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

NL Template of EMN Focussed Study 2017

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Action: EMN NCPs are invited to submit their completed Common Templates by 22nd September 2017. If needed, further clarifications can be provided by directly contacting the EMN Service Provider (ICF) at emn@icfi.com

1 STUDY AIMS AND SCOPE

The return of irregular migrants is one of the main pillars of the EU's policy on migration and asylum. However, in 2014, it was estimated that less than 40% of the irregular migrants who were ordered to leave the EU departed effectively.[1] In addition, recent data made available to Eurostat show that return rates at EU level have not improved despite the important increase in the number of rejected asylum applications and in the number of return decisions issued between 2014 and 2015.[2] As a result, the European Commission has emphasised in its EU Action Plan on Return published on 9th September 2015,[3] and, subsequently, in its communication on a more effective return policy in the EU published on 2nd March 2017 and the attached Recommendation,[4] the need for a stronger enforcement of EU rules on return in order to increase the overall effectiveness of the EU's return policy.

[1] Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return,* 9th September 2015, COM(2015) 453 final.
[2] Communication from the Commission to the European Parliament and to the Council on *a More Effective Return Policy in the European Union – a Renewed Action Plan,* 2nd March 2017, COM(2017) 200 final
[3] Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return, op.cit*.
[4] Communication on a *More Effective Return Policy in the European Union – a Renewed Action Plan*, *op. cit.*, and Commission Recommendation on *making returns more effective when implementing Directive 2008/115/EC*, 2nd March 2017, C(2017) 1600.

This study **aims** at analysing the impact of EU rules on return – including the Return Directive[5] and related case law from the Court of Justice of the European Union (CJEU) – on Member States' return policies and practices and hence on the effectiveness of return decisions issued across the EU. The study will present an estimation of the scale of the population of irregular migrants who have been issued a return decision but whose return to a third country has, as yet, not been carried out. The study will also seek to provide an overview of the challenges encountered by Member States in effectively implementing returns, as well as identify any good practices developed to ensure the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of *non-refoulement.* Such challenges and good practices may cover national implementing measures or interpretations of concepts used under EU law (e.g. risk of absconding) or of the conditions to implement certain EU provisions, such as Article 15 of the Return Directive on detention. Conversely, the aim of the study is NOT to make an overall assessment of whether return policies in general are an effective instrument to manage or address migration – be it in the view of EU Member States, the countries of origin or the migrants themselves.

The **target audience** consists of national and EU policy-makers concerned with the design of return policies as well as of national practitioners engaged in the issuance and enforcement of return decisions. The results of the study will assist the target audience in taking informed decisions on the need (or not) to introduce modifications to current policies and practices to return irregularly staying third-country nationals. In particular, the outcomes of the study will feed into the Progress Report on the Renewed Action Plan on Return and the accompanying Recommendation on making returns more effective which the European Commission will present in December 2017. The information gathered in the study will also inform the upcoming revision of the EU Return Handbook.[6]

In terms of **scope**, the study focuses on the way the EU standards and procedures on return have been interpreted and applied at the national level and, to the extent possible, on how their application has impacted on the effectiveness of return - bearing in mind the difficulty of drawing strong causal connections between specific policy measures and the number of implemented returns. Other factors impacting such effectiveness, such as the challenges Member States face in cooperating with third countries and obtaining travel documents, have been documented in other studies and therefore are not covered. Member States that are not bound by the Return Directive (IE, UK) should point out synergies with the EU legislative framework and potential challenges and good practices they have encountered in relation to their legislative framework.

The scope and added value of this study needs to be assessed in the context of **other EMN studies and outputs** also touching on the issue of the effectiveness of return of irregular migrants, such as:

- The 2016 **EMN Study on the 'Return of rejected asylum seekers'.**[7] The study investigated the specific challenges in relation to the return of rejected asylum seekers and Member State responses to these challenges. The study also investigated national measures to prepare asylum seekers for return during the asylum procedure to anticipate the possibility that their applications would be rejected.

- The 2015 EMN Study on '**Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities'**.[8] The study looked into the different approaches followed by the Member States to ensure that irregular migrants were informed of options for return, with particular reference to voluntary and assisted voluntary return.

[5] *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, OJ L 348, 24th December 2008
[6] Commission Recommendation *establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks*, 1st October 2015, C(2015) 6250 final,
[7] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf, last accessed on 30th March 2017.
[8] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/info_on_return_synthesis_report_20102015_final.pdf, last accessed on 30th March 2017.

- The 2014 **EMN Study on the 'Use of detention and alternatives to detention in the context of immigration policies'.**[9] The study aimed at identifying similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of Member States' immigration policies. The study also collected evidence of the way detention and alternatives to detention contributed to the effectiveness of return and international protection procedures.

- The **2014 EMN Study on 'Good practices in the return and reintegration of irregular migrants**: Member States' entry bans policy and use of readmission agreements between Member States and third countries'.[10] The study assessed the extent to which Member States used entry bans and readmission agreements to enhance their national return policies. **Incentives to return to a third country**, while not being covered by a EMN Study, have been analysed in an EMN Inform updated in 2016 that provided an overview of the results of the review of 87 programmes implemented by 23 Member States and Norway to assist migrants to return and to support their reintegration.[11]

Recent and ongoing work by the EMN Return Experts Group (REG), including on the use of detention in return procedures and obstacles to return, will also be taken into account to complete the relevant sections of this study. EMN NCPs and REG Members are kindly requested to coordinate their contributions in order to submit **only one completed Common Template per Member State**. In addition, **any information which national authorities deem sensitive in nature should be provided in Annex 1 to the Common Template and clearly identified as 'not for wider dissemination'.** Any such information will not be included in the public version of the Synthesis Report and will only be made available to national authorities and the European Commission.

2 EU LEGAL AND POLICY CONTEXT

The objective of the development of a coherent return policy was emphasised by the **Hague Programme**.[12] The **Stockholm Programme** reaffirmed this need by calling on the EU and its Member States to intensify the efforts to return irregularly staying third-country nationals by implementing an effective and sustainable return policy.[13]

The main legal instrument regulating the EU return policy is the 2008 **Return Directive**.[14] The Return Directive lays down common EU standards on forced return and voluntary departure. It has a two-fold approach: on the one hand, it provides that Member States are obliged to issue return decisions to *all* third-country nationals staying irregularly on the territory of a Member State. On the other hand, it emphasises the importance of implementing return measures with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of '*non-refoulement*'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.[15]

The Return Directive provides for different types of return measures. A broad distinction can be made between voluntary and forced return, with the Directive emphasising that voluntary return is preferred, while acknowledging the inevitable need for efficient means to enforce returns where necessary.

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[9] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf, last accessed on 30th March 2017.
[10] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_reentry_bans_and_readmission_agreements_final_december_2014.pdf, last accessed on 30th March 2017.
[11] EMN Inform: *Overview: Incentives to return to a third country and support provided to migrants for their reintegration*, June 2016, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-informs/emn-informs-emn_reg_inform_-_in-cash_in-kind_assistance_to_return_june_2016.pdf, last accessed on 30th March 2017.
[12] *The Hague Programme: strengthening freedom, security and justice in the European Union*, OJ C 53, 3rd March 2005
[13] *The Stockholm Programme — An open and secure Europe serving and protecting citizens*, OJ C 115, 4th May 2010.
[14] *Directive 2008/115/EC,* op. cit.
[15] E.g. the EU Charter of Fundamental Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 Convention against Torture and other Cruel, Inhuman and degrading treatment or punishment and the 1951 Geneva Convention related to the Status of Refugees as amended by the 1967 New York Protocol.

Following the dramatic increase in arrivals of migrants to the EU in 2014 and 2015, a **European Agenda on Migration** was adopted on 17th May 2015.[16] The Agenda set out actions in the areas of humanitarian response, international protection, border management, return and legal migration and encouraged Member States to step up their efforts to effectively return irregular migrants. Similarly, the European Council Conclusions of 25th-26th June 2015 called for all tools to be mobilised to increase the rate of effective returns to third countries.[17] Subsequently, the **EU Action Plan on Return** of 9th September 2015 proposed measures across two strands: i) enhancing cooperation within the EU; ii) enhancing cooperation *with third countries* (origin and transit). In order to increase the effectiveness of return, the Plan asked for enhancing efforts in the area of voluntary return, stronger enforcement of EU rules, enhanced sharing of information on return, increased role and mandate for Frontex as well as for the establishment of an "integrated system of return management".[18]

On 1st October 2015 the European Commission adopted a Recommendation establishing a common **"Return Handbook"** to provide guidance to Member States' competent authorities for carrying out return related tasks.[19] The handbook deals with standards and procedures in Member States for returning irregularly staying third-country nationals and is based on EU legal instruments regulating this issue, in particular the Return Directive. It does not establish, however, any legally binding obligations on the Member States.

After the **Informal meeting of EU heads of state or government** held in Malta on 3rd February 2017 highlighted the need for a review of the EU's return policy,[20] the European Commission published a **Renewed EU Action Plan on Return**, along with an Annex listing the actions to be implemented by Member States to complete as well as a **Recommendation** on making returns more effective when implementing the Return Directive.[21] The Action Plan foresees the adoption of immediate measures by the Member States to enhance the effectiveness of returns when implementing EU legislation, in line with fundamental right obligations. Based on the results achieved in the implementation of the Recommendation and depending on whether it is estimated that further action should be taken to substantially increase return rates, the European Commission may present a proposal to revise Return Directive. In addition, it is envisaged that the Return Handbook will be updated to ensure consistency with the Recommendation.

3 RELEVANT CASE LAW FROM THE COURT OF JUSTICE OF THE EU

- C-47/15, *Affum,* 7 June 2016, ECLI:EU:C:2016:408 (transit passenger and illegal stay)
- C-161/15, *Bensada Benallal,* 17 Mar 2016, ECLI:EU:C:2016:175 (right to be heard)
- C-290/14, *Skerdjan Celaj,* 1 Oct 2015, ECLI:EU:C:2015:640 (prison sanction, entry ban and removal)
- C-554/13, *Zh. & O.,* 11 June 2015, ECLI:EU:C:2015:94 (risk to public policy)
- C-38/14, *Zaizoune,* 23 Apr 2015, ECLI:EU:C:2015:260 (fine incompatible with removal)
- C-562/13, *Abdida,* 18 Dec 2014, ECLI:EU:C:2014:2453 (suspensive effect of appeal on medical grounds)

[16] Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions, *A European Agenda on Migration,* 13th May 2015, COM(2015) 240 final.
[17] European Council meeting (25 and 26 June 2015), Conclusions, 26th June 2015, EUCO 22/15.
[18] Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return, op.cit*.
[19] European Commission, *Commission Recommendation of 1.10.2015 establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks*, 1st October 2015, C(2015) 6250 final, 1.10.2015.
[20] Malta Declaration by the members of the European Council on the external aspects of migration: *Addressing the Central Mediterranean route*, 3rd February 2017.
[21] Communication on a *More Effective Return Policy in the European Union – a Renewed Action Plan*, *op. cit.*, and Commission Recommendation on *making returns more effective when implementing Directive 2008/115/EC*, 2nd March 2017, C(2017) 1600.

- C-249/13, *Boudjlida,* 11 Dec 2014, ECLI:EU:C:2014:2431 (right to be heard)
- C-166/13, *Mukarubega,* 5 Nov. 2014, ECLI:EU:C:2014:2336 (right to be heard)
- C-473 and 514/13, *Bero & Bouzalmate,* 17 Jul 2014, ECLI:EU:C:2014:2095 (absence from special detention centre)
- C-474/13, *Pham,* 17 Jul 2014, ECLI:EU:C:2014:2096 (separation of ordinary criminals)
- C-189/13, *Da Silva,* 3 Jul 2014, ECLI:EU:C:2014:2043 (criminal sanctions on illegal entry)
- C-146/14 PPU, *Mahdi,* 5 Jun 2014, ECLI:EU:C:2014:1320 (scope judicial review and cooperation with return)
- C-297/12, *Filev & Osmani,* 19 Sep 2013, ECLI:EU:C:2013:569 (unlimited entry bans)
- C-383/13 PPU, *G. & R.,* 10 Sep 2013, ECLI:EU:C:2013:533 (rights of defence)
- C-534/11, *Arslan,* 30 May 2013, ECLI:EU:C:2013:343 (Return directive and detention asylum seekers)
- C-522/11, *Mbaye,* 21 Mar 2013, ECLI:EU:C:2013:190 (risk of absconding)
- C-430/11, *Sagor,* 6 Dec 2012, ECLI:EU:C:2012:277 (alternatives to detention)
- C-329/11, *Achughbabian,* 6 Dec 2011, ECLI:EU:C:2011:807 (non-compliance with return order)
- C-61/11 PPU, *El Dridi,* 28 Apr 2011, ECLI:EU:C:2011:268 (prison sentence, order to return)
- C-357/09 PPU, *Kadzoev,* 30 Nov 2009, ECLI:EU:C:2009:741 (maximum period of detention)

4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The primary questions the Study will address include:

- To what extent are Member States able to effectively return irregularly staying third-country nationals?
- In which way have the EU standards and procedures on return been interpreted at the national level?
- How have the adoption and implementation of EU rules (in particular the Return Directive), including relevant case law, impacted on the systematic and effective return of irregularly staying third-country nationals?
- Which EU provision(s) and related EU case law have had the most impact over Member States' practice to enforce returns?
- To what extent are Member States able to use detention as a legitimate measure of last resort within the context of return procedures?
- To what extent do Member States use alternatives to detention in the return process?
- What good practices have Member States identified in their application of EU rules that guarantee an effective return?

5 RELEVANT SOURCES AND LITERATURE

EU Legislation

- Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals;

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals.

Commission policy documents

- Evaluation on the application of the Return Directive (2008/115/EC), 22nd October 2013;[22]
- European Agenda on Migration, 13th May 2015;[23]
- EU Action Plan on Return, 9th September 2015;[24]
- Return Handbook, 1st October 2015;[25]
- A More Effective Return Policy in the European Union - A Renewed Action Plan, 2nd March 2017;[26]
- Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, 2nd March 2017;[27]

EMN Studies

- EMN (2007), 'Return Migration';[28]
- EMN (2011), 'Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries';
- EMN (2012), 'Practical responses to irregular migration';[29]
- EMN (2014), 'The use of detention and alternatives to detention in the context of immigration policies';[30]
- EMN (2014), 'Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries';[31]
- EMN (2016), 'The Return of Rejected Asylum Seekers: Challenges and Good Practices';[32]

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[22] Available at: http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=10737855, last accessed on 4th April 2017.
[23] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf, last accessed on 4th April 2017.
[24] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf, last accessed on 4th April 2017.
[25] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf, last accessed on 4th April 2017.
[26] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf, last accessed on 4th April 2017.
[27] Available at: http://europa.eu/rapid/press-release_IP-17-350_en.htm, last accessed on 4th April 2017.
[28] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/return-migration/emn_return_migration_booklet_feb08_en.pdf, last accessed on 4th April 2017.
[29] Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf, last accessed on 4th April 2017.
[30] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf, last accessed on 4th April 2017.
[31] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_reentry_bans_and_readmission_agreements_final_december_2014.pdf, last accessed on 4th April 2017.
[32] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf, last accessed on 4th April 2017.

EMN Informs

- EMN Inform (2016), 'The Use of Detention in Return Procedures';
- EMN Inform (2016), 'Obstacles to return in connection with the implementation of Directive 2008/115/EC' (not for dissemination beyond the scope of the REG Practitioners);
- REG Inform (2017), 'The Correlation between voluntary and forced return';
- REG Inform (2017), 'The Means to Incentivise Return'.

EMN Ad-Hoc Queries

- EMN Ad-Hoc Query, 'The costs of the issue and the execution of the decision on return' – *requested on 23th March 2015;*
- EMN REG Ad-Hoc Query, 'Use of Detention in Return Procedures' – *requested on 30th November 2015;*
- EMN Ad-Hoc Query, 'Enforcement of expulsion decisions' – *requested 11th December 2015;*
- EMN REG Ad-Hoc Query, 'Obstacles to return in connection with the implementation of the Return Directive' – *requested 21st January 2016* (not for dissemination beyond the scope of the REG Practitioners);
- EMN Ad-Hoc Query, 'Handing over of personal documents in the framework of the asylum and return procedure' – *requested on 10th March 2016;*
- EMN REG Ad-Hoc Query, 'Member States' Experiences with the use of the Visa Information System (VIS) for Return Purposes' – *requested on 18th March 2016;*
- EMN Ad-Hoc Query, 'Motivation of return decisions and entry bans' – *requested on 31st March 2016;*
- EMN REG Ad-Hoc Query, 'The Means to Incentivise Return' – *requested on 14th December 2016;*
- EMN REG Ad-Hoc Query, 'The Correlation between voluntary and forced return', - *requested on 3rd January 2017*
- EMN Ad-Hoc Query, 'Accelerated asylum procedures and asylum procedures at the border' – *requested 17th February 2017 (Part 1 and 2).*

Other studies and reports

- Ramboll (2013), 'Study on the situation of third country nationals pending return/removal in the EU Member States and the Schengen Associated Countries';[33]
- Matrix (2013), 'Evaluation on the application of the Return Directive (2008/115/EC)';[34]
- Fundamental Rights Agency (2011), 'Fundamental rights of migrants in an irregular situation in the European Union';[35]
- REDIAL Project (2016), 'European Synthesis Report on the Judicial Implementation of Chapter IV of the Return Directive, Pre-Removal Detention';[36]
- CONTENTION Project (2014), 'European Synthesis Report of the Project CONTENTION, The Extent of Judicial Control of Pre-Removal Detention in the EU'.[37]

[33] Available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf, last accessed on 4th April 2017.
[34] Available at: http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=10737855, last accessed on 4th April 2017.
[35] Available at: http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf, last accessed on 4th April 2017.
[36] Available at: http://cadmus.eui.eu/bitstream/handle/1814/45185/MPC_REDIAL_2016_05.pdf?sequence=1&isAllowed=y, last accessed on 4th April 2017.
[37] Available at: http://contention.eu/synthesis-reports/, last accessed on 4th April 2017.

6 AVAILABLE STATISTICS

EU level

The following statistics are available through Eurostat, and may be indicative of the scale of the problem in the Member States:

- Number of return decisions (by nationality)
- Number of return decisions effectively carried out (by nationality)
- Number of forced returns (by nationality) – data available since 2014;
- Number of voluntary return (by nationality) – data available since 2014.

