



***EMN FOCUSSED STUDY 2017***

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

***Slovene National Contribution***



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

The study has been prepared by Legal-informational Centre for NGOs, Slovenia (PIC) in cooperation with the National contact point of the European Migration Network in the Republic of Slovenia and the Ministry of the Interior of the Republic of Slovenia.

European Migration Network was established due to the need for exchange of information on all aspects of migrations and for the establishment of common asylum and migration policy. Council Decision 2008/381/EC which provides a legal basis for the establishment of the European Migration Network was adopted on 14 May, 2008.

More information about the European Migration Network is available at: [www.emm.si](http://www.emm.si)

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.

## Top-line “Factsheet” (National Contribution)

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

This study aims at analysing the impact of EU rules on return – including the Return Directive<sup>1</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 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.

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.

Evaluating the effectiveness of return measures in Slovenia is as challenging as on the EU level.

Statistical data for 2016 show that in Slovenia out of 1.375 issued orders to leave, 173 forced removals and 96 voluntary returns were registered and 62 persons were returned under Assisted Voluntary Return and Reintegration Program, altogether 24% of third-country nationals who were found to reside illegally on the territory of Slovenia.

The trend of issuing decisions was reversed in 2014 and statistics show that in 2014, 2015 and 2016, significantly more decisions on forced return were issued in comparison to the number of decisions allowing voluntary return. The reasons for such turnaround could be in increased migration flow, including rejected asylum seekers who almost automatically receive decision on forced return.

#### **Q1.** Please provide an overview of the national measures implementing the Return Directive

Slovenia has in 2002 adopted Resolution on migration policy, which actually relies on the Resolution on Immigration policy from 1999, but is in comparison to the latter more concrete in defining the measures to which integration policy applies, further emphasizes the active prevention of discrimination, xenophobia and racism. The Resolution on migration policy at the basic level determines the economic, social and other measures and activities that the state must adopt in the field of migration policy, but does not foresee concrete activities. In addition, it is important to emphasize that both documents originate from a period when migration policies, especially return

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<sup>1</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<sup>th</sup> December 2008

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policies did not rank high on the Slovene priority list.

Slovenia transposed provisions of the Return Directive into national legislation in 2011, when the Aliens Act was completely revised. Slovenia does not have a specially designed return policy legislation therefore it follows the principles and standards of the Return Directive. Return policy is not on the current political agenda as number of migrants ordered to leave in spite of the increased migration flow do not come in high numbers (in recent years around 1.000 - 1.500 per year).

The Aliens Act, adopted in 2011 created the legal basis for the issuance of a return decision to third-country nationals illegally residing in the territory of the Republic of Slovenia, allowing them to voluntarily leave Slovenia within a certain period of time (7-30 days). The law also introduced the possibility of determining the entry ban to the third-country national who did not return voluntarily within the set deadline and had to be removed from the territory of Slovenia. Both decisions need to be issued in writing, which was an important procedural guarantee introduced at the time. The law clearly sets priority of voluntary return before forced one.

The Aliens Act was later several times amended, but the provisions on the return did not substantially change. Among the by-laws regulating the field of return, the Rules on the form of the return decision and the circumstances warranting an extension of the deadline for voluntary return<sup>2</sup>, Rules on assistance in cases of transit for the purpose of removal by air<sup>3</sup>, Rules on residing in the Aliens Centre, depositing their own financial resources and on the form and content of the card with the permission to remain in the Republic of Slovenia<sup>4</sup>, were adopted.

Since the first years of the application of the new provisions more uniform approaches and interpretations have been developed through practice and national case law, when to impose forced return, the length of entry bans, criteria for assessing abscond risk and the right to statement. Administrative court case law helps competent authorities better understand the principles and standards of the directive and sums relevant case law of the CJEU although more could be done in transferring judicial practice to the first instance decisions.

**Q2.** [EC Recommendation (8)] Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?<sup>5</sup> **Yes**

Article 64(1) of the Aliens Act <sup>6</sup>states that the return decision is not issued, hence the Return Directive is not applied in cases where:

(1) the third-country national is apprehended while illegally crossing the border or ( in connection with the illegal border crossing, and after that has not acquired the right of residence;

(2) the third-country national is in the process of return or extradition on the basis of an international treaty on the return of persons; and

<sup>2</sup> Official Gazette of the Republic of Slovenia, no. 99/11 (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10884>)

<sup>3</sup> Official Gazette of the Republic of Slovenia, no. 5/12 (on the link: <http://www.pisrs.si/Pis.web/previewPredpisa?id=PRAV10880>)

<sup>4</sup> Official Gazette of the Republic of Slovenia, no. 11/15 (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12237>)

<sup>5</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).

