossa Ouhrami, regarding when an entry ban starts.[30]

## **Section 9**: Conclusions

**Q70**. With regard to the aims of this study, what conclusions would you draw from your findings?

There are certain challenges and factors to consider when studying the impact of the Return Directive and EU rules and the effectiveness on return. When it comes to looking at the impact, the evaluation of the Return Directive in 2013 states that the directive in general has had a positive impact when it comes to harmonizing national practices in the EU. What is identified as well is a significant number of variations between Member States.[31] The differences are important to consider as they explain why the impact of the Return Directive differ between Member States. The extent of the changes made when implementing the Directive depends on which national system that was in place before the Return Directive. As there were not that many statutory changes in Sweden, the Return Directive had a limited impact on policies and practices in Sweden. Over all Sweden had a systematic issuance of return decisions, a period of voluntary departure was granted and a ban to re-enter the country if there were grounds for it was in place in 2008.

Secondly when looking at the impact and the effectiveness of the Return Directive there is the problem to identify causal connections between measures and number of effected returns. Many factors do have an impact when studying return and the measures needed might be many and diverse. How to identify the major factor especially when third-country nationals are such a diverse group? The re-admission policy of the country to return to, the individual situation in the country of reception compared to the country of return are some examples of factors that do have an impact when studying return. The Return Directive is one of many measures which is brought forward in the Communication from the Commission on a more effective return policy[32] which means it does not address all the challenges. This also have to be considered when assessing effectiveness.

When it comes to the national report, the result depends on data available. There are three authorities involved in Sweden when enforcing return decisions, the Swedish Migration Agency, the Police Authority and the Prison and Probation Service. There is a problem of coordination when evaluating the effectiveness of return. In the appropriation directives for 2017 the three authorities are tasked to coordinate and develop statistics in order to facilitate the evaluation of return. Meanwhile there is a problem to evaluate the effectiveness of return in Sweden as the authorities use different data. There is as well a lack of studies or evaluations looking at return in regard to effectiveness. The study is therefore based on inputs from experts and other competent officials handling return.

When looking at voluntary departure the workload has increased after the implementation of the Return Directive. Case officers take decisions when extending the period of voluntary departure and then they have to control if there has been a return within the period of voluntary return, if not a decision of entry ban is taken. A follow-up by the Swedish Migration Agency in 2015 regarding the decisions to extend the period of voluntary departure highlighted the problems to estimate the length of the voluntary departure and assessing the individual circumstances when deciding the period of voluntary departure.[33] One outcome of the Return Directive is therefore that the workload has increased for the Case Officers. What is lacking is a study to evaluate the impact of the possibility to extend the voluntary departure in regard to the number of voluntary return in order to answer the question of effectiveness.

Another impact of the Return Directive was that entry ban became applicable in the entire Schengen area. One effect identified was that third-country nationals from Western Balkans with unfounded claims decided not to apply for asylum or to withdraw their application. What is lacking is data on how this effected the number of return. Until now the entry ban starts when the decision of entry ban enters into force in force. A

[30] Available at: http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d60f17d2731ae5411a8afaee333b3d3a69.e34KaxiLc3qMb40Rch0SaxyMaNj0?text=&docid=193211&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=925343, 17 th of August 2017.

[31] Evaluation on the application of the Return Directive (2008/115/EC) 22nd October 2013.

[32] Communication from the Commission to the European Parliament and the Council: On a more effective return policy in the European Union – a renewed action plan, 2nd March 2017.

[33] Migrationsverket, "Analysrapport: Kvalitetsuppföljning 2015 av beslut om förlängning av tidsfrist för frivillig avresa", Norrköping (2015).

third-country national who absconds therefore avoids the negative effect of the entry ban. The impact and the effectiveness of the entry ban therefore varies depending on the outcome. When the entry ban starts is now revised after the case C-225/16 from the Court of Justice of EU, Mossa Ouhrami.

Another example of how the impact varies is return decision issued when an irregularly-staying third-country national is detected upon the exit. In some cases it is not done as the time to issue a return decision until the departure of an aircraft is too short. It is considered better to have the third-country national leaving the country as there is no legal right to stay in the country than ensuring a return decision with the consequence of having the third-country national remaining in the country. This illustrates the problem when policies are not estimated to effectively decrease the number of third-country nationals illegally residing in the country. When looking at third-country nationals residing illegally in the country, as discussed in the country report from EMN Sweden in 2015, it is even more difficult to analyse the effectiveness of the Return Directive as the total number of third-country nationals illegally in the country is unknown. We therefore cannot estimate the effectiveness of the Return Directive and EU rules in this matter.

The most central impact of the Return Directive and EU law is the harmonizing of policies and practices in EU, to make it less attractive to apply for asylum in another member state which limits secondary movements as well as to safeguard that national policies and practices fully respect fundamental rights and freedom.

The focus of this study was as well to look at the impact of the Return Directive in relation to the recommendations made by the Commission in March 2017. Sweden has adopted some of the recommendations for example circumstances that should be considered when identifying a risk of absconding, an individual assessment when determining the duration of the period of voluntary departure and assisted voluntary programmes in cooperation with other Member States. Some of the recommendations are not adopted as an unlimited duration of return decisions and the maximum duration of detention is twelve months and not 18 months. As the number of detention places is limited Sweden is looking on how to use detention more efficient. The Swedish Migration Agency has recently presented an action plan to the Ministry of Justice how to accomplish this. What is about to be adopted is that the entry ban starts the day the third-country national exit the country to avoid that it starts when still in the country.

**Q71.** What overall importance do EU rules have for the effectiveness of return in the national context?

See above.

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