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

Draft Common Template of EMN Focussed Study 2017

25th May 2017

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.

This study **aims** to analyse 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.

- 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.

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)

- 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]

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]

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
- 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

Date	Action
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]

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
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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.

The impact of EU rules on Luxembourg's return policies and practices is substantial. This is not least a result of the transposition of Directive 2008/115/EC on return into national law by the Law of 1 July 2011, which was then further developed through amendments in 2014 following the conclusions of the European Commission that Luxembourg was not fully in line with the directive.

With regards to the European Commission Recommendation of 7th March 2017 'on making returns more effective when implementing the Directive 2008/115/EC', Luxembourg did not introduce any specific legal or policy change. Most of the referenced provisions already form part of the national legal and/or policy framework.

The government's efforts to conclude and apply readmission agreements with third-countries to better organise returns have continued throughout 2016. The Benelux Member States concluded a readmission agreement and a protocol of implementation with the Republic of Kazakhstan on 2 March 2015, which was approved by Law of 31 August 2016.

As a result of the relatively high influx of asylum-seekers in 2015/2016, a backlog in the processing of applications for international protection occurred and could only be properly addressed by the Refugees and Return Department of the Directorate of Immigration through an increase and a reorganisation of its administrative staff.

On the other side, the impact of the migration situation 2015/2016 did not significantly affect the functioning of the Detention Centre nor its maximum occupation limits. However, the Detention Centre took over the management of the SHUK (*Structure d'hébergement d'urgence Kirchberg*) a new semi-open facility established for Dublin cases (single men) with a view of transferring them to the responsible Member State.

Although vulnerable groups are generally not detained in Luxembourg, the permitted period of detention of families with children was recently (March 2017) extended from 72 hours to 7 days with a view to enhancing the organisation of their return. The controversial extension through law amendment was largely criticised by civil society organisations and hence debated in parliament.

The definition of guarantees to avoid the risk of absconding remains a major challenge in the field of return and (alternatives to) detention. In most cases, the applicant fails to provide evidence enabling the reversal of the legal presumption of the existence of a risk of absconding, allowing the Minister to use a detention measure instead of another less coercive measure. As long as the concerned third-country national is unable to indicate a fixed address of stay (reception facilities are not taken into account), the competent authorities cannot rule out the existence of a risk of absconding. The practical implementation of 'home custody' as an alternative to detention is therefore considered problematic, with most potential candidates not having a fixed address in Luxembourg. The substantial amount of the financial guarantee, 5.000€, make it also difficult to practically implement release on bail as an alternative. Although the Law foresees the possibility of combining home custody with electronic surveillance, the electronic tag has not yet been implemented.

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 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.

The Return Directive was transposed by the Law of 1 July 2011.[43] With the transposition, the Grand Ducal regulation of 5 September 2008 establishing the criteria of financial resources and housing[44] as well as the Grand Ducal regulation of 26 September 2008 establishing the rules of good administrative conduct that apply to the agents in charge of carrying out a removal decision[45] were also amended.

Following the conclusions of the European Commission that Luxembourgish legislation was not in line with the Return Directive, the parliament approved the Law of 26 June 2014 amending the amended Law of 29 August 2008 on free movement of persons and immigration (hereafter Immigration Law).[46] Thus, three amendments concerning return were introduced:

1. The law introduced the circumstances foreseen in the Directive whereby the deadline for voluntary return can be extended by taking into account the specific circumstances of the individual case such as the length of stay, the existence of children attending school and the existence of family and social links.[47]
2. In case an entry ban has been issued against a third-country national, s/he must be informed of the fact that s/he has been registered in the Schengen Information System.[48]
3. The last amendment dealt with the fact that national legislation was not in line with the European Court of Justice Decision C-329/11 (Achughbabian) of 6 December 2011 on the criminalisation of illegal stay[49]. The Court of Justice concluded that the Directive does not preclude a Member State from classifying an illegal stay as an offence and laying down penal sanctions to deter and prevent such an infringement of the national rules on residence. On the other side, the Court concluded that European Law opposes to a national regulation allowing the imprisonment of a third-country national who, though staying irregularly and not willing to leave the territory, has not been subject to any of the coercive measures foreseen by the Directive and has not been placed in detention in order to execute a return decision. The amendment modified article 140 of the Immigration Law in this sense.[50]

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?[51] ***Yes***

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

Article 2 (2) a) of the Return Directive was transposed in Articles 99, 104 and 105 of the Immigration Law, establishing that the principles of the Return Directive are not applicable to third-country nationals who are subject to a refusal of entry[52], allowing the refusal of entry to be executed ex-officio.

Article 2 (2) b) of the Return Directive was transposed in Article 128 of the amended Law of 29 August 2008, which establishes that in case there is an extradition request, the foreigner who is subject to a return decision cannot be returned.

The Luxembourgish Criminal Code does not establish any sanction, which implies the return of a third-country national.[53] However, if a third-country national is being investigated because of a criminal offence, s/he cannot be returned during the duration of the investigation and of the trial. If s/he is condemned to serve a prison sentence, s/he cannot be returned during the duration of the criminal sanction. S/he may nevertheless be freed on parole if the s/he is a first offender and has served at least three months of the sentence in case the latter is less than 6 months or half of their sentence in case it is over 6 months.[54] In case the third-country national is a recidivist, s/he will have to serve at least 6

months if the sentence(s) is less than 9 months or two thirds in case the sentence(s) is over 9 months.[55] This benefit is granted by the State Public Prosecutor,[56] but can be subject to certain conditions and modalities.[57] In cases dealing with third-country nationals who do not have any links or permanent residence in Luxembourg, the benefit is granted upon the condition that s/he leaves the country voluntarily. Nevertheless, in practice, this provision has very little impact as most concerned persons want to avoid any type of return (voluntary or forced) and revealing of their nationality, even if it means serving a full sentence and eventually being transferred to the Detention Centre in view of a forced return.[58]

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) As mentioned above, the derogation only applies to a third-country national who is subject to a refusal or entry[59] and to individuals who are subject to an extradition procedure.[60]

b) In the first case, the decision of refusal of entry can be executed ex-officio by the agents of the Airport Police Control Unit (UCPA).[61] The agents will draw a written report on the notification of the decision and its execution and will send it to the Minister in charge of Immigration.[62] Against the refusal decision, an annulment appeal can be filed before the First Instance Administrative Court within a deadline of 30 days after the notification of the decision.[63] However, the filing of the appeal does not have suspensive effect.[64]

In the case of extradition, the Return Department of the Directorate of Immigration cannot execute the return decision, as the extradition is a competence of the Minister of Justice.[65]

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).

There are several changes that were recently introduced in the legal and policy framework, some of which took place within the context of the migration situation in 2015-2017, but not necessarily as a direct response to it.

- The new Asylum Law[66], for which the law-making process already begun before the afore-mentioned migration situation 2015-2017, introduced several amendments in the fields of return and detention. Thus, the transposition of Article 8 ° 4 of the Reception Conditions Directive[67] extends the alternatives to detention in the framework of the execution of a return decision[68] (i.e. house arrest[69], electronic surveillance[70], provision of a financial guarantee[71] and the obligation to present regularly to the authorities[72]). Detention is used as a last resort when the alternatives cannot be applied with a reasonable certainty of efficiency.[73]

- The Law of 8 March 2017 amending the Law on the Detention Centre[74] extended the permitted period of detention of adults/families with children from 72 hours to 7 days in order to enhance the organisation of their return.

- In February 2017, a new "ultra-accelerated" procedure was introduced for applicants of international protection from safe countries of origin, i.e. mainly from Western Balkans countries. The new procedure did not require legislative changes. It was only decided to expedite the already existing accelerated procedure in practice, without however affecting the mandatory deadlines laid down by law. When submitting his/her application for international protection, the

applicant is informed that s/he has a period of two days to prepare for the interview with the official of the Ministry of Foreign and European Affairs with a view to determine the grounds for their application. These interviews take place in specially equipped offices at the reception facility "Logopédie", where the applicants are accommodated. A location for lawyers to consult has also been set up within this reception facility. For applications processed under this procedure, a decision will be taken on the 6th or the 9th day (if there are still documents to be translated) after the applicant has submitted his application. In the case of appeals, the time limit is 15 days from the notification of the decision. Appeals against decisions resulting from accelerated procedures are dealt with by a single judge. The latter has a period of one month to render a judgment, which is not subject to appeal. If, on the other hand, the judge considers that the appeal is not manifestly unfounded, he shall refer the matter to the Administrative Tribunal and its collegial composition for a ruling. Against the decisions of the Administrative Tribunal, an appeal may be lodged with the Administrative Court.[75]

- Also, in order to facilitate the transfer to another state of third-country nationals falling under the Dublin Regulation,[76] the Return Department of the Directorate of Immigration established in April 2017 the Emergency Housing Structure of Kirchberg (*Structures d'hébergement d'urgence Kirchberg* – SHUK[77]).

- Finally, since 1st December 2016, nationals from Kosovo[78] are excluded from the reintegration programme managed by International Organization for Migration (AVRR-Luxembourg).

The Government's general policy on return is to promote voluntary return in collaboration with the International Organization for Migration and to use forced return as a measure of last resort.[79]

With regards to the European Commission Recommendation of 7th March 2017 'on making returns more effective when implementing the Directive 2008/115/EC', Luxembourg did not introduce any specific legal or policy change. Most of the provisions included already form part of the national legal and/or policy framework.[80]

Q4. Is the return of irregularly staying third-country nationals a priority in your Member State? ***Yes.***

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).