National level

The following data would be very useful for this Study, and should be included as far as possible:

- Total number of third-country nationals placed in detention;
- Detention capacity;

7 DEFINITIONS

The notions of 'effective return' and 'effective return policy' are used in multiple EU policy documents but not explicitly defined. For the purposes of this Focussed Study, **effective return** is understood as the actual enforcement of an obligation to return, i.e. removal or voluntary departure (both defined below), and '**effective return policy'** is considered as one which is successful in producing a desired or intended result, i.e. the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of *non-refoulement.*[38]

Similarly, there are no commonly agreed definitions of the concepts of 'good practice' and 'policy challenge'.[39] For the purposes of this Synthesis Report, the term **'good practice'** refers to specific policies or measures that are proven to be effective and sustainable, demonstrated by evaluation evidence and/or monitoring and assessment methods using process data and showing the potential for replication. Good practices may cover both the formulation and the implementation of policies or measures, which have led to positive outcomes over an extended period of time. A number of criteria can be used to select good practices, including their policy relevance, scope, evidence-base on their outputs and outcomes, timescale for application, effectiveness and potential for learning and replication in a different (national) context. The term **'policy challenge'** is defined as an issue that existing policies, practices and/or institutions may not be ready or able to address.[40]

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0.[41]

Assisted voluntary return: Voluntary return or voluntary departure supported by logistical, financial and / or other material assistance.

Compulsory return: In the global context, obligatory return of an individual to the country of origin, transit or third country (i.e. country of return), on the basis of an administrative or judicial act. In the EU context, the process of going back – whether in voluntary or enforced compliance with an obligation to return – to:

- one's country of origin; or

[38] This definition is based on the definition of 'effective' as 'successful in producing a desired or intended result' included in the Oxford Dictionary, available at https://en.oxforddictionaries.com/definition/effective, last accessed on 4 May 2017.

[39] In particular, the notion of 'good practice' has been mired in confusion with the terms 'best practices, 'good practices' and 'smart practices' being often used interchangeably. For an overview of the methodological issues and debates surrounding 'best practice research, see e.g. Arnošt Veselý, 'Theory and Methodology of Best Practice Research: A Critical Review of the Current State', *Central European Journal of Public Policy* – Vol. 5 – № 2 – December 2011.

[40] Given the lack of a standard definition of policy challenge within the EU context, this definition is broadly based on the one provided by Policy Horizons Canada, the foresight and knowledge organization within the federal public service of the Canadian government. See http://www.horizons.gc.ca/eng/content/policy-challenges-0, last accessed on 19th May 2017.

[41] Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf, last accessed on 4th April 2017.

- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Detention: In the global migration context, non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented.

Detention facility: In the global context, a specialised facility used for the detention of third-country nationals in accordance with national law. In the EU return context, a specialised facility to keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: there is a risk of absconding; or the third-country national concerned avoids or hampers the preparation of return or the removal process.

Entry ban: An administrative or judicial decision or act prohibiting entry into and stay in the territory of the Member States for a specified period, accompanying a return decision.

Humanitarian protection: A form of non-EU harmonised protection nowadays normally replaced by subsidiary protection, except in some Member States

Irregular stay: Means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.

Overstay(er): In the global context, a person who remains in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit

Removal: Means the enforcement of the obligation to return, namely the physical transportation out of the Member State.

Rejected applicant for international protection: A person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.

Removal order: An administrative or judicial decision or act ordering a removal.

Return: As per Art. 3(3) of the Return Directive, means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or
- another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.

Return decision: An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

Return programme: Programme to support (e.g. financial, organisational, counselling) the return, possibly including reintegration measures, of a returnee by the State or by a third party, for example an international organisation.

Returnee : A person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous. The definition covers all categories of migrants (persons who have resided legally in a country as well as failed asylum seekers) and different ways the return is implemented (e.g. voluntary, forced, assisted and spontaneous). It does not cover stays shorter than three months (such as holiday visits or business meetings and other visits typically considered to be for a period of time of less than three months).

Risk of absconding: In the EU context, existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is subject to return procedures may abscond.

Third-country national: Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.

Voluntary departure: Compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.

Voluntary return: The assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

8 ADVISORY GROUP

For the purpose of providing support to EMN NCPs while undertaking this focussed study and for developing the Synthesis Report, an "Advisory Group" has been established.

The members of the Advisory Group for this study, in addition to COM and EMN Service Provider (ICF), are (DE, IE, HR, LU, NL, PL, and SE) EMN NCPs. EMN NCPs are thus invited to send any requests for clarification or further information on the study to the following "Advisory Group" members:

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9 TIMETABLE

The following timetable has been proposed for the next steps of the Study:

Date	Action
24th of February 2017	First meeting of the Advisory Group for the Study (NL)
08th of March 2017	Second meeting of the Advisory Group for the Study
4th April 2017	Circulation of the first draft of the Common Template for review by the Advisory Group
4th May 2017	Circulation of the second draft of the Common Template for review by all EMN NCPs
15th May 2017	Launch of the study
22nd September 2017	Deadline for National Contributions
23rd October 2017	1st version of the Draft Synthesis Report[42]

[42] Provided that a sufficient number of EMN NCPs submit their National Contribution in time for the Synthesis stage.

10 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Focussed Study. The indicative number of pages to be covered by each section is provided in the guidance note.

In filling in this Common Template for developing their national contributions, EMN NCPs are kindly asked to consider the following **guidance**:

Guidance for filling in the Common Template

- EMN NCPs and REG Members are kindly asked to coordinate their contributions in order to submit **only one Common Template** per Member State;
- Any **sensitive information** should be provided in Annex 1 to the Common Template and clearly identified as 'not for wider dissemination'. Any such information will not be included in the public version of the Synthesis Report and would only be made available to national authorities and the European Commission.
- EMN NCPs/ REG Members are kindly requested to submit their contributions in the **Common Template format** and in **English**;
- To the extent possible, the questions in the Common Template have been **cross-referenced** to specific recommendations of the European Commission Recommendation of 7th March 2017 'on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and the Council' (C(2017) 1600 final). Such cross-references are included between square brackets and indicate the number of the corresponding recommendation, for example *[EC Recommendation (5)];*
- A number of questions in the Common Template request **updates** on information provided for the purposes of previous EMN Studies or Ad-Hoc Queries and clearly identified as 'update questions' in the text (e.g. questions on detention practices and entry bans). In answering those questions, EMN NCPs/ REG Members are encouraged to check their national contributions to the said EMN outputs and provide only updated information;
- In answering legal and procedural 'yes or no questions', EMN NCPs/ REG Members should state what the law/practice is as a general rule in their Member State, while providing details on important exceptions if so wished;
- A number of questions in the Common Template request information on the **challenges** faced by national authorities in implementing various aspects of the return process (e.g. detention and alternatives to detention, the return of vulnerable groups, etc.). In responding to those questions, EMN NCPs/REG Members are kindly asked to justify their answers by identifying for whom the issue identified constitutes a challenge and specifying the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law);
- A number of questions in the Common Template request information on **good practices** in implementing various aspects of the return process in the Member States. In responding to those questions, EMN NCPs/REG Members are kindly asked to justify their answers by:
  - Bearing in mind the definition of 'effective return policy' used for the purposes of this Study, i.e. one which is successful in producing a desired or intended result, i.e. the enforcement return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of non-refoulement. Respect for fundamental rights' obligations is thus an integral part of this definition and thus should be duly accounted for when identifying certain practices as 'good';
  - Reflecting on the following questions: is the practice in question sufficiently relevant? By whom is it considered a good practice? For how long has this practice been in place? Is there sufficient evidence (e.g. through independent evaluations or other assessments) of its effectiveness?
  - Referencing any supporting evidence available (e.g. studies, evaluations, statements by the authorities, commentaries from NGOs/ International Organisations, etc.).

  Please note that a practice may be considered useful or valuable without necessarily meeting the more stringent criteria noted above. However, if they do not meet these criteria, they are not useful for the synthesis report. Thus, **EMN NCPs should not be reluctant to leave questions on good practices unanswered** where applicable.

EMN FOCUSSED STUDY 2017
The effectiveness of return in the Netherlands: challenges and good practices linked to EU rules and standards

Top-line "Factsheet" (National Contribution)

National contribution (one page only)

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.

Implementation of the Return Directive

The implementation of the Return Directive has led to a number of changes in Dutch legislation and regulations, such as the introduction of the return decision and the entry ban. In addition, it seems that the introduction of the Directive and the safeguards for third-country nationals laid down therein have led to an increase in individual considerations made by governmental agencies during the return process. The authorities are, for instance, less likely to detain third-country nationals and there is more attention for alternatives to detention. It is difficult to establish whether these developments have led to a decrease of third-country nationals in detention. It is a fact that the number of third-country nationals in detention has more than halved in the period between 2012 and 2016. However, the changes that ensue from the introduction of the Directive have also led to an increase in the administrative burden. This increase is particularly felt in detention measures for third-country nationals (namely in the assessment whether there is a risk of absconding), the issuance of return decisions and the imposition of entry bans.

Return in the public debate

The return of irregularly staying third-country nationals is an important priority for the current cabinet:[43] the effectiveness of the return is considered an important starting point for a successful migration policy.[44] Return is and will be a priority in policy making and is also a recurring point of discussion in the national debate. In the coalition agreement by the current cabinet, a number of issues have explicitly been included which directly touch upon the theme of irregular stay.[45]

Recent policy changes

In the recent years, the Dutch government has taken a number of measures which directly influence return. For instance, the return support has been reduced or completely abolished for persons from certain countries (e.g. the Western Balkans). The Repatriation and Departure Service has also been authorised to detain third-country nationals in a pilot project. Measures that directly influence return are for instance the introduction of a multi-track policy that includes an accelerated procedure for persons from safe countries, the introduction of a list of safe countries of origin, and the processing of Dublin claims in the national asylum procedure.

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

The introductory section of the Synthesis Report will aim at contextualising the study by providing a brief overview of the overall situation in the Member States as regards the return of third-country

[43] *Parliamentary Papers II, session year 2016-2016, 19 637, no* 2177
[44] EMN, *Terugkeer van afgewezen asielzoekers, beleid en praktijk in Nederland [Return of rejected asylum seekers, policy and practice in the Netherlands]*, 2017
[45] *Bruggen slaan [Building bridges]*. Coalition agreement VVD-PvdA, 29 October 2012

nationals. It will succinctly review the national measures implementing the Return Directive (including judicial practices and interpretations) or equivalent standards (for Member States that are not bound by the Directive) and examine the policy debate concerning the return of third-country nationals in the Member States. The section will also include quantitative data extracted from Eurostat to estimate the scale of the main issues concerning return (e.g. number of third country nationals ordered to leave and of third country nationals returned following an order to leave).

Q1. Please provide an overview of the national measures implementing the Return Directive (including judicial practices, 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.

Implementation of the EU Return Directive

Implementing the Return Directive has led to a number of changes in legislation and regulations. The most important consequence of the implementation is the introduction of the return decision and the entry ban.[46]

The introduction of the return decision has, among other things, caused expulsion from the Netherlands to be replaced by expulsion from the EU. It is also new that third-country nationals are always subjected to a return decision if they are found to be staying irregularly in the Netherlands and have never resided there legally. In the past, it sufficed to establish that the person concerned was residing irregularly in the Netherlands, followed by removal.

The introduction of the entry ban also meant a change in the Dutch practice. Formerly, there was a possibility to pronounce a third-country national undesirable. This had the same effect as an entry ban. But a condition for pronouncement of undesirability was repeated irregular stay. The entry ban can be imposed if the third country national is found to be staying irregularly for the first time. The entry ban also has a light and a heavy version (see question 62a). The pronouncement of undesirability does not make this distinction. Finally, the pronouncement of undesirability was only valid for the Netherlands, whereas the entry ban applies to the entire EU.

Implementing the Return Directive also led to the introduction of a legal maximum of six months' detention, with an option for extension of a maximum of twelve months. The legal provisions are also new for factors that can contribute to the risk of absconding.[47]

Explanation and changes as a result of case law

Below an overview has been included of the case law which has shown to be important for interpreting the Return Directive and which has had an influence on Dutch implementation practice. The rulings have been sorted by subject as much as possible.

Public order and period for voluntary departure

C-554/13, *Zh. & O.,* 11 June 2015, ECLI:EU:C:2015:94

This ruling has had consequences for the practice with regard to issuing entry bans as well as for the denial of a period for voluntary departure.

The periods for voluntary departure have been adjusted to the Zh and O principles. When imposing an entry ban of more than two years, the additional criterion must also be taken into consideration of a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society".

[46] *Parliamentary Papers I, 2011-2012, 34 420 H*
[47] *Parliamentary Papers II*, 2015-2016, 34 309 no 3

Suspensive effect on medical grounds

C-562/13, *Abdida,* 18 Dec 2014, ECLI:EU:C:2014:2453 (suspensive effect of appeal on medical grounds)

Appeals to this ruling are only lodged incidentally, but it is generally accepted that this ruling provides for highly exceptional situations in which the removal of a third-country national suffering from a serious illness to a country where there is no adequate treatment available is in breach of the principle of non-refoulement. This situation is prevented in the Netherlands by the practice provided for in Section 64 of the Dutch Aliens Act (Vw).

Right to be heard

C- C-249/13, *Boudjlida,* 11 Dec 2014, ECLI:EU:C:2014:2431 (right to be heard)

166/13, *Mukarubega,* 5 Nov. 2014, ECLI:EU:C:2014:2336 (right to be heard)

These rulings have led to the expansion of the standard list of questions/ additional questioning in hearings preceding the return decision and, with it, to a more balanced choice between the denial of a period for voluntary departure and a period for voluntary departure of 28 days.

C-161/15, Bensada Benallal, 17 Mar 2016, ECLI:EU:C:2016:175 (right to be heard)

No far-reaching impact as of yet. The right to defence is laid down in Dutch administrative law (Section 4.8, Dutch General Administrative Law Act, or *Awb*). The ruling may potentially influence discussions concerning ex officio review by judges.

Detention

C-473 and 514/13, Bero & Bouzalmate, 17 Jul 2014, ECLI:EU:C:2014:2095 (absence from special detention centre)

C-474/13, Pham, 17 Jul 2014, ECLI:EU:C:2014:2096 (separation from ordinary criminals)

These three rulings have led to a confirmation of an earlier ruling by the Administrative Jurisdiction Division of the Council of State (hereinafter also the Division)[48] which requires a strict application of the separation rule of Article 16 of the Return Directive. This rule of separation also prevails in situations in which continued stay in a detention centre is less desirable from interests relating to peace and order in the institution.[49] While formerly it was possible to move extremely unruly prisoners from a immigration detention centre to a regular penal institution, this can now no longer be done.

Initially policies did not provide for this, particularly in cases of young migrants. Detention in a Judicial youth detention centre with other minors was preferred over detention in a special facility. The most important reason for this was the limited number of young third-country nationals in detention. This solution was, however, forbidden by a judicial decision by the Administrative Jurisdiction Division of the Council of State.[50] At the moment, young persons are being detained in a 'Closed' Family Centre (GGV).

[48] The Administrative Jurisdiction Division of the Council of State (ABRvS) is the highest administrative court in the Netherlands. The Division reviews rulings by lower courts in among other fields the field of immigration law.

[49] ABRvS 12 October 2012, ECLI:NL:RVS:2012:BY1542 (201201589/1).
[50] ABRvS 22 April 2014, ECLI:NL:RVS:2014:1605 (201402057/1).

In detention situations of third-country nationals with a psychiatric or physical disorder, it is difficult to implement the separation principle, because special medical facilities are often only available in a penal institution. However, the separation is being enforced, partly as a result of case law.[51]

A Return and Detention Act is currently being drafted, which provides for a special regime for detainees under migration law.

C-146/14 PPU, Mahdi, 5 Jun 2014, ECLI:EU:C:2014:1320 (scope judicial review and cooperation with return)

This ruling has led to far-reaching changes in the obligation to state reasons for detention measures, not only with regard to their extension, but also for their imposition. There are around 30 rulings by the Division that refer to this ruling. Relevant is the ruling of 10 April 2015, ECLI:NL:RVS:2015:1309 (201502024/1). In this ruling, the Division established that in a detention order the grounds for detention only do not suffice: it must also include the assessment of special facts or circumstances relating to personal interests that could make the detention measure disproportionate.

This has given the detention order a central role. The inclusion of the required statement of reasons in a different document than that of the order imposing the measure is also not allowed once the measure has been imposed.[52]

As a result, the options to remedy any omission in the detention order *after* its imposition are limited. This provides a restrictive explanation of an earlier ruling (the G and R ruling) by the Court of Appeal. In this earlier ruling on violation of the right to be heard, the Court of Appeal had decided that violation of the right to be heard pertains to procedural omissions in the establishment of the order and not to any shortcomings in the motivation of the measure. As a result of the restrictive explanation by the Division, violation of the right to be heard can be categorised as a lack of motivation after all, as referred to in a later ruling by the Court of Appeal of 5 June. As a result of this Court ruling, it is no longer possible to remedy violation of the right to be heard after the detention order.

The additional motivations which must be included in the detention order relate to responses from the person detaining the third-country national to statements on this person's health and any care responsibilities. The procedure is decisive in the detention and should make it clear that the person detaining a third-country national on behalf of the Minister clearly states in advance to have actively investigated whether any special personal circumstances apply.

This investigation should take place every time, also when the legal basis has changed as a result of an application for asylum and the rejection of it. An exception to the right to be heard was rendered inoperative in the Dutch Aliens Decree (Vreemdelingenbesluit) in situations in which a legal basis that had been used before was reused.[53]

In addition to the greater requirements for the imposition and extension of detention measures, the Mahdi ruling has also led to a change in the review methods used by the courts for the question whether it is possible in a concrete case to impose a lighter measure. Concretely, the result is that it no longer suffices for the court to perform a restricted review.[54]

C-383/13 PPU, G. & R., 10 Sep 2013, ECLI:EU:C:2013:533 (rights of defence)

This ruling has effect insofar as that when procedural rules have been breached, the court should assess whether if the procedural rules had been followed the procedure would have resulted in a different outcome. However, the ruling cannot be used to remedy omissions in the motivation of

[51] ABRvS 6 May 2013, ECLI:NL:RVS:2013:3358 (201303645/1).
[52] ABRvS 13 May 2015, ECLI:NL:RVS:2015:1593 (201503491/1).
[53] ABRvS 30 March 2016, ECLI:NL:RVS:2016:949 (201506839/1).
[54] ABRvS, 23 January 2015, ECLI:NL:RVS:2015:232 (201408655/1) and ABRvS 23 February 2015, ECLI:NL:RVS:2015:674 (201408880/1).

measures or return orders, Administrative Jurisdiction Division of the Council of State, 14 July 2016, ECLI:NL:RVS:2016:2071 (201602722/1).

