



CZECH  
REPUBLIC

# THE EFFECTIVENESS OF RETURN IN EU MEMBER STATES: CHALLENGES AND GOOD PRACTICES LINKED TO EU RULES AND STANDARDS

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COMMON TEMPLATE

## 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.<sup>1</sup> 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.<sup>2</sup> As a result, the European Commission has emphasised in its EU Action Plan on Return published on 9 September 2015,<sup>3</sup> and, subsequently, in its communication on a more effective return policy in the EU published on 2 March 2017 and the attached Recommendation,<sup>4</sup> 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** at analysing the impact of EU rules on return – including the Return Directive<sup>5</sup> 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

<sup>1</sup> Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return*, 9 September 2015, COM(2015) 453 final.

<sup>2</sup> 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*, 2 March 2017, COM(2017) 200 final

<sup>3</sup> Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return*, op.cit.

<sup>4</sup> 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, 2 March 2017, C(2017) 1600.

<sup>5</sup> *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, OJ L 348, 24 December 2008

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.<sup>6</sup>

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 effective-

<sup>6</sup> Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, 1 October 2015, C(2015) 6250 final,

ness, 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'**.<sup>7</sup> 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'**.<sup>8</sup> 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'**.<sup>9</sup> The study

<sup>7</sup> 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](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 30 March 2017.

<sup>8</sup> 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](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 30 March 2017.

<sup>9</sup> 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](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 30 March 2017.

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'.<sup>10</sup> 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.<sup>11</sup>

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.

<sup>10</sup> 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](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 30 March 2017.

<sup>11</sup> 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](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 30 March 2017.

## 2 EU LEGAL AND POLICY CONTEXT

The objective of the development of a coherent return policy was emphasised by the **Hague Programme**.<sup>12</sup> 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.<sup>13</sup>

The main legal instrument regulating the EU return policy is the 2008 **Return Directive**.<sup>14</sup> 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.<sup>15</sup>

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.

<sup>12</sup> *The Hague Programme: strengthening freedom, security and justice in the European Union*, OJ C 53, 3 March 2005

<sup>13</sup> *The Stockholm Programme — An open and secure Europe serving and protecting citizens*, OJ C 115, 4 May 2010.

<sup>14</sup> *Directive 2008/115/EC*, op. cit.

<sup>15</sup> E.g. the EU Charter of Fundamental Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 Convention against Torture and other Cruel, Inhuman and degrading treatment or punishment and the 1951 Geneva Convention related to the Status of Refugees as amended by the 1967 New York Protocol.

Following the dramatic increase in arrivals of migrants to the EU in 2014 and 2015, a **European Agenda on Migration** was adopted on 17 May 2015.<sup>16</sup> 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 25–26 June 2015 called for all tools to be mobilised to increase the rate of effective returns to third countries.<sup>17</sup> Subsequently, the **EU Action Plan on Return** of 9 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".<sup>18</sup>

On 1 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.<sup>19</sup> 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.

<sup>16</sup> 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*, 13 May 2015, COM(2015) 240 final.

<sup>17</sup> European Council meeting (25 and 26 June 2015), Conclusions, 26 June 2015, EUCO 22/15.

<sup>18</sup> Communication from the Commission to the European Parliament and to the Council, *EU Action Plan on Return*, op.cit.

<sup>19</sup> 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*, 1 October 2015, C(2015) 6250 final, 1. 10. 2015.

After the **Informal meeting of EU heads of state or government** held in Malta on 3 February 2017 highlighted the need for a review of the EU's return policy,<sup>20</sup> 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.<sup>21</sup> 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)

<sup>20</sup> Malta Declaration by the members of the European Council on the external aspects of migration: *Addressing the Central Mediterranean route*, 3 February 2017.

<sup>21</sup> 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*, 2 March 2017, C(2017) 1600.

- 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), 22 October 2013;<sup>22</sup>
- European Agenda on Migration, 13 May 2015;<sup>23</sup>
- EU Action Plan on Return, 9 September 2015;<sup>24</sup>

<sup>22</sup> Available at: <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=10737855>, last accessed on 4 April 2017.

<sup>23</sup> 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](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 4 April 2017.

<sup>24</sup> 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](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 4 April 2017.



- Return Handbook, 1 October 2015;<sup>25</sup>
- A More Effective Return Policy in the European Union – A Renewed Action Plan, 2 March 2017;<sup>26</sup>
- Recommendation on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, 2 March 2017;<sup>27</sup>

### EMN Studies

- EMN (2007), 'Return Migration';<sup>28</sup>
- 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';<sup>29</sup>
- EMN (2014), 'The use of detention and alternatives to detention in the context of immigration policies';<sup>30</sup>

<sup>25</sup> 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](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 4 April 2017.

<sup>26</sup> 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](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 4 April 2017.