<sup>6</sup> Official Gazette of the Republic of Slovenia, no. 16/17 - official consolidated text (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>)

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(3) the third-country national was sentenced to a secondary sanction of expulsion from the country.

If the return procedure under an international treaty (i.e. readmission agreement) is completed in such a way that the third-country national has not been admitted to a contracting state or if the third-country national who is being returned or extradited under an international treaty has not been returned to the state party within 72 hours the police issues a return decision (in accordance with the Return Directive).

If the third-country national is returned under the so called readmission agreements in informal/fast procedure (less than 72 hours), no written decision is issued, no legal remedy is available and the return is carried out between Slovene police and police in the country where the third-country national is being returned to (in most cases Croatia). All categories of the third-country nationals can be returned under readmission agreement, including unaccompanied minors.

**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).

On 26 January 2017, the Slovenian National Assembly passed amendments to the Aliens Act which allow the State to activate the closure of the borders for asylum seekers in case of mass arrival of migrants and refugees. The threshold foreseen in the law for the closure of the border is a "changed migration situation", due to which "public order and internal security of the Republic of Slovenia may be or are threatened", making the "functioning of central State institutions and provision of their vital functions more difficult" (para. 2 of new Article 10a of the Aliens Act). In the assessment of such circumstances, which should be prepared by the Ministry of Interior, the ministry must take into account a number of factors, such as: the circumstances in the countries from which third country nationals will (intends to) enter Slovenia, the migration situation in the region, the number of third country nationals residing illegally in Slovenia, the number of foreigners with "permission to remain" (a special toleration that protects a person from expulsion but that is not a residence permit) in Slovenia, the number of asylum seekers and the number of persons granted international protection, as well as the integration and accommodation capacities of the Republic of Slovenia for all these persons (para. 3 of new Article 10a of the Aliens Act). An additional factor that must be taken into account is the possibility to implement the International Protection Act, as well as any other relevant factor that could affect public order and internal security (*ibid.*).

If the state authorities assess that such changed circumstances, which resemble the mass influx witnessed in 2015 and 2016, have arisen, the Government will propose to the National Assembly to activate the extraordinary measures, effectively leading to the closure of the borders. A simple majority at the National Assembly will suffice to activate these measure (para. 2 of new Article 10a of the Aliens Act). The measure will last for six months, but may be extended every six months for an indefinite period. This is one of the differences between the Slovenian measure and the Austrian emergency law, which limits extraordinary measures to two years. The measure may be declared for the entire State territory or only for a certain border or other region.

The legislative changes were widely criticized by various human rights institutions, among those also Council of Europe Commissioner for Human Rights, UNHCR, UNICEF... The amendments are currently under the scrutiny of Slovene Constitutional court, submitted by Slovene Ombudsman.

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

One of the priorities.

## Section 2: Systematic issuance of return decisions

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

Return decision can be issued by the police, administrative units<sup>7</sup> or the ministry, responsible for foreign affairs.

Return decision issued by administrative units are actually part of the following decisions:<sup>8</sup>

- decision on the cancellation of a residence permit,
- decision on the cancellation of a stay,
- decision issued on the basis of a foreigner's statement on the renunciation of a residence permit,
- decision or decree by which the application for the extension or issuance of a prolonged temporary residence permit is rejected, dismissed or the proceedings are stopped,
- decision or a decree by which an application for the issuance of the first temporary residence permit is rejected, dismissed or the proceedings are stopped and the foreigner is already in the Republic of Slovenia<sup>9</sup>,

The ministry responsible for foreign affairs issues a return decision along the decision on the annulment or revocation of visa to a foreigner already staying in the Republic of Slovenia<sup>10</sup>.

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

- a) The whereabouts of the third-country national concerned are unknown; **No**
- b) The third-country national concerned lacks an identity or travel document; **No**
- c) Other (*please describe*)

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**Q6b.** In connection with Q6aa) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown?