C-534/11, Arslan, 30 May 2013, ECLI:EU:C:2013:343 (Return directive and detention asylum seekers)

The Arslan ruling has particularly had an effect on whether the assessment or, in the light of an asylum application, the detention could be continued. Since then, the rules ensuing from this ruling have been included in the 2013/33 Directive and in the national legislation in Section 59b, under c of the Aliens Act (Vw) 2000 in conjunction with 5.1c Aliens Decree (Vb). Nationally there is still some discussion when the Return Directive becomes applicable to a third-country national again. Is it when the rejection is issued or also during the period when an appeal is being lodged/ a provisional ruling is being requested has a suspensive effect?

Entry bans

C-297/12, Filev & Osmani, 19 Sep 2013, ECLI:EU:C:2013:569

Before the implementation of the Return Directive, the Netherlands had a situation in which third-country nationals who posed a (serious) threat to the public order could be pronounced undesirable: their mere presence in the Netherlands was a criminal offence. Breach of this provision is/was criminally prosecuted by the Public Prosecution Service and sentences were/are imposed by the Criminal Court Judge. This pronouncement of undesirability was in principle not for a limited period, even though the Aliens Decree (Vb) provided for the possibility to request this pronouncement of undesirability to be lifted after a period of residence of five or ten years abroad.

Pronouncements of undesirability that were in force at the time the Return Decree was introduced in Dutch legislation have been adapted as far as possible to be in line with the rules then applicable in cases where requests for lifting them had been made. The Filev & Osmanli ruling confirmed that the pronouncement of undesirability instrument had correctly been included in the new methods for entry bans when the Return Directive was introduced.

Roughly speaking, since the Return Diective, a system is being applied wherein serious threats to the public order can lead to the imposition of an entry ban for a period of ten years and in cases of a threat to the national security for a period of twenty years. Violation of these entry bans is punishable as a criminal offence.

The Division too was of the opinion that the similarities of purpose and extent between a pronunciation of undesirability and an entry ban were such that a pronunciation of undesirability falls under the definition given in Article 3.6 of the Return Directive with regard to the concept of entry ban.

The Dutch judiciary has been divided on the question when the period of an entry ban commences. In consistence with the position of the Dutch government, it has been judged in the Ouhrami ruling (C-225/16, ECLI:EU:C:2017:590) that the period of the entry ban commences the moment the third-country national has actually left the European Union.

Criminalisation of irregular stay

C-430/11, *Sagor,* 6 Dec 2012, ECLI:EU:C:2012:277

C-329/11, *Achughbabian,* 6 Dec 2011, ECLI:EU:C:2011:807 (non-compliance with return order)

C-61/11 PPU, *El Dridi,* 28 Apr 2011, ECLI:EU:C:2011:268 (prison sentence, order to return)

The El Dridi/ Achughbabian/Sagor rulings relate to the criminalisation of irregular stay. Currently, the Dutch legal system only criminalises irregular stay indirectly, namely after an entry ban or former pronouncement of undesirability has been issued. Because of this, proposals to further expand the

criminalisation of irregular stay had to be assessed against the background of this case law. For political reasons too, irregular stay has never been criminalised further.

The Sagor ruling repeats the rules of El Dridi and Achugbabian with relation to the criminalisation of irregular stay, but with the addition that this ruling does not forbid the imposition of a fine for violation of the entry ban, To this extent, the option to impose one on grounds of Section 108 of the Aliens Act 2000 is not in conflict with the Decree.

The Achugbabian ruling led to the amendment of prosecution policy with regard to Section 197 of the Penal Code: the stay as an undesirable alien in the Netherlands. The Supreme Court demanded that in order to be allowed to prosecute, the Public Prosecution Service had to prove that the return procedures had all been completed. In practice, this is effected by the submission of statements by the National Police and the Repatriation and Departure Service which contain a description of the reasons why return procedures have not had any results.

In the El Dridi ruling the Court of Appeal introduced the gradual increase in the severity of return measures. In a practical sense this has led to greater attention being paid to alternatives to detention and an increase in periods for voluntary return.

From the requirement to assess the behaviour of a third-country national per case as formulated in the El Dridi ruling (legal ground 39), it is deduced that the order which imposes the detention should always contain a motivation based on the individual case on the grounds of which the circumstance deemed factually applicable and which is considered indicative for a risk of absconding also gives rise for deeming the risk of absconding a real one in this concrete case. This only differs if it ensues from the nature of the circumstance that there is a risk of absconding. The Council of State has developed case law in which it is laid down per objective circumstance whether this circumstance is deemed light or serious.

C-357/09 PPU, *Kadzoev,* 30 Nov 2009, ECLI:EU:C:2009:741 (maximum period of detention)

The Kadzoev ruling is particularly important for the Netherlands because of the rules it provides for the question of to what extent the public order can be a factor in the imposition of a return measure. The Dutch judiciary is of the opinion that it should be possible to relate crimes to return or removal and that crimes should give rise to the assumption that the third-country national will abscond. The fact that a third-country national has not complied with Dutch legal provisions might raise the question whether this third-country national will comply with the migration legislation, but without additional indications this is insufficient to make it probable that there is a risk this third country national will abscond. This specific case concerned a suspected theft and public drunkenness. The effect of the ruling is that the suspicion of an offence can only be used as a ground for detention if the offence relates to concealment of identity or the possession of forged documents or the intention of such possession. In other cases criminal behaviour cannot contribute to the assumption of a risk of absconding, Council of State's Administrative Jurisdiction Division, 12 April 2012, ECLI:NL:RVS:2012:BW3351 (201200612/1).

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?[55] ***Yes***/~~*No*~~

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

Yes, the Netherlands makes use of the option in Article 2.2 of the Return Directive to exempt certain categories of third-country nationals form the effect of the Directive.

[55] 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).

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. Section 109a of the Aliens Act (Vw) stipulates which third-country nationals are exempt from the requirements laid down in the Return Directive the Netherlands. These are third-country nationals who are subject to a refusal of entry on grounds of the Schengen Borders Code and who have subsequently **not** applied for asylum and third-country nationals who are the subject of an extradition procedure as referred to in the Extradition Act (*Uitleveringswet*). The Netherlands has not made use of any of the other exemption categories in Article 2.2 of the Return Directive.
b. The return procedure **for third-country nationals who have been denied access** differs from the standard procedure in the following ways: The persons do not receive a return decision. Moreover, these persons are required to stay in a room or space designated by border control (this room or space may be enclosed to prevent the third-country national from leaving without permission). The exemption of this group from the Return Directive has no consequences for the period for voluntary departure (the period for voluntary return), nor for the suspensive effect of appeal procedures against an entry ban or detention measure. The return procedure is completely different from the procedure laid down in the Return Directive for **third-country nationals who are the subject of an extradition procedure** . There is no return decision, nor is there an entry ban and the organisations involved in the migration, asylum and return processes do not play a role in the process; the persons involved are in criminal detention and not in immigration detention and the legal procedures take place in a criminal court, not in an administrative court.[56]

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).

Since 2015 a number of changes have been made to the Dutch return policy:

- **The reduction of return support for persons from certain countries:** In the last couple of years, the return support for persons from certain countries has been reduced or abolished completely. The reasons for this were signals that assisted return formed an incentive for persons to apply for asylum in the Netherlands even though they had little prospect of asylum. The return support has been abolished or reduced since 2015 for persons from the following countries: all visa-free countries, Algeria, Albania, Bosnia-Herzegovina, Egypt, Kosovo, Lebanon, Macedonia, Morocco, Mongolia (Dublin claimants only), Montenegro, Ukraine, Russia, Serbia, Tunisia, Turkey and Belarus.[57]

- **Pilot project: The Repatriation and Departure Service (DT&V) has been granted the authorisation to detain third-country nationals:** On 1 October 2014, a pilot started at DT&V enabling DT&V them to detain third-country nationals.[58] Formerly, this could only be

[56] Extradition Act - Act of 9 March 1967 on new regulations relating to extradition and other forms of international legal assistance in criminal cases.
[57] Parliamentary Papers II, 2016-2017, 19637, no 2236; Parliamentary Papers II, 2016-2017, 19637, no 2257
[58] Meldpunt Vreemdelingendetentie [Immigration Detention Hotline] (2017), Newsletter of January 2017, http://meldpuntvreemdelingendetentie.nl/wp-content/uploads/Nieuwsbrief-januari-2017.pdf, consulted on 1 August 2017

done by an acting public prosecutor (usually a member of the police or the Royal Netherlands Marechaussee) The aim of the pilot is to examine whether detention of third-country nationals who are already part of DT&V's caseload could take place more effectively. The first results show that the pilot contributes to the reduction of the period between the moment it is decided to detain a third-country national and the moment this third-country national is actually placed in detention. There is also a qualitative improvement of the detention measure. Around 96% of the detention measures imposed by DT&V have substantively been upheld.[59]

In addition, a number of changes have been made in the asylum policy with the aim to accelerate the return of rejected asylum seekers:

- **Introduction of the multi-track policy:** An important policy change of 2016 is the introduction of the multi-track policy on 1 March 2016. In the old situation the Immigration and Naturalisation Service processed all (first) asylum applications (with the exception of Dublin claimants) using one working method. Because of the high influx this resulted in a considerable increase in the waiting periods for all applicants. Because of this, the Immigration and Naturalisation Service developed a multi-track procedure to be able to use different procedures (tracks) for different target groups. At the moment, three tracks are in use: 'Dublin procedure', 'Safe country of origin or legal residence in a different EU member state', and 'General Asylum procedure'. Asylum applications of persons from safe countries of origin are generally processed using a different accelerated-procedure track. As a result, the application can usually be processed faster. In addition, these persons are not usually allowed a period for voluntary departure, so that they have to leave the Netherlands immediately. Also, an entry ban is usually imposed on these persons for the whole Schengen Areafor a period of two years.[60] [61]

- **Introduction of the list of safe countries of origin:** In 2015 a list of safe countries of origin was introduced in the Netherlands. Since then, this list has been expanded a number of times. In the course of 2016 the list was expanded three times. As indicated above, asylum applications of persons from safe countries of origin are generally processed using an accelerated procedure. As a result, their return can be facilitated faster. In addition, these persons are not usually allowed a period for voluntary departure, so that they have to leave the Netherlands immediately. Also, an entry ban is usually imposed on these persons for the whole Schengen Area for a period of two years. At the moment (July 2017) the list consists of the following countries: Albania, Algeria, Andorra, Australia, Belgium, Bosnia-Herzegovina, Brazil, Bulgaria, Canada, Cyprus, Denmark, Germany, Estonia, Finland, France, Georgia, Ghana, Greece, Hungary, Ireland, India, Italy, Jamaica, Japan, Kosovo, Croatia, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Morocco, Monaco, Mongolia, Montenegro, the Netherlands, New-Zealand, Norway, Ukraine, Austria, Poland, Portugal, Romania, San Marino, Senegal, Serbia, Slovenia, Slovakia, Spain, Togo, Trinidad and Tobago,

[59] Parliamentary Papers II, 2016-2017, 19637, no 2270
[60] Dutch government (2016), Staatssecretaris Dijkhoff breidt lijst veilige landen verder uit [Minister Dijkhoff further expands list of safe countries of origin] - News item | 11-10-2016, https://www.rijksoverheid.nl/actueel/nieuws/2016/10/11/staatssecretaris-dijkhoff-breidt-lijst-veilige-landen-verder-uit, consulted on 15 August 2017
[61] EMN (2017), Beleidsoverzicht 2016 [2016 Policy overview], http://www.emnnetherlands.nl/dsresource?type=pdf&objectid=emn:4615&versionid=&subobjectname=, consulted on 15 August 2017

Czech Republic, Tunisia, the United Kingdom, the United States of America, the Vatican, Iceland, Sweden, Switzerland. [62] [63] [64]

- **Processing of Dublin claims in the national asylum procedure:** In August 2016 the policy changed for asylum seekers from certain safe countries of origin who fall under the responsibility of a different member state within the framework of the Dublin Regulation. This only applies to asylum seekers from the Western Balkan countries which have been classified as safe (Albania, Kosovo, Serbia, Macedonia, Bosnia and Montenegro). Since this change, the Immigration and Naturalisation Service has been processing asylum applications by applicants from Western Balkan countries in the national procedure, even if there are indications for a claim on a different country on the grounds of the Dublin Regulation. As a result of the change, room is created for the cases in which it is advantageous to process the application in the national procedure for reasons of process economy. This particularly concerns cases in which after completion of the national procedure, return to the country of origin is faster to realise than a transfer to the member state responsible on grounds of the Dublin Regulation. In this case, asylum applications by persons from a safe country of origin can be processed faster in the Netherlands within the framework of an accelerated procedure.[65]

An overview of the relevant case law which influenced the Dutch legislation and practice has been included in question 1.

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).

Yes, the return of irregularly staying third-country nationals is an important priority for the current cabinet.[66] The effectiveness of the return policy is considered an important starting point for a successful migration policy.[67] Return is and will remain a priority in policy making and is also a recurring point of discussion in the national debate. In the 2012 coalition agreement of the current cabinet, a number of subjects have explicitly been included which directly touch upon the theme of irregular stay.[68] For instance, the coalition agreement includes a statement that employers and mala fide landlords will face severe sanctions if they employ or provide housing to persons without a residence permit. The agreement also includes criminalisation of irregular stay. This criminalisation was eventually not put into effect because it raised a lot of protest, inter alia from civil society.[69]

A subject that has been prominent in the national debate for many years is the "bed, bath and bread arrangement". This discussion focuses on the question whether third-country nationals who have exhausted all legal remedies should be offered any form of shelter. This is where the field of tension

[62] Dutch government (2016), Staatssecretaris Dijkhoff breidt lijst veilige landen verder uit [Minister Dijkhoff further expands list of safe countries of origin] - News item | 11-10-2016, https://www.rijksoverheid.nl/actueel/nieuws/2016/10/11/staatssecretaris-dijkhoff-breidt-lijst-veilige-landen-verder-uit, consulted on 15 August 2017
[63] EMN (2017), Beleidsoverzicht 2016 [2016 Policy overview], http://www.emnnetherlands.nl/dsresource?type=pdf&objectid=emn:4615&versionid=&subobjectname=, consulted on 15 August 2017
[64] Dutch Government (2017), Welke landen staan op de lijst van veilige landen van herkomst? [Which countries are on the list of safe countries of origin?], https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/lijst-van-veilige-landen-van-herkomst, consulted on 15 August 2017
[65] Decision by Minister of Migration of 23 August 2016 no WBV 2016/10 on amendment of Aliens Implementation Guidelines 2000.
[66] *Parliamentary Papers II, session year 2016-2016, 19 637, no* 2177
[67] Prime M inister in press conference after cabinet meeting of 24 April 2015
[68] *Bruggen slaan [Building bridges].* Coalition agreement VVD-PvdA, 29 October 2012
[69] EMN, *De terugkeer van afgewezen asielzoekers [Return of rejected asylum seekers],* Rijswijk 2017

becomes most problematic that exists between the central government that develops the return policy and the municipalities, who are to implement this policy and are confronted with third country nationals who have exhausted all legal remedies and are living on the streets.

The debate on return is often fed by media attention for discussions on individuals who are (in their opinion) unable to return to their country of origin because of personal circumstances. Incidentally, such issues lead to amendments of the specific (country) policy.[70]

In the aftermath of the increased asylum influx of 2015, the return of third-country nationals who cause a nuisance has become a subject of debate. This category often comes from safe countries of origin. In 2016, a number of municipalities were exposed to nuisance caused by asylum seekers. This nuisance consisted of such things as theft, confused behaviour, skirmishes in and around reception centres and intimidation.[71]

The Dutch government imposed various measures on these groups. These measures include:

- accelerated asylum procedures and Dublin procedures;
- a coordinated and case-oriented approach to deal with persons who cause a nuisance. In this approach the Public Prosecution Service (OM), the police, the municipality, the Repatriation and Departure Service (DT&V), the Central Agency for the Reception of Asylum Seekers (COA) and the Immigration and Naturalisation Service (IND) cooperate intensively with the aim of dealing quickly and in a focused way with third country nationals who cause a nuisance, under criminal law and immigration law, as well as though other administrative means;
- measures to prevent return support from being a pull factor;
- the Netherlands will also attempt to conclude agreements with the countries of origin and particularly with Tunisia, Morocco, and Algeria. The purpose of this agreement is to stimulate returns.

Reports on return

Below a short overview is given of a number of reports that were published during the research period. The overview is not exhaustive.

In 2014 the Research and Documentation Centre (WODC) researched the implementation practice and the perceived effects of the Return Directive in the Netherlands.[72] One of the conclusions drawn in this report is that there is a certain reluctance in the Dutch practice to impose entry bans and – particularly – to punishing violations of entry bans.

In June 2015, the Advisory Committee on Aliens Affairs (ACVZ) drafted an evaluation and advice report on the so-called strategic country approach.[73] The most important recommendation to the cabinet was to "invest more in the relationship with countries of origin to improve their cooperation in forced return."

In April 2016, Amnesty International, Médecins du Monde, LOS Foundation and the Immigration Detention Hotline published a report on detention of vulnerable third-country nationals.[74] This report

[70] Ibid.
[71] EMN, *Beleidsoverzicht 2016 [2016 Policy overview] Migratie en asiel in Nederland [Migration and asylum in the Netherlands].* Rijswijk, May 2017
[72] WODC, *The fate of the entry ban: In 2014 the Research and Documentation Centre (WODC*) researched the implementation practice and the perceived effects of the Return Directive in the Netherlands.
[73] ACVZ, *The strategic country approach to migration: between ambition and reality,* 2015
[74], Amnesty International, Médecins du Monde, LOS Foundation and the Immigration Detention Hotline, *To confine or to protect? Vulnerable people in immigration detention,* 2016

criticises the Dutch practice in which vulnerable persons are also kept in detention. The most important point of criticism is the lack of an individual and thorough analysis of their vulnerability prior to the detention of third-country nationals. Such a "vulnerability test should not only take place prior to detention, but also regularly during the period of detention".

In July 2017, Amnesty International published a report on human rights within the framework of forced return and departure.[75] In this report, Amnesty warns that too high a pressure on return may pose the risk of human rights violations.