<sup>27</sup> Available at: [http://europa.eu/rapid/press-release\\_IP-17-350\\_en.htm](http://europa.eu/rapid/press-release_IP-17-350_en.htm), last accessed on 4 April 2017.

<sup>28</sup> 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](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 4 April 2017.

<sup>29</sup> 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](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 4 April 2017.

<sup>30</sup> 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](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 4 April 2017.

- 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';<sup>31</sup>
- EMN (2016), 'The Return of Rejected Asylum Seekers: Challenges and Good Practices';<sup>32</sup>

### 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 2 March 2015*;
- EMN REG Ad-Hoc Query, 'Use of Detention in Return Procedures' – *requested on 30 November 2015*;

<sup>31</sup> 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](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 4 April 2017.

<sup>32</sup> 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](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 4 April 2017.

- EMN Ad-Hoc Query, 'Enforcement of expulsion decisions' – *requested 11 December 2015*;
- EMN REG Ad-Hoc Query, 'Obstacles to return in connection with the implementation of the Return Directive' – *requested 21 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 10 March 2016*;
- EMN REG Ad-Hoc Query, 'Member States' Experiences with the use of the Visa Information System (VIS) for Return Purposes' – *requested on 18 March 2016*;
- EMN Ad-Hoc Query, 'Motivation of return decisions and entry bans' – *requested on 31 March 2016*;
- EMN REG Ad-Hoc Query, 'The Means to Incentivise Return' – *requested on 14 December 2016*;
- EMN REG Ad-Hoc Query, 'The Correlation between voluntary and forced return', – *requested on 3 January 2017*
- EMN Ad-Hoc Query, 'Accelerated asylum procedures and asylum procedures at the border' – *requested 17 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';<sup>33</sup>

<sup>33</sup> Available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013\\_sudy\\_report\\_on\\_im-migration\\_return-removal\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_im-migration_return-removal_en.pdf), last accessed on 4 April 2017.

- Matrix (2013), 'Evaluation on the application of the Return Directive (2008/115/EC)';<sup>34</sup>
- Fundamental Rights Agency (2011), 'Fundamental rights of migrants in an irregular situation in the European Union';<sup>35</sup>
- REDIAL Project (2016), 'European Synthesis Report on the Judicial Implementation of Chapter IV of the Return Directive, Pre-Removal Detention';<sup>36</sup>
- CONTENTION Project (2014), 'European Synthesis Report of the Project CONTENTION, The Extent of Judicial Control of Pre-Removal Detention in the EU'.<sup>37</sup>

## 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;

<sup>34</sup> Available at: <http://ec.europa.eu/smart-regulation/evaluation/search/download.do?documentId=10737855>, last accessed on 4 April 2017.

<sup>35</sup> Available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1827-FRA\\_2011\\_Migrants\\_in\\_an\\_irregular\\_situation\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf), last accessed on 4 April 2017.

<sup>36</sup> Available at: [http://cadmus.eui.eu/bitstream/handle/1814/45185/MPC\\_REDIAL\\_2016\\_05.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/45185/MPC_REDIAL_2016_05.pdf?sequence=1&isAllowed=y), last accessed on 4 April 2017.

<sup>37</sup> Available at: <http://contention.eu/synthesis-reports/>, last accessed on 4 April 2017.

- 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*.<sup>38</sup>

Similarly, there are no commonly agreed definitions of the concepts of 'good practice' and 'policy challenge'.<sup>39</sup> For the purposes of this Synthesis Report, the term '**good practice**' refers to specific policies or meas-

<sup>38</sup> 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.

<sup>39</sup> 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 – No 2 – December 2011.

ures 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.<sup>40</sup>

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0.<sup>41</sup>

**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

<sup>40</sup> 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 19 May 2017.

<sup>41</sup> Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](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 4 April 2017.

- 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 spend-

ing 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.

## THE CONTRIBUTION OF THE CZECH REPUBLIC

## INTRODUCTION

The return policy forms an integral part of the migration policy. According to the Migration Policy Strategy of the Czech Republic return policy is one of the main instruments of the Czech Republic for the prevention of illegal migration. One of the goals at national level is to maintain an effective return policy while preserving transparency and respect for human rights and human dignity. There is a need to strengthen the available assistance in the field of sustainable returns and raise awareness of the target groups about their offer.

The Return Directive was implemented to the Act No. 326/1999 Coll. (Alien Act). Corresponding changes that were assessed as necessary were introduced into Asylum Act as well in order to secure similar standards to both asylum and expulsion detentions.

Major legislative changes that were introduced as a reaction to the Return Directive were following:

- Clear distinction between return decision for TCNs and EU citizens and their family members
- Introduction of a new type of return decision that does not contain the entry ban and just impose the obligation to return
- Decision on administrative expulsion (2nd type of return decision) with the validity for all states bound by Return Directive. This decision is sent to SIS.
- Limitation of reasons for a 10 years entry ban

- Explicit process for prolongation of period for departure
- Rules for expulsion for UAMs
- Introduction of alternatives to detention
- New rules for detention, new procedure for prolongation of detention
- Shorter period of detention of UAMs and families with minor children
- Suspensive effect for all appeals against decision on administrative expulsion
- New speedy system of court review of detention and return decisions.