The issue of return has mostly been dealt with as part of a global policy on asylum and international protection and arose already in the early '90s during the ratification of the Schengen accords on 27 May 1992.[81] The concern of non-return of rejected international protection applicants resurfaced on several occasions in the following years, mostly under the impulse of discussions on regularisation measures or on draft legislation.[82] When such concerns resurfaced, a special consideration was often given to families with children.[83]

Discussion on the regularisation measure of 2001 kept the topic relevant in the early 2000s as the issue was widely discussed before and after setting the criteria to benefit from this measure. The public debate focussed on the conditions and the procedure of removal and the prerequisites of a return procedure to respect security and human dignity.[84] In this context, protests also arose concerning returns to countries of origin. Rejected asylum seekers from Montenegro feared the return to their country and the Luxembourgish Refugee Council expressed concerns on the unstable political situation.[85]

In 2008, when discussing the draft legislation of the new Law on Immigration, but also prior to its entering into force, the contention points on non-return included the removal of individuals who had been living in Luxembourg for several years and had shown efforts of integration as well as the removal of families with children during the school year or the coercion used in forced returns.[86]

The same year, the Government furthered the priority given to return by increasing the advocacy of consensual return and signing a Convention with the International Organisation for Migration (IOM) on

5th August 2008. The aim was to establish a programme of assistance to voluntary return and to reintegration in the country of origin of Kosovar nationals.[87]

The detention component in the framework of the forced return procedure was also publicly criticised by national and international organisations who were opposed to the detention of individuals with no residence permits in a penitentiary centre.[88] Following the death of a detainee in the penitentiary centre in 2006, the Government concluded to the construction of a separate structure and to a renewed legal definition of rights and obligations of detainees with the Law of 28 May 2009.[89]

The coalition agreement of the Government resulting from the 2009 elections reaffirmed the Government's position of making voluntary return a priority.[90]

Based on the content of the return programme, we can deduce an increased importance allocated to the issue of return, as the programme was exclusively aimed at rejected international protection applicants from Kosovo in an initial phase from 2008 – 2009 and was consequently extended to all third-country national whose application is ongoing or has been rejected, as long as third-country nationals are subjected to visa obligation.[91] This priority can also be witnessed in the increase in budget allocated to voluntary return through the years[92] and to the priority given to both the financial aid provided for voluntary return and to the financial aid for reintegration, a priority that was expressed as soon as 2011 in the annual programme.[93]

While Luxembourg has also experienced an increase of international protection applicants during the 'refugee crisis' in 2015, the issue of non-return did not experience a significant rise in profile in the context of national migration and asylum debates.

The AMIF programme for the period 2014-2020 renews the same priorities in the area of return by extending the policy on voluntary returns through reintegration projects and specifying that forced returns and its procedure should be continuously monitored to ensure efficacy and efficiency.[94] As a support for these two strands of policy, cooperation with third-country authorities will be maintained and extended.[95]

The programme puts an increased emphasis in the efficacy, efficiency and sustainability of returns. For voluntary returns, the emphasis is placed on the delivery of information and the assistance given to individuals to be potentially returned with the specific and express aim to discourage irregular migration and encourage potential returnees to opt for voluntary return.[96] Thus, the programme foresees an increase in number of voluntary returns.[97] For forced returns, the programme aims to improve the execution of removal by accelerating the implementation of return decisions through identification and the issuance of travel documents.[98]

The financial allocation of funds within the AMIF programme testifies to the relative importance given to returns, as it has the second highest budget, behind Integration and Legal Migration, but surpassing Asylum.[99]

Most recently, the extension of the period of detention for families with children prompted public debate and controversy. In order to enhance the organisation of the return and to ensure that it is carried out successfully,[100] the permitted period of detention for families with children was extended from the current 72 hours to 7 days.[101] In the opinion of the Luxembourgish Refugee Council (LFR), the extension undermines the fundamental rights of the concerned persons, especially of children. The LFR further recalled the provisions relating to the detention of minors as a measure of last resort enshrined within several international texts[102], while referring to recent jurisprudence of the European Court of Human Rights[103] relating to the issue of minors' detention.

During 2016, the Government has continued its efforts to conclude and apply readmission agreements with third-countries to better organise returns. The Benelux Member States concluded a readmission agreement and a protocol of implementation with the Republic of Kazakhstan on 2 March 2015[104], which was approved by Law of 31 August 2016.[105] This agreement entered into force on 27 September 2016.[106]

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 competent authority to issue a return decision is the Minister in charge of Immigration.[107] The duly motivated refusal of entry decision can be issued, as mentioned above, by an agent of the UCPA[108], who can notify and execute it ex-officio.[109]

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; ***No***[110]

b) The third-country national concerned lacks an identity or travel document; ***No***[111]

a) No. In this case, even though the return decision is issued it cannot be notified in person. However, if the authorities locate the person the decision will be notified and the decision will be executed.
b) No. When confronted with this case, the return decision will be issued but it will not be executed until the identity of the individual is established. If the identity is established the decision can be executed.

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? ***No***

If Yes, please elaborate on the type of measures

As Luxembourg is a small country (2.586 km^2) with no visible external borders (except for the Luxembourg International Airport), it is difficult to implement measures to effectively locate and apprehend those irregularly staying third-country nationals whose whereabouts are unknown.

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

Yes[112]

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

N/A.

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***[113]

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

N/A.

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***

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

The Immigration Law establishes that provided his/her presence does not constitute a threat to public policy, public health or public security, the Minister in charge of Immigration may grant to an irregular staying third-country national an authorisation to stay on humanitarian grounds of exceptional seriousness.[114] The application shall be considered inadmissible if it is founded on grounds invoked in the course of a previous application, which has been rejected by the Minister. Where this authorisation to stay on humanitarian grounds of exceptional seriousness is granted, any return decision shall be annulled.[115]

Q9a. *[EC Recommendation (6)]* In your Member State, do return decisions have unlimited duration? ***Yes***

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

The Immigration Law does not foresee the duration of validity of a return decision. The principles of the Administrative Law apply in this case, thus providing different possibilities for the extinction of effects of the return decision: withdrawal of the decision by the administration, expiry of the duration established by the administrative act itself or by annulment of a judge.[116] In principle, a return decision is an administrative act and must produce its effects since it is issued. However, the decision will only produce its effects in regards with the third-country national since its personal notification[117]. In case the person is not in the territory, it can be notified through the intervention of the competent diplomatic or consular authority.[118]

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***

If Yes, please describe such mechanism:

The Immigration Law establishes that forced returns, as coercive measures to remove from the territory. A foreigner who resists removal must be proportionate and should not go beyond the use of reasonable force. Such measures shall be applied in accordance with fundamental rights and with respect for the dignity of the person concerned. During the enforcement of a return decision, the best interests of the child, family life, the state of health of the third-country national and the principle of non-refoulement are taken into due account.[119]

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.***[120]

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

Rejected applicants for international protection are invited for an interview in which the actual circumstances and the proceedings that will follow are explained to them.[121] However, irregular staying third-country nationals (who did not apply for international protection) are informed of their obligation to leave the territory by the Grand-Ducal Police.[122]

A return decision can be accompanied by an entry ban for a maximum period of 5 years. This decision is taken either at the same time as the return decision or subsequently by a separate decision.[123] The third-country national subject to an entry ban is informed of being subject to an alert in the Schengen Information System for refusal of entry.[124] The entry ban will be entered into the SIS as soon as the decision is taken and after it has been notified to the third country national by the Grand Ducal police. It can also be introduced in the SIS when the person leaves the country. This will depend upon when the Directorate of Immigration decides to transfer the information to the Grand Ducal police.[125]

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),[126] as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).

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

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

Table 1 Assessment of the risk of absconding

Elements/ behaviours	Yes/No	Comments
Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints	Yes.[127]	
Violent or fraudulent opposition to the enforcement of return	Yes (fraudulent opposition[128]).	The violent opposition to the enforcement of the return decision is not foreseen as a presumed risk of absconding as such but it can be considered in accordance with article 111 (3) a) with regards to article 120 (1) of the amended law of 29 August 2008.
Explicit expression of the intention of non-compliance with a return decision	Yes.[129]	
Non-compliance with a period for voluntary departure	No.	The third-country national can be subject to a forced return,[130] but the non-compliance with a period for

		voluntary decision is not considered as a rebuttable presumption that a risk of absconding exists.[131]
Conviction for a serious criminal offence in the Member States	No.	In this case, the authorities can consider that the behaviour of the individual constitutes a threat to public order, public safety or national security. Thus, the return decision can be carried out immediately.[132] However, the answer is 'Yes' if the individual is reported under article 96 of the Schengen Convention and an alert has been included in the SIS.[133]
Evidence of previous absconding	Yes.[134]	
Provision of misleading information	Yes.[135]	
Non-compliance with a measure aimed at preventing absconding	No.	
Non-compliance with an existing entry ban	Yes.[136]	
Lack of financial resources	Yes.[137]	
Unauthorised secondary movements to another Member State	No.	
If the alien remains on the territory after the expiry of the period of validity of his/her visa, or, where he/she is not subject to the obligation to possess a visa, after three months have elapsed from the date on which he/she entered the territory;	Yes.[138]	

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; ***No.***

b) Deposit of an adequate financial guarantee; ***No.***

c) Submission of documents; ***No.***

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

e) Other (please describe)

In principle, the Immigration Law foresees that the third-country national will be granted a 30-day voluntary period to leave the country without having to fulfil any of the conditions mentioned above. This voluntary period is not subject to a presumption of absconding with the exceptions mentioned in the answer to Q.12. In case there is a risk of absconding the third-country national can be placed in

detention.[139] As alternatives of detention the following provisions can be applied: a) Regular reporting to the authorities[140]; b) submission of documents[141]; c) house arrest up to six months with the possibility of combining it with an electronic surveillance[142] and d) provision of a financial guarantee of 5.000€.[143]

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)

A major challenge is to define guarantees to avoid the risk of the concerned person absconding, especially, that the burden of proof for reverting the presumption lays on the third-country national.[144] In most cases, the applicant fails to provide the evidence enabling the reverse the legal presumption of the existence of a risk of absconding, allowing the Minister to use a detention measure instead of another less coercive measure.[145]

If the concerned third-country national is unable to indicate a fixed address of stay (reception facilities are not taken into account), the competent authorities cannot rule out the existence of a risk of absconding.[146]

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.)