Section 2: Systematic issuance of return decisions

This section of the Synthesis Report will provide information on Member States' practices with respect to the issuance of a return decision to any third-country national staying irregularly on their territory (as per Article 6 of the Return Directive). The section will consider, among others, whether the issuance of a return decision is subject to the possession of travel or identity documents by the third-country national concerned and examine if Member States issue joint decisions concerning the ending of a legal stay and a return decision in a single administrative or judicial decision (Article 6(6) of the Return Directive). The section will also provide information on the frequency with which Member States choose to grant an autonomous residence permit for compassionate, humanitarian or other reasons (Article 6(4) of the Return Directive) or refrain from issuing a return decision due to the third-country national being the subject of a pending procedure for renewing his or her residence permit (Article 6(5) 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

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

The Immigration and Naturalisation Service, the Royal Netherlands Marechausee and the National Police.[76]

The Immigration and Naturalisation Service is responsible for the decision on an application for a residence permit or its renewal and the decision to withdraw a residence permit. Pursuant to the Aliens Act (Vw) 2000, this decision is also considered a return decision.[77]

The official in charge of border control or with the supervision of third-country nationals can issue a return decision against a third-country national who is staying irregularly in the Netherlands. Border control is a task of the Royal Netherlands Marechausee and in the harbour of Rotterdam of the Sea Harbour Police (ZHP, the regional unit of the National Police in the area in which the harbour of Rotterdam is situated). Supervision of third-country nationals is a task of the National Police and the Royal Netherlands Marechausee .[78]

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***

[75] Amnesty International International, *Uitgezet. Mensenrechten in het kader van gedwongen terugkeer en vertrek* [*Removed: Human rights within the framework of compulsory return*], Amsterdam July 2017.

[76] The Immigration and Naturalisation Service and the National Police come under the Ministry of Security and Justice. The Royal Netherlands Marechaussee comes under the Ministry of Defence.

[77] Aliens Act 2000, inter alia Sections 27 and 45

[78] Aliens Act Implementation Guidelines 2000, A2

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

c) Other *(please describe)*

a) No, the Netherlands does not refrain from issuing a return decision if the whereabouts of the third-country national are unknown. An example of such a situation is a third-country national who applied for asylum and has left for an unknown destination while the application was being processed. In that case, the processing of the application will be stopped.[79] This decision also applies as a return decision.[80] The fact that the whereabouts of the third-country national are unknown does not impede the return decision from being issued.

b) No, the fact that the third-country national does not possess travel or identity documents is no reason to refrain from issuing a return decision.

c) Reasons to refrain from issuing a return decision to an irregularly-staying third-country national are:

- if an earlier return decision has been issued to him/her and the obligation to return ensuing from it has not been complied with.[81] In this case, the former return decision is, after all, still valid.
- if there is another ground for residence. This exception is not explicitly laid down in Dutch laws and regulations but ensues directly from Article 3 of the Directive. This is for instance the case if the third-country national applies for asylum, or if there are indications that the third-country national is a victim of human trafficking.
- if the third-country national can be transferred to another EU member state within the framework of the Dublin Regulation or a bilateral or multi-lateral agreement or arrangement.[82]

If an irregularly staying third-country national is found on Dutch territory by the National Police or the Royal Netherlands Marechausee , it is also possible to refrain from issuing a return decision in the following cases:

- If the return decision obstructs the third-country national's departure (for instance when he or she would miss their flight when leaving the Schengen Area)

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

Yes, the Netherlands has measures in place to locate and apprehend irregularly-staying third-country nationals whose whereabouts are unknown. Whether these measures are effective is difficult to answer in the nature of the question, because it is not possible to establish the total number of irregularly-staying third-country nationals.

Irregularly-staying third-country nationals are located and apprehended by means of the operational supervision of foreign nationals by the National Police. As part of this, the police performs domestic supervision with the purpose of countering irregular stay of third-country nationals. On the one hand, this takes place through active supervision: the tracking of irregularly-staying third-country nationals on grounds of facts and circumstances that give a reasonable suspicion of irregular stay. This could be by performing object-targeted inspections and participating in inspections for illegal labour. On the other hand, there is also passive supervision. When performing their task, the police are authorised to

[79] Aliens Act Implementation Guidelines 2000, C2.8)
[80] Aliens Act 2000, Sections 27 and 45
[81] Aliens Act 2000, Sections 27.1 and 45.1
[82] Aliens Act 2000, Section 62a.1.c

check the identity, nationality and residence status of the third-country national, for instance when suspected of committing a punishable act or in a traffic control.

To perform these forms of supervision, the police is authorised to stop persons to establish their identity, nationality and residence status pursuant to of Section 50 of the Aliens Act on grounds of facts and circumstances which either give rise to a reasonable suspicion of irregular stay according to objective standards or to combat irregular stay after border crossing. If it is not immediately possible to establish the identity of the person who has been stopped, they may be taken to a place designated for hearing. They may not be detained for more than six hours. In addition, the police are authorised to search this person's clothing or body, as well as their belongings. On the grounds of Sections 53 and 53a of the Aliens Act, the police are moreover authorised to enter and search a dwelling without the resident's permission, if based on the facts and circumstances and according to objective standards there is a reasonable suspicion that a third-country national is staying there without a right of residence.

Active search for irregularly-staying third-country nationals is, however, not a priority. The supervision of foreign nationals is in the first place aimed at criminal, nuisance-causing, or fraudulent third-country nationals. The following prioritisation is given in the most recent target agreements that have been made with the National Police on the supervision and enforcement of third-country nationals:[83]

1a) criminal third-country nationals, whether staying irregularly or not, with special attention to multiple offenders,

2a) combating fraud aimed at admission (migration fraud),

2) third-country nationals who disturb the public order or cause a nuisance in any other way,

3a) a periodical focus on a specific theme (target group/ location) together with cooperating organisations, and

3b) in addition, absconding third-country nationals are a point of focus.

Within this framework, it should be noted that the Netherlands has an option for the suspension of a sentence of irregularly-staying third-country nationals:

Third-country nationals who are not allowed to continue their stay in the Netherlands after completing their sentence do not return to Dutch society and are for that reason excluded from conditional release. They have to complete their sentence, in principle.

However, their sentence may be suspended for an indefinite period on the basis of Section 40a of the Regulation for Temporary Leave from the Institution (Rtvi), which provides for the specific situation of foreign nationals. As a result of this suspension of the sentence, the execution of a custodial sentence is interrupted prematurely on the condition that the third-country national leaves the Netherlands and does not return to the Netherlands. If a third-country national does return, the execution of the sentence will be resumed.

In a letter to the House of Representatives, the Minister wrote the following on this subject: "The option to temporarily interrupt the execution of the custodial sentence of foreign nationals with a criminal past has proved a strong incentive for them to cooperate in their departure from the Netherlands. Partly as a result of this regulation, 78% of criminally convicted third-country nationals have demonstrably left the Netherlands in 2016. As a result, this regulation facilitates an effective removal and prevents an expensive removal procedure."[84]

[83] Revised police agreements on aliens related duties of 2016, Minister of Migration, Minister of Security and Justice, National Police Commissioner.
[84] Parliamentary Papers II, 2016-2017, 19637, no 2335

Irregular stay in the Netherlands is further countered by making it unappealing. The Benefit Entitlement (Residence Status) Act (koppelingswet) plays an essential role in this. On the grounds of the benefit entitlement principle (koppelingsbeginsel), irregularly-staying third-country nationals are not entitled to benefits, provisions, and supplements from an administrative body.

In addition to the operational supervision of foreign nationals by the police, the Royal Netherlands Marechausee carries out Mobile Security Monitoring. This Mobile Security Monitoring is the supervision of persons who have travelled to the Netherlands from different Schengen countries across the German and Belgian borders. The checks take place on roads, in trains, on the water and in airports. In the

area adjoining the border the Royal Netherlands Marechausee randomly checks travel documents. The checks take place to combat illegal immigration and cross-border crime.[85]

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

Yes, if irregular stay is detected on exit and the third-country national has not received a return decision with an entry ban before, the Royal Netherlands Marechausee , who are responsible for border control, have to issue one to the third-country national.[86]

If issuing a return decision and entry ban impedes the third-country national's departure (for instance because it would lead to their flight being missed), departure has priority. In addition, a return decision will not be issued if there is no entry ban. The issuance of a return decision without entry ban does not have an added value if the third-country national is about to depart. After all, the third-country national has complied with the return decision by departing.[87]

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, in the Netherlands a negative decision on the application for a residence permit or its renewal is also the return decision.[88] If the third-country national is still staying legally in the Netherlands on the basis of a different ground, the rejection is, however, not a return decision.

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.

Yes, there are various options for decisions to grant a residence permit or other form of authorisation for residence to third-country nationals staying irregularly in the Netherlands, either because of distressing circumstances, on humanitarian or on other grounds. This can be a residence permit on humanitarian grounds, but also a residence permit on other grounds, such as work in paid employment or family reunification. This is, however, on the condition that the applicant is exempted from the requirement of a Regular Provisional Residence Permit (a type D Schengen visa), which is only possible if a rejection on the grounds of not meeting the requirement of having a Regular Provisional Residence Permit leads to extreme unreasonableness (hardship clause).[89]

In addition, a so-called postponement of departure can be granted on medical grounds and rejected asylum applicants can be provided with temporary residence if the circumstances in their country of origin or continuous residence temporarily impedes return.

[85] Ministry of Defence (2017), Grenstoezicht [border patrol], https://www.defensie.nl/onderwerpen/taken-in-nederland/grenstoezicht, consulted on 15 August 2017
[86] Aliens Act Implementation Guidelines 2000, A3 6.10

[87] Source: Royal Netherlands Marechausee

[88] Aliens Act 2000, Sections 27.1 and 45.1
[89] Source: Aliens Decree 2000, Section 3.71, sub 3

Any third-country national staying irregularly in the Netherlands can qualify for one of the above-mentioned residence permits if they meet the criteria, with the exception of a postponement of departure, which is specifically intended for rejected asylum applicants.

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?

Yes, once a return decision has been issued its validity is unlimited. The decision does not have a expiry date.

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 Netherlands has mechanisms in place to take into account changes in the situation of the third-country national prior to their removal. For this purpose the return process has been equipped with adequate safeguards. The Repatriation and Departure Service (DT&V) is responsible for the process. A departure caseworker supervises the third-country national until the moment of voluntary or forced return. The caseworker has several interviews with the third-country national on the options for return. During the process, there are fixed moments when the caseworker evaluates the third-country national's removability. There is also specific attention for medical circumstances, human trafficking and any compelling individual circumstances. Under certain circumstances there is, in addition, an option to perform a medical test (inter alia on the third-county national's own indication) shortly before departure to assess whether the person concerned is indeed medically fit to travel (a fit-to-fly test).[90]

Also, the third-country national is at all times allowed to file a (new) asylum application, to apply for a non-asylum residence permit or to provide medical circumstances which impede departure. Finally, the third-country national always retains the right to an attorney-at-law financed by the government, who if necessary can apply for a provisional ruling at the Court.

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 <u>important exceptions</u> to the general rule stated above

Yes, return decisions contain the information that third country nationals must leave EU territory.

Return decisions, which are part of rejections, contain the following text:

> *Your application has been rejected. You no longer have the right of residence. This means that you are no longer allowed to be in the Netherlands.*
>
> *You have to leave the Netherlands and the European Union immediately. If you do not do so, you may be removed. By the European Union, I also mean the European Economic Area and Switzerland.*

[90] Process description Repatriation and Departure Service

Independent return decisions issued by the Royal Netherlands Marechausee or the National Police contain the following text:

...On the grounds of the provisions of Section 62 of the Aliens Act 2000 (Vw 2000), the obligation to return to his/her country of origin, or another non EU country where he/she has a right to entry. This is in light of the fact that it has become evident that the foreign national is staying irregularly in the European Union or it has not become evident that he/she is staying legally in the European Union.

( ) The third-country national must leave the European Union within a period of 28 days.

( ) The third-country national must leave the European Union immediately.

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),[91] 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?

Background information for the reader:

The following is important in answering the question which elements are considered rebuttable presumptions as described in the Commission's recommendations:

A distinction is made in assessing whether there is a risk of the third country national absconding between light and significant grounds.[92] In case of light grounds (e.g. no fixed place of abode or residence, insufficient means of existence) the authorities have to motivate why in the individual case the ground leads to a risk of absconding, so the burden of proof rests with the authorities. Significant grounds (e.g. providing incorrect data, destruction of identity documents) are sufficient in themselves to determine that there is a risk of the third-country national absconding and do not require motivation by the authorities;[93] in case of significant grounds, the burden of proof rests with the third-country national.

[91] For example, the EMN Focussed Study 2014 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'; the Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)" (Requested by Estonian NCP on 15 October 2014); and the "Ad-Hoc Query on the Return Directive (2008/115/EC)article 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

[92] The grounds actually concern the imposition of detention. The reasons for detention are a) that there is a risk of absconding, and b) that the third-country national will avoid or obstruct the preparation for departure or the removal procedure (Aliens Decree 2000, section 5.1a, sub 1). Whether these reasons are applicable is assessed by means of the light and significant grounds for detention (e.g. provision of incorrect data, no fixed abode) which have been laid down in the form of a list in the Dutch regulations (Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3 and 4). In this assessment no distinction is made between the risk of going into hiding and the fact that the third-country national is obstructing departure; these two reasons for detention are assessed in conjunction with light and significant grounds without further differentiation. There is also no distinction in case law.

[93] This is likely to change soon as a result of a Council of State ruling (ABRvS 24 maart 2017, ECLI:NL:RVS:2017:793 (201700489/1)

The rebuttable presumptions as described in the Commission's recommendations are comparable to the significant grounds in the Dutch legislation. The light grounds cannot be seen as rebuttable presumptions because in their case the burden of proof does not rest with the third-country national.

When filling in this table the answer to a question is 'yes' if a significant ground is concerned and the answer to a question is 'no' if a light ground is concerned.

Challenges ensuing from case law:

For a number of presumptions, the Council of State has raised the threshold for assuming that there is a risk of absconding. For instance, the presumption of "unauthorised secondary movements to another member state" (recommendation 15(e)) has formerly been dismissed by the Council of State as an indication of a risk of absconding.[94] The presumption of "an existing conviction for a significant criminal offence in the Member States" (recommendation 16(c)) is a light ground in the Netherlands. It is important here that the Administrative Jurisdiction Division has decided in view of the Kadzoef ruling by the European court of Justice to only accept this presumption if the criminal offence can be related to the risk of absconding.[95] In addition, in a recent ruling, the Division has decided that significant grounds also[96] require motivation, whereas in the past motivation of significant grounds was not required.[97]

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	Refusal to cooperate in the identification process is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: d. does not or does not fully cooperate in the establishment of their identity and nationality, e. gives false or contradictory information in an application for legal stay concerning identity, nationality, or travel route to the Netherlands or another Member State; f. has discarded their travel or identity documents without necessity. Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under d, e, and f
Violent or fraudulent opposition to the enforcement of return	No	In Dutch legislation this element is no part of the assessment of whether there is a risk of absconding.
Explicit expression of the intention of non-compliance with a return decision	Yes	Indicating that one is unwilling to cooperate on their return is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: i. has indicated that they will not meet their obligation to return or their obligation to travel to the Member State responsible for their asylum application." Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under i

[94] ABRvS 24 March 2017, ECLI:NL:RVS:2017:793 (201700489/1).
[95] ABRvS 28 June 2013, ECLI:NL:RVS:2013:3199 (201302364/1/V3)
[96] It is still unclear which significant grounds are concerned (except for the ground "entered into the Netherlands in an unauthorised manner or attempted to do so")
[97] ABRvS 24 March 2017, ECLI:NL:RVS:2017:793 (201700489/1).

Non-compliance with a period for voluntary departure	Yes	Non-compliance with the period for departure is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: c. was previously issued a visa, a notice, an order or a return decision containing an obligation to leave the country with which they did not comply voluntarily within the time limit prescribed;" Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under c
Conviction for a serious criminal offence in the Member States	No	In the Netherlands, the fact that a third-country national has been convicted for a serious criminal offence is a light ground for the presumption of a risk of them absconding.[98] In a case of light grounds, the authorities are required to motivate why in an individual case the ground gives rise to a risk of absconding, and it is therefore not a rebuttable presumption.
Evidence of previous absconding	Yes	Previous absconding is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: b. violates existing Aliens Legislation by absconding for a period of time." Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under b
Provision of misleading information	Yes	Provision of misleading information is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: e. gives false or contradictory information in an application for legal stay concerning identity, nationality, or travel route to the Netherlands or another Member State; g. has used false or forged documents in Dutch legal matters." Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under e and g
Non-compliance with a measure aimed at preventing absconding	Yes	Non-compliance with a measure to prevent absconding is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: b. violates existing Aliens Legislation by absconding for a period of time." Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under b
Non-compliance with an existing entry ban	Yes	Non-compliance with an existing entry ban is a significant ground for the presumption of a risk of absconding. This element has been laid down in Dutch legislation: "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: a. entered the Netherlands in an unauthorised manner or attempted to do so."

[98] Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 4, under e

		A third-country national who is subject to an entry ban and nevertheless attempts to enter the Netherlands is doing so in an unauthorised manner. The Dutch provision is broader but also includes this situation. Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3, under a
Lack of financial resources	No	The fact that a third-country national does not possess sufficient financial resources is a light ground for presumption of a risk of absconding in the Netherlands.[99] In a case of light grounds the authorities are required to motivate why in an individual case the ground gives rise to a risk of absconding, so it is not a rebuttable presumption.
Unauthorised secondary movements to another Member State	No	In Dutch legislation this element is not part of the assessment of whether there is a risk of absconding.
Other (please describe)		In addition, there are the following significant grounds: Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 3 "Significant grounds for detention or for imposing a freedom-restricting measure are if the alien: h. has been declared an undesirable person as referred to in Section 67 of the [Aliens] Act or is subject to an entry ban issued with the application of Section 66a, sub 7 of the Act." See question 1 for more information on the declaration of undesirability. In addition there are the following light grounds: Source: Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 4 "Light grounds for detention or for imposing a freedom-restricting measure are if the alien: b. has submitted several applications for a residence permit, while none have been granted, c. has no fixed place of abode or residence, f. has worked in violation of the Labour Act for Aliens."