Recent legislative changes mainly aim at clarifying relation between detention under Return Directive and Reception Conditions Directive.

In 2016, a total of 4,411 return decisions were issued in the Czech Republic. This included 818 decisions on imposition of the obligation to leave the country. According to a year-on-year comparison, there was a decrease by 68.9 %. In addition to that, a total of 3,593 effective decisions on administrative expulsion were registered, which represents an increase by 17.6 % in comparison with the previous year.

The largest groups of foreign nationals who were issued a return decision were the citizens of Ukraine, Moldova and Kuwait. Administrative expulsion in the form of forced return was executed for 207 foreign nationals.

In the area of voluntary returns, during the year 2016, a total of 331 voluntary returns of third-country nationals were registered (including those who departed spontaneously at their own expense and whose return was confirmed).

## 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.*

**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 implemented to the Act No. 326/1999 Coll. (Alien Act). Corresponding changes that were assessed as necessary were introduced into Asylum Act as well in order to secure similar standards to both asylum and expulsion detentions.

Major legislative changes that were introduced as a reaction to the Return Directive were following:

- Clear distinction between return decision for TCNs and EU citizens and their family members

- Introduction of a new type of return decision that does not contain the entry ban and just impose the obligation to return
- Decision on administrative expulsion (2<sup>nd</sup> type of return decision) with the validity for all states bound by Return Directive. This decision is sent to SIS.
- Limitation of reasons for a 10 years entry ban
- Explicit process for prolongation of period for departure
- Rules for expulsion for UAMs
- Introduction of alternatives to detention
- New rules for detention, new procedure for prolongation of detention
- Shorter period of detention of UAMs and families with minor children
- Suspensive effect for all appeals against decision on administrative expulsion
- New speedy system of court review of detention and return decisions.

**Q2.** Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?<sup>42</sup>

**YES**

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**oth exceptions are used.

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.)

**E**xternal border – refusal of entry as regulated by EU law is used.  
**C**riminal law instruments are used.

<sup>42</sup> 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).

**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).

**R**ecent legislative changes mainly aim at clarifying relation between detention under Return Directive and Reception Conditions Directive. The very last amendment of the Alien Act implemented Art. 15 (6)(b) – i.e. the new reason for exceptional prolongation of the detention period above 180 days is introduced and this amendment enters into force on 15 August 2017. Other amendments brought new alternatives to detention (mainly more flexible reporting obligations) and some other amendments implemented last remarks from European Commission made within the control of the directive’s implementation (especially criteria for detention). No massive changes as a reaction to migration crisis are necessary (with the exception of the prolongation of the detention period).

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

**YES**, the return policy is a priority in the Czech Republic.

**T**he current situation in the area of illegal migration in the Czech Republic is stable compared to the significantly more complex situation of some other European Union countries (e. g. Italy, Greece, Hungary). Illegal migration is, however, an extremely dynamic area with little possibility of estimating development (mainly in relation to changes in migration routes), which requires a flexible and consistent approach of the Czech Republic both in relation to the fight against ille-



gal migration and in relation to the return of foreigners illegally residing in the Czech Republic.

According to the **Migration Policy Strategy of the Czech Republic** the main instruments of the Czech Republic for the prevention of illegal migration remain effective pre-accession control and return policy, cooperation with third countries, the fight against trafficking in human beings and the detection and consistent sanctions of the organizers of illegal migration.

One of the goal at national level is to maintain an effective return policy while preserving transparency and respect for human rights and human dignity. There is a need to strengthen the available assistance in the field of sustainable returns and raise awareness of the target groups about their offer.

The readmission policy needs to be seen and addressed in the wider context of international cooperation that goes beyond the field of migration.

## 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).*

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

Alien Police Service of the Czech Republic

**Q6a.** Does your Member State refrain from issuing a return decision to irregularly-staying third-country nationals if?:

a) The whereabouts of the third-country national concerned are unknown;

**YES**

b) The third-country national concerned lacks an identity or travel document;

**YES**

**Q6b.** In connection with Q6a a) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown?

**YES**

The Alien Police Service conduct regular residence checks in selected locations.

**Q6c.** Does your Member State issue a return decision when irregular stay is detected on exit?

**YES**

**Q7.** In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national?

**YES**

**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**

Humanitarian asylum under Asylum Act or the so-called tolerated stay under Alien Act can be granted upon request. Tolerated stay is a national type of long-term visa for third country nationals.