No

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

<sup>7</sup> [http://www.gu.gov.si/en/services/free\\_access\\_database/administrative\\_units/](http://www.gu.gov.si/en/services/free_access_database/administrative_units/)

<sup>8</sup> Article 60 of the Aliens Act, paragraph 3

<sup>9</sup> Article 55 of the Aliens Act, paragraph 6

<sup>10</sup> Article 28 of the Aliens Act

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Yes

**Q7.** [EC Recommendation (5) (c)] In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national?

**Yes.** Return pending final negative asylum application is not part of this decision, therefore immediately after such decision becomes final, competent asylum authority announces the police (competent return authority) to initiate the return procedure.

**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.**

According to the Article 72 of the Aliens Act **the principle of non-refoulement** means an obligation of the Republic of Slovenia not to deport the third-country national to a country in which his life or freedom would be threatened on the basis of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the third-country national would be exposed to torture or other cruel, inhumane and humiliating treatment or punishment therefore is one of the grounds for the Police to issue a **permission to stay**.

Permission to stay in the country means permission granted to the third-country national who must be deported to remain temporarily in the Republic of Slovenia. This is granted in the following circumstances:

- if the deportation would mean breach of non-refoulement principle;
- if the third-country national does not possess and is unable to acquire a valid travel document of the country of his nationality;
- if a physician advises that immediate deportation is avoided due to the health condition of the third-country national;
- if the third-country national minor attends primary school in the Republic of Slovenia, permission shall be granted till the end of the school year;
- if the country of the third-country national's nationality or, for stateless persons, of last habitual residence refuses to admit the third-country national;
- if deportation is not possible because the transportation of the third-country national from the country cannot be provided by land, air or water;
- if deportation is not possible because circumstances preventing return, such as natural or other disasters, occurred in the country of the third-country national's nationality or in the country where the third-country national last resided as a stateless person;
- if it is required by a guardian assigned to unaccompanied minor.

Permission to stay means the third-country national' deportation from the state is not permitted under statutory reasons and the third-country national is permitted to remain temporarily in the Republic of Slovenia. A permission to stay is issued at the request of an alien or ex officio by the police for a period of six months and may be renewed for as long as the grounds exist. In the decision permitting the third-country national to stay, the police may determine the place of residence at a specific address (Article 73 of the Aliens Act).

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

**Yes.**

**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.**

According to the article 72 of the Aliens Act which refers to protection of the third-country nationals from refoulment, the third-country national who objects the removal proving that there is a risk of refoulment, would not be removed. In case other conditions for issuing a permission to stay were fulfilled, such permission would be issued. This procedure can be also initiated by the police ex officio.

**Q11.** [EC Recommendation (7)] Does your Member State systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country?

**No.**

Decisions only order the third-country national to leave the territory of the Republic of Slovenia.

## Section 3: Risk of absconding

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

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

**Table 1 Assessment of the risk of absconding**

Elements/ behaviours	Yes/No	Comments
Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints	Yes	
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	
Evidence of previous absconding	No	
Provision of misleading information	Yes	



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<b>Non-compliance with a measure aimed at preventing absconding</b>	No	
<b>Non-compliance with an existing entry ban</b>	Yes	
<b>Lack of financial resources</b>	Yes	The provision states that milder form of circumstances indicating the risk of absconding is also when there is no possibility for the third-country national to reside hence this includes financial means.
<b>Unauthorised secondary movements to another Member State</b>	No	
<b>Other (please describe)</b>		The third-country national has previously resided illegally in the country, the third-country national has exceeded the period of legal residence by less than 30 days, other circumstances identified on the basis of individual assessment.

**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; **No**
- c) Submission of documents; **No**
- d) Obligation to stay at a certain place; **Yes**
- e) Other (please describe)

/

**Q14.** Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State.

An important part of national case law (Administrative court decisions) refers to the question on whether a risk of abscond exists or not and consequently does that determine necessity for the competent authority to issue decision on forced removal. Administrative court judgements provide interpretation that even when the risk of abscond exists, forced return decision should not apply automatically, but all circumstances and third-country national's statement (if possible) should be carefully considered and evaluated if perhaps the goal of such procedure could be reached also by imposing voluntary return decision. If the third-country national is imposed a forced removal, such decision should be thoroughly explained and argued.

**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.)

Slovenia does not yet have good practices in determination of the existence of a risk of absconding, however, responsible authorities, such as Aliens Centre and Police, are actively involved in different forums and expert events whereas also, other Member States participate and where different possibilities for implementation of such measures are discussed and evaluated.

## Section 4: Effective enforcement of return decisions

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

**Q16.** [EC Recommendation (11)] Does national legislation in your Member State foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes?

No.