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*~~[100]

b) Deposit of an adequate financial guarantee; ***Yes***/~~*No*~~[101]

c) Submission of documents; ***Yes***/~~*No*~~[102]

d) Obligation to stay at a certain place; ***Yes***/~~*No*~~[103]

e) Other (please describe)

In addition to the above-mentioned measures, the authorities can also ask the third-country national to provide the following assurances:

- submission of travel ticket,[104]
- a statement by a solvent third-party guarantor for the costs.[105]

[99] Aliens Decree 2000 (Vb 2000), Section 5.1b, sub 4, under d
[100] Aliens Decree 2000 (Vb 2000), Section 4.51
[101] Aliens Act 2000, Section 4.52a, sub 3, under c
[102] Aliens Act 2000, Section 4.52a, sub 3, under a
[103] Aliens Decree 2000 (Vb 2000), Section 5.1, sub 1, under a
[104] Aliens Decree 2000, Section 4.52a, sub 3, under b
[105] Aliens Decree 2000, Section 4.52a, sub 3, under d

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)

From a number of evaluations and interviews with representatives of the Dutch authorities it became apparent that the **administrative burden** of the assessment of the risk of absconding (often in conjunction with the decision whether it is possible to detain a third-country national) has increased in the past years. From a 2014 evaluation by the Research and Documentation Centre (WODC) it became apparent that among other things "there has been a considerable increase of the administrative burden and time pressure as a result of the issuance of return decisions, imposing entry bans, and the punishment of violations of these bans [as a result of the introduction of the Return Decree]. Sources at the Public Prosecution Service as well as the Immigration and Naturalisation service have indicated that in their own organisation it is sometimes thought that this has gone too far." In a 2014 letter to the House of Representatives the Minister for Migration underlined that: "the procedural conditions ('rules') which ensue from the Return Directive and judges' rulings based on it have led to an increased workload for the services involved."[106] The Council of State's case law seems to reveal a trend in which the assessment of the risk of absconding has to be motivated in an increasingly extensive and more detailed way.[107] The Council of State has, for instance, ruled that the risk of absconding needs to be motivated individually and that ticking a number of grounds alone will not suffice. *Challenge for government agencies*

Another challenge, which is related to the increase in the administrative burden, is the **time pressure** during immigration detention. From a 2013 report by the Advisory Committee on Migration Affairs (ACVZ) it became evident that the increase in the administrative burden is particularly problematic for the detention of third-country nationals because of the deadlines. For instance, if a third-country national is detained, the police has only six hours to consider a great number of things and take a great number of actions (including the assessment whether there is a risk of absconding). *Challenge to government agencies*

What is also experienced as a challenge, which applies to the implementing bodies (such as the police, the Royal Netherlands Marechausee and the Repatriation and Departure Service) in particular, is the **complexity of regulations**. The regulations are often difficult to understand for non-lawyers such as police officers who want to detain a third-country national and have to assess the risk of absconding in order to do so. This is mainly caused by the fact that in certain regions relatively few third-country nationals are detained and as a result officers do not really know how to act. They are annually trained in detention of third-country nationals (including absconding), but in practice it is much more laborious to detain a third-country national than, for instance, to handle a case of shoplifting. The frequent change of rules, often as a result of case law, is another fact that is experienced as complicating. *Challenge to government agencies*

The Dutch Council for Refugees has observed that some **unaccompanied minor third-country nationals leave the reception centre for an unknown destination** shortly before their 18th birthday.[108] Unaccompanied minors whose asylum application has been rejected are in practice only removed once they are 18 years old. *Challenge to government agencies and third-country nationals*

The IOM pointed out the challenge **of an increase in absconding third-country nationals from countries without visa requirements since the return support for this group** has been abolished. Since 1 January 2017 IOM has excluded migrants from countries without a visa requirement from support for voluntary return. This also applies to those who have applied for asylum. The embassies concerned often refer their citizens to IOM because they do not always have the means to support them. These migrants often do not want to get in touch with the Dutch government and without IOM's support they are increasingly likely to abscond. When migrants who applied for asylum are concerned, they will be marked as having "left for an unknown destination." If they are not known to Dutch government agencies, they will remain invisible, whereas in the past

[106] Parliamentary Papers II, 2013-2014, Annex to Parliamentary Paper 32420 no I
[107] D. Kuiper, LLM (2016), Lichter middel, het verslag van een stille revolutie bij de Detention van vreemdelingen [Lighter measures, an account of a silent revolution in immigration detention]; In Journaal Vreemdelingenrecht, 2016, no 4/33
[108] European Network of Ombudspersons for Children (ENOC) (2016), Safety and Fundamental Rights at stake for children on the move, http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2016KOM.00%20Safetyandfundamentalrightsatstakeforchildrenonthemove.pdf , consulted on 1 August 2017

they would demonstrably have left the country with the help of IOM. The abolition of the return support will be evaluated in the summer of 2017.

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.)

No relevant good practices that meet the criteria (page 12).

Section 4: Effective enforcement of return decisions

This section of the Synthesis Report will present Member States' practices in relation to the effective implementation of return decisions. In particular, it will examine the following issues (to the extent that they are not already covered by previous EMN studies and recent EMN Ad-Hoc Queries): the application of the principle of mutual recognition of return decisions by the Member States (as provided for by Council Directive 2001/40/EC[109] and Council Decision 2004/191/EC;[110] the use of detention and alternatives to detention in return procedures (as per Article 15 of the Return Directive); the extent to which emergency situations have led national authorities to apply derogations from the standard periods of judicial review and general detention conditions (Article 18 of the Return Directive); and the use of European travel documents for return in accordance with Regulation 2016/1953.[111]

Please note that similar information was requested in the EMN 2014 Study on 'The use of detention and alternatives to detention in the context of immigration policies' and the EMN Ad-Hoc Query on the Use of Detention in Return Procedures (update) requested by the European Commission on 9th August 2016. Please review your Member State contribution to the aforementioned Study and Ad-Hoc Query (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

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, national legislation foresees sanctions for third-country nationals who fail to return within the time period mentioned in the return decision and/or intentionally obstruct return processes. The following sanctions can be imposed:

In the case of non-compliance with the return decision an entry ban can be imposed, after which stay is punishable:

[109] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001

[110] Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 60, 27.2.2004.

[111] 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

Under Section 66a of the Aliens Act 2000 (Vw 2000), an entry ban is imposed on any third country national who has not left within the period for voluntary departure, unless a suspension of departure applies on grounds of Section 64 of the Aliens Act (see Q 44). This decision can be issued independently or as an amendment of the earlier return decision. If applicable, reception facilities will also be terminated.

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, return decisions issued by another Member State are not recognised if a third-country national is found in Dutch territory. There are no exceptions to this rule.

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)*

Not applicable.

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

It ensues from the scheme of the Directive that irregular stay in a Member State's territory must be established by that Member State. The Directive does not provide for an exception if the irregular stay has already been established by another Member State. Bearing in mind the rulings of 21 March 2011, ECLI:NL:RVS:2011:BP9280 (201100307/1) and 12 April 2012, ECLI:NL:RVS:2012:BW3971 (201102602/1) by the Division, it is up to the Minister to determine that a third-country national's residence in the Netherlands is irregular before he or she is detained if this person is subject to the effect of the Directive.

There are also practical obstructions. An important precondition is that Member States know from each other that a return decision has been taken. Until now this has not been the case. In many cases this will concern Dublin cases. In that case, third country nationals will not be initially returned to their country of origin, but transferred to the Member State that is responsible.

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?[112] **Yes**/~~No~~

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

Yes, European travel documents are issued.[113]

A European travel document is issued by the Repatriation and Departure Service (DT&V) and is intended as a one-time-only travel document for return to the country of origin or another country.[114]

In suitable cases, departure from the Netherlands can take place by means of a European travel document. This document is issued by the Dutch government if the nationality of a third-country national can be adequately established. The European travel document can be used for return to the country of origin, but in some cases also for return to another country. Additionally, the document can be used as a supporting travel document in transfers to other European countries.

For the use of a European travel document within the framework of departure from the Netherlands the following cumulative conditions are to be met:

- it has proved to be impossible to obtain a travel document or replacement travel document on time from the authorities concerned in the country of origin or a third country, or agreements have been made with the country concerned on the use of the EU travel document;
- There are one or more indications based on which the nationality and in some cases identity of the third-country national concerned can be assumed.
- It is likely that the third-country national concerned will be admitted to the country to which he/she is to return.

In all cases EU travel documents are issued by Repatriation and Departure Service . If available, it is recommended that identity documents, identity supporting documents or copies of such documents are added, for instance a driving license or birth certificate. These documents or their copies can not contain any asylum-related information.

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

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

In practice third-country nationals are always accepted if they return to their country of origin by means of a European travel document in combination with a supporting document (e.g. an expired passport or copies of documents). Prior to return the Repatriation and Departure Service checks with the flight company whether the third-country national will really be admitted by the border authorities. If the border authorities at the country of origin give the go-ahead, an EU travel document is issued. Therefore the return always takes place without any setbacks.

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 procedure is described below as followed for obtaining valid travel documents or acceptation of a European travel document:

[112] Ibid.

[113] Aliens Act Implementation Guidelines 2000 (A) A3 Departure and removal 4 Travel documents

[114] https://zoek.officielebekendmakingen.nl/stcrt-2006-234-p13-SC77941.html

If a third-country national does not possess a valid travel document, the Repatriation and Departure Service must file an application for a replacement travel document or Laissez Passer with the diplomatic representatives. Depending on the situation and on the third country this requires representation in person or by telephone. After any confirmation of the nationality by the third-country representative the diplomatic representation does or does not issue a replacement travel document for the third-country national to return. With some third countries agreements have been made on travelling by means of a European travel document instead of an Laissez Passer. The Repatriation and Departure Service is responsible for the application for a replacement travel document at the authorities/diplomatic representatives of the third country or the issuance of an European travel document.

The timeframe for recognition of the nationality and issuance of a Laissez Passer differs per country and is often laid down in agreements with the third country (Return agreements or *Memoranda of Understanding*).

In principle return is only possible if the third-country national possesses a valid travel document, because every country has its border control authorities at airports and borders who check whether a person is allowed access to the country. Third-country nationals who have to return must provide the necessary travel documents themselves. If they do not or no longer have these documents they can apply to their diplomatic representative with an application for a (replacement) travel document. Those

who need help can request assistance from the Repatriation and Departure Service.[115] Most diplomatic representatives only issue a (replacement) travel document if the third country national's identity and nationality can be proven or made plausible. [116]

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 <u>any exceptions</u> to the general rule stated above

Yes, under certain circumstances it is possible to detain third-country nationals within the context of the return procedure.[117]

There are a considerable number of exceptions to this option. To list all exceptions here would go beyond the framework of this study. It is, however, possible to indicate the most frequent reasons for not detaining third-country nationals while requirements have been complied with. The most frequent reasons are:

- the option to use a lighter instrument (e.g. duty to report, bail),[118]
- the third-country national's medical impairment,[119]
- the third-country national has indicated that he or she is able and willing to leave the Netherlands.[120]

The threshold is higher for the detention of families with minor children and unaccompanied minors. Families with minor children can, for instance, only be detained if it is expected that they can be removed within two weeks.[121] In the case of unaccompanied minors there must be "compelling reasons"(e.g. the minor is suspected of or sentenced for a crime, departure can take place within 14 days, the minor has left for an unknown destination before or has not complied with a duty to report or a freedom-restricting measure).[122] See question 49a for more information. Families with minor children and unaccompanied minors are also detained at special locations (see question 31).

Challenges in the application of detention which ensue from the Directive and from case law:

A challenge to the Dutch authorities is the interpretation and implementation of the stipulation "detention for the purpose of removal" in Article 15 of the Return Directive. The question is whether the options provided by the Return Directive are sufficient to detain third-country nationals from countries that demand voluntary return (e.g. Iraq) for the purpose of return. In the current situation it is often unclear to what extent coercive measures such as detention can be imposed to exhort the third-country national to cooperate on their return.

Another challenge is the interpretation of the risk of absconding in detention cases. The legal framework is often experienced as complex by government agencies (see question 14 for more information).

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*~~[123]

b) If the third-country national avoids or hampers the preparation of a return or removal process; ***Yes***/~~*No*~~[124]

c) **Other** *(please specify).*

An additional requirement for detention is that there is a prospect of removal.[125]

[115] The Ministry of Security and Justice is responsible for the im of the Dutch Government. This includes the return policy and dealing with irregular stay. The Repatriation and Departure Service implements this policy.
[116] www.dienstterugkeerenvertrek.nl
[117] Aliens Act 2000, Section 59
[118] Aliens Act Implementation Guidelines 2000, A5 6
[119]Custodial Institutions Agency (2017), Wie in bewaring? [Who are in detention?], https://www.dji.nl/justitiabelen/vreemdelingen_in_bewaring/dji-wie-in-Detention.aspx, consulted on 15 August 2017
[120] Aliens Act 2000, Section 59, sub 3
[121] Aliens Act Implementation Guidelines 2000, A5 2.4
[122] Aliens Act Implementation Guidelines 2000, A5 2.4
[123] Aliens Decree 2000, Section 5.1, sub 1, under a
[124] Aliens Decree 2000, Section 5.1, sub 1, under b
[125] Aliens Act 2000, Section 59 sub 1

Q22a. *[EC Recommendation (10) (b)]* 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).[126]

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	5420	3668	2728	2176	2570	Excl. children in families and incl. UAMs Source: Custodial Institutions Agency
Number of third-country nationals placed in detention (men)	4609	3255	2374	1901	2301	Source: Custodial Institutions Agency
Number of third-country nationals placed in detention (women)	811	413	354	275	269	Source: Custodial Institutions Agency
Number of families in detention	201	89	44	66	76	Source: Custodial Institutions Agency
Number of UAMs in detention	49	25	11	12	26	Source: Custodial Institutions Agency

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)?[127]

> Dutch legislation provides that third-country nationals can be detained for a maximum of 6 months.[128] This period can be extended by a maximum of 12 months if the removal is going to take longer despite all reasonable effort, because the third-country national does not cooperate in their removal or the documents needed from third countries are still missing.[129] So the maximum period of detention is 18 months.

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, there are no exceptions to the maximum period of 18 months of detention within the framework of the return procedure.

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

~~a) Judicial authorities; *please specify*~~

> Not applicable.

b) **Administrative authorities**; *please specify*

> In the Netherlands detention of third-country nationals is ordered by an administrative authority: the acting public prosecutor or an employee appointed as such by the police, Repatriation and Departure Service or Immigration and Naturalisation Service.[130] The acting public prosecutor is usually a police officer or aofficial of the Royal Netherlands Marechausee..

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

Not applicable.

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?

Yes, the lawfulness of detention is reviewed by a judge ex officio if the third-country national has not presented it to the court of their own motion within 28 days. The third-country national or their legal representative (e.g. an attorney-at-law) can always present the lawfulness of the detention to the court for review. If the third-country national does not do so, the government will still present the detention to the court for review of lawfulness (ex officio) after up to

[126] The following (Member) States provided quantitative information on the use of detention for the period 1st January 2012 -31st July 2016 through the EMN Ad-Hoc Queries on the 'Use of Detention in Return Procedures - Requested by COM on 30th November 2015' and 'Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1st January-31st December 2016.

[127] Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

[128] Aliens Act 2000, Section 59, sub 5

[129] Aliens Act 2000, Section 59, sub 6

[130] Dutch Government (2017), Vreemdelingenbewaring [immigration detention], https://www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/vreemdelingenbewaring, consulted on 15 August 2017

28 days[131] [132] A hearing mustl take place within 14 days after the court has been notified of the detention.[133] Within a maximum of 7 days after the hearing the court must rule on the lawfulness of the detention.[134]

So the ex officio review by the court of the lawfulness of detention takes place within 49 days (28 + 14 + 7) after the third-country national was detained.

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?

The third-country national or their legal representative (e.g. attorney-at-law) can always challenge the lawfulness of the detention in court. The hearing will take place within 14 days after the court has received the third-country national's (or attorney-at-law's) writ of appeal.[135] Within a maximum of 7 days after the hearing the court must rule on the lawfulness of the detention.[136]

So the court will rule on the lawfulness of detention within 21 days (14 + 7) after the third-country national appealed.

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.*

The duration of detention can be reviewed upon application by the third-country national or ex officio.

Review upon application by the third-country national

The third-country national or their legal representative (e.g. attorney-at-law) can always challenge the duration of the detention in court. After the district court has received the writ of appeal, it will instigate an investigation. This means that the Repatriation and Departure Service must respond in writing on the appeal and that the third-country national will be given the opportunity to respond to the Repatriation and Departure Service's answer.[137] It is also possible that the court plans a hearing to hear the third-country national. Within a maximum of 7 days after the investigation has been concluded the court must rule.[138]

Ex officio review

The Repatriation and Departure Service continuously monitors whether the reasons for detention still exist. If the grounds for detention no longer exist, the detention is lifted.

If there are reasons to extend the detention after the first six months by a period of no more than twelve months (see Q22a), the third-country national must be informed of the extension in writing before the first six months have passed. The Repatriation and Departure Service is responsible for drafting the so-called 'decision to extend' and issues it to the third-country national.[139] In the Return

[131] Aliens Act 2000, Section 94, sub 1
[132] Custodial Institutions Agency (2017), Wie in bewaring? [Who are in detention?], https://www.dji.nl/justitiabelen/vreemdelingen_in_bewaring/dji-wie-in-Detention.aspx, consulted on 15 August 2017
[133] Aliens Act 2000, Section 94, sub 4
[134] Aliens Act 2000, Section 94, sub 5
[135] Aliens Act 2000, Section 94, sub 4
[136] Aliens Act 2000, Section 94, sub 5
[137] Rules of Procedure for Aliens Chambers, Section 3.5.4
[138] Aliens Act 2000, Section 96, sub 2
[139] Aliens Act 2000, Section 94, sub 7 Aliens Act Implementation Guidelines 2000, A5 3.1

Decree the same periods of time apply as in the initial decision to detain third-country nationals (see Q23b);[140] the government must present the decision to extend to court in order to review the lawfulness of the duration of the detention within a maximum of 28 days (ex officio).[141] [142] The court must rule no later than 7 days after the investigation has been concluded.[143]

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 Repatriation and Departure Service continuously monitors whether the reasons for detention still exist. If the grounds for detention no longer exist, the detention is lifted. The Repatriation and Departure Service employee checks at least after every return interview whether detention is still justified. In detention cases detention interviews are held at least once a month. In addition a change of circumstances can be a reason to reconsider the detention. In the Netherlands a third-country national can also launch an appeal to the court against their detention at any moment of detention. In practice attorneys-at-law also instigate an appeal against the duration of the detention measure on a monthly basis.

If the period of detention is longer than six months, there is an explicit moment for review around the sixth month within the framework of the issuance of the decision to extend. If the third-country national does not launch an appeal against the extension, the review of the decision to extend takes place ex officio.

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*~~

Not applicable.

~~b) Administrative authorities; *please specify*~~

Not applicable.

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

The Repatriation and Departure Service (administrative authority) continuously monitors whether the reasons for detention still exist. If the third-country national lodges an appeal against detention or when the extension of the detention is reviewed ex officio, the district court (judicial authority) rules on the lawfulness of the detention.