**Q9a.** In your Member State, do return decisions have unlimited duration?

**NO**

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

**NO**

**A**dministrative decision on expulsion is defined as the termination of the foreigner's stay in the territory. The return decision includes the determination of the time for departure from the territory and the time when the foreigner may not be allowed to enter the territory again. This period is set by the expiration date of the return decision. The period for which entry into the territory cannot be allowed shall not run unless the decision is enforceable.

**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**

**T**he period for voluntary departure may be extended if individual circumstances change. If non-refoulement reasons newly occur, the

law also counts with additional decision on non-refoulement and tolerated stay may be granted.

**Q11.** 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**

## 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),<sup>43</sup> as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).*

**Q12.** In your Member State, are the following elements/behaviours considered as a rebuttable presumption that a risk of absconding exists?

<sup>43</sup> 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) Art. 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

**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	The police are entitled to detain foreign national over 15 years of age to whom has been delivered a notice of commencement of an administrative expulsion procedure or whose administrative expulsion has already been legally ruled or imposed by another Member State of the European Union valid for the territory of the Member States of the European Union and the exceptional measure for the purpose of leaving the country does not suffice if he / she has provided false information on the identity, the place of stay, or refused to provide such information.
Violent or fraudulent opposition to the enforcement of return	YES	–
Explicit expression of the intention of non-compliance with a return decision	YES	–
Non-compliance with a period for voluntary departure	YES	–
Conviction for a serious criminal offence in the Member States	YES	–

Table 1

Elements/ behaviours	Yes/ No	Comments
Evidence of previous absconding	YES	–
Provision of misleading information	YES	–
Non-compliance with a measure aimed at preventing absconding	YES	–
Non-compliance with an existing entry ban	YES	–
Lack of financial resources	NO	–
Unauthorised secondary movements to another Member State	YES	–
Other (please describe)	–	–

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

a) Regular reporting to the authorities;

**YES**

b) Deposit of an adequate financial guarantee;

**YES**

c) Submission of documents;

**NO**

d) Obligation to stay at a certain place;

**YES**

**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)

The Czech Republic is a country of transit for many migrants. Therefore it is very difficult to assess alternatives to detention as there

are clear indications that persons head for Germany or other western states. This may result in wide use of detention as it was the case during the migration crisis. This is a challenge especially for the Alien Police Service.

**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.)

There were no examples of good practices reported. An assessment of the risk of absconding is exercised only for detained foreigners for the purpose of handing over under the Dublin Regulation. The vast majority of such persons are foreigners who only use the Czech Republic as a transit country. The Directorate of the Alien Police Service Studies is not aware of any evaluation reports, academic studies or studies by non-governmental and international organizations.

## 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<sup>44</sup> and Council Decision 2004/191/EC;<sup>45</sup> 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.<sup>46</sup>*

<sup>44</sup> 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

<sup>45</sup> 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.

<sup>46</sup> 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

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 9 August 2016. Please review your Member State contribution to the aforementioned Study and Ad-Hoc Query (if completed) and provide only updated information here.

**Q16.** 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?

**N**on-respecting of the return decision is a criminal act; however, detention under Alien Act is a preferred option. Those who obstruct expulsion may be subject to a prolonged detention period up to 18 months in total as allowed by the directive.

#### 4.1. MUTUAL RECOGNITION

**Q17.** Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory?

**YES**, on the basis of a record in SIS. If Yes, does your Member State:

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

**YES**

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

**YES**

#### 4.2 TRAVEL DOCUMENTS

**Q18.** Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?<sup>47</sup>

**NO**

**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.

**A**lien Police Service is responsible for the procedure of identification and delivering of travel documents. Each case is handled individually that is why it is not possible to estimate the timeframe for lodging the request. However, in general, the Alien Police Services always try to lodge the request without delay.

<sup>47</sup> Ibid

### 4.3. USE OF DETENTION IN RETURN PROCEDURES

**Q20a.** In your Member State, is it possible to detain a third-country national within the context of the return procedure?

**YES**

**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**

b) If the third-country national avoids or hampers the preparation of a return or removal process;

**YES**

**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 1 January to 31 December).<sup>48</sup>

<sup>48</sup> The following (Member) States provided quantitative information on the use of detention for the period 1 January 2012 -31 July 2016 through the EMN Ad-Hoc Queries

**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	202	183	229	1,761	606	–
Number of third-country nationals placed in detention (men)	N/A	N/A	N/A	N/A	–	–
Number of third-country nationals placed in detention (women)	–	–	–	–	–	–
Number of families in detention	–	–	–	–	–	–
Number of UAMs in detention	–	–	–	–	–	–

on the 'Use of Detention in Return Procedures - Requested by COM on 30 November 2015' and 'Use of Detention in Return Procedures (update) - Requested by COM on 9 August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1 January 31 December 2016.



**Q22a.** 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)?<sup>49</sup>

The standard detention period shall not exceed 180 days and shall be counted from the moment of restriction of personal freedom. In the case of a foreigner under the age of 18 or a family with minors, the detention period must not exceed 90 days.