### Section 4.1 - Mutual recognition

**Q17.** [EC Recommendation (9) (d)] Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory? **Yes.** Please briefly elaborate on your practice and any exception to the general rule stated above.

Such provisions are in place. Nevertheless, there are very few such cases.

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; **No**
- c) Other (please specify)

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

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### Section 4.2 - Travel documents

**Q18.** [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?<sup>11</sup>

**No.** At the moment Slovene authorities are using a form which is accordance with the recommendation of the EU Council from 30<sup>th</sup> November 1994.

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<sup>11</sup> Ibid

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**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.

Slovenia is in the phase of preparation of the EU passport, which will be in accordance with the Regulation of the 2016/1953.

### Section 4.3 - Use of detention in return procedures

**Q20a.** [EC Recommendation (10) (a)] In your Member State, is it possible to detain a third-country national within the context of the return procedure?

**Yes.** However third-country nationals issued a voluntary return are not detained.

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

If third-country national has not left the country within the given deadline for voluntary return or if the identity of a third-country national is unknown.

**Q21.** How often does your Member State make use of detention for the purpose of removal?

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

	2012	2013	2014	2015	2016	Comments
<b>Total number of third-country nationals placed in detention</b>	359	425	337	2338	1428	
<b>Number of third-country nationals placed in detention (men)</b>	297	333	276	1606	1094	
<b>Number of third-country nationals placed in detention (women)</b>	14	42	23	283	99	
<b>Number of families in detention</b>	9	10	5	14	67	Children 154
<b>Number of UAMs in detention</b>	30	34	31	66	135	

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

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6 months and can be extended to additional six months.

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

If the third country national for objective reasons can't be returned even after six months, the police must issue a decision to carry out the following:

– extend the detention for additional six months if the third-country national fails to cooperate in the return procedure, due to delayed acquisition of documents from third countries or due to a pending procedure establishing identity, if it is realistic to expect that the return will be possible within that period;

– determine another place of accommodation until the deportation, where third-country national must observe the rules on accommodation outside the Centre, otherwise third-country national may be again accommodated at the Centre.

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

a) Judicial authorities; *please specify*

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b) Administrative authorities; *please specify*

police

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

Detention order in return procedures is issued by the police, ex officio review of the lawfulness of detention before expiration of three months of detention is done by the ministry responsible for internal affairs and review after the three months (within six months) of detention is done by the administrative court (Article 79.a of the Aliens Act<sup>12</sup>).

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

a) The lawfulness of detention is reviewed by a judge ex officio: **Yes**

If Yes, how long after the start of detention?

Around three months after the detention was ordered.

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

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

The third-country national has three days to appeal upon receiving detention order; the appeal is

<sup>12</sup> Ibid.

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reviewed by the administrative court and the decision has to be rendered within six days. The appeal does not have the suspensive effect (Article 78 of the Aliens Act<sup>13</sup>).

In addition to that before expiration of three months of detention, lawfulness of the detention is ex officio reviewed by the Ministry for interior and review after the three additional months ex officio review is done by the Administrative court (Article 79.a of the Aliens Act<sup>14</sup>).

**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?

See above

**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.)?

Every three months lawfulness of the detention is reviewed (e.g. if reasons for detention still exist).

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

a) Judicial authorities; *please specify*

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b) Administrative authorities; *please specify*

/

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

Before expiration of three months of detention review is done by the ministry responsible for interior affairs and review after another the three months of detention is done by the administrative court.

**Q25.** [EC Recommendation (10) (c)] How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31<sup>st</sup> December 2016?

**Table 3 Detention capacity as of 31<sup>st</sup> December 2016**

		Situation as of December 2016	Comments
<b>Number of detention centres</b>		1	
<b>Number of places available in detention centres per category of third-country nationals</b>	<b>Men</b>	120	
	<b>Women</b>		
	<b>Families</b>	88	
	<b>Unaccompanied minors</b>	32	
	<b>Total</b>	240 (320)	In addition 80 places in mobile unite

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

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

Number of beds.

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

**No.** There is only one centre for detention of third-country nationals whereas they can be either detained asylum seekers, asylum seekers waiting for Dublin transfer or migrants in return procedure.

**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.** Slovenia established temporary controls on the otherwise unsupervised border with Hungary in the north east on 17 September 2015, following Germany and Austria's similar actions. On 18 September, Slovenia experienced the first larger and largely illegal border crossing occurrences, coming mostly from Croatia, already overwhelmed by the large influx of migrant groups.