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.[144] If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

[140] Aliens Act 2000, Section 94, sub 7
[141] Aliens Act 2000, Section 94, sub 1
[142] Custodial Institutions Agency (2017), Wie in bewaring? [Who are in detention?], https://www.dji.nl/justitiabelen/vreemdelingen_in_bewaring/dji-wie-in-Detention.aspx, consulted on 15 August 2017
[143] Aliens Act 2000, Section 94, sub 5
[144] Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

Table 3 Detention capacity as of 31st December 2016

		Situation as of 31st December 2016	Comments
Number of detention centres		3	Source: Custodial Institutions Agency
Number of places available in detention centres per category of third-country nationals	**Men**	707	Source: Custodial Institutions Agency
	Women	14	Source: Custodial Institutions Agency
	Families	26	Source: Custodial Institutions Agency
	Unaccompanied minors	10	Source: Custodial Institutions Agency
	Total	757	Source: Custodial Institutions Agency

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.)*

In the Netherlands the detention capacity is measured by the number of beds.

Q27 *[EC Recommendation (10) (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 important exceptions to the general rule stated above

Yes, in compliance with the Return Directive the Netherlands has specialised detention facilities for third-country nationals in detention. Third-country nationals are detained in the following three detention centres: Rotterdam, Zeist, and Schiphol. The detention centres of Rotterdam and Zeist are exclusively for third-country nationals. The Schiphol Detention Centre also houses criminal detainees, but they are separated from those in immigration detention.

Exceptions are if special care or security measures are needed. For instance, third-country nationals with medical complaints can be transferred to the Scheveningen Judiciary Centre for Somatic Care. On a psychiatrist's indication third-country nationals can also be placed in a forensic psychiatric centre. These centres are no specialised centres for the detention of third-country nationals and they also house persons who have been detained for other reasons, but separately from third-country nationals.

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

Not applicable.

Q28a. Has your Member State faced an emergency situation where an exceptionally large number of third-country nationals to be returned placed an unforeseen heavy burden 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, in the past years this has not happened.

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, in the past years this has not happened.

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*.)

Not applicable.

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[145] When a duty to report is imposed on a third-country national, they are obliged to report regularly to the police. This can be on a daily, weekly, or monthly basis. A duty to report is often imposed in combination with the facilitation of return by the Repatriation and Departure Service.[146] If the third-country national has not fulfilled their duty to report twice, the police will ask them to personally provide information on the breach of duty. If the third-country national does not respond, the police may conclude that the third-country national has left the Netherlands or has definitively absconded. In this case the police then deregisters the third-country national from the administrative systems.[147]
Obligation to surrender a passport or a travel document	Yes, the third-country national may be asked to surrender their passport and/or travel document.[148]
Residence requirements (e.g. residing at a particular address)	Yes[149] A freedom-restricting measure may be imposed on third-country nationals who do not leave within the period for departure (see Q54).[150] In practice this means that they will be housed in a

[145] Aliens Act 2000, Section 54, sub 1, under f Aliens Decree 2000, Section 4.51 Aliens Act Implementation Guidelines, A2 10.3.2
[146] EMN (2014), Vreemdelingenbewaring en alternatieven voor vreemdelingenbewaring [Immigration detention and alternatives to immigration detention]
[147] Aliens Act Implementation Guidelines 2000, A210.3.3
[148] Aliens Decree 2000, Section 4.52a, sub 3, under a
[149] Aliens Act 2000, Section 56, sub 1 Aliens Decree 2000, Section 5.1, sub 1, under a
[150] EMN (2017), Return of rejected asylum seekers: Policy and Practices in the Netherlands, http://www.emnnetherlands.nl/dsresource?type=pdf&objectid=emn:4646&versionid=&subobjectname=, consulted on 15 August 2017

	freedom-restricting centre (VBL). Third-country nationals are placed in a VBL if they are demonstrably willing to cooperate in their departure from the Netherlands and if their return can be facilitated within 12 weeks.[151] Third-country nationals in a VBL are allowed to leave the site, but they are required to stay within the territory of the municipality.[152] It is not monitored whether third-country nationals actually stay within the borders of the municipality. This only becomes evident when a third-country national is found as a result of regular supervision (such as police checks). Whether a freedom-restricting measure will be imposed is discussed in so-called Local Return Consultations (LTO) by the IND, the Repatriation and Departure Service, the Central Organ for the Reception of Asylum Seekers (COA) and the police.[153]
Release on bail (with or without sureties) ***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)***	Yes, the authorities may require the third-country national to provide a guarantee, inter alia in the form of a bail.[154] This bail can be imposed on condition that the third-country national demonstrably cooperates in their return and signs a return agreement with the Repatriation and Departure Service. This return agreement contains the third-country national's rights and obligations with regard to return and the amount of bail. The return agreement contains at least a period of in principle 28 days, in which the third country national is required to have complied with their duty to return voluntarily. The bail is in principle set at € 1,500; the Repatriation and Departure Service may, however, deviate from this sum. The Repatriation and Departure Service will return the bail if the third-country national reports to the Royal Netherlands Marechausee him- or herself and actually leaves the Netherlands.[155]
Electronic monitoring (e.g. tagging)	No
Guarantor requirements ***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)***	Yes, the authorities may require the third-country national to provide a guarantee, including a statement by a solvent third-party guarantor for the costs.[156] It does not matter in actual fact who this solvent third-party guarantor is, as long as they are solvent. The same conditions apply to a guarantee by a solvent third party as to the imposition of a bail.
Release to care worker or under a care plan	No
Community management programme	Yes. The Dutch government subsidises social and non-governmental organisations for projects who promote enhance voluntary return. Participation in a return project is often seen

[151] Ibid.
[152] DT&V (2017), Vrijheidsbeperkende locatie [Freedom-Restricting Centre], https://www.dienstterugkeerenvertrek.nl/VertrekuitNederland/Verblijfslocatiesvoorvreemdelingen/vrijheidsbeperkendelocatie/index.aspx, consulted on 15 August 2017
[153] EMN (2017), Return of rejected asylum seekers: Policiy and Practices in the Netherlands, http://www.emnnetherlands.nl/dsresource?type=pdf&objectid=emn:4646&versionid=&subobjectname=, consulted on 15 August 2017
[154] Aliens Decree 2000, Section 4.52a, sub 3, under c
[155] Aliens Act Implementation Guidelines 2000, A2, 10.4
[156] Aliens Decree 2000, Section 4.52a, sub 3, under d

	as a sign of the third-country national demonstrably cooperating in their return. This prevents the third-country national from being detained.[157] [158]
Other alternative measure available in your (Member) State. Please specify.	No

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)

A number of experts at government agencies have indicated that opting for **alternatives to detention** (e.g. a bail or duty to report) constitutes a challenge, since there is still **a risk of absconding**. The advantage of detention is that government agencies know where the third-country national is staying and that he or she is unable to abscond. Some government officials have also indicated that they are under the impression that third-country nationals only agree to alternatives to detention to gain time. *Challenge for government agencies*

A number of experts have also indicated that it remains difficult to **place third-country nationals in detention if they cause a nuisance and/or have been in criminal detention before**. The reason for this is that the risk of absconding can often not be substantiated sufficiently. The fact is that the Council of State has determined that, bearing in mind the Kadzoev ruling by the European Court of Justice, a third-country national's criminal antecedents cannot be accepted as a ground for detention, unless it becomes evident from these antecedents that there is a risk that the third-county national will abscond or will avoid or obstruct the preparation for their return.[159]

Challenge for government agencies

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 number of experts at government agencies have called **the Closed Family Centre (GGV) in Zeist**, which was opened in June 2016, a good practice. This is a facility for families with minor children and unaccompanied minors (UAMs) who are placed in migration detention. The government is only allowed to detain minor children if departure from the Netherlands can be facilitated in two weeks. The GGV consists of twelve dwellings with room for up to six people per dwelling. A special building provides room for 10 UAMs each with their own room and a bathroom and common living room. In the design of the new facility, the protection and perception of children have been taken into account. The basis is to include as few limitations as possible: in the dwelling families are free to organise their time and cook for themselves. They can also move freely within the premises. In addition to the individual dwellings there are common sports facilities, a prayer room, and a healthcare department.[160] *Good practice for Government agencies and third-country nationals*

[157] Repatriation and Departure Service (2017), Soorten subsidies [Types of subsidies], https://www.dienstterugkeerenvertrek.nl/Subsidies/soorten-subsidies/index.aspx, consulted on 15 August 2017; https://www.nationaleombudsman.nl/system/files?file=bijlage/koepelbrief-def.pdf

[158] Parliamentary Papers II, 2012-2013, 19637, no 1721

[159] ABRvS 28 juni 2013, ECLI:NL:RVS:2013:3199 (201302364/1/V3)

[160] EMN (2017), Beleidsoverzicht 2016 [2016 Policy Overview], http://www.emnnetherlands.nl/EMN_producten/Beleidsoverzicht/Beleidsoverzichten/Beleidsoverzicht_2016 , consulted on 15 August 2017

Since September 2013 the Netherlands has laid down a number of **alternatives to detention in its policies.** These are considered good practices by experts as well as NGOs. In 2012 the Netherlands started a number of pilot projects to test alternatives to detention, in particular a duty to report in combination with Repatriation and Departure Service's case management, bail, and subsidies for NGOs. After an evaluation in 2013, it was decided to anchor these alternatives in the Dutch return policy. For more information on the alternatives to detention please see question 29.[161] *Good practice for Government agencies and third-country nationals*

The Dutch Council for Refugees (VWN) called a number of **local projects which could provide alternatives to detention** good practices, particularly the "Transit House" in Groningen and the "Bed, Bath, and Bread +" in Utrecht. The Transit House was founded in 2009 for third-country nationals without a residence permit whose application had been rejected in the Netherlands and who were in detention or ran the risk of being detained.[162] Participants in the project have no prospect of a continued legal stay in the Netherlands and are not entitled to benefits.[163] They are living on the street or are in detention.[164] The Transit House project aims to help participants to map out the challenges that form an obstacle to a sustainable return to the country of origin (or another country which is able to assure access and prospects).[165] These challenges are discussed confidentially and mapped out to subsequently overcome these challenges together and realise a safe and sustainable repatriation.[166] According to VWN, one success factor of the Transit House is the intensive and personal assistance provided there. In addition, the third-country national is not only given housing, but is also motivated to take part. *Good practice for: Government agencies and third-country nationals*

Another good practice that is mentioned by national experts is the **screening of families who apply for asylum at the border**. Adults who apply for asylum at the border are usually placed in border detention for a certain period. Families with minor children arriving at an airport and applying for asylum are screened immediately at the border. If it becomes evident from the screening that there is a family relationship and no criminal past, the family is not placed in border detention and is allowed to enter the Netherlands and follow the normal asylum procedure at an open facility. In this way, attempts are made to prevent children from being held in detention.[167] *Good practice for Government agencies and third-county nationals*

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***

Is the application of the principles 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?

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

[161] Parliamentary Papers II, 2012-2013, 19637, no 1721
[162] INLIA (2017), Het Transithuis [The Transit House], http://www.inlia.nl/transithuis.html, consulted on 15 August 2017
[163] Ibid.
[164] Ibid.
[165] Ibid.
[166] Ibid.
[167] Ditch Government (2017), Grensbewaring [border detention], https://www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/grensdetentie, consulted on 15 August 2017

No, the principles of non-refoulement and of Article 3 of the European Convention on Human Rights are not systematically assessed as part of the procedure to take a return decision.

If No, under which circumstances is it assessed?

a) It is never assessed as part of the return procedure; ***Yes***

b) It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure; ***Yes***

c) Other *(please specify)*

a) Yes, if a return decision is part of a decision on an application for a non-asylum residence permit or its renewal, neither the principle of non-refoulement nor of Article 3 of the European Convention on Human Rights is assessed.
b) Yes, if a return decision is part of the decision on an application for an asylum residence permit, the principles of non-refoulement and of Article 3 of the European Convention on Human Rights are assessed only once, namely after the substantial assessment of the application.
c) In a situation in which a third-country national is found to be staying irregularly and receives a return decision, they will be heard on grounds of the Boudjlida ruling (C249/13) on matters such as their health situation child's best interest, family life, and the principle of non-refoulement. In doing so the police uses a list of questions which are asked prior to the return decision. The list of questions can be considered an aid for the employees in helping them make a balanced decision. If the third-country national does mention grounds for asylum after all, he will be referred to the application centre where he can still file an asylum application.

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, the return decision can be challenged in court.
b) Yes, if a return decision is part of the decision on an application for a non-asylum residence permit, the third-country national can challenge it before the government agency that decided to reject the application, namely the IND. After rejection of the application for review there is the option to lodge an appeal to court. If the return decision is part of the decision on an asylum application the only option to challenge the decision is to lodge an appeal to court.

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, there is a deadline for an application for review or lodging an appeal against the return decision and the decision on the application of which this decision is part. This term is four weeks.

If an application for a non-asylum residence permit is rejected, application for review may be filed within four weeks. In principle, a term of four weeks also applies for lodging an appeal to Court against the rejection of an application for an asylum residence permit. In some asylum cases the appeal term is one week.[168]

The term for challenging an appeal to the Court of Appeal is one or four weeks. This depends on the type of immigration case. A term of four weeks applies to appeals to the Court of Appeal in asylum cases which were processed in the extended asylum procedure and in non-asylum cases. A term of one week applies to appeals to the Court of Appeal in asylum cases which were processed in the general asylum procedure and in detention cases. These terms are set out by law.

If a third-country national's stay is no longer lawful, the police or the Royal Netherlands Marechausee will notify the third-country national in writing of the obligation to depart from the Netherlands voluntarily. On grounds of the direct appeal regulation (General Administrative Law Act, Awb) an appeal can subsequently be lodged in court no later than four 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, the appeal against a return decision **may** have a suspensive effect. The starting point of Dutch administrative law is that an application for review, an appeal, or an appeal to a Court of Appeal does not have a suspensive effect, unless it has been provided otherwise by law (see Awb Sections 6.16 and 6.24). This is, however, different for an application for review or an appeal against an asylum application and its return decision. Under the Aliens Act 2000, the asylum seeker is in principle allowed to await the ruling in an appeal to the Court in the Netherlands, but not the ruling in an appeal to a Court of Appeal. Third-country nationals who applied for admission on other grounds than asylum grounds are in principle not allowed to await the ruling in an appeal to the Court or Administrative Jurisdiction Division in the Netherlands. If an appeal does not automatically have a suspensive effect, a third-country national may ask the court for a Provisional Ruling. If this Ruling is granted, he or she is still allowed to await the appeal in the Netherlands and the removal is suspended.[169]

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

Yes, national legislation does provide for an administrative/judicial hearing for the purposes of return. If the return decision is part of the rejection of an application for admission (asylum as well as non-asylum) or of a decision to withdraw a residence permit, the return decision is incorporated in this decision. In that case the hearing will primarily focus on the question of admission and not so much on specific 'purposes of return'.

The Repatriation and Departure Service does, however, hold so-called return interviews with third-country nationals who have received such a return decision. Participation in these interviews is not compulsory, but regular absence from these interviews may be a valid reason for detention.

[168] Aliens Act 2000, Section 69, sub 2
[169] For more information, please see: https://www.rechtspraak.nl/Uw-Situatie/Onderwerpen/Rechtsgebieden/Bestuursrecht/Procedures/Paginas/Voorlopig-voorziening.aspx (in Dutch)

If a third-country national is found staying irregularly, the National Police or the Royal Netherlands Marechausee will provide the third-country national with the possibility to be heard on any circumstances impeding return (See Q32).

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)?

Yes, if a return decision is taken by the police or Royal Netherlands Marechausee it is possible to combine a return hearing with a hearing for the purpose of intended detention and an entry ban.

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…)*

Even if it is not required by law, the third-country national is generally present during the hearing. If not, there is a telephone hearing.

Asylum hearings are in principle always attended by the asylum seeker.

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

Dutch legislation does not explicitly distinguish between categories of persons who are considered vulnerable in relation to return and detention. However, the Dutch regulations do pay particular attention to the vulnerability of unaccompanied minors and families with minor children.[170]

The government submitted their Return and Detention Bill to the House of Representatives on 30 September 2015. This bill is still under debate in the House of Representatives, but the debate has been suspended as a result of the Cabinet's caretaker status.[171] This bill does include a definition of vulnerable persons. The bill is in line with the definitions in Article 21 of Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 that lays down standards for the reception of applicants for international protection (PbEU L 180/96):

[170] See Aliens Act Implementation Guidelines A5

[171] *Parliamentary Papers II*, session year 2016-2017, 34 707, no

- minors,
- unaccompanied minors,
- people with disabilities,
- elderly people,
- pregnant women,
- single parents with minor children,
- victims of human trafficking,
- persons with serious illnesses,
- persons with mental disorders, and
- persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

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?

Non-asylum immigration procedures

When a return decision is issued as a result of the withdrawal of a non-asylum residence permit or the rejection of a non-asylum residence application of **members of a family with minor children,** the best interest of the child is taken into consideration in an Article 8 ECHR assessment. The basic assumption is that minor children should stay in the presence of (both) their parents as much as possible.[172] The position of the Dutch government is that the interest of the child is respected as long as the right to family life is honoured.

The Immigration and Naturalisation Service (IND) decides of its own motion when this decision is in conflict with Article 8 ECHR. In addition a third-country national can also apply directly for an assessment of family life in conformity with Article 8 ECHR.

All information known about the child and family is included in the assessment for the child's best interest in the general consideration of interests within the framework of Article 8 ECHR prior to the issuance of a return decision (as a result of a withdrawal of a residence permit or a rejection of an application). In each case all interests are considered in conjunction.

One of the elements in the Article 8 EVRM assessment of the child's best interest is whether the child or children have strong ties with the Netherlands. Such ties need to be supported. The question of what constitutes strong, supported ties with the Netherlands does not have a straightforward answer. The answer depends on the individual circumstances of the case. Their weighting determines whether they are to the advantage or disadvantage of the family (Work instruction 2015/4).

Asylum procedure

When issuing a return decision because of the withdrawal of a asylum permit or the rejection of an asylum application by **members of a family with minor children** or by **unaccompanied minors** the child's best interest is not taken into consideration. It is not assessed ex officio whether this would be in conflict with Article 8 ECHR. Within the asylum procedure there are additional procedural guarantees for applications by minors, for instance special facilities for interviewing them.

Members of families with minor children may apply for an assessment of family life in conformity with Article 8 ECHR of their own motion after rejection of the application (so after the issuance of the return decision) in which the best interest of the child is also taken into consideration.

After rejection of their application and issuance of the return decision, unaccompanied minors can only lodge an application for a residence permit on the grounds of private life as referred to in Article 8 ECHR. In such an application the best interest of the child is also given special weight. In addition, the Immigration and Naturalisation Service may decide to assess ex officio whether the unaccompanied minor qualifies for a residence permit on grounds of the specific no-fault policy for unaccompanied minors (for more information please see the answer to question 42).

