



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

Draft Common Template of EMN Focussed Study 2017

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

1 STUDY AIMS AND SCOPE

The return of irregular migrants is one of the main pillars of the EU's policy on migration and asylum. However, in 2014, it was estimated that less than 40% of the irregular migrants who were ordered to leave the EU departed effectively.¹ In addition, recent data made available to Eurostat show that return rates at EU level have not improved despite the important increase in the number of rejected asylum applications and in the number of return decisions issued between 2014 and 2015.² As a result, the European Commission has emphasised in its EU Action Plan on Return published on 9th September 2015,³ and, subsequently, in its communication on a more effective return policy in the EU published on 2nd March 2017 and the attached Recommendation,⁴ the need for a stronger enforcement of EU rules on return in order to increase the overall effectiveness of the EU's return policy.

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

² Communication from the Commission to the European Parliament and to the Council on *a More Effective Return Policy in the European Union – a Renewed Action Plan*, 2nd March 2017, COM(2017) 200 final

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

⁴ Communication on *a More Effective Return Policy in the European Union – a Renewed Action Plan*, *op. cit.*, and Commission Recommendation on *making returns more effective when implementing Directive 2008/115/EC*, 2nd March 2017, C(2017) 1600.

This study **aims** at analysing the impact of EU rules on return – including the Return Directive⁵ and related case law from the Court of Justice of the European Union (CJEU) – on Member States' return policies and practices and hence on the effectiveness of return decisions issued across the EU. The study will present an estimation of the scale of the population of irregular migrants who have been issued a return decision but whose return to a third country has, as yet, not been carried out. The study will also seek to provide an overview of the challenges encountered by Member States in effectively implementing returns, as well as identify any good practices developed to ensure the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of *non-refoulement*. Such challenges and good practices may cover national implementing measures or interpretations of concepts used under EU law (e.g. risk of absconding) or of the conditions to implement certain EU provisions, such as Article 15 of the Return Directive on detention. Conversely, the aim of the study is NOT to make an overall assessment of whether return policies in general are an effective instrument to manage or address migration – be it in the view of EU Member States, the countries of origin or the migrants themselves.

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

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

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

- ★ The 2016 **EMN Study on the 'Return of rejected asylum seekers'**.⁷ The study investigated the specific challenges in relation to the return of rejected asylum seekers and Member State responses to these challenges. The study also investigated national measures to prepare asylum seekers for return during the asylum procedure to anticipate the possibility that their applications would be rejected.
- ★ The 2015 EMN Study on **'Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities'**.⁸ The study looked into the different approaches followed by the Member States to ensure that irregular migrants were informed of options for return, with particular reference to voluntary and assisted voluntary return.

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

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

⁷ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf, last accessed on 30th March 2017.

⁸ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/info_on_return_synthesis_report_20102015_final.pdf, last accessed on 30th March 2017.

- ★ The 2014 **EMN Study on the 'Use of detention and alternatives to detention in the context of immigration policies'**.⁹ The study aimed at identifying similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of Member States' immigration policies. The study also collected evidence of the way detention and alternatives to detention contributed to the effectiveness of return and international protection procedures.
- ★ The **2014 EMN Study on 'Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries'**.¹⁰ The study assessed the extent to which Member States used entry bans and readmission agreements to enhance their national return policies. **Incentives to return to a third country**, while not being covered by a EMN Study, have been analysed in an EMN Inform updated in 2016 that provided an overview of the results of the review of 87 programmes implemented by 23 Member States and Norway to assist migrants to return and to support their reintegration.¹¹

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

2 EU LEGAL AND POLICY CONTEXT

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

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

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

⁹ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf, last accessed on 30th March 2017.

¹⁰ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_reentry_bans_and_readmission_agreements_final_december_2014.pdf, last accessed on 30th March 2017.

¹¹ EMN Inform: *Overview: Incentives to return to a third country and support provided to migrants for their reintegration*, June 2016, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-informs/emn-informs-emn_reg_inform_-_in-cash_in-kind_assistance_to_return_june_2016.pdf, last accessed on 30th March 2017.

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

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

¹⁴ *Directive 2008/115/EC*, op. cit.

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

Following the dramatic increase in arrivals of migrants to the EU in 2014 and 2015, a **European Agenda on Migration** was adopted on 17th May 2015.¹⁶ The Agenda set out actions in the areas of humanitarian response, international protection, border management, return and legal migration and encouraged Member States to step up their efforts to effectively return irregular migrants. Similarly, the European Council Conclusions of 25th-26th June 2015 called for all tools to be mobilised to increase the rate of effective returns to third countries.¹⁷ Subsequently, the **EU Action Plan on Return** of 9th September 2015 proposed measures across two strands: i) enhancing cooperation within the EU; ii) enhancing cooperation *with third countries* (origin and transit). In order to increase the effectiveness of return, the Plan asked for enhancing efforts in the area of voluntary return, stronger enforcement of EU rules, enhanced sharing of information on return, increased role and mandate for Frontex as well as for the establishment of an “integrated system of return management”.¹⁸

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

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

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

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

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions, *A European Agenda on Migration*, 13th May 2015, COM(2015) 240 final.