By midday of 19 September, the country had registered around 1500 migrants, with all of them being accommodated in temporary reception camps or asylum centres. The largest traffic was seen at Obrežje border crossing, Dobova border crossing and Brežice.

There were various humanitarian and non-governmental organisations aiding the migrants on the border, coming mostly from Slovenia, Croatia and Austria. On 18 October 2015, Slovenia began restricting admission to 2,500 migrants per day, stranding migrants in Croatia as well as Serbia and Macedonia.

From 18 October, the country began receiving large numbers of refugees, which soon exceeded the upper admission limit of 2,500. On 22 October, the police reported 12,600 migrant arrivals in 24 hours. The Slovenian government also passed a law giving the army more powers and asked the EU for aid. By 24 October 2015, Slovenia had reported more than 56,000 total migrant arrivals.

On 10 November, Prime Minister announced that Slovenia would impose *temporary technical obstacles at the border with Croatia* to prevent irregular migration, but that the country would not close border crossings. On 11 November, Slovenian military personnel began the construction of the fence consisting of razor wire. The razor wire fence is being replaced by ordinary fence.

Migrants went through identification process, received decision permitting them the stay (according to article 73 of Aliens Act<sup>15</sup>) and already within few hours left to enter Austria. Detention facilities started to be used, after Austria has rejected some of the migrants who could not prove their identity. As Croatia refused to readmit them, they were placed in detention. Slovenia at that time opened additional two detention premises with overall capacity of 900 accommodations.

In early March 2016 the humanitarian corridor was closed and up to that moment 422.724 refugees passed the country continuing their way to the northern EU members. Less than 400 asylum applications were submitted during this period, therefore asylum capacities were not overburdened, neither judicial system. This occurred after the closure of the borders.

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<sup>15</sup> Ibid.

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

No.

### Section 4.4 – Use of alternatives to detention in return procedures

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

**Table 4 Alternatives to detention**

Alternatives to detention	Yes/ No (If yes, please provide a short description)
<b>Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)</b>	<i>Yes, the frequency of the reporting is not set by the law but in practice the decisions allowing this measure foresee weekly reporting.</i>
<b>Obligation to surrender a passport or a travel document</b>	<i>NO</i>
<b>Residence requirements (e.g. residing at a particular address)</b>	<i>Yes, movement can be restricted to a particular address.</i>
<b>Release on bail (with or without sureties)</b> <i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	<i>NO</i>
<b>Electronic monitoring (e.g. tagging)</b>	<i>NO</i>
<b>Guarantor requirements</b> <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>	<i>NO</i>
<b>Release to care worker or under a care plan</b>	<i>NO</i>
<b>Community management programme</b>	<i>NO</i>
<b>Other alternative measure available in your (Member) State. Please specify.</b>	<i>NO</i>

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

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

..See answer Q31

**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

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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.)

Maximal duration of detention of third-country nationals in Aliens Centre, which is also responsible for their removal, is 12 months (counting possibility of extension for 6 months from regular duration of 6 months). According to the Aliens Act the authority may decide to allow the third-country national residency outside the centre and, if needed, such residency may be limited to a certain area (town, village) or specific address Alternatives to detentions are used only when identity of the TCNs is confirmed and known and there are real possibilities the Tthird-country national will leave the country.

## Section 5: Procedural safeguards and remedies

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

**Q32.** [EC Recommendation (12) (d)] Is the application of the principle of *non-refoulement* and/or of Article 3 European Convention on Human Rights systematically assessed as part of the procedure to take a return decision?

**No**

If No, under which circumstances is it assessed?

- a) It is never assessed as part of the return procedure; **Yes**
- b) It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure; **No**
- c) Other (*please specify*)

Non-refoulement principle applies to all categories of third-country nationals (over-stayers, denied asylum seekers....) and is considered if a third-country national appeals the return decision and subsequently applies for permission to stay on that ground and it can also be considered in ex officio police procedure for issuance of permission to stay.

**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**

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

If Yes, please specify whether the deadline is:

- a) Less than a week;

The deadline is three days upon receiving the decision.



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**Q35.** [EC Recommendation (12) (c)] In your Member State, does the appeal against a return decision have a suspensive effect? **Yes**

All appeals against return decisions have suspensive effect.

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

Appeal against first instance decision issued by the police is reviewed by the competent ministry and no hearing is provided; appeal against second instant decision is reviewed by administrative court under the rules of Administrative Dispute Act<sup>16</sup>, therefore general rules on administrative court proceeding apply, possibility of hearing as well.