[172] IND, Work instruction 2015/4 – Guidelines for the application of Article 8 ECHR

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	All information known about the child and family is taken into account in the determination of the child's best interest in the general consideration of interests within the framework of Article 8 ECHR. In each case all interests are considered in conjunction (Work instruction 2015/4). This includes the child's identity: available documentation of the child's identity and reasons for migration are requested from the parties involved in the decision making process.
Parents' (or current caregiver's) views	No	
Child's views	No	
Preservation of the family environment, and maintaining or restoring relationships	Yes	The preservation of the family environment and maintenance or restoration of family relationships are taken into account in the determination of the child's best interest in the following way: the appellant is requested to provide information on the family environment and the actual family life situation and substantiate why all this is connected to the Netherlands. The principle of the policy is that the interest of the child is respected as long as the right to family life is honoured. (Work instruction 2015/4)
Care, protection and safety of the child	Yes	Care, protection and safety of the child is taken into account in the determination of the child's best interest in the following ways: the applicant is requested to provide information related to it; in addition information available from organisations such as the Child Care and Protection Board (RvdK) or police information on domestic violence in the family is included in the weighing of interests. (Work instruction 2015/4)
Situation of vulnerability	Yes	The vulnerable position of children is recognised by considering the unique set of circumstances of each case in the general assessment within the framework of Article 8 ECHR.
Child's right to health	Yes	The child's right to health is taken into account in the determination of the child's best interest in the following ways: when assessing whether there are strong, supported ties between the child or children

		and the Netherlands, it is determined whether the healthcare or treatment the child is receiving in the Netherlands is specific to the Netherlands, or whether this treatment is also available in the country of origin. (Work instruction 2015/4)
Access to education	Yes	When assessing whether there are strong, supported ties between the child or children and the Netherlands, it is determined whether the education the child is receiving in the Netherlands is specific to the Netherlands, or whether this education is also available in the country of origin. This element is not mentioned explicitly in the work instruction which describes the assessment according to Article 8 ECHR, but this instruction does not provide an exhaustive list of the elements that are taken into consideration when determining whether there are strong, supported ties to the Netherlands (Work instruction 2015/4).
Other (please describe) All information known about the child and the family is taken into consideration when determining the child's best interest.	Yes	All information known about the child and family is taken into account in the determination of the child's best interest in the general consideration of interests within the framework of Article 8 ECHR. In each case all interests are considered in conjunction.

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? ***No***

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

No, if a return decision against an unaccompanied minor cannot be carried out, this does not automatically lead to a right to stay. The rule that return is in the first place the third-country national's own responsibility also applies to unaccompanied minors. It is the view of the Dutch government that in principle any rejected asylum seeker is able to return to their country of origin or country of former stay and that they themselves are responsible for realising this return. The mere fact that the authorities are unable to remove an unaccompanied minor does not lead to the conclusion that return is not possible and in turn does not lead to a right to residence.[173]

Only if the unaccompanied minor is unable to return within the maximum period of three years after the last application for residence through no fault of their own may they qualify for a temporary residence permit under these conditions.

Unaccompanied minors younger than 15 may qualify for a temporary residence permit on grounds of the specific no-fault policy for unaccompanied minors.[174] This is the case when there is no adequate reception in the country of origin or another country where the unaccompanied minor could reasonably leave for within three years of the last application for residence or when the unaccompanied minor is unable to return within these three years through no fault of their own. In both cases the unaccompanied minor must actively have contributed to facilitate their return. In some cases it

[173] EMN, *Terugkeer van afgewezen asielzoekers, beleid en praktijk in Nederland [Return of rejected asylum seekers, policy and practice in the Netherlands],* 2017

[174] Aliens Act Implementation Guidelines 2000, B8, 6

becomes immediately clear that there will not be an adequate reception within three years. In those cases a residence permit can be granted earlier ex officio.

The regular policy applies to unaccompanied minors of 15 years and older who are unable to return independently and with support from the Repatriation and Departure Service . In that case lawful stay is possible on grounds of a special policy for third-country nationals who are unable to leave the Netherlands through no fault of their own. The third-country national does, however, need to fulfil strict conditions. The third-country national, for instance, needs to demonstrate or make it plausible that they have contacted the authorities in the country of origin. They must also have asked the Dutch authorities to mediate between them and the authorities of the country of origin in order to obtain travel documents, and there should be no doubt of the nationality and identity.[175]

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

No, the Dutch government does not have any reintegration policies in place specifically targeted to unaccompanied minors. There is, however, additional support for unaccompanied minors within the reintegration programmes subsidised by the Dutch government and implemented by IOM.[176] The larger integration budget can be offered by all organisations that have a project for supporting return.[177] The larger support budget also applies to children returning with their families.

In addition to the standard return support from the REAN programme (Return- and Emigration Assistance from the Netherlands programme), third-country nationals in the Netherlands may also qualify for reintegration support from the AVRR-NL project (Assisted Voluntary Return and Reintegration project) Within this provision unaccompanied minors are entitled to a higher reintegration budget than adults.[178]

In addition to the financial support and support in kind which are available to unaccompanied minors within the return support programmes, IOM also pays special attention to the assistance in the return preparations of unaccompanied minors. IOM considers this group a group of potentially vulnerable migrants. For this reason IOM pays special attention to this group by taking care of their dignity, safety and well-being during departure, during their journey and on arrival. In order to support the departure of unaccompanied minors the necessary care and safeguards are required. IOM assists voluntary return when an unaccompanied minor requests IOM to do so. The principle is that assistance by IOM is always in compliance with international legislation and treaties and in the minor's interest.[179]

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.

The enforcement of the return decision can be postponed on the grounds of health issues, Section 64 Aliens Act 2000 (Vw 2000). Someone is not removed if they are suffering from an illness of which it is established that if no treatment is given it will cause death, disability, or another form of physical or

[175] Aliens Decree Section 3.48 sub 2, introductory words under a in conjunction with Aliens Act Implementation Guidelines chapter B8/4

[176] http://www.iom-nederland.nl/nl/vrijwillig-vertrek/terugkeer-naar-uw-land-van-herkomst-rean (consulted on 14 July 2017).

[177] Government Gazette, 31 March 2016, no 9132

[178] http://www.iom-nederland.nl/nl/vrijwillig-vertrek/herintegratieondersteuning (consulted on 14 July 2017).

[179] Source: IOM

mental damage within three months, and when it is evident that the necessary medical care will not be available after return.

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, often the third-country must bring their own medical certificate.[180]
b) No, the third-country national does not have to consult with a doctor appointed by the competent national authority.[181]
c) Applications for a suspension of departure are assessed by IND's Medical Assessment Section (BMA). The examination of the third country national's health situation and treatment is in principle conducted on the basis of written information by practitioners registered in the Dutch

[180] Aliens Act Implementation Guidelines A3 7.1
[181] Immigration and Naturalisation Service, 2016, Medical Assessment Section Protocol

Individual Healthcare Professions (BIG) register.[182] If necessary, a practitioner is contacted in writing or by telephone, or an independent expert is asked for their opinion after the written information has been received.[183]

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 accessibility of medical treatment is taken into account in the decision to grant suspension of departure on grounds of a medical emergency situation. As a result of a recent ruling by the ECHR the policy is soon likely to be amended.

The consideration of this element directly ensues from the ECHR ruling of 13 December 2016 in the case of Paposhvili v. Belgium, no 41738/10. Until that moment the Dutch government position was that the responsibility the Dutch government was limited to the question whether medical treatment is available.[184]

In a letter of 11 April 2017 in a reaction to the ruling by the European Court the Minister notified the House of Representatives which role the determination of accessibility of medical treatment is going to play in the assessment of the application. "If the third-country national has made it plausible that the medical care deemed necessary is not accessible to him/her in the country of origin (...) the Immigration and Naturalisation Service will include in their decision on suspension of departure pursuant to Section 64 which conditions the Repatriation and Departure Service must meet before they can proceed with removal."[185]

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?

No, when medication has been prescribed, the Medical Assessment Section (BMA) generally advises the third-country national to continue medication during the journey and to bring sufficient medication to bridge the travel period (for instance for a number of weeks; in practice often a discharge prescription for a month). [186] The IOM checks in return cases whether the medication and treatment are available in the country of origin and can provide a budget that is used for medication/treatment. This provision is financed by the Dutch government through AMIF.[187]

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***/~~*No*~~

Yes, when a third-country national is pregnant removal by air plane does not take place for the period of six weeks before to six weeks after delivery. This is the period of six weeks from the first day on which delivery is estimated from a statement by a doctor or midwife. The third-country national must

[182] The BIG register (Individual Healthcare Professions) is a Dutch database in which a number of officially recognised healthcare professionals have been registered.. The BIG register records doctors, chemists, physiotherapists, healthcare psychologists, psychotherapists, clinical technicians, dentists, midwifes and nurses(source: www.bigregister.nl).

[183] Immigration and Naturalisation Service, 2016, Medical Assessment Section Protocol

[184] *Parliamentary Papers II*, 2015-2016, 19 637 no 2066

[185] Letter to Parliament of 11 April 2017, session year 2016-2017
Parliamentary Paper 19637: ECHR ruling in the case of Paposvili v. Belgium. See also the norm on p.2: Suffering from an illness of which it is established that if no treatment is given it will cause death, disability, or another form of serious physical or mental damage within three months.

[186] Immigration and Naturalisation Service, 2016, Medical Assessment Section Protocol

[187] Government Gazette, 31 March 2015, no 9132

submit this statement by a doctor or midwife to the IND. (Aliens Act Implementation Guidelines 2000, A3/7.4)

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. ***Yes***/~~*No*~~

Yes, it is possible to detain persons belonging to vulnerable groups.

A number of groups can only be detained in specific circumstances:

Families with minor children can only be detained if they are ready for removal on grounds of Section 59 or 59a of the Aliens Act 2000 (Vw 2000) (maximum detention period of 14 days). Families with minor children who after having been screened by the Immigration and Naturalisation Service have not

been permitted access to the Netherlands and who can be detained on grounds of Section 6 of the Aliens Act 2000 can in principle be detained for up to 30 days.[188]

Unaccompanied minors (UAMs) can in principle only be detained for up to 14 days pursuant to Section 59 of the Aliens Act. A longer period of detention is possible if:

- the UAM is suspected of a crime,
- the UAM has left for an unknown destination before or has not complied with a duty to report or a freedom-restricting measure, or
- the UAM has been refused access at the border and his minor age has not been confirmed.

Pregnant women are not held in detention during the period of six weeks before to six weeks after delivery (also see Q48).

Health issues are not usually a reason to refrain from detention, because all Dutch detention centres for third-country nationals have a medical service which can usually provide the third-country national with the treatment needed. At these medical services various healthcare professionals are employed, with at least a (general) practitioner, dentist, nurse, and a psychologist. In addition there is a consultation hour with a psychiatrist. Outside office hours an on-call emergency doctor is available.[189]

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.

Families with minor children and unaccompanied minors (UAMs) can only be detained in the special Closed Family Centre (GGV). The GGV consists of twelve dwellings with room for up to six people per dwelling. A special building provides room for 10 UAMs with each their own room and a bathroom and common living room. In the design of the new facility, the protection and perception of children have been taken into account. The basis is as few limitations as possible: in the dwelling families are free to organise their time and cook for themselves. They can also move freely within the premises. In addition to the individual dwellings there are common sports facilities, a prayer room,and a healthcare department.[190]

The employees on the site have considerable expertise in the fields of reception, supportive housing, activation, healthcare, and safety. Specific attention is paid to the child's position. For this reason the employees do not wear uniforms.[191]

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)

The governmental experts have noticed the following.

Vulnerable groups

It is considered important that it is made clear in advance which vulnerable groups under the Return Directive are not explicitly marked as vulnerable in the Netherlands. Elderly people and women are, for instance, not mentioned as such in Dutch policies.

Whether to detain vulnerable groups or not, and in particular UAMs and families with minor children, is a dilemma for Dutch government agencies. Alternatives to detention are preferred for these groups, but

[188] Repatriation and Departure Service, Central Agency for the Reception of Asylum Seekers, Aliens Police Department for Identification and
Human Trafficking, and the Immigration and Naturalisation Service (IND), 2015, Return and Departure Guidelines.

[189] EMN (2014), Vreemdelingenbewaring en alternatieven voor vreemdelingenbewaring [*Immigration detention and alternatives* to immigration detention]

[190] Custodial Institutions Agency (2016). Zeist Closed Family Centre (GGV) Consulted on 2 January 2017. https://www.dji.nl/locaties/detentiecentra/gesloten-gezinsvoorziening-zeist/index.aspx

[191] *Parliamentary Papers II*, session year 2013-2014, 19 637, no 1827.

detention in the period shortly before departure remains unavoidable to reduce the risk of absconding shortly before departure. Medical issues form a challenge in particular. The policy frameworks have been very thoroughly safeguarded where they concern vulnerable groups, including third-country nationals with medical complaints. This is justified where it concerns third-country nationals with serious medical complaints, but third-country nationals can also use it to gain time. Medical complaints are a prime example of such a challenge.

Individual assessment

Classifying groups as vulnerable represents an additional challenge. An individual test for vulnerability often does more justice to a correct assessment than the generalisation of groups.

Rule of separation

The rule of separation in Article 16 of the Return Directive poses a problem for third-country nationals in detention who are in need of specialised assistance. Examples are centres for youth detention and institutions specialised in the detention of persons with psychological disorders. This is a challenge to government agencies because it is not easy to facilitate such special assistance outside existing penal institutions. As a consequence, third-country nationals sometimes have to be placed in isolation in such an institution or be given less-specialised care.

Amnesty International

Research by Amnesty International et al. from 2016[192] has revealed the following challenges: According to the authors one problem in the Netherlands is that *vulnerable third-country nationals* can be placed in detention and that detention may lead to a greater risk of deterioration of health and wellbeing in vulnerable persons. Therefore, vulnerability should be a decisive factor in refraining from detention and an individual vulnerability test should be introduced. The Dutch government is of the opinion that vulnerable persons can also be placed in detention.

In a recent report, Amnesty International recommended the following:

- Do not limit the guidelines for medical care after removal to life-threatening illnesses, but include other serious health issues. In doing so, do not limit the term of healthcare to three months, but choose for a tailor-made approach based on the individual circumstances which approach emables people to arrange the healthcare needed afterwards.
- Make sure that the rights for 'rooted children' to apply for residence is not undermined by an alleged obstruction of return by the parents.

The Council for Refugees indicated that it considers the long-term residence of families in family centres a problem. In contrast to the reception of adults with adult children or without children, the reception of families with minor children in the Netherlands cannot be terminated as long as they have not returned.[193] Families with minor children are transferred to family centres aimed at return.[194] The Council for Refugees is very positive about the fact that the reception of families can no longer be terminated. In the family centres there is, however, little to do for adults while the children are attending school, so that many parents are suffering from depression and suicidal ideation.

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.)

[192] Amnesty International, Médecins du Monde, LOS Foundation and the Immigration Detention Hotline, *To confine or to protect? Vulnerable people in immigration detention,* 2016

[193] https://www.dienstterugkeerenvertrek.nl/VertrekuitNederland/Verblijfslocatiesvoorvreemdelingen/gezinslocatie/index.aspx

[194] https://www.dienstterugkeerenvertrek.nl/VertrekuitNederland/Verblijfslocatiesvoorvreemdelingen/gezinslocatie/index.aspx

For the Netherlands the Closed Family Centre (GGV) is a good practice because GGVs provide the opportunity for UAMs and families with minor children to be detained humanely and decrease the risk of absconding (see Q31).

The following is also considered good practice: the facility to support persons through AMIF in the diagnosis of medical and/or psychological problems by a doctor, the check for medication and availability of healthcare in the country of origin, the option to organise the journey in such a way that persons can be transported (e.g. in a supine position and with medical escort), and the availability of a budget for medication and treatment in the country of origin. As a result, IOM was able to support 300 persons with various medical conditions in 2016.

Section 7: Voluntary departure

This section of the Synthesis Report will review Member States' practices in implementing EU rules relating to voluntary departure (to the extent that the issue was not covered in other EMN studies/outputs), in particular concerning: the length of the period for voluntary return granted (Article 7(1) of the Returns Directive); the use of the possibility to subject the granting of a period for voluntary departure to an application by the third-country national concerned (Article 7(1) of the Returns Directive); the granting of an extension to the period for voluntary return taking into account the specific circumstances of the individual case (Article 7(3) of the Returns Directive); and the cases where the period for voluntary return is denied (Article 7(4) 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

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 <u>important exceptions</u> to the general rule stated above

A period for voluntary departure is automatically granted with the return decision.[195]

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).

[195] Aliens Act 2000, Sections 62 and 62a

Not applicable.

Q53. In your Member State is there a possibility to refrain from granting a period for 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?[196]

a) Yes, to refrain from granting a period for 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, there is an option to refrain from granting a period for voluntary departure in the following situations:[197]
   a. if there is a risk that the third-country national will abscond,
   b. if the application for a residence permit or its renewal has been rejected as manifestly unfounded or as a result of the provision of incorrect or incomplete data,
   c. if the third country national poses a risk to the public order, public security, or national security.
   d. There are no other grounds for refraining from granting a period for voluntary departure.

It is only laid down in legislation that the period for voluntary departure can be shortened in the above situations the third-country national has to leave the Netherlands immediately. In practice the latter option is always chosen in the above situations.

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

The period for voluntary departure is four weeks.[198]

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)*

[196] 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'.
[197] Aliens Act 2000, Section 62m, sub 2
[198] Aliens Act 2000, Section 62

No, individual circumstances are not taken into consideration when determining the duration of the period for voluntary departure.

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, the period for voluntary return can be extended by up to 90 days; this is taking into account the specific circumstances of the individual case.

a) No, the length of stay is not stated as a circumstance which is taken into account when deciding to extend the period. However, the regulations do not provide an exhaustive list of elements which must be taken into consideration when deciding to extend the period.
b) Yes, the existence of children attending school is explicitly stated as a circumstance which is taken into account when deciding to extend the period.[199]
c) Yes, the existence of other family and social links is explicitly stated as a circumstance which is taken into account when deciding to extend the period.[200]
d) The period for voluntary departure is only extended if the third-country national has made sure that the documents required for their return are available or will be available within a short term.[201]

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:

No, there is no mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure. At most it can be established that he or she has absconded or has left for an unknown destination.