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

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

¹⁹ European Commission, *Commission Recommendation of 1.10.2015 establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks*, 1st October 2015, C(2015) 6250 final, 1.10.2015.

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

²¹ Communication on a *More Effective Return Policy in the European Union – a Renewed Action Plan*, *op. cit.*, and Commission Recommendation on *making returns more effective when implementing Directive 2008/115/EC*, 2nd March 2017, C(2017) 1600.

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

4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The primary questions the Study will address include:

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

5 RELEVANT SOURCES AND LITERATURE

EU Legislation

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

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

Commission policy documents

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

EMN Studies

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

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

²³ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf, last accessed on 4th April 2017.

²⁴ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf, last accessed on 4th April 2017.

²⁵ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf, last accessed on 4th April 2017.

²⁶ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_a_more_effective_return_policy_in_the_european_union_-_a_renewed_action_plan_en.pdf, last accessed on 4th April 2017.

²⁷ Available at: http://europa.eu/rapid/press-release_IP-17-350_en.htm, last accessed on 4th April 2017.

²⁸ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/return-migration/emn_return_migration_booklet_feb08_en.pdf, last accessed on 4th April 2017.

²⁹ Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf, last accessed on 4th April 2017.

³⁰ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf, last accessed on 4th April 2017.

³¹ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_reentry_bans_and_readmission_agreements_final_december_2014.pdf, last accessed on 4th April 2017.

³² Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf, last accessed on 4th April 2017.

EMN Informs

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

EMN Ad-Hoc Queries

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

Other studies and reports

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

³³ Available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf, last accessed on 4th April 2017.

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

³⁵ Available at: http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf, last accessed on 4th April 2017.

³⁶ Available at: http://cadmus.eui.eu/bitstream/handle/1814/45185/MPC_REDIAL_2016_05.pdf?sequence=1&isAllowed=y, last accessed on 4th April 2017.

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

6 AVAILABLE STATISTICS

EU level

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

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

National level

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

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

7 DEFINITIONS

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

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

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0.⁴¹

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

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

- one’s country of origin; or
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or

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

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

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

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

- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ADVISORY GROUP

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

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

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9 TIMETABLE

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

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

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

10 TEMPLATE FOR NATIONAL CONTRIBUTIONS

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

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

Guidance for filling in the Common Template

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

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

EMN FOCUSSED STUDY 2017

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

Top-line "Factsheet" (National Contribution)

National contribution (one page only)

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

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

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

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

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?⁴³ Yes/No

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

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

⁴³ 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)).

subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures);

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

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).

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

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

Section 2: Systematic issuance of return decisions

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

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

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

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

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

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

If Yes, please elaborate on the type of measures

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

Yes/No

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

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

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

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

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

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

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

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

If Yes, please describe such mechanism:

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

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

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),⁴⁴ as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).

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

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

Table 1 Assessment of the risk of absconding

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

⁴⁴ For example, the EMN Focussed Study 2014 on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'; the Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)" (Requested by Estonian NCP on 15 October 2014); and the "Ad-Hoc Query on the Return Directive (2008/115/EC)article 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

Evidence of previous absconding		
Provision of misleading information		
Non-compliance with a measure aimed at preventing absconding		
Non-compliance with an existing entry ban		
Lack of financial resources		
Unauthorised secondary movements to another Member State		
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/No*
- b) Deposit of an adequate financial guarantee; *Yes/No*
- c) Submission of documents; *Yes/No*
- d) Obligation to stay at a certain place; *Yes/No*
- e) Other (please describe)

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)

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.)

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/EC⁴⁵ and Council Decision 2004/191/EC;⁴⁶ 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 2016/1953.⁴⁷

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

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

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

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

SECTION 4.1. MUTUAL RECOGNITION

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

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

If Yes, does your Member State:

- a) Initiate proceedings to return the third-country national concerned to a third country; Yes/No
- b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision; Yes/No
- c) Other (please specify)

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

⁴⁵ 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

⁴⁶ 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.

⁴⁷ 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

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?⁴⁸ Yes/No

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

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

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

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.

SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

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

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

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

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

- a) If there is a risk of absconding; Yes/No
- b) If the third-country national avoids or hampers the preparation of a return or removal process; Yes/No
- c) Other (please specify).