Administrative court has in several cases referred to the Mukarubega case and interpreted the right to be heard as the obligation of the first instance authority, the police, to allow the third-country national a statement on modalities of return (deadline, voluntary or forced return), but is not necessary to present the third-country national with facts upon which the decision will be reasoned or justified.

**Q37.** [EC Recommendation (12) (a)] In your Member States, is there a possibility to hold the return hearing together with hearings for different purposes? **Yes**

Yes, in cases for granting of residence permit the third-country national could also be heard on the return, providing circumstances upon which administrative unit could use to decide on the modality of the return (deadline, forced, voluntary), if residence permit would be rejected, annulled, procedure dismissed etc... This possibility would fall under the General Administrative Procedure Act.<sup>17</sup>

Return decision is normally not issued by the same authority as detention, otherwise there are no legal obstacles for such hearing to be held.

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

Yes, if the administrative unit decides to have a hearing, it is obligatory for the third-country national to attend. No alternatives are provided within the act. When deciding on detention the third-country national is always present.

<sup>16</sup> Official Gazette of the Republic of Slovenia, no. 105/06, 107/09 - rev. US, 62/10, 98/11 - rev. US, 109/12 and 10/17 - ZPP-E (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732>)

<sup>17</sup> Official Gazette of the Republic of Slovenia, no. 24/06 - official consolidated text, 105/06 - ZUS-1, 126/07, 65/08, 8/10 and 82/13) (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603>)

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

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

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

In relation to return the Aliens Act does not categorize or specific vulnerable categories of persons; non-refoulement also applies to all persons.

In relation to detention the act provides separate accommodation for vulnerable groups among which are women, children, unaccompanied minors, elderly and other vulnerable groups - the list is open.

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

According to the Article 82 of the Aliens Act in cases where an unaccompanied minor (UACM) is being deported, the police informs a locally competent social work centre, which assigns a guardian for special case to this minor. The police issues the return decision if the guardian, having carefully considered all circumstances, establishes that this is in the best interests of the child.

Procedure of appointing a guardian is lead by the locally competent centre for social work by their official duty and in accordance with the Family Code<sup>18</sup>.

Before removing an unaccompanied minor, the police and the guardian need to ensure that the UACM will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the state of return.

**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)?

There are no official guidelines on what are the elements to be considered when determining the best interest of the child. This consideration is in discretion of individual guardian

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

Elements considered	Yes/No	Comments
Child's identity		NA

<sup>18</sup>

Official Gazette of the Republic of Slovenia, no. 15/17 (on the link: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7556>)

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Parents' (or current caregiver's) views		NA
Child's views		NA
Preservation of the family environment, and maintaining or restoring relationships		NA
Care, protection and safety of the child		NA
Situation of vulnerability		NA
Child's right to health		NA
Access to education		NA
Other (please describe)		NA

**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.**

UACM who can't be deported is or would be issued permission to stay under the provisions of the Aliens Act, but the practice shows that actually all UACMs eventually submit asylum application.

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

*No, not specifically targeted to UACMs.*

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

**Yes.** If a physician advises that immediate deportation is avoided due to the health condition of the third-country national, this can be temporarily postponed. This are cases when a surgery, treatment needs to performed in order to preserve one's life.

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

a) The third-country national brings his/her own medical certificate; **Yes**

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- b) The third-country national must consult with a doctor appointed by the competent national authority; **No**
- c) Other (*please describe*)

The provisions regulating these exemptions are not very clear or defined regarding which doctor (appointed or freely chosen) can issue such certificate.

**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**

**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?

Although legislation does not provide specifically for this to be a ground for postponing the return in practice if the pregnancy is advanced or there are health risks this might constitute a risk for the woman or child, this can represent a (medical) reason for postponing the return.

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

Legislation does not provide for any exemptions from detention though it foresees alternatives if available. There are limited alternatives for accommodation of minors or families. For the third-country nationals with emotional or behavioural difficulties placement to appropriate institutions (social institutions, psychiatric hospitals...) is foreseen.