In the frame of the present study, no specific good practice could be identified. The LU EMN NCP study entitled "The use of detention and alternatives to detention in the context of immigration policies" of 2014[147] could also not determine any good practice for the assessment of a risk of absconding, not least because the law defines it as a legal presumption.[148]

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[149] and Council Decision 2004/191/EC;[150] 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.[151]

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.

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

The Immigration Law establishes that a third-country national can be subject to imprisonment from 8 days up to 1 year and a fine of 251 up to 1.250 € or only one of the sanctions, if without a justified ground for non-returning, s/he resides irregularly on the territory after her/his detention or house arrest period has expired without a removal having been carried out.[152]

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?

No.

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

The Minister in charge of Immigration[153] may recognise an expulsion decision taken in accordance with Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals, by a competent administrative authority of a Member State bound by that Directive where the third-country national concerned is present on the territory of the Grand Duchy of Luxembourg without having been authorised to stay there and where the following conditions are fulfilled:

1) The expulsion decision ("*décision éloignement*") is duly motivated:

a) either on a serious and present threat to public policy or national security, and arises from the third-country national having been convicted in the State which took the decision for an offence punishable by a penalty involving deprivation of liberty of at least one year, or the existence of serious grounds for believing that the person concerned has committed serious criminal offences, or the existence of solid evidence of his/her intention to commit such offences within the territory of a State bound by the Directive in question[154], or

b) on failure to comply with national rules on the entry or stay of foreigners in that State.[155]

2) The expulsion decision ("*décision éloignement*") has not been suspended or rescinded by the State by which it was taken.[156]

In practice, the decision is only recognised if, in addition to one of the above-mentioned cases, there is a real prospect of return. There may, for instance, be a real prospect for return to the country of origin in the other (Member) State. In this case the third-country national will be transferred back to this (Member) State.[157]

If Yes, does your Member State:

a) Initiate proceedings to return the third-country national concerned to a third country;

b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision;

N/A.

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

As mentioned above, the decision is only recognised if, in addition to one of the above-mentioned cases, there is a real prospect of return.

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? ***Yes***[158]

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

Although the Regulation came into force on 8 April 2017, the Directorate of Immigration and IOM, which is in charge of the Assisted Voluntary Return and Reintegration programme for Luxembourg (AVRR-L), have not used it in practice so far, as they are in the process of implementing the new tool with all security features that this requires.[159] The Directorate of Immigration welcomes the new travel document which is of higher security standard.[160]

Luxembourg has issued the older version of the EU laissez-passer to third-country nationals from Kosovo and Montenegro[161] and they were recognised by the authorities of both countries.[162]

If Yes, are these documents generally accepted by third countries?

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

The new EU laissez-passer has not yet been used in practice.

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 for obtaining valid travel documents in the AVRR-L programme is as follows:

The person comes to the IOM offices in Luxembourg and asks for an appointment to apply to participate in the AVRR-L programme, for which s/he has to sign the necessary papers. Once the Return Department of the Directorate of Immigration approves the application there are two possibilities:

1) IOM organises the issuing of documents directly with the diplomatic authorities (i.e. Kosovo).
2) The applicant initiates the proceedings in person at the embassy or consulate of his/her country of origin. In these cases, IOM provides the applicant with the money to cover the travel expenses (as embassies are often outside of Luxembourg) and the costs of the travel document. In most cases, the authorities issue a laissez-passer (i.e. Iraq and Russia), but in other cases they may issue a passport (i.e. Lebanon and Brazil).

The applicant must submit a copy of the travel document issued by the diplomatic authorities of the country of origin to IOM, which provides a copy of the document to the Return Department of the Directorate of Immigration.[163]

For certain countries of origin, Luxembourg has established direct contact with competent local authorities, which assists in identifying the person without having to engage with embassies/consulates who might not be willing to cooperate for the identification of their nationals.[164]

The timeframe always depends upon a number of factors: namely whether the file is complete, whether the police has to undergo further investigation, but also the relation with the consular services of the third country concerned. In any case, the aim is to request and to receive them as fast as possible.[165]

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.

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

In case there are no real prospects to return the third-country national to its country of origin, s/he will not be held in detention, even if the criteria are fulfilled.[166] Also, in practice, the third-country national is solely held in detention if there is a prospect of identification, both for security reasons and in order to be able to ensure the enforcement of the removal.[167]

Unaccompanied minors may only be detained if it is in their best interests.[168]

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**[169]

b) If the third-country national avoids or hampers the preparation of a return or removal process; **Yes**[170]

c) Other *(please specify).*

If a third-country national, held in detention in the context of a return procedure in order to prepare the removal, introduces an international protection application, it will be considered whether there are reasonable grounds to believe that the applicant introduced the application in order to delay or obstruct the execution of the return decision considering s/he had the possibility of introducing the application earlier.[171] In these cases, the duration of the detention will be counted from the day that the application was filed.[172]

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

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

	2012	2013	2014	2015	2016	Comments
Total number of third-country nationals placed in detention	322	284	392	394	391	
Number of third-country nationals placed in detention (men)	203	213	264	261	288	
Number of third-country nationals placed in detention (women)	11	16	17	16	23	
Number of families in detention	27 families (108 pers.)	14 families (55 pers.)	27 families (111 pers.)	33 families (117 pers.)	20 families (80 pers.)	

Number of UAMs in detention	/	/	/	/	/	

Source: Directorate of the Detention Centre, Ministry of Foreign and European Affairs, 2017

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)?

The maximum authorised length of detention for a return procedure is of 6 months.[173] This maximum duration is calculated as follows:

The Minister in charge of Immigration will order the third-country national to be placed in detention. The period of detention shall be fixed at one month. The detention may be extended only for as long as the removal arrangements are in progress, and shall be executed with due diligence. It may be renewed by the Minister three times, each time for one month, provided it is necessary to ensure that the removal can be carried out successfully. Where it is probable, despite the efforts made, that the removal operation will take longer, owing to a lack of cooperation by the person to be returned or delays in obtaining the necessary documentation from third countries, the detention period may be extended twice, each time for a further month.[174]

Nevertheless, in the case of international protection applicants the maximum duration of detention is of 12 months (including extensions).[175]

This maximum duration may also be applied if a third-country national, held in detention in the return framework in order to prepare his/her removal, introduces an international protection application in order to delay or obstruct the execution of the return decision. See also answer to Q20b. c)

As of 19th July 2017, the average duration of stay in the Detention Centre was 59 days.[176]

As regards the detention period of UAM and other vulnerable groups, please see answer to Q.49a.

Q22b. Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded? No.[177]

Please elaborate under which circumstances:

N/A. For the extensions see Q22a.

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

a) Judicial authorities; *please specify*

No.

b) Administrative authorities; *please specify*

Yes. It is ordered by the Minister in charge of Immigration[178], through the Directorate of Immigration, Return Department.

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

No. Judicial review is only triggered by an appeal against the decision of detention and the decision of extension of the detention of the third-country national.[179]

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: ***No***

If Yes, how long after the start of detention?

N/A.

b) The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention; ***Yes***

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

As soon as the third-country national has been notified of the decision of detention, its lawfulness can be reviewed by a judge if the third-country national engages proceedings to challenge it.[180] The third-country national can file an appeal against the decision of detention[181], which must be introduced during the month following the notification of the decision.[182]

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.*

As mentioned in answer to Q.22a, the Minister in charge orders the detention of the third-country national for a month. The detention can only be maintained as long as removal arrangements are in progress and executed with due diligence.[183] It can be renewed three times, each time for a month if the conditions for maintaining the detention remain and if it's necessary to ensure successful removal.[184] If despite all the efforts, it is probable that the removal takes more time than foreseen, due to the lack of cooperation of the third-country national or because of delays in obtaining the necessary documents required for the removal, the duration of detention can be extended twice, each time for a month.[185] In the case of applicants for international protection, the decision of detention is taken for a maximum of 3 months, extendable to a maximum of 12 months.[186] Each extension will be made for a duration of three months.[187] See also answer to Q.22a.

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 detention is reviewed every month on the basis of Article 120 of the Immigration Law[188] or every three months on the basis of Article 22 (4) of the Asylum Law.[189] (See answers to Q.22a and Q.24a).

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*

No. See answer to Q.23b

b) Administrative authorities; *please specify*

Yes. The Minister in charge of Immigration has to review the extension of the detention of the third-country national and whether the conditions[190] are still being fulfilled.[191]

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

No. However, if the extension of the detention is appealed by the third-country national, the appeal will not be examined by the Minister in charge of Immigration, but by the First Instance Administrative Court.[192]

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

Table 3 Detention capacity as of 31st December 2016

		Situation as of 31st December 2016	Comments
Number of detention centres		1 Detention Centre SHUK (from 1st April 2017 onwards)	The SHUK (Emergency housing structure of Kirchberg) is used to accomodate international protection applicants (IPAs) falling under the provisions of the Dublin III Regulation and, in view of a transfer to the responsible Member State for processing their applications[193]. It also lodges individuals who are Eurodac positive.[194] The maximum capacity of the SHUK is of 216.[195] Its administration was taken over by the Administration of the Detention Center as from 1 April 2017, which had to post part of its staff and hired additional staff.[196] The transfer of a third-country national to the SHUK constitutes a home custody measure (*assignation à residence*).[197]
Number of places available in detention centres per category of third-country nationals	**Men**	**44**	From a theoretical standpoint, two single men units with a maximum capacity of 16 for the first unit and 28 for the second (14x2 – double cells), but used actually as single rooms.
	Women	**16**	From a theoretical standpoint, for single women with a maximum capacity of 16 persons but used actually for men.
	Families	**28**	Family unit with a maximum capacity of 28 persons (2x14 double cells) used actually as single rooms for women (capacity : 14) or double rooms for families.[198]
	Unaccompanied minors	**N/A**	Unaccompanied minors may be held in detention, in an appropriate place adapted to the needs of their age. Consideration is given to the best interests of the child.[199] Under the current legislation, it is therefore

			possible to held unaccompanied minors in the Detention Centre. However, both, the Directorate of Immigration as well as the Directorate of the Detention Centre do not consider a detention centre as an appropriate place for minors.[200] In practice, they are therefore usually accommodated within open reception facilities.[201]
	Total (theoretical maximum capacity)	88	Theoretical maximum capacity of the Detention Centre.[202] However, in practical terms, because of the circumstances mentioned above, the maximum capacity depends on the type of population detained.[203]

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.)*

The theoretical maximum capacity of the Detention Centre is of 88 persons. In practice, the Centre is divided into 4 units: Unit A consisting of 16 single rooms for men (8m2 including sanitary facilities); Unit B consisting of 14 double rooms used as single rooms for men (9m2 including sanitary facilities); a unit for women consisting of 16 double rooms but used for the moment as single rooms for men and a unit for families consisting of 14 double rooms used either as single rooms for women or as double rooms for families. There are also two isolation rooms, used for disciplinary[204], security or health reasons[205], with an available surface of around 10m^2 each.[206]

So, in practice, double rooms are generally used as single rooms. In addition, the women's unit was more recently reallocated to men in order to increase capacity for men.