The police are authorized to extend the duration of the detention, which may not exceed 545 days in total, which is only allowed if during the detention the foreign national has denied the execution of the administrative expulsion decision or provided false information necessary to secure a replacement of travel document. On 15 of August 2017 the amendment, which transposes also Article 15 (6) (b), entered into force, where the maximum detention period is 365 days.

**Q22b.** Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded?

**YES**

The police are authorized to extend the duration of the detention for more than 180 days, provided that the expulsion of the foreigner is feasible during the period of detention if:

<sup>49</sup> Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9 August 2016 and provide only updated information in response to this question.

- A)** during the detention, the foreigner has denied the execution of administrative expulsion decision, or
- B)** the foreigner provides false information which is necessary for the provision of a replacement of travel document or refuses to provide it or
- C)** in the course of obtaining the necessary documents for the purpose of administrative expulsion, despite the police's diligent efforts, the delay occurs from the side of third countries.

The duration of the detention under the above mentioned may not exceed 545 days in total, in case of (C) it is 365 days and it is counted from the moment of restriction of personal freedom. The decision on extension of the detention period is issued by the police (it is the initial act in the proceeding).

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

a) Judicial authorities;

-

b) Administrative authorities;

**D**etention is ordered by the administrative authority, in this case by the Alien Police Service of the Czech Republic

c) Both judicial and administrative authorities;

-

**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**

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

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

**YES**

The time limit is 7 working days after delivery of the court file.

**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*?

**D**uration of the stay of a third-country national in detention is reviewed by a judge only on the proposal of a detained foreigner (no one else may submit the proposal).

**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.*)?

**I**t cannot be generalized. It depends on the fact if the foreigner submits legal action. The police extend the detention gradually by decisions according to the complexity of the case. On average, the foreigner is detained for 30–60 days, after which the detention period is re-decided.

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

a) Judicial authorities;

There are 2 types of review:

**1)** Review of police decision on detention of foreigner, or decision on prolongation of detention period within the administrative judiciary. The administrative court does not have the power to order the release of a foreigner, but only to cancel the decision of the administrative body which ordered the detention. However, according to the case law, the consequence of the cancellation of the decision is the release of the foreigner. (Section 124 + 172 of Alien Act)

**2)** Review of police decision on not releasing a foreigner from the facility when requested by the foreigner. (Section 129a + 172 of Alien Act)

## b) Administrative authorities;

The procedure pursuant to Section 129a of the Alien Act applies, where the foreigner files a request to Alien Police Service in order to be released from the facility. The Alien Police Service investigates whether the reasons for which the foreigner was detained are still valid or for which reason the detention period was prolonged or whether the conditions for the imposition of a special measure were met. They will decide on request without undue delay.

## c) Both judicial and administrative authorities;

-

**Q25.** How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31 December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors.<sup>50</sup> If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

<sup>50</sup> EMN Ad-Hoc Query Use of Detention in Return Procedures.

Table 3: Detention capacity as of 31 December 2016

		Situation as of 31 December 2016	Comments
Number of detention centres		3	-
Number of places available in detention centres per category of third-country nationals	Men	240 + 340 (240 places in separate detention centre solely used for single men, 340 in other detention centre where the categories could be mixed)	-
	Women	340	-
	Families	270	-
	Unaccompanied minors	(In practice unaccompanied minors are placed in detention only in rare cases as there are special facilities run by the Ministry of Education where foster care is provided to unaccompanied minors)	-
	Total	850	-

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

Number of beds available

**Q27.** 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)?

It is a common detention facility.

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

It is a common detention facility.

**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

During migration crisis in 2015 and 2016. CZ served as a transit country and the capacities were fully exhausted. Additional emergency beds needed to be installed immediately. After several weeks a new detention facility was opened.

**Q28b.** Has your Member State's capacity to guarantee the standards for detention conditions, as defined in Article 16 of the Return Directive, been affected due to an exceptionally large number of other categories of third-country nationals (e.g. Dublin cases) being placed in detention facilities?

YES

**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.)

CZ served as a transit country in 2015 and 2016. The capacities of detention facilities were fully exhausted and additional emergency beds needed to be installed immediately. However, overall conditions of detention remained dignified. After several weeks a new detention facility was opened and one of the detention centres was transformed into a facility specialised in detention of families and single women only.