**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.

As all persons can be detained, vulnerable as well, the legislation foresees separate accommodation this group and provision of additional free-time activities for minors (accompanied and unaccompanied)

**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)

See answer Q 51

**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.)

Police within the Aliens Centre encourages third-country nationals who by their assessment fall in to the category of vulnerable persons to enter reintegration programs upon their return to the country of origin. The biggest obstacles for return of vulnerable persons do not differ much from other categories of third-country nationals such as false identity, non-cooperation in identification procedures, etc. Third-country nationals in general are due to the fact that Slovenia is not their destination country, but is close to their final destination, are demotivated to return and the Police reports lesser participation in the process. Therefore the police provides individual assessment with emphasis on thorough information on their status and possibilities.

## Section 7: Voluntary departure

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

- a) Automatically with the return decision? **Yes**
- OR
- b) Only following an application by the third-country national concerned for a period for voluntary departure? **No**

The Slovene return policy follows the principles in the Directive and when possible voluntary return is provided prior to forced one, therefore if the conditions are met (that is that no circumstance for issuing forced return decision is identified), the third-country national would first receive decision on voluntary return.

**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>19</sup>

**No.**

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

From 7 to 30 days with the possibility for prolongation upon request.

**Q55.** [EC Recommendation (19)] In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case?

**Yes**

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**
- c) Other (please specify)

<sup>19</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'.

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**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? Please indicate all that apply:

- a) The length of stay; **No**
- b) The existence of children attending school; **Yes**
- c) The existence of other family and social links; **Yes**
- d) Other (*please specify*)

If the third-country national needs more time to receive the necessary travel documents, tries to regularize staying, resolve family issues..

**Q57.** [EC Recommendation (24)(b)] In your Member State, is there a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure? **Yes**

The third-country national needs to present the return decision at the exit border point and this is registered in the system.

**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 period for voluntary departure	Yes/No/In some cases	Reasons
<b>Insufficient length of the period for voluntary departure</b>	In some cases	If diplomatic representations and consulates are passive in providing information, support and personal documents
<b>Abandoning during the period for voluntary departure</b>	Yes	If a third-country national does not have any more family or social links in the country of origin
<b>Verification of the departure within the period of voluntary departure</b>	In some cases	Some third country-nationals do not understand the instructions or sometimes these are not included in the decision
<b>Other challenges (please specify and add rows as necessary)</b>		

**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.)

NGO representatives providing free legal aid and assistance in return procedures (Legal-Informational Centre for NGOs - PIC and IOM Slovenia) find that practice of prolongation of period for voluntary return constitutes a good practice as in cases where such prolongation of the deadline is needed this can be resolved very quickly in good cooperation with the police. Prior to submitting the application for prolongation of the deadline, a short discussion with the police officer handling the case is needed in order to establish what kind of proof or evidence is needed for the later written request to be approved and how to assist the third-country national if there are prospects for regularization of his or her status in Slovenia.

## Section 8: Entry bans

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

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

- a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted; **Yes**
- b) Entry-bans are automatically imposed on all return decisions other than under a); **No**
- 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>20</sup>	Yes	<i>As risk of absconding is one of the reasons for issuing a forced return decision, that also means imposing the entry ban.</i>
The third-country national concerned poses a risk to public policy, public security or national security <sup>21</sup> .	Yes	
The application for legal stay was dismissed as manifestly unfounded or fraudulent <sup>22</sup>	No	
The obligation to return has not been complied with <sup>23</sup>	Yes	
Other (e.g. please indicate and add rows as appropriate)		

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

5 years

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

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

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<sup>20</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).  
<sup>21</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).  
<sup>22</sup> As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).  
<sup>23</sup> As stipulated in the Return Directive Article 11(1)(b).

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**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?

**No.**

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

- a) On the day the return decision is issued; **No**
- b) On the day in which the third-country national leave the EU; **Yes**
- c) Other (please specify)

/

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

- a) Alerts are entered into the SIS systematically; **Yes**
- b) Alerts are entered into the SIS on a regular basis; **No**
- c) Alerts are entered into the SIS on a case-by-case basis; **No**
- d) Other (please specify)

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

**No.** Not systematically, only if a decision on forced return is issued, which is normally not the case - in such cases more likely a decision on voluntary return would be issued.

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

A misdemeanour, the prescribed fine for this misdemeanour is from 500 to 1.200 EUR.

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

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



**Table 8 Practical challenges for the implementation of entry bans**

Challenges associated with entry ban:	Yes/No, n so cases	Reasons
Compliance with entry bans on the part of the third-country national concerned		There seems to be a problem with return decisions from other EU countries if the decision does not clearly define the obligation of the return and consequently third-country nationals believe that complying with the decision means just leaving the particular country and not the Schengen zone in whole.
Monitoring of the compliance with entry bans	No	Entering the information on complying with the decision is still not done systematically therefore monitoring is hindered
Cooperation with other Member States in the implementation of entry bans <sup>24</sup>		
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges (please specify and add rows as necessary)		

**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.)

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## 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?