Thus, in terms of real capacity, there are three units for men with a total capacity of 46[207] (16+14+16) and one unit for women/families with a total capacity of 14, which may nevertheless increase up to 28 (14 x 2) in case the double rooms for women are occupied by families. Therefore, the real maximum capacity always depends on the population detained.[208]

Q27 *[EC Recommendation (21) (c)]***.** In your Member State, are third-country nationals subject to return procedures detained in specialised detention facilities (i.e. a facility to keep in detention third-country nationals who are the subject of a return procedure)? ***Yes***.

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

Rejected international protection applicants and irregular migrants may be detained in the Detention Centre.

As of 1st April 2017, a new semi-open facility "*Structure d'hébergement d'urgence Kirchberg* –SHUK) was established for Dublin cases (single men).[209] Occupants of the SHUK may not leave the facility during the night (8 p.m. until 8 a.m.), although there is no legal basis to prevent them doing so. However, should they abscond and eventually be traced by police, they will be sent to the Detention Centre. Also, if judged necessary in view of the organisation of their transfer, they may be sent to the Detention Centre a few weeks before their transfer.[210]

The SHUK has a maximum capacity of 216 persons and is managed by the Direction of the Detention Centre (which depends of the Ministry of Foreign and European Affairs). On 19thJuly the occupancy rate was of 58 persons with the vast majority of the population being Dublin cases.[211] The new structure was established as a temporary facility in response to the high number of Dublin cases and rejected applicants for international protection accommodated within regular reception facilities. In this context, a joint parliamentary delegation together with the Luxembourgish government administration carried out a study visit of Dutch reception, detention and return practices on 18 and 19 May 2017 in The Hague, Netherlands.[212]

Current discussions are being held on the possibility of establishing a new '*Maison retour*' (Return house)[213] for rejected applicants for international protection, as well as a new facility for vulnerable persons subject to a return procedure.

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

N/A.

Q28a. Has your Member State faced an emergency situation where an 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.*

Please elaborate on the circumstances in which this happened:

Since 2015, the numbers of rejected applicants for international protection have significantly increased (even though the recognition rate has also increased during that period of time), creating a backlog that could not be properly absorbed with the administrative staff of the Refugees and Return Department. In order to better handle the inflow, the administrative staff of the Directorate of Immigration was increased and the Refugees Department was reorganised.[214]

In the case of the Detention Centre, the migration situation of 2015/2016 has not significantly affected its operation, not least because of the maximum occupation limits explained in answer to Q.25.[215]

However, as the Detention Centre also took over the management of the SHUK, some of their staff were posted to the new structure and they hired additional staff.[216]

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? ***No.***

During the migration situation of 2015/2016, standards for detention conditions have not been affected.[217] There also has been an administrative practice - established by the Directorate of Immigration (Returns Department) - of not systematically placing in detention all individuals who are subject to a return decision and who are in the return phase.

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.*)

No derogations have been applied.

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. This alternative to detention is defined in the Immigration Law as an obligation upon the foreigner to regularly report, at intervals to be fixed by the Minister in charge of Immigration, before the services of the Minister or any other authority designated by the latter. In this case, the foreigner has to hand over his/her original passport and any other supporting document proving his/her identity in exchange for a receipt justifying the identity. [218] Their implementation in practice remains very rare. According to the Directorate of immigration its added value would be limited and the administrative burden difficult to manage. [219]
Obligation to surrender a passport or a travel document	Yes.[220] See below. Their implementation in practice remains very rare.[221]
Residence requirements (e.g. residing at a particular address)	Yes. Article 125 (1) and 125(1) b) of the amended Law of 29 August 2008 lays down the possibility for home custody. With regard to Article 120, the Minister can take the decision to place a person under home custody if the execution of the obligation to leave the territory was postponed because of technical reasons and if the person can present the necessary guarantees to prevent the risk of absconding. The decision can be taken for a maximum duration of 6 months and is notified. The person receives a copy of the notification. Also, Article 125b allows the possibility of home custody in case there are technical obstacles to carry out the return decision and the third country national can prove his/her inability to leave the territory for reasons beyond his/her control. The measure of house arrest can be combined with other alternatives of detention (reporting, electronic bracelet, financial guarantee).[222] Home custody carries the obligation for the person to reside in a specific place established by the Minister.[223] The decision for home custody is revoked if the person does not fulfil the conditions fixed by the Minister or if there is a risk of absconding.[224] The person in home custody is not obliged to stay at home 24 hours a day, 7 days a week, but during set hours in which inspections can be carried out.[225] The legal framework for this alternative exists, but there is no Grand-Ducal Regulation yet that defines the exact procedure.[226]

	Their implementation in practice remains very rare, unless one takes into account "residence requirements" granted in the frame of a SHUK transfer. [227]
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.[228] In this case, the amount of the financial guarantee is of 5.000€. The money can be deposited by the concerned individual or a third party. In any case, if the third-country national absconds, the money will not be refunded. This alternative has been used very few times in order to release someone from detention.[229]
Electronic monitoring (e.g. tagging)	Yes.[230] It should be noted that the electronic monitoring is only foreseen in relation with home custody (see above). To date, electronic monitoring has not been applied in practice, although a system already implemented for prisoners could be used by the competent authority. However, the Directorate of Immigration is not entirely convinced of its implementation due to logistical reasons.[231] As most persons to whom such an alternative may apply do not have a fixed address (N.B: a reception facility is not regarded as fixed address), the practical implementation is proving difficult.
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)***	No. However, to be granted home custody, a person has to present the necessary guarantees to prevent the risk of absconding.[232]
Release to care worker or under a care plan	No.
Community management programme	No.
Other alternative measure available in your (Member) State. Please specify.	No. However, the Immigration Law foresees that the alternative measures can be applied individually or cumulatively.[233]

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)

Detention

Taking into account the parliamentary debate surrounding the adoption of Bill N°6992 amending the Law of 28 May 2009 concerning the Detention Centre, the detention of vulnerable groups as well as the extension of the detention period can be identified as a major challenge.

As already mentioned above, the permitted period of detention for families with children was extended from the 72 hours to 7 days.[234] Besides criticism from the Refugee Council[235] with regard to this extension, the State Council[236] made their approval on the amendment conditional on compelling reasons outside of public authorities' constraints. The amendment was eventually adopted and a motion was adopted in parliament which invited the Government to ensure that in practice, as it had been done in the past, unaccompanied minors as well as families with minors are only held in detention as a measure of last resort and for the shortest period possible, exceeding the maximum period of detention only in exceptional cases.[237] The Ombudsman for the rights of the child further noted with concern the adoption of the extension of the detention period.[238]

Alternatives to detention

Alternatives to detention face the most challenges with their practical implementation. Home custody is considered problematic because most potential candidates do not have a fixed address in Luxembourg.[239] A major challenge of its implementation is also to define guarantees to avoid the risk of the concerned person absconding. The scope under which the benefit can be granted is indeed very limited as the evaluation to determine whether there is a risk of absconding or not is based in most cases on situations specified in the legislation.

Furthermore, if a person absconds, the small size of the country makes it very unlikely to locate the person. As soon as the person crosses a border, the Police is not able to search for the person anymore.[240]

The law foresees the possibility of combining home custody with electronic surveillance.[241] However, so far, the electronic surveillance (electronic bracelet) has not been implemented, whereas the use of the financial guarantee has only been seldom used.[242]

Release on bail is also difficult to implement practically as the financial guarantee of 5.000€ is substantial.[243]

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.)

Most alternatives to detention were introduced by the Law of 18 December 2015 (Asylum Law) and they entered into force on 1 January 2016 so they are very recent for determining good practices.

However, home custody, as an alternative to detention, for Dublin returnees and the international protection applicants who are Eurodac positive can be considered as a good practice.[244]

Also, the commitment[245] to detain unaccompanied minors as well as families with minors solely as a measure of last resort and for the shortest period possible, can be considered a good practice (see answer to Q.30).

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***.[246]

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

N/A.

If No, under which circumstances is it assessed?

a) It is never assessed as part of the return procedure; **N/A.**

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

c) Other *(please specify)*

N/A.

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

a) Judicial authority; ***Yes***[247] An annulment appeal can be filed before the First Instance Administrative Court.[248] The decisions of the First Instance Administrative Court are susceptible to be appealed before the Administrative Court.

b) Administrative authority; ***No***[249]

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

If Yes to c), please specify

N/A.

Q34. *[EC Recommendation (12) (b)]* Is there a deadline for the third-country national concerned to appeal the return decision? ***Yes***.[250]

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)

The third-country national can file his/her appeal in a delay of one month after the notification of the decision (option c).[251] Against the decision of the First instance administrative Court the third-country national can file an appeal before the Administrative Court 40 days after the notification of the decision.[252]

Q35. *[EC Recommendation (12) (c)]* In your Member State, does the appeal against a return decision have a suspensive effect? ***No***.[253]

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

However, the appeal can be filed together with an injunction request in order to suspend the execution of the return decision.[254] The execution of the return decision cannot be carried out until the injunction request has been decided upon,[255]except if the return decision is based on serious grounds of public security.[256]

Q36. Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? ***Yes***.[257]

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

N/A.