#### 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 police or immigration authorities at regular intervals)	<p><i>Example: Third-country nationals subject to reporting obligations are required to report regularly to a monitoring authority once a week. When reporting, the person has to present an identification document and sign the reporting protocol. The third-country national can reside in an address of his/her own or s/he can be accommodated in an open reception centre. If the person fails to comply with reporting obligations, s/he will be placed in detention facilities.</i></p> <p>YES</p> <p>A foreigner is obliged to report at a time set by the police.</p>
Obligation to surrender a passport or a travel document	NO

**Table 4**

Alternatives to detention	Yes/No (If yes, please provide a short description)
Residence requirements (e.g. residing at a particular address)	<p>YES</p> <p>In this case, the foreigner is obliged to notify the police of the address of the place of his/her residence, to stay there, to report every change to the police on the next working day, and to stay at the place of residence at the specified time for the purpose of carrying out a resident check.</p>
Release on bail (with or without sureties)	<p>YES, but not used in practice.</p> <p>This means to pay down the cash in a freely convertible currency at the level of the estimated costs associated with administrative expulsion (hereinafter referred to as the "financial guarantee") by a foreigner who is subject to special measure for the purpose of travel arrangements; funds for foreigners can be paid by a Czech citizen or a foreigner with long-term or permanent residence in the territory (hereinafter referred to as the "agent"). The financial guarantee is put on the police's bank account and is refundable after a foreigner has left the territory or has been granted a long-term or permanent residence or stay under a special legal regulation, a long-term visa or a temporary residence permit. The police will agree with the foreigner or the agent on how the financial guarantee is returned. The cost of returning the financial guarantee is borne by the agent or the foreigner.</p>

Table 4

Alternatives to detention	Yes/No (If yes, please provide a short description)
Electronic monitoring (e.g. tagging)	NO
Guarantor requirements <i>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)</i>	NO
Release to care worker or under a care plan	NO
Community management programme	NO
Other alternative measure available in your (Member) State. Please specify.	NO

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

The main challenge is the detention of minors and families. One of the detention facilities in the Czech Republic has been recently transformed into a facility specialised in detention of families and single women only.

**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.)

The detention facility Bělá-Jezová has been modified to meet high demands for detention of families with children and minors.

## 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).*

**Q32.** 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**

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

a) Judicial authority;

**YES**

b) Administrative authority;

**YES**

c) Competent body composed of members who are impartial and who enjoy safeguards of independence.

**NO**

**Q34.** Is there a deadline for the third-country national concerned to appeal the return decision?

If Yes, please specify whether the deadline is:

a) Less than a week;

b) Two weeks;

c) One month;

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

e) Other (please specify)

**YES**

10 days (entry into force 15.8.2017).

**Q35.** In your Member State, does the appeal against a return decision have a suspensive effect?

**YES**, in all cases.

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

**D**ecisions on return are issued in the administrative procedure where a foreigner is always heard. In case an action against this decision is lodged, the court also arranges an oral hearing as a standard rule. The exception is if a foreigner agrees that the oral hearing before the court will not take place – this question is asked by the court if the court considers that the hearing is not necessary.

**Q37.** In your Member States, is there a possibility to hold the return hearing together with hearings for different purposes?

**NO**

**I**n practice, decision on detention is usually issued right after the return decision is issued – i.e. on the same day, but both procedures are independent administrative procedures and separate decisions are issued.

**Q38.** Is there an obligation for the third-country national concerned to attend the hearing in person?

**YES**

**V**ideoconference may also be an option – the amendment of the Alien Act which includes this option entered into force on 15 August 2017.



## 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*

**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

**Return decision** – no one.

**Detention decision** – families with minor children, UAMs older 15 years – there is a shorter detention period.

**Note:** The law allows for a very limited legal possibility to detain UAMs

older than 15 years. In practice, UAMs are not detained but when apprehended they are transferred into a specialised facility for children operated by the Ministry of Education.

**Q40.** 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?

The law imposes obligation to determine a guardian in case of an UAM. The Charter on the Rights of the Child applies in all situations where a minor is present. It is the obligation of the police.

**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	–
Child's views	YES	–

Table 5

Elements considered	Yes/No	Comments
Preservation of the family environment, and maintaining or restoring relationships	NO	-
Care, protection and safety of the child	YES	-
Situation of vulnerability	YES	-
Child's right to health	NO	-
Access to education	NO	-
Other (please describe)		The Administrative Code imposes the obligation to assess all relevant facts and circumstances of the case.

**Q42.** In the event a return decision against an unaccompanied minor cannot be carried out, does your Member State grant the minor a right to stay?

**YES**

CZ allows all UAMs to stay until the age of maturity on the basis of special type of permanent residence and further stay is allowed if a minor is integrated in to the society.

**Q43.** Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors?

As the Czech Republic does not return UAMs there are no such policies.

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

**YES**

**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;

**NO**

b) The third-country national must consult with a doctor appointed by the competent national authority;

**YES**

**Q46.** When returnees suffer from health problems does your Member State take into account the accessibility of medical treatment in the country of return?

**NO**

**E**verything is handled on a case by case basis.

**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**

**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*)

**G**enerally not. Everything is handled on a case by case basis.

**Q49a.** 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.

**F**or these groups, the Czech Republic has a special detention facility which is designed with respect to their special needs arising from their vulnerable situation

**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.

**V**ulnerable people are detained together with taking into account all their needs.

**A)** Children are accommodated together with their parents in the special facility designed for vulnerable groups.

**B)** Unaccompanied minors are not detained. They are usually transferred to the Facility for Children – Foreigners. See Q39 for more details.