Slovenia adopted standards and procedures laid down in the Return Directive and is striving to implement them in accordance with its general principles. Analysing the facts and circumstances preventing the decisions to be carried out, many aspects need to be considered and reviewed.

These are some of the challenges Slovene authorities are encountering in implementation of return policy and measures, as well as lessons learned throughout implementation of the migration legislation:

1.) Monitoring of the implementation of return measures is not yet systematic. Statistical data, despite some progress is not yet comprehensive enough, for example there are no reliable statistics on implementation of voluntary return decisions or used alternatives to detention in return procedures, forced decisions are not aggregated by the main reason for such decision therefore

<sup>24</sup> This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

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analysing to what extent forced return decisions are issued due to non-compliance with voluntary decisions, is not possible. Statistical aggregation is unfortunately not available. Nevertheless, there is a system of monitoring in place in accordance with special agreement between the Police and designated NGO.

2.) Inconsistent use of the second generation of the Schengen Information System by member states does not provide for a reliable source of information on entry bans, neither the fact whether other EU member has already imposed return measure, perhaps without entry ban. For efficient implementation of return decision even decisions on voluntary return should be shared among transit countries in order to prevent new procedures. There were few cases where third-country nationals illegally residing in the EU were apprehended when exiting Slovenia; as they did not possess document proving that they are implementing voluntary return order, the procedure was initiated (again) in Slovenia.

3.) Return decisions in most cases order third-country nationals to leave the country, but not the Schengen area, much less to return to the country of origin; there have been cases of third-country nationals coming to Slovenia believing they have complied with return decision issued by Austrian authorities. There are no specific guidelines nor responsibility of the competent authority to explain the third-country national where or whom to present the decision or how to receive confirmation on its implementation. Third-country national exiting Slovenia (and the Schengen area) normally presents the border police with the return decision, the exit is registered in the system as execution of the return decision.

4.) Slovene case-law is not yet rich enough to significantly influence the practice. In addition, the transfer of the decisions and the reasoning of the judgments back to the first-instance authority is rather limited and improving the quality of procedures and decisions therefore slower.

5.) Determining the best interest of the child (unaccompanied minor) in Slovenia is provided by appointed legal guardian. The legal guardians' duty is to guarantee for and monitor implementation of the child's best interest. However, competent authorities are aware that there are some gaps, which need to be improved to make assessment procedure more effective, such as containing more in-depth explanations of facts or elements that were considered, when making a final decision. This might be formalized through Child protection Standard Operating Procedures that currently developed by different state and non-state actors. Also, Slovenia is facing with similar problems, as most of Member States and EU wider, such as providing false identity by the unaccompanied minors during assessment procedure, challenges with assessing age of the unaccompanied minors, etc. For that reason more should be done to improve methodology of age assessment on EU level or at least minimum standards and sufficient guidance in age assessing procedures need to be adopted.

6.) In its decisions, the Administrative Court refers to gradual application of the measures provided for in the Return Directive and emphasizes the importance of the principle of proportionality. Even when certain conditions for issuing a decision on forced return are fulfilled, the competent authority still needs to assess whether more lenient measures would be enough for the return to be carried out. The court recalls that there should be no automatism but a careful weighing, which must be clearly argued in the decision.

7.) Assessments of the risk of non-refoulement all along the different phases of the asylum and return procedures, can cause the delays, but without such careful assessment, an important human right can be violated.

8.) Determination of the best interests of the child should be a part of a wider protection system. Decisions on the return of unaccompanied minors should be based on individual, multi-disciplinary assessments of their best interests, such assessment should be adequately documented.

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

EU rules on return create basis for the Member States to design their own return policy with enough margin of appreciation in transposition to adapt them to their own, national legal

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standards and procedures.

After transposition of these rules there is still need for evaluation, revision and improvements based on gained experience. Effectiveness therefore depends on the quality of such process. Slovenia has been implementing the Return Directive for four years and the findings of this national contribution show that the trend has nevertheless changed and there are still steps to be made towards effective return procedures with all the necessary procedural safeguards.

## **ANNEX 1 – SENSITIVE INFORMATION**

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

NTR.