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

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

N/A.

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

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

The third-country national can attend the hearing, but it is not mandatory as s/he is represented by his/her lawyer.[258]

Section 6: Family life, children and state of health

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

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

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

Please differentiate between return and detention if applicable

The following categories of persons are considered 'vulnerable': minors, unaccompanied minors, disabled persons, pregnant persons, single parents accompanied by under-age children, elderly persons and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence. Particular attention is paid to their situation.[259]

Detention

In principle, vulnerable persons are not held in detention unless there are charter flights that include families.[260]

The Law provides for the possibility to detain UAMs in a suitable centre adapted to the needs of their age.[261] For doing so, the authorities must consider the best interests of the child.[262] In practice, it is very rare that UAMs are held in detention.[263] The UAM will be lodged, in a first phase, in a first-arrival reception facility of the Luxembourgish Red Cross, before being transferred to a reception facility adapted to their age and needs.[264]

Families with children can be held in detention for a duration of up to 7 days in order to organise the removal from the territory.[265] However, since the entering into force of the amendment introduced by Law of 8 March 2017, it has not been applied in practice.[266]

Return

No return decision can be taken against a minor who is not accompanied by a legal representative, with the exception of decisions based on serious public security grounds, unless return is in the best interests of the minor concerned.[267] In any case, during the execution of the return decision the Minister in charge of Immigration must take into consideration the best interests of the child (see also answer to Q.40).[268]

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? ***Yes***

The Minister in charge of Immigration will assess the case, taking into consideration the best interest of the child. The Minister can request an expert opinion to take the decision.

In accordance with the "Return" Directive, the Immigration Law provides that a return decision for an unaccompanied minor can only be taken if it is in the best interest of the minor. However, the Law does not specify how the interests of the child are determined. Therefore, on 7th July 2017, the Council of government[269] adopted the creation of a commission with the function of assessing the best interest of the child in the context of return of unaccompanied minors. This commission, composed of the representative of the child as well as the representatives of the ministries and departments concerned, will be responsible for conducting an individual assessment of the best interest of the child with the aim of both, issuing return decisions and their implementation situation in accordance with Article 10 of Directive 2008/115/ EC, as well as issuing them a residence permit.[270]

Since the creation of this commission is relatively recent and in the process of being set up, it is premature to report on the modalities of its operation. However, according to the Directorate of Immigration, it is envisaged that it will take into account all factors relating to the situation of the minor in the event of his/her return, including the grounds on which his/her application for international protection is based as well as the family environment of the minor. In order to do so, the Directorate of Immigration is exploring the possibility of concluding an agreement with an international organisation in order to carry out a family assessment of the family members of the minor in his/her country of origin.[271]

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.	
Parents' (or current caregiver's) views	Yes.	IOM does systematically perform a socio-economic evaluation of the family or current caregiver's in the country of origin to determine if the child will be taken care upon return. If the evaluation considers that the parents or caregiver in the country of origin are not fit to receive the UAM they will not proceed with the return.[272] The main interest is to be sure there is someone who is going to take care of the child in his/her country of origin.[273] In case that the evaluation is positive both parents must sign the required paperwork (and provide copies of the identification documents).[274]
Child's views	Yes.[275]	As the child is appointed an ad-hoc administrator[276] and a guardian, the voluntary return has to be taken with their consent as they are the legal representatives of the child.
Preservation of the family environment, and	Yes.	See above (Parents' view).

maintaining or restoring relationships		
Care, protection and safety of the child	Yes.	See above (Parent's view).
Situation of vulnerability	Yes.	Both the Immigration[277] and Asylum[278] law consider the UAM as a vulnerable group.
Child's right to health	Yes.	
Access to education	Yes.	

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.

Where the ad-hoc administrator shows that the unaccompanied minor is unable to leave the territory for reasons not of his/her own making, or if he/she is unable either to return to his/her country of origin or to travel to any other country, the Minister may postpone the removal of the unaccompanied minor for a period determined in accordance with the circumstances peculiar to each case and until there exists a reasonable prospect of return. In this case, the unaccompanied minor may remain on the territory on a provisional basis, without being authorised to reside. The decision to postpone the removal may be accompanied by an order for home custody.[279] During the period of postponement of the removal, the minor shall be given humanitarian aid[280] and, depending on the length of their stay, access to the basic education system.[281] The specific needs of unaccompanied minors shall in any case be taken into consideration.[282]

Q43. *[EC Recommendation (13) (c)]* Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors? **Yes.**

If Yes, please describe such policies

Unaccompanied minors are entitled to register for the AVRR-L programme, under which they will only receive in-kind assistance on post-arrival.[283]

Full aid (assistance to reintegration) applies to applicants for international protection who register with IOM at the latest one month after their application has been rejected or if the international protection procedure has lasted over 6 months and although willing to return, they had not received any decision on their claim by the ministry.[284]

In addition, unaccompanied minors are entitled to a post-arrival financial aid of 700€ as they are considered a vulnerable group.[285] Also, the unaccompanied minor will benefit from the following:

1. Airport assistance and onward transportation;
2. Temporary lodging and housing;
3. Assistance to find a school or a job;
4. Material and legal assistance;

5. Investment in training and learning;

6. Medical assistance/medicines; orientation and information on the health system in the country of origin.[286]

Q44. In your Member State, can the enforcement of the return decision be postponed on the grounds of health issues? ***Yes***[287]

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

The return can be postponed provided he/she does not constitute a threat to public policy or public security, and if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot, in practice, receive appropriate treatment in the country to which he/she may be returned.[288]

The third-country national may obtain a suspension of his/her removal for a period not exceeding six months. Such a suspension shall be renewable, but may not exceed a period of two years.[289] After the two years if the person cannot be removed, s/he can apply for an authorisation of stay for medical reasons with an initial duration up to one year, renewable.[290] However, this is not a permanent residence permit, but a temporary residence permit.

In practice and as a general rule, the opinions issued by the doctor delegated under Article 130 et seq. of the amended Law of 29 August 2008 on the free movement of persons and immigration are followed.[291]

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***.[292]

b) The third-country national must consult with a doctor appointed by the competent national authority; ***Yes***.[293]

c) Other *(please describe)* ***Yes***[294]

a) In cases of voluntary return and where the person has a health problem s/he must present a medical certificate which allows them to receive additional help for reintegration (700€). In addition, a medical certificate is compulsory in case the returnee has mobility or mental problems and s/he requires social or medical assistance. This medical certificate will be attached to the medical report that IOM has to submit with the medical department of the airline.
b) The Immigration Law establishes that the assessment of the state of health of the third-country national concerned is to be conducted by the medical officer, which will determine the need of a medical supervision, the seriousness of the medical condition and the possibility of obtaining the required medical treatment in the country of origin.[295] See answer to Q44.

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***.

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

The Return Department of the Directorate of Immigration will determine the accessibility of medical treatment in the country of return. The Return Department previously requested a medical opinion from the medical officer[296] which it follows. It is also the doctor who gives his/her opinion on whether the concerned third-country national needs treatment in Luxembourg, thus a suspension of removal, or if s/he may access the necessary treatment in their country of origin.[297]

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? ***No.***

If Yes, for how long is the medication provided?

N/A.

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)*

Pregnant women were already detained in Luxembourg. Decisions on when to return pregnant women are taken on a case-by-case basis. Depending on the stage of the pregnancy, a woman is allowed to give birth in Luxembourg, however, the removal decision can be executed afterwards and the fact that she gave birth on the territory does not mean that she will be granted an authorisation for stay.[298] Normally, if the woman is less than 7 ½ months pregnant she can be removed from the territory, except if the medical officer determines otherwise.[299]

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.

In principle, the Law does not forbid the detention of (unaccompanied) minors, disabled persons, pregnant women, single parents with children, elderly people and persons who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence against whom a removal decision was issued.

Vulnerable persons are usually not held in detention, unless there are specific charter flights for families.[300]

a) An unaccompanied minor can be held in detention in an appropriate place adapted to the needs of his/her age and where the best interest of the child is respected.[301] Although it is very rare in practice (only one case has been reported), unaccompanied minors can therefore be detained in case that they represent a risk of public safety. They can be placed in a unit for families/women.[302] Nonetheless, the Luxembourgish government is not in favour of detaining unaccompanied minors.[303]

b) Families with under-age children cannot be detained for more than 7 days.[304]

c) Pregnant women: See answer to Q48.

d) There were no cases of victims of torture, rape or other serious forms of psychological, physical or sexual violence who were detained.[305] They can be detained. In that case, the special needs and conditions of these detainees will be taken into consideration.[306]

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.

See answer to Q.39 and Q.49a

In principle, unaccompanied minors are not held in detention even though the Immigration Law foresees the possibility. In this case the Minister in charge of Immigration must place the unaccompanied minor in an adequate facility.[307]

Families accompanied with minors can be held in detention in order to organise and carry out the return decision.

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

A challenge associated with return of vulnerable persons is to ensure adequate means of transportation for the implementation of the return. Also, the availability of medical treatment was identified as a challenge by the Directorate of Immigration.[308]

According to IOM, it is important to ensure that, in the frame of voluntary return, the concerned persons are also willing to return.[309]

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.)

The fact that persons with difficulties will be accompanied to travel is considered a good practice by IOM.[310] A specific post-arrival financial aid of 700€ is also granted to vulnerable groups in the frame of voluntary return (see answer to Q.43).[311] They may also get information ahead of their return (or in some cases from IOM colleagues working in the country of return) on where/how to get necessary medical treatment or aid.[312]

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***.

OR

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

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

The Immigration Law grants a 30-day period for the third-country national to leave the country voluntarily except if there is a duly motivated urgency (i.e. public policy, public safety or national security). The third-country national can ask to benefit from an assisted return scheme (*dispositif d'aide au retour*). Where necessary, having regard to the foreigner's personal circumstances, the Minister in charge of Immigration may exceptionally allow a time for voluntary departure exceeding 30 days taking

into account the specific circumstances of the individual case, such as the duration of stay, the existence of children attending school as well as other family and social links.[313]

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

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

b) The actors involved / responsible;

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

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

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

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

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

N/A.