**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)

**D**ue to a small number of cases, there are no significant issues.

**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.)

**T**here were no example of good practices reported. Upon the return of these groups the cooperation with international organizations is well established.

## 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).*

**Q52a.** In your Member State, is a period of voluntary departure granted:

a) Automatically with the return decision?

**NO**

b) Only following an application by the third-country national concerned for a period for voluntary departure?

**YES**

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

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

The transmission of initial information on voluntary return is regulated by the internal procedures of the Police of the Czech Republic and more generally by Act No. 326/1999 Coll. on the residence of foreigners in the territory of the Czech Republic (Alien Act).

*b) The actors involved / responsible;*

Initial information on the possibility of filing a request for voluntary return is provided by the Police of the Czech Republic in the process of administrative expulsion procedure, later by the Ministry of the Interior, which is responsible for the realization of the voluntary return of the foreigner.

*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.);*

A foreigner is informed that the Ministry of the Interior may bear the cost of his voluntary return and that the Ministry of the Interior may request the approval of his voluntary return if he decides to do so.

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

Information on the possibility of filing a request for voluntary return is

given to foreigners in the context of handing over the administrative expulsion decision. This information is always translated into foreigner's native language.

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

Foreigners are informed on the possibility of voluntary return in writing when handing over of decisions on administrative expulsion, and this is translated into his / her native language. When the foreigner is detained in a detention facility, the information is repeated orally by social workers and staff of the Ministry of the Interior responsible for the implementation of voluntary returns, who regularly visit the detention facilities and conduct interviews with detained foreigners for this purpose.

*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.);*

Initial written information on the possibility of voluntary return is translated by an official interpreter to his / her native language as part of the handover of the decision on administrative expulsion. In the facility, this information is repeated to foreigners orally by the staff of refugee facilities in the Russian and English language as part of the regular interviews, as well as by the staff of the Ministry of the Interior, who, during their interviews with foreigners, can also forward information to foreigners in German, Turkish, Arabic, or the French language. If a foreigner does not understand any of these languages but is interested in more information about his return, an official interpreter is invited to provide the information in his native language.

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

No special measures.

**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?<sup>51</sup>

**YES,** to grant a period for voluntary departure shorter than seven days;

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?

The period can be shorter than 7 days only in cases where the return decision was issued due to national security reasons or due to serious cases of public order.

**Q54.** In your Member State, how long is the period granted for voluntary departure?

Time is limited only by the period of enforceability of administrative expulsion decision. During this time, a foreigner may request a voluntary return at any time.

<sup>51</sup> 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'.

**Q55.** In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case?

**YES**

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

**A)** The prospects of return;

**YES**

**B)** The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return;

**YES**

**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**

If Yes, which circumstances are taken into consideration in the decision to extend the period for voluntary departure?

The existence of children attending school.

**Q57.** 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?

It is important to distinguish between the terms: “voluntary departure” and “voluntary return”

When it comes to “**voluntary departure**” under the Return Directive, it is de facto assisted voluntary return, assisted by Ministry of Interior staff, and we can therefore assert with certainty that the TCN has left the territory of the state.

In the case of “**voluntary return**”, according to the Return Directive, this is a spontaneous departure where the foreigner has been issued by a return decision, has been not detained and may travel spontaneously on the basis of an exit order. This departure from the territory cannot be registered due to the absence of an Entry-Exit information system at the external borders of the Schengen area.

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

**Table 6:** Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No /In some cases	Reasons
Insufficient length of the period for voluntary departure	NO	–
Absconding during the period for voluntary departure	NO	See Q57
Verification of the departure within the period of voluntary departure	YES	See Q57
Other challenges (please specify and add rows as necessary)	YES	The absence of an Entry-Exit information system at the external borders of the Schengen area. It is not possible to register the exit of Schengen by TCN who has been issued by a return decision, has not been held in detention facilities and spontaneously left the territory.

The absence of an Entry-Exit information system at the external borders of the Schengen area. It is not possible to register the exit of Schengen by TCN who has been issued by a return decision, has not been held in detention facilities and spontaneously left the territory.

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

**N/A**

## Section 8

### ENTRY BANS

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

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

**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**



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

### YES

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

### NO

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

**Table 7:** Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
Risk of absconding <sup>52</sup>	YES	–
The third-country national concerned poses a risk to public policy, public security or national security <sup>53</sup>	YES	–
The application for legal stay was dismissed as manifestly unfounded or fraudulent <sup>54</sup>	YES	Specific criteria/indicators cannot be clearly identified as this issue is generally handled on a case by case basis.