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	No	A too short period for departure is not a challenge to an effective return. After the period for voluntary departure has ended an irregularly-staying third-country national who actively cooperates in their return can receive

[199] Aliens Regulations 2000, Section 6.3, sub 4
[200] Aliens Regulations 2000, Section 6.3, sub 4
[201] Aliens Regulations 2000, Section 6.3, sub 4

		shelter and provisions in a freedom-restricting centre.[202]
Absconding during the period for voluntary departure	Yes	Absconding during the period for voluntary departure is a challenge to effective return. As a result departure cannot be realised and it also cannot be established whether the irregularly-staying third-country national has actually left.
Verification of the departure within the period of voluntary departure	Yes	The inability to verify the departure within the period of voluntary departure is a challenge to an effective return. Pursuant to case law the date of effective return is the start date of the entry ban. If this departure cannot be verified the entry ban cannot come into force. If a third-country national at a later stage still reports to IOM and leaves, the departure is reported to the Dutch government agencies and qualifies as realised.
Other challenges (please specify and add rows as necessary)	Yes, in some cases	IOM has indicated that the period for departure can obstruct voluntary return because persons who have exceeded the period know that an entry ban will be imposed and that it will be more difficult for them to return to Europe. IOM has also indicated that the exclusion of certain countries (e.g. safe countries of origin) from return support has raised a lot of questions with the diplomatic representatives and organisations who are concerned with this target group. Migrants from these countries who do not wish to return voluntarily can -- with some exceptions -- no longer turn to IOM but do not always want to contact the Dutch government. The embassies concerned often indicate that they do not always have the means to support their citizens and refer them to IOM for support.

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.)

A good practice by government agencies is the introduction of a **0-day period for voluntary departure** for asylum seekers from safe countries of origin, because this enables them to immediately place persons in detention. This prevents them from absconding and contributes to an effective return. In addition it gives a signal to asylum seekers from safe countries of origin

[202] The condition for reception is active cooperation in departure. This is in principle for 12 weeks at the most. However, if the third-county national has not obtained a (replacement) travel document despite their active cooperation in departure, the reception is continued.

that they cannot casually abuse the asylum system because this has direct consequences, including an entry ban. In addition a 0-day departure term prevents rejected asylum seekers from safe countries of origin from making long-term use of reception facilities.

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***/~~*No*~~

b) Entry-bans are automatically imposed on all return decisions other than under a); ~~*Yes*~~/***No***

c) Entry bans are issued on a case by case basis on all return decisions other than a); ~~*Yes*~~/***No***

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

Grounds for imposing entry bans	Yes / No	Comments
Risk of absconding[203]	Yes	The existence of a risk of absconding can indirectly lead to the imposition of an entry ban. The risk that the third-country national will abscond is not explicitly included in Dutch legislation as a ground for an entry ban. The existence of a risk of absconding can, however, lead to a period for return of 0-days being imposed.[204] The fact that there is no period for voluntary return means that the third-country national must leave the Netherlands immediately and that an entry ban will be imposed.[205] For more information on how the Dutch authorities determine whether there is a risk of absconding, see Q12.
The third-country national concerned poses a risk to public order, public security or national security[206]**.**	Yes	The fact that the third country national poses a risk to public order, public security, or national security can indirectly lead to an entry ban being imposed. The fact that the third country national poses a risk to public order, public security, or national security is not included in Dutch legislation as a ground for imposing an entry ban. If the third country national poses a risk to public order, public security, or national security Dutch authorities may,

[203] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
[204] Aliens Act 2000, Section 62, sub 2, under a
[205] Aliens Act 2000, Section 66a, sub 1, under a
[206] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

		however, decide not to award a period for voluntary departure.[207] This means that the third-country national must leave the Netherlands immediately and that an entry ban will be imposed.[208]
The application for legal stay was dismissed as manifestly unfounded or fraudulent[209]	Yes	The fact that the application for legal stay was dismissed as manifestly unfounded or fraudulent because of the submission of incorrect or incomplete data can indirectly lead to an entry ban being imposed. The fact that the application for legal stay was dismissed as manifestly unfounded or fraudulent because of the submission of incorrect or incomplete data is not included in Dutch legislation as a ground for imposing an entry ban. If the application for legal stay was dismissed as manifestly unfounded or fraudulent because of the submission of incorrect or incomplete data, Dutch authorities may, however, decide not to award a period for voluntary departure.[210] This means that the third-country national must leave the Netherlands immediately and that an entry ban will be imposed.[211]
The obligation to return has not been complied with[212]	Yes	If a third-county national does not leave the Netherlands voluntarily within the period for voluntary departure, an entry ban will automatically be imposed.[213]
Other (e.g. please indicate and add rows as appropriate)	Yes	Dutch regulations include a number of other grounds for imposing an entry ban. [214] An entry ban will be imposed if: • the third-country national has exceeded the free period for stay[215] by more than three days, • the third-country national has not exceeded the free period, but it becomes evident from a check that he/she no longer fulfils the conditions (e.g. sufficient means of existence, no danger to public order or national security), • The third-country national withdraws their application for an asylum permit without excusable reason before a decision has been taken while there was an indication that the application had little chance of being granted. An example is a third-country national from a country on the list of safe countries of origin.

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

The maximum period of validity of an entry ban is a period of **20 years**.[216]

There are two types of entry bans in the Netherlands: a light and a heavy entry ban. A **heavy entry ban** is meant for irregularly-staying third-country nationals who pose a danger to public order and/or national security and is valid for up to twenty years. As a rule other irregularly-staying third-country nationals

[207] Aliens Act 2000, Section 62, sub 2, under c
[208] Aliens Act 2000, Section 66a, sub 1, under a
[209] As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).
[210] Aliens Act 2000, Section 62, sub 2, under c
[211] Aliens Act 2000, Section 66a, sub 1, under a
[212] As stipulated in the Return Directive Article 11(1)(b).
[213] Aliens Act 2000, Section 66a, sub 1, under b
[214] Aliens Act Implementation Guidelines 2000, A4 2.1
[215] Persons without a visa requirement are allowed to stay in the Netherlands or another Schengen country for up to 90 days ("free period") in every period of 180 days. Source: https://ind.nl/kort-verblijf/Paginas/vakantie-en-familiebezoek.aspx
[216] Aliens Act 2000, Section 6.5a, sub 6

who have to leave the Netherlands immediately receive a **light entry ban**. This entry ban is in principle valid for two years.[217] [218]

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?

The most common period of validity is two years.

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, there is a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry.

The general rule is that an entry ban is valid for up to **two years**[219]. There are the following exceptions to this rule:

- The maximum validity of the entry ban is **one year**, if a the third-country national has exceeded the free period for residence[220] by more than three days, but no more than 90 days.[221]
- The maximum validity of the entry ban is **three years** if a third-country national has been sentenced to a custodial sentence of up to six months.[222]
- The maximum validity of the entry ban is **five years** if the third country national:[223]
  - has been sentenced to a custodial sentence of six months or more, or
  - used false or forged travel or identity documents or intentionally submitted travel or identity documents that did not pertain to him/her, or
  - has received more than one entry ban, or
  - entered Dutch territory while under an entry ban.
- The maximum validity of the entry ban is **ten years** if the third-country national forms a serious threat to public order or public security. This serious threat may become evident from: [224]
  - a sentence for a violent or drug offence, or
  - a custodial sentence for a crime that carries a sentence of over 6 years, or
  - the circumstance that Article 1F of the Refugee Convention is invoked against them, or
  - placement in a psychiatric hospital as a result of a criminal offence.[225]

[217] Parliamentary Papers II, 2013-2014, Annex to Parliamentary Paper 32420 no I

[218] Entry bans are imposed by IND, the National Police, the Seaport Police, and Royal Netherlands Marechausee. The police can only impose light and no heavy entry bans. The other three parties can impose light as well as heavy entry bans/

[219] Aliens Decree 2000, Section 6.5a, sub 1

[220] Persons without a visa requirement are allowed to stay in the Netherlands or another Schengen country for up to 90 days ("free period") in every period of 180 days. Source: https://ind.nl/kort-verblijf/Paginas/vakantie-en-familiebezoek.aspx

[221] Aliens Decree 2000, Section 6.5a, sub 2

[222] Aliens Decree 2000, Section 6.5a, sub 3

[223] Aliens Decree 2000, Section 6.5a, sub 4

[224] Aliens Decree 2000, Section 6.5a, sub 5

[225] Dutch Penal Code, Section 37a

- The maximum validity of the entry ban is **twenty years** if in the judgement of the Minister of Security and Justice the third country national forms a serious threat to national security or if in his judgement compelling interests require a validity of more than ten years.[226]

The above terms and conditions could change soon pursuant to a recent ruling by the Council of State on entry bans with a validity of more than two years.[227]

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)*

The entry ban starts applying on the date on which the third-country national has actually left the Netherlands.[228] Here it is important that the validity of the entry ban only starts applying when the third-country national has actually/demonstrably left the Netherlands.

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)*

The Aliens Act lays down that an alert must be issued in relation to a third-country national under an entry ban .[229] The Netherlands registers all entry bans in SIS by default.[230] In practice the Immigration and Naturalisation Service receives data from the National Police and Royal Netherlands Marechausee and enters them in SIS.

Q65. *[EC Recommendation (24)(d)]* If a return decision is issued when irregular stay is detected on exit (see Q6c 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

Yes, if it becomes evident from a check upon departure that a third-country national is leaving the Netherlands voluntarily after an irregular stay and has not received a return decision with an entry ban before, the Royal Netherlands Marechausee , who are responsible for border patrol, have to issue one to the third-country national.[231]

There may be humanitarian grounds or other grounds to refrain from imposing an entry ban, for instance pursuant to the ECHR.[232] No entry ban is imposed if an entry ban impedes the third-country national's departure, for instance if they would miss their flight.

[226] Aliens Decree 2000, Section 6.5a, sub 6
[228] Aliens Act 2000, Section 66a, sub 4
[231] Aliens Act Implementation Guidelines 2000, C A3 6.10

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~~

Whether ignoring an entry ban is qualified as misdemeanour or a criminal offence depends on the type of entry ban.

There are two types of entry bans in the Netherlands: a light and a heavy entry ban. A **heavy entry ban** is meant for irregularly-staying third-country nationals who pose a danger to public order and/or national security and is valid for up to twenty years. Breach of a heavy entry ban is prosecuted as a **criminal offence**.

Other irregularly-staying third-country nationals who have to leave the Netherlands immediately receive a **light entry ban**. This entry ban is in principle valid for two years. If a third-country national is staying irregularly in the Netherlands while under a light entry ban, this is considered a **misdemeanour**.[233]

Q67. Has your Member State conducted any evaluations of the effectiveness of entry bans? ***Yes***/*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.

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	No	
Contribute to ensuring compliance with voluntary return[234]	Yes	In 2014 the Research and Documentation Centre (WODC) published a study named "The fate of the entry ban".[235] This is a study of the efficacy of the entry ban, which was introduced in 2011 in conjunction with the implementation of the European Return Directive.

[229] Aliens Act 2000, Section 66a, sub 3: "The alien to whom an entry ban has been issued will for the purpose of denial of access and stay be registered in an information or detection system designated for this purpose by virtue of a treaty, EU regulation, EU directive, EU decree or general order in council."
[230] EMN (2014), Inreisverboden en terug- en overnameovereenkomsten in de Nederlandse praktijk [The practice of entry bans and readmission agreements in the Netherlands], http://www.emnnetherlands.nl/dsresource?objectid=2868&type=org, consulted on 15 August 2017
[231] Aliens Act Implementation Guidelines 2000, C A3 6.10
[232] Aliens Act 2000, Section 66a, sub 8
[233] Parliamentary Papers II, 2013-2014, Annex to Parliamentary Paper 32420 no I
[234] 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?
[235] Research and Documentation Centre (WODC) (2014), The fate of the entry ban - A study into the implementation in practices and the perceived effects of the Return Directive in the Netherlands, https://www.wodc.nl/onderzoeksdatabase/2414-uitvoeringspraktijk-en-werking-van-het-Entry bans.aspx, consulted on 15 August 2017

		From this study it became evident that there are "indications that the issuance of return decisions without an entry ban has a certain deterrent effect. For instance the chance of being apprehended within a year by the police or Royal Netherlands Marechausee was about two times smaller for individuals who received a return decision in 2013 than individuals who received a return decision in 2012. This could indicate that a larger portion of third-country nationals left the Netherlands after a return decision had been imposed in order to avoid an entry ban. (...) Once an entry ban is been imposed its effect may be adverse according to NGO isources and lawyers: third-country nationals are less likely to leave the Netherlands because it will be difficult for them to return to the Netherlands/Europe."[236]
Cost-effectiveness of entry bans	Yes	From the above-mentioned evaluation by WODC it also became evident that the administrative burden as a result of the Return Directive has increased manifestly as a result of inter alia the introduction of the entry ban. From interviews with employees at the Public Prosecution Service and the Immigration and Naturalisation Service it became evident that "in their own organisation it is sometimes thought that this has gone too far. It was for instance said that the benefit of imposing a light entry ban was doubted by a number of the Immigration and Naturalisation Service employees interviewed, also because they wonder whether violation of it is being punished."
Other aspects of effectiveness (please specify)	No	

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

Challenges associated with entry bans	Yes / No / In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	No	
Monitoring of the compliance with entry bans	Yes	It is unclear to the Dutch authorities whether a third-country national has already received an entry ban in another country. Moreover, in a number of cases the imposition an entry ban is refrained from in the Netherlands under specific circumstances, for instance when a third-country national leaves voluntarily, but after the period has expired or when it is not possible to make time for hearings and decisions, for instance during the summer holiday peak at Schiphol Airport.

[236] Ibid.

Cooperation with other Member States in the implementation of entry bans[237]	Yes	A number of national experts have indicated that one of the greatest challenges is the cooperation between other Member States. An entry ban imposed in a different country must be entered into SIS so that the Netherlands knows that it has been imposed. If this has not been done, the full procedure must be followed to impose an entry ban. Exchange of data between countries is still in its infancy.
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges (please specify and add rows as necessary)	Yes	IOM has indicated that an entry ban can obstruct voluntary return. After a third-country national has received an entry ban or when they know an entry ban may be imposed the moment they return it is less likely that they will return voluntarily because they will no longer be able to enter the EU. It also increases the chance that third-country nationals leave through a different EU country.

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.)

No relevant good practices that meet the criteria (page 12).

Section 9 Conclusions

This section of the Synthesis Report will draw conclusions as to the impact of EU rules on return – including the Return Directive and related case law from the Court of Justice of the European Union (CJEU)–on Member States' return policies and practices and on the effectiveness of return decisions issued across the EU.

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

See answer to Q71.

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

The implementation of the Return Directive has led to a number of changes in Dutch legislation and regulations, such as the introduction of the return decision and the entry ban. In addition, it seems that the introduction of the Directive and the safeguards for third-country nationals laid down therein have led to an increase in individual considerations by government agencies during the return process. The authorities are, for instance, less likely to detain third-country nationals and there is more attention for alternatives to detention. However, these changes, which ensue from the introduction of the Directive, have also led to an increase in the administrative burden.

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

This increase is particularly felt in the assessment of whether there is a risk of absconding, the detention of third-country nationals, the issuance of return decisions and the imposition of entry bans. In addition, a number of rulings by European and national courts (for instance the Mahdi and Kadzoev rulings) and their national interpretation have led to changes in the return policy which increase the administrative burdens and can sometimes impede return.

ANNEX 1 – SENSITIVE INFORMATION

Please include here any information which is considered sensitive in nature and not intended for public dissemination

Procedure for departure of unaccompanied minors from the Netherlands.

For an unaccompanied minor to depart from the Netherlands, an authorised guardian (usually Nidos Foundation) must give permission. Nidos Foundation is the national guardianship organisation for unaccompanied minors which is subsidised by the government. Under the Youth Care Act this organisation has been accepted as the organisation operating nationally to carry out the guardianship over these children. Nidos Foundation helps youths and provides a part of these youths with reception. In order to do so, Nidos has entered into contracts with organisations for youth care.

If a minor comes to the Netherlands without a parent/parents or other legal guardian, a guardian must be appointed for the minor pursuant to Dutch law. He or she will then be under the guardianship of Nidos Foundation. In addition to these guardianship tasks, Nidos foundation also implements family supervision orders (OTS): child protection measures when youths from third-country families are concerned.

In March 2003 IOM signed an agreement with Nidos Foundation to facilitate cooperation on return. As a result of this agreement Nidos and IOM have aligned work processes in the field of return. On its website Nidos foundation provides information on return and has a link to IOM's website (www.nidos.nl). (Source: IOM)

To guarantee a careful return, the guardian (usually Nidos Foundation) must be able to establish that adequate reception is available to the minor in the country of origin and that there are no circumstances in which this minor would be exposed to risks. Prior to permission for departure the guardian requests IOM to conduct an investigation into the availability of reception (by family or other forms of reception) and the circumstances to which the minor will return. IOM conducts this investigation in the country of origin (or in the rare case that IOM is unable to conduct the investigation by itself, a reliable alternative will be explored) and reports the outcome to IOM in the Netherlands. IOM in the Netherlands shares this information with the guardian, who decides on the basis of the information whether return can take place. Without the guardian's permission, IOM cannot facilitate the return. (Source: IOM)

Depending on the minor's age and mental constitution, an IOM supervisor will accompany the minor during the journey. Upon arrival the minor will be handed into the care of their family or, if it is not possible for the family to pick the minor up on the airport, IOM will further accompany the minor to their final destination. (Source: IOM)

IOM has appointed focal points for the supervision and assurance of the voluntary return process of unaccompanied minors. In addition there are five counsellors in the field specialised in the procedures, network, and return process of unaccompanied minors. (Source: IOM)

Transfer of Guardianship (Source: IOM)

Return to the country of origin is only possible if the guardian in the Netherlands is able to transfer the guardianship to the family in the country of origin.

If there is no family in the country of origin who is able to take on the guardianship, return to the country of origin is only possible if an official guardian can be appointed. In the ultimate case and when there is no other option, attempts will be made to find an organisation that can take on the guardianship. This is, however, not preferred.

The transfer of the unaccompanied minor to the parent, guardian, or guardianship organisation is arranged with a local IOM employee and/or an IOM supervisor who has travelled with the minor. Before departure it must be clear and verifiable to whom the unaccompanied minor will be transferred.

- The full name and address of the person to whom the unaccompanied minor will be transferred should be known to the minor, Nidos Foundation and IOM. IOM in the country of origin or a reliable alternative organisation verifies this reception.

- Upon transfer the above-mentioned person must identify him/herself by means of an identity document with a photo.

- If (after all) another person picks up the unaccompanied minor, this must be known to IOM in advance and the identification requirements apply.

The person who facilitates the transfer reports the arrival and transfer of the unaccompanied minor to IOM in the Netherlands at all times.