Q53. In your Member State is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?[314]

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

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

c) No.

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

a) When there is a risk of absconding;

b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent;

c) When the person concerned poses a risk to public policy, public security or national security;

d) Other *(please specify)*

a) Yes.[315]
b) Yes.[316]
c) Yes.[317]

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

The period granted for voluntary departure is 30days.[318] However, it can be extended taking into consideration the duration of stay, the existence of children attending school and the existence of other family and social links.[319] In practice, the third-country national may apply for voluntary return as long as a forced return has not yet been organised. However, if the 30days period has expired, their return and reintegration assistance will be reduced, meaning they will only receive the basic assistance (*aide de base*).[320]

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? ***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; **N/A**[321]

b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; **N/A**[322]

c) Other *(please specify)*

N/A.

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***.[323]

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**.[324]

b) The existence of children attending school; **Yes**.[325]

c) The existence of other family and social links; **Yes**.[326]

d) Other *(please specify)*

Where necessary, having regard to the foreigner's personal circumstances, the Minister in charge of Immigration may exceptionally allow a time for voluntary departure exceeding 30 days.[327]

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:

In accordance with the Immigration Law, the Minister in charge of Immigration can request the Grand Ducal police to proceed with the necessary controls and verifications in order to see if the third-country national has left the country.[328]

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	In some cases.	According to the Directorate of Immigration, the length of the period should, in principle, be sufficient if there is a willingness to cooperate.[329] IOM, which is in charge of implementing voluntary returns in Luxembourg, considers that the deadline of 30 days can be insufficient.[330] It regularly occurs that lawyers do not inform persons subject to a return decision of their current situation in due course, meaning they are only informed when the Directorate of Immigration summons them for leaving the country. Hence, the third-country national cannot file the application for voluntary return within the 30 days period and,

		in consequence, can only apply for the basic assistance for return and reintegration.[331]
Absconding during the period for voluntary departure	Yes.[332]	
Verification of the departure within the period of voluntary departure	In some cases.	The system implemented with IOM works quite well, as the Directorate of Immigration will be informed by IOM as soon as the third-country national left the territory. The same goes for bus departures, for which the bus company informs the Directorate of Immigration. However, if they leave on their own, the Directorate of Immigration is not necessarily aware of it. [333]
Lack of documents	In some cases.	IOM experienced several cases in the past of third-country nationals (i.e. Palestinians) applying for voluntary return, but for whom the return could not be carried out, due to lack of documents.

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.)

No particular practice to report.

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; ***No***.[334]

b) Entry-bans are automatically imposed on all return decisions other than under a); ***No***.[335]

c) Entry bans are issued on a case by case basis on all return decisions other than a); ***Yes.***[336]

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[337]	Yes	In this case, the entry ban is usually of 3 years.
The third-country national concerned poses a risk to public policy, public security or national security[338]**.**	Yes.	In this case, the entry ban is usually of 5 years or more (see answer to Q.62a.)
The application for legal stay was dismissed as manifestly unfounded or fraudulent[339]	Yes.	In this case the entry ban is usually of 3 years.
The obligation to return has not been complied with[340]	Yes	In this case the entry ban is usually of 3 years.
Other (e.g. please indicate and add rows as appropriate)		

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

Return decisions may carry with them a ban on entering the territory for a maximum period of five years, declared either simultaneously with the return decision or by a separate subsequent decision. The Minister shall take into consideration the specific circumstances of each case. The period of prohibition of entry onto the territory may be longer than five years if the foreigner concerned constitutes a serious threat to public policy, public security or national security.[341]

Q62b. Does legislation in your Member State provide for different periods of validity for the entry bans?

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

Yes.

It can be issued up to a maximum duration of 5 years or more if the foreigner concerned constitutes a serious threat to public policy, public security or national security. [342]

The most common period is 3 years. [343] It is very rare that an entry ban of more than 5 years is imposed.

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.**

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.):*

The period of prohibition of entry onto the territory may be longer than five years if the foreigner concerned constitutes a serious threat to public policy, public security or national security. [344]

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; **No.**

b) On the day in which the third-country national leave the EU; ***Yes****.*

c) Other *(please specify)*

a) No.
b) Yes.

c) As an administrative act, it produces its effects on the day it was issued. However, for the third-country nationals it only has effect on the day it was notified[345]. When a person is subject to an entry ban, s/he may submit an application for its lifting after a reasonable time, depending on the circumstances, but not before three years from his/her removal from the territory. In that case s/he must put forward arguments to establish that there has been a material change in the circumstances which justified the decision banning him/her from entering the territory. The Minister shall rule on that application within six months.[346]

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***

Please specify whether;

a) Alerts are entered into the SIS systematically; ***Yes***

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

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

d) Other *(please specify)*

N/A

Q65. *[EC Recommendation (24)(d)]* If a return decision is issued when irregular stay is detected on exit (see Q4c above), does your Member State also issue an entry ban? ***Yes***.[347]

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

N/A

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

a) Yes, a misdemeanour

b) Yes, a criminal offence

c) No

a) It is qualified as a criminal offence and punished with imprisonment from 6 months up to 3 years and a fine from 251€ up to 3.000 € or just one of them.[348]

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

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

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.	The general effectiveness of entry bans is considered very low by the Directorate of Immigration. It may be effective for those persons who are required to travel with a visa when trying to re-enter, but even in such cases they may find ways to circumvent (i.e. travelling to other third countries before entering the Schengen area).[349]
Contribute to ensuring compliance with voluntary return	No.	This may be effective with persons from the Western Balkans, who often do not want to get entry bans in order to re-enter the country without having to pay a smuggler. [350]
Cost-effectiveness of entry bans	No.	
Other aspects of effectiveness (please specify)	No. [351]	

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	Yes	See Table 8.
Monitoring of the compliance with entry bans	Yes	It is very difficult to undertake any type of monitoring or produce statistics. Persons may have re-entered the territory without the authorities knowing. [352]
Cooperation with other Member States in the implementation of entry bans	No	Cooperation in the implementation of entry bans with other Member States is good. [353]
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges (please specify and add rows as necessary)	Yes	According to the Directorate of Immigration, compliance with entry bans may solely be improved through efficient control of external borders. [354]

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 good practices have been identified.

Section 9 Conclusions

This section of the Synthesis Report will to 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?

European Union rules on return as well as the decisions of the European Court of Justice have had a significant impact on national policy and legislation. In order to undertake and effect return more efficiently, Luxembourgish authorities have prioritised voluntary return over forced return. This prioritisation can be seen through the official figures which demonstrate a sharp increase in the number of assisted voluntary returns (there has been a 64,8% increase in persons using the AVRR-L programme year-on year between 2015 and 2016, from 142 to 234 individuals).

Regardless of the difficulty in evaluating the impact of return measures in regard to the effective returns carried out, it is certain that the possibility for a third-country national- subject to a return decision - to return to their country of origin in a dignified manner instead of being subject to the risk of a forced return, can influence their choice of voluntary return.

There is no data available regarding the different issues on return policy (i.e. the return procedure in regard with the identification of individuals, the effectiveness of the methods used to identify the returnees, the dissuasive effect of the entry bans etc.)

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

The rules of the European Union on return represent an important framework on which the Luxembourg Return Policy is based.

Within this framework, it is necessary to strengthen the exchange of information and overall mutual cooperation of Member States in order to overcome common challenges experienced in implemented that effective return of third-country nationals.

One example of good practice is the implementation of a video conference system for the identification of returnees which was initially developed as a pilot project between Belgium, Luxembourg and Poland before being rolled-out for use by other Member States.

ANNEX 1 – SENSITIVE INFORMATION

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

[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.

[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.

[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.

[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.

[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.

[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.

[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.

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

[43] Law of 1 July 2011 amending the amended law of 29 August 2008 on free movement of persons and immigration, in Memorial A-151 of 25 July 2011.

[44] Grand-ducal regulation of 11 August 2011 amending the grand-ducal regulation of 5 September 2008 establishing the criteria of financial resources and housing foreseen by the law of 29 August 2008 on free movement of persons and immigration, Memorial A-180 of 22 August 2011.

[45] Grand-ducal regulation of 17 August 2011 amending the grand-ducal regulation of 26 September 2008 establishing the rules of good administrative conduct that apply to the agents in charge of carrying out a removal decision, Memorial A-180 of 22 August 2011.

[46] Law of 26 June 2014 amending the amended law of 29 August 2008 on free movement of persons and immigration, Memorial A-113 of 1 July 2014.

[47] Article 111 paragraph 2 of the amended law of 29 August 2008 as amended by article 1 of the Law of 26 June 2014.

[48] Article 112 paragraph 1 of the amended law of 29 August 2008 as amended by article 2 of the Law of 26 June 2014.

[49] Alexandre Achughbabian v. Préfet du Val-de-Marne, C-329/11 of 6 December 2011, Court of Justice of the European Union, Judgement of the Court (Grand Chamber).

[50] Article 140 of the amended law of 29 August 2008 as amended by article 3 of the Law of 26 June 2014.

[51] 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).

[52] Article 105 (1) of the amended law of 29 August 2008.

[53] Article 7 of the Criminal Code.

[54] Article 100 1) of the Criminal Code.

[55] Article 100 2) of the Criminal Code.

[56] Article 100 5) of the Criminal Code.

[57] Article 100 6) of the Criminal Code.

[58] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[59] Article 105 (1) of the amended law of 29 August 2008.

[60] Article 128 of the amended law of 29 August 2008.

[61] Article 105 (1) of the amended law of 29 August 2008.

[62] Article 105 (1) of the amended law of 29 August 2008.

[63] Article 105 (2) in accordance with article 113 of the law of 29 August 2008.

[64] Article 105 (2) of the amended law of 29 August 2008.