<sup>52</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

<sup>53</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

<sup>54</sup> As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

**Table 7**

Grounds for imposing entry bans	Yes/No	Comments
The obligation to return has not been complied with <sup>55</sup>	YES	Same as above.
Other (e.g. please indicate and add rows as appropriate)	YES	Repeated obstruction of administrative or judicial decisions.

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

10 years

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

### YES

The law divides the offenses into three categories: the first category - the ban on entry up to 10 years, the second category up to 5 years and the third category up to 3 years.

<sup>55</sup> As stipulated in the Return Directive Article 11(1)(b).

**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

There are categories of violations divided in to three main “length of entry ban” groups: up to 10 years, up to 5 years, up to 3 years. The grounds for each category are specified in § 119 of the Alien Act.

### a) up to 10 years

1. If there is a reasonable danger that the foreigner could threaten the state’s security by using force in the pursuit of political objectives, by performing activities threatening the foundation of a democratic state or destroying the integrity of the territory or in a similar manner;
2. If there is a reasonable risk that the foreigner may seriously undermine public order while residing in the territory.

### b) up to 5 years

1. If the foreigner proves himself/herself in a border or residence check by a document that is forged or by a document of another person as his/her own;
2. If the foreigner proves during his / her stay or border check on leaving the territory a travel document, which is invalid for reasons stated in Section 116 (a), (b), (c) or (d);
3. If the foreigner is employed in the territory without a residence permit or a work permit, although such a permit is a condition of em-

ployment or in the territory he carries out gainful activity subject to tax without authorization according to a special legal regulation; or without a work permit, such employment was mediated by foreigner;

4. If the foreigner has acted or should have acted as a legal entity which has employed or brokered such employment without an employment permit;
5. If the foreigner fails to comply with the police call for border control;
6. If the foreigner crosses the border in hiding or attempts to do so;
7. If the foreigner crosses the state border outside the border crossing;
8. If the foreigner does not prove in a credible way that he resides in the territory of the contracting states for a period during which he is authorized to reside temporarily in that territory without a visa or a short-stay visa; or
9. If the foreigner violates repeatedly a law, if the issue of a decision on administrative expulsion is appropriate with respect to the breaching of obligation set up by this regulation, or if he /she disregards the enforcement of judicial or administrative decisions.

### c) up to 3 years

1. If the foreigner resides in the territory without a travel document, although not entitled to do so;
2. If the foreigner resides in the territory without a visa, even if he is not entitled to or without a valid residence permit;
3. If the foreigner has stated false information in the proceedings under the Alien Act in order to influence the decision of the administrative body; or

4. If there is a reasonable risk that the foreigner may seriously endanger public health while being in the territory by suffering from the infectious disease.

**Q63.** In your Member State, when does an entry ban start applying?

This question looks simple but there are plenty of different situations that occur in practice. Generally the entry ban starts applying after the period for voluntary departure is gone.

**Q64.** 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**

**Q65.** 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**

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

**Yes, a misdemeanor**

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

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	YES	In most cases, the existence of an entry ban acts as a preventive measure for expelled persons within their migration strategy, but cannot be generalized.
Contribute to ensuring compliance with voluntary return <sup>56</sup>	YES	It is one of the motivating factors for agreeing to return voluntarily.
Cost-effectiveness of entry bans	YES	The current use of the bans system appears to be efficient and cost-effective.
Other aspects of effectiveness (please specify)	–	–

<sup>56</sup> i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

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

**Table 9:** Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	NO	–
Monitoring of the compliance with entry bans	YES	–
Cooperation with other Member States in the implementation of entry bans <sup>57</sup>	NO	–
Cooperation with the country of origin in the implementation of entry bans	NO	–
Other challenges (please specify and add rows as necessary)	–	–

<sup>57</sup> This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

**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.)

N/A

## 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?

To manage a successful migration policy, returns are one of the crucial activities that Member States should effectively carry out. The implementation of Return Directive has helped to clear out the rules and practice in returns as it has introduced similar standards to expulsion detentions or by introducing the validity of administrative expulsion for all states applying the Directive. This, in general, helps to protect the EU states against undesirable persons.

However, some of the changes have influenced the time-frame of return procedure, for instance the fact that all appeals against decision on administrative expulsion have now suspensive effect.

The migration crisis has shown that in the Czech Republic there is no need for massive changes as a reaction to it, except the prolongation of detention period which was introduced. Nevertheless, the situation in the Czech Republic in the area of irregular migration is stable when compared to other European countries. Return policy remains one of the key parts of the Czech Republic's approach against irregular migration where also cooperation with third countries in readmissions is an important element.

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

EU rules serve as necessary tool, but the issue in practice is difficult to grasp, still the effective return is a big challenge if we compare the number of third-country nationals who should be according to the law returned and the real numbers of returns realized. With regard to the non-existence of entry-exit system and necessary amendments within the SIS (under negotiations), we even do not have exact numbers of returnees. Thus, it is hard to objectively assess the overall return policy and rules.

The content of this study

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