[65] Article 2 of the amended law of 20 June 2001 on extradition.

[66] Law of 18 December 2015 on international protection and temporary protection, Memorial A-255 of 28 December 2015.

[67] Article 22 (3) b) of the law of 18 December 2015.

[68] Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, March 2017, p. 31.

[69] Article 22 (3) b) of the law of 18 December 2015. Article 125 (1) 3) b) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.

[70] Article 22 (3) b) of the law of 18 December 2015. Article 125 (1) 3) b) paragraph 2 of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.

[71] Article 22 (3) c) of the law of 18 December 2015. Article 125 (1) 3) c) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.

[72] Article 22 (3) a) of the law of 18 December 2015 on international protection and temporary protection. Article 125 (1) 3) a) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.

[73] Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, March 2017, p. 31.

[74] Article 6 (2) of the amended law of 28 May 2009 regarding the Detention Centre as amended by article II of the Law of 8 March 2017, Mémorial A-298 of 20 March 2017.

[75] Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.

[76] See First instance Administrative Court, 39452 of 27 April 2017, First instance Administrative Court, 2nd Chamber, 39449 of 27 April 2017 and First instance Administrative Court, 1st Chamber, n° 39413 of 24 April 2017.

[77] See answer to Q.25 and 27.

[78] LU EMN NCP answer to NO EMN NCP ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.

[79] Government of the Grand-Duchy of Luxembourg, Communiqué en réponse au Commissaire aux droits de l'Homme du Conseil de l'Europe, on : *gouvernement.lu*, 7 February 2017.

[80] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[81] Besch, Sylvain, 2010. « Les réfugiés entre le droit et la politique (1990 – 2009) », in : ASTI (éd), *30+. 30 ans de migrations, 30 ans de recherches, 30 ans d'engagement*. Luxembourg, p. 108.

[82] Besch, Sylvain, 2010, pp. 109-110.

[83] Besch, Sylvain, 2010, pp. 109-110.

[84] Besch, Sylvain, 2010, p.115.

[85] Besch, Sylvain, 2010, p.115.

[86] Besch, Sylvain, 2010, p.117.

[87] Besch, Sylvain, 2010.

[88] Besch, Sylvain, 2010, p. 118.

[89] Besch, Sylvain, 2010, p. 118.

[90] Besch, S., p. 117 ; Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p. 6.

[91] Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p. 6.

[92] Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p. 45.

[93] Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p. 19.

[94] OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.

[95] OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.

[96] OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.

[97] OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 22.

[98] OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 22.

[99] Thus, 2.310.000€ are planned for „Integration/Legal migration", 2.057.548€ for „Return" and 1.435.000€ for „Asylum". OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 32.

[100] Parliamentary document 6992/00 of 18 May 2016, Commentaire des articles, p.27.

[101] Law of 8 March 2017 modifying the law of 28 May 2009 on the Detention Centre, Memorial A n°298 of 20 March 2017 Art. III.

[102] See Art. 37 b) of the Convention on the Rights of the Child; Resolution 1810 (2011) of the Council of Europe on unaccompanied minors in Europe: issues of arrival, stay and return; Recommendation n°1985 of 7 October 2011 on undocumented migrant children in an irregular situation: a real cause for concern; Art. 17 of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.

[103] A.B. and Others v. France - 11593/12; R.K. and Others v. France - 68264/14; R.C. and V.C. C. France - 76491/14; R.M. and Others v. France - 33201/11; A.M. and Others v. France - 24587/12

[104] Directorate of Immigration, Bilan de l'année 2016 en matière d'asile et d'immigration, Mars, 2017, p. 31.

[105] Law of 31 August 2016 between the Benelux States and the Republic of Kazhakstan concerning the readmission of persons in an irregular situation and its application protocole signed in Brussels on 2 March 2015, Memorial A-179 of 2 September 2016.

[106] Directorate of Immigration, Bilan de l'année 2016 en matière d'asile et d'immigration, Mars, 2017, p. 31.

[107] Article 109 (1) of the amended law of 29 August 2008.

[108] Article 104 (1) of the amended law of 29 August 2008.

[109] Article 105 (1) of the amended law of 29 August 2008.

[110] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[111] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[112] Article 100 (1) of the amended law of 29 August 2008.

[113] Article 100 (1) of the amended law of 29 August 2008.

[114] Article 78 (3) of the amended law of 29 August 2008.

[115] Article 78 (3) of the amended law of 29 August 2008.

[116] Manuels Larcier, Abrogation et retrait de l'acte administratif unilatéral, *last accessed 13 September 2017.*

[117] Article 110 of the amended law of 29 August 2008.

[118] Article 110 of the amended law of 29 August 2008.

[119] Article 112 (1) in accordance with article 124 (1) of the amended law of 29 August 2008.

[120] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[121] This procedure was established as in the past several misunderstandings had occurred, with persons (or lawyers representing them) claiming they were not aware of the proceedings, in particular with regards to the 30 days delay for a voluntary return. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[122] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[123] Article 112 (1) of the amended law of 29 August 2008.

[124] Article 112 (1) of the amended law of 29 August 2008.

[125] LU EMN NCP answer to FI EMN NCP ad-hoc query on registering entry bans in the SIS, launched on 10 November 2014.

[126] 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).

[127] Article 111 (3) c) 5 and 6 of the amended law of 29 August 2008.

[128] Article 111 (3) c) 5 of the amended law of 29 August 2008.

[129] Article 111 (3) last paragraph of the amended law of 29 August 2008.

[130] Article 124 (1) in accordance with article 111 (2) of the amended law of 29 August 2008.

[131] Article 111 (3) c) of the amended law of 29 August 2008.

[132] Article 111 (3) a) of the amended law of 29 August 2008.

[133] Article 111 (3) c) 1 in accordance with article 34 (2) 2 of the amended law of 29 August 2008.

[134] Article 111(3) c) 3 of the amended law of 29 August 2008.

[135] Article 111(3) c) 5 and 6 of the amended law of 29 August 2008.

[136] Article 111(3) c) 1 in accordance with article 34 (2) 3) of the amended law of 29 August 2008.

[137] Article 111 (3) c) 1 in accordance with article 34 (2) 5) of the amended law of 29 August 2008.

[138] Article 111 (3) c) 2 of the amended law of 29 August 2008.

[139] Article 120 (1) of the amended law of 29 August 2008.

[140] Article 125 (1) a) of the amended law of 29 August 2008.

[141] Article 125 (1) a) of the amended law of 29 August 2008.

[142] Article 125 (1) b) of the amended law of 29 August 2008.

[143] Article 125 (1) c) of the amended law of 29 August 2008.

[144] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, National Report, Luxembourg, 2014, p. 31.

[145] See First instance Administrative Court, 3rd Chamber, n°30713 of 29 June 2012.

[146] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[147] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, National Report, Luxembourg, 2014, p. 31.

[148] Article 111 (3) c) of the amended law of 29 August 2008.

[149] 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

[150] 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.

[151] 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

[152] Article 140 of the amended law of 29 August 2008, as amended by law of 26 June 2014.

[153] Article 117 of the amended law of 29 August 2008.

[154] Article 117 (1) a) of the amended law of 29 August 2008.

[155] Article 117 (1) b) of the amended law of 29 August 2008.

[156] Article 117 (2) of the amended law of 29 August 2008.

[157] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[158] In accordance with article 9 of the regulation 2016/1953, which entered into force on 8 April 2017.

[159] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[160] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[161] Only for Montenegrin children born in Luxembourg. LU EMN NCP answer to DE EMN NCP Ad-Hoc Query on EU Laissez-Passer for Repatriation of third-country nationals, launched on 10 November 2015.

[162] LU EMN NCP answer to DE EMN NCP Ad-Hoc Query on EU Laissez-Passer for Repatriation of third-country nationals, launched on 10 November 2015.

[163] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[164] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[165] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[166] Article 120 (1) and (3) of the amended law of 29 August 2008.

[167] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[168] Article 120 (1) of the amended Law of 29 August 2008.

[169] Article 120 (1) of the amended law of 29 August 2008.

[170] Article 120 (1) of the amended law of 29 August 2008.

[171] Article 22 (2) e) of the Law of 18 December 2015.

[172] Article 22 (2) e) of the Law of 18 December 2015.

[173] Article 120 (3) of the amended law of 29 August 2008.

[174] Article 120 (3) of the amended law of 29 August 2008.

[175] Article 22 (4) of the Law of 18 December 2015.

[176] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[177] Article 120 (3) of the amended law of 29 August 2008.

[178] Article 120 (1) of the amended law of 29 August 2008.

[179] Article 123 (1) of the amended law of 29 August 2008.

[180] Article 121 (1) of the amended law of 29 August 2008.

[181] Article 123 (1) of the amended law of 29 August 2008.

[182] Article 123 (2) of the amended law of 29 August 2008.

[183] Article 120 (3) of the amended law of 29 August 2008.

[184] Article 120 (3) of the amended law of 29 August 2008.

[185] Article 120 (3) of the amended law of 29 August 2008.

[186] Article 22 (4) of the Law of 18 December 2015.

[187] Article 22 (4) of the Law of 18 December 2015.

[188] Article 120 (3) of the amended law of 29 August 2008.

[189] Article 22 (4) of the Law of 18 December 2015.

[190] Article 120 (1) of the amended law of 29 August 2008.

[191] Article 120 (3) of the amended law of 29 August 2008 and article 22 (6) of the Law of 18 December 2015.

[192] Article 123 (1) of the amended law of 29 August 2008.

[193] The persons concerned will be held under house arrest at the SHUK for a maximum period of 6 months. In practice, the stay should be relatively short, since the request for transfer of the persons concerned will have already been accepted by the responsible Member State before their assignment and it will therefore be a matter of proceeding to the actual transfer of the persons concerned.

[194] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[195] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. On 19 July 2017, the total occupancy was 58 persons.

[196] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[197] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017. See also Article 125 (1) c) of the amended law of 29 August 2008.

[198] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[199] Article 120 (1) of the amended Law of 29 August 2008.

[200] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 20. Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[201] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. The law authorises detention of unaccompanied minors in the Detention Centre if the Minister in charge of Immigration considers the place as adequate.

[202] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[203] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[204] Article 20 of the Law of 28 May 2009 and Article 29 of the Grand-Ducal Regulation of 17 August 2011.

[205] Article 2 (2) and 3 (2) of the amended Law of 28 May 2009 and LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 19.

[206] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 19.

[207] In practice, the maximum capacity for single men is 45 as one of the cells is used for technical and urgent situations.

[208] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[209] At first, solely Dublin cases where a readmission agreement was reached were sent to SHUK. Meanwhile, all third-country nationals for whom a positive EURODAC result is established are assigned to SHUK. Also, Dublin cases for whom there is a real risk of absconding may still be detained within the Detention Centre. Information provided by the Directorate of the Detention Centre on 19July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[210] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[211] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[212] Embassy of Luxembourg in The Hague, Grand-Duchy of Luxembourg, Visite d'étude luxembourgeoise d'un centre de retention et d'une maison retour aux Pays-Bas, 18 and 19 May 2017.

[213] The establishment of the *Maison de retour* (Return House) for families subject to a return procedure was already foreseen by the governmental programme 2013-2018, p.204.

[214] Ministry of Foreign and European Affairs, Rapport d'activité 2016, Luxembourg, p. 77.

[215] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[216] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[217] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. There were no critics/recommendations referring to a deterioration of standards of detention in the Ombudsman Report of 2016. Ombudsman.lu, Rapport d'activité 2016, Luxembourg, 2016.

[218] Article 125 (1) a) of the amended Law of 29 August 2008.

[219] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[220] Article 125 (1) a) of the amended Law of 29 August 2008.

[221] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[222] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and Article 125 (1) of the amended Law of 29 August 2008.

[223] Article 125 (1) b) of the amended Law of 29 August 2008.

[224] Article 125 (1) of the amended Law of 29 August 2008.

[225] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 29.

[226] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 29.

[227] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[228] Article 125 (1) c) of the amended law of 29 August 2008. When a third-country national has been placed in detention, s/he can be freed if s/he provides a financial guarantee of 5.000€ or is subject to an electronic bracelet.

[229] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[230] Article 125 (1) b) of the amended law of 29 August 2008.

[231] Information provided by the Director of the Detention Centre on 19th July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[232] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 30.

[233] Article 125 (1) last paragraph of the amended law of 29 August 2008.

[234] Law of 8 March 2017 modifying the law of 28 May 2009, Art. III.

[235] Opinion of the Refugee Council on the Bill modifying the law of 28 May 2009, Parliamentary Document n°6992/09.

[236] Opinion of the State Council on the Bill modifying the law of 28 May 2009, Parliamentary Document n°6992/05, p.9.

[237] Motion introduced by Deputy Marc Angel on 8 February 2017 and adopted in Parliament on the same day.

[238] Ombudsman for the right of the child (ORK), Réflexions et témoignages des foyers pour mineurs non accompagnés au Luxembourg, 2017, p.4.

[239] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[240] Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 2 April 2014.

[241] Article 125 (1) b) of the amended law of 29 August 2008.

[242] The financial guarantee was applied in two cases. Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[243] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[244] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[245] Motion introduced by Deputy Marc Angel on 8 February 2017 and adopted in Parliament on the same day.

[246] Article 129 of the amended Law of 29 August 2008.

[247] Article 113 of the amended law of 29 August 2008.

[248] Article 113 of the amended Law of 29 August 2008.

[249] Article 113 of the amended law of 29 August 2008.

[250] Article 113 of the amended Law of 29 August 2008.

[251] Article 113 of the Law of 29 August 2008 in accordance with article 16 of the amended law of 21 June 1999.

[252] Article 113 of the amended law of 29 August 2008 in accordance with article 38 of the amended law of 21 June 1999.

[253] Article 113 of the Law of 29 August 2008.

[254] Article 114 of the Law of 29 August 2008.

[255] Article 114 of the Law of 29 August 2008.

[256] Article 114 of the amended law of 29 August 2008.

[257] Article 113 of the Law of 29 August 2008 in accordance with article 11 (5) of the amended law of 21 June 1999, Mémorial A-98 of 26 July 1999.

[258] Article 1 of the amended law of 21 June 1999 required that for the validity of the appeal it has to be filed by a lawyer registered at the Bar Association.

[259] Article 125bis (2) of the amended law of 29 August 2008; Article 53 (2) of the Law of 18 December 2015 and Article 7 (2) of the Law of 28 May 2009 on the Detention Centre.

[260] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[261] Article 120 (1) of the Immigration Law.

[262] Article 119 (5) and article 120 (1) of the Immigration Law.

[263] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[264] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014

[265] Article 6 (3) of the amended law of 28 May 2009 on the Detention Centre as amended by article II of the Law of 8 March 2017.

[266] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[267] Article 103 of the amended law of 29 August 2008.

[268] Article 124 (1) of the amended law of 29 August 2008.

[269] Government of the Grand-Duchy of Luxembourg, Council of government, Résumé des travaux du Conseil de Gouvernement, Press release of 7 July 2017.

[270] Government of the Grand-Duchy of Luxembourg, Council of government, Résumé des travaux du Conseil de Gouvernement, Press release of 7 July 2017.

[271] Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.

[272] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[273] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[274] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[275] The representative of the child (guardian and/or ad-hoc administrator) shall represent the interest of the child and therefore also express his/her viewpoint.

[276] Article 5 (3) and (4) in accordance with article 20 (1) and (2) of the Asylum Law of 18 December 2015 and article 103 of the amended Law of 29 August 2008.

[277] Articles 119 (5), 120 (1), 124 (1) and 125bis(2) of the amended law of 29 August 2008.

[278] Articles 20 and 21 of the Asylum Law and Article 15 of the Law on the reception of international protection applicants of 18 December 2015.

[279] Article 125bis (1) of the amended law of 29 August 2008.

[280] Article 125bis (2) of the amended law of 29 August 2008 and Article 27 of the Law of 18 December 2009 organising social aid, Mémorial A-260 of 29 December 2009.

[281] Article 125bis (2) of the amended law of 29 August 2008.

[282] Article 125bis (2) of the amended law of 29 August 2008.

[283] LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.

[284] LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.

[285] LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[286] LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[287] Article 130 of the amended law of 29 August 2008.

[288] Article 130 of the amended law of 29 August 2008.

[289] Article 131 (1) of the amended law of 29 August 2008.

[290] Article 131 (2) of the amended law of 29 August 2008.

[291] Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.

[292] Article 130 of the amended law of 29 August 2008.

[293] Article 131 (3) of the amended law of 29 August 2008.

[294] Article 131 (3) of the amended law of 29 August 2008.

[295] Article 131 (3) of the amended law of 29 August 2008.

[296] Article 131 (3) of the amended law of 29 August 2008.

[297] Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.

[298] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 9. Articles 124 (1) last phrase and 125bis (2) of the amended law of 29 August 2008.

[299] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[300] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[301] Article 120 (1) of the amended law of 29 August 2008.

[302] According to the Ombudsman for the right of the child, 48 minors were detained in 2016 (January to September 2016). At least one of them was an unaccompanied minor. Ombudsman for the right of the child (ORK), Réflexions et témoignages des foyers pour mineurs non accompagnés au Luxembourg, 2017, p.4.

According to the Directorate of Immigration, in principle, only so called “false minors” and for which the authorities assume they are not minor, can be detained. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[303] Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[304] Article 6 (3) of the amended law of 28 May 2009 on the Detention Centre as amended by article II of the Law of 8 March 2017.

[305] LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 9.

[306] Articles 124 (1) last phrase and 125bis (2) of the amended law of 29 August 2008 and Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[307] Article 124 (1) of the amended law of 29 August 2008 and Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

[308] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[309] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[310] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[311] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[312] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[313] Article 111 (2) of the amended law of 29 August 2008.

[314] 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*'.

[315] Article 111 (3) c) of the amended law of 29 August 2008.

[316] Article 111 (2) and (3) b) of the amended law of 29 August 2008.

[317] Article 111 (2) and (3) a) of the amended law of 29 August 2008.

[318] Article 111 (2) of the amended law of 29 August 2008.

[319] Article 111 (2) of the amended law of 29 August 2008.

[320] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

[321] Article 111 (2) of the amended law of 29 August 2008.

[322] Article 111 (2) of the amended law of 29 August 2008.

[323] Article 111 (2) of the amended law of 29 August 2008.

[324] Article 111 (2) of the amended law of 29 August 2008.

[325] Article 111 (2) of the amended law of 29 August 2008.

[326] Article 111 (2) of the amended law of 29 August 2008.

[327] Article 111 (2) of the amended law of 29 August 2008.

[328] Article 133 (1) in accordance with article 134 of the Law of 29 August 2008.

[329] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[330] Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017. As already mentioned, in practice, third-country nationals may still apply for voluntary return if the 30 days have expired and as long as a forced return has not yet been organised, but they will only receive the basic assistance (*aide de base*).

[331] IOM informed the Luxembourg Bar Association by letter, requesting the lawyers to notify immediately the return decision to their clients, but without any impact so far. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017 and with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[332] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[333] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[334] Although the law foresees the issuance of an entry-ban as a discretionary measure, in practice, they are imposed to all forced returnees. In some specific cases, an entry ban is also imposed for voluntary return. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.

[335] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.

[336] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.

[337] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

[338] As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

[339] As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

[340] As stipulated in the Return Directive Article 11(1)(b).

[341] Article 112 (1) of the amended law of 29 August 2008.

[342] Article 112 (1) of the amended law of 29 August 2008.

[343] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[344] Article 112 (1) of the amended law of 29 August 2008.

[345] Article 112 (1) in accordance with article 113 of the amended law of 29 August 2008.

[346] Article 112 (2) of the amended law of 29 August 2008.

[347] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[348] Article 142 of the amended law of 29 August 2008.

[349] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[350] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[351] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[352] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[353] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

[354] Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.