⁴⁸ Ibid

Q21. How often does your Member State make use of detention for the purpose of removal? Please complete the table below for each reference year (covering a 12-month period, from 1st January to 31st December).⁴⁹

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						
Number of third-country nationals placed in detention (men)						
Number of third-country nationals placed in detention (women)						
Number of families in detention						
Number of UAMs in detention						

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)?⁵⁰

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

Please elaborate under which circumstances:

⁴⁹ The following (Member) States provided quantitative information on the use of detention for the period 1st January 2012 -31st July 2016 through the EMN Ad-Hoc Queries on the 'Use of Detention in Return Procedures - Requested by COM on 30th November 2015' and 'Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1st January-31st December 2016.

⁵⁰ Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

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

a) Judicial authorities; *please specify*

b) Administrative authorities; *please specify*

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

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

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

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

If Yes, how long after the start of detention?

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

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

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

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.*)?

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*

b) Administrative authorities; *please specify*

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

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

Q25. [EC Recommendation (10) (c)] How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31st December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors.⁵¹ If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

Table 3 Detention capacity as of 31st December 2016

		Situation as of 31 st December 2016	Comments
Number of detention centres			
Number of places available in detention centres per category of third-country nationals	Men		
	Women		
	Families		
	Unaccompanied minors		
	Total		

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.*)

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

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

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

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

⁵¹ Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

Please elaborate on the circumstances in which this happened:

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

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.)

SECTION 4.4. USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

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

Table 4 Alternatives to detention

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	<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>
Obligation to surrender a passport or a travel document	
Residence requirements (e.g. residing at a particular address)	
Release on bail (with or without sureties) <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>	
Electronic monitoring (e.g. tagging)	
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>	
Release to care worker or under a care plan	
Community management programme	
Other alternative measure available in your (Member) State. Please specify.	

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)

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.)

Section 5: Procedural safeguards and remedies

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

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

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

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

If No, under which circumstances is it assessed?

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

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

- a) Judicial authority; *Yes/No*

- b) Administrative authority; *Yes/No*
- c) Competent body composed of members who are impartial and who enjoy safeguards of independence. *Yes/No*

If Yes to c), please specify

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

If Yes, please specify whether the deadline is:

- a) Less than a week;
- b) Two weeks;
- c) One month;
- d) As long as the return decision has not been enforced.
- e) Other (please specify)

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

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

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

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

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

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

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

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

Section 6: Family life, children and state of health

This section will study Member States' practices on the interpretation and implementation of EU rules relating to: the assessment of the best interest of the child; the assessment of family life; the

assessment of the state of health of the third-country national concerned; irregularly staying unaccompanied minors; and the use of detention in the case of minors, as per Articles 3, 10 and 17 of the Return Directive. Questions referring to children below refer both to accompanied and unaccompanied minors, unless specified

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

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

Please differentiate between return and detention if applicable

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?

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

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

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

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

If Yes, please describe such policies

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

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

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

- a) The third-country national brings his/her own medical certificate; *Yes/No*
- b) The third-country national must consult with a doctor appointed by the competent national authority; *Yes/No*
- c) Other (*please describe*)

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

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

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

If Yes, for how long is the medication provided?

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)

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.

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.

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)

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.)

Section 7: Voluntary departure

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

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

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

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

OR

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

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

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

- a) The legal/ policy provisions regulating the facilitation of such information;
- b) The actors involved / responsible;
- c) The content of the information provided (e.g. the application procedure, the deadlines for applying, the length of the period for voluntary departure, etc.);
- d) The timing of the information provision (e.g. on being issued a decision ending legal stay/return decision);
- e) The tools of dissemination (in person (written), in person (oral), via post, via email, in a telephone call, in public spaces, etc.),
- f) The language(s) in which the information must be given and any accessibility / quality criteria (visual presentation, style of language to be used, etc.),
- g) Any particular provisions for vulnerable groups (e.g. victims of trafficking, unaccompanied minors, elderly people) and other specific groups (e.g. specific nationalities).

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?⁵²

- a) Yes, to refrain from granting a period of voluntary departure;
- b) Yes, to grant a period for voluntary departure shorter than seven days;
- c) No.

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

- a) When there is a risk of absconding; *Yes/No*
- b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent; *Yes/No*
- c) When the person concerned poses a risk to public policy, public security or national security; *Yes/No*
- d) Other (*please specify*)

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

⁵² 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. [EC Recommendation (19)] In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case? *Yes/No*

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

- a) The prospects of return; *Yes/No*
- b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; *Yes/No*
- c) Other (*please specify*)

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

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

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

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

If Yes, please describe:

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		
Absconding during the period for voluntary departure		
Verification of the departure within the period of voluntary departure		
Other challenges (please specify and add rows as necessary)		

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.)

Section 8: Entry bans

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

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

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

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

- a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted; *Yes/No*
- b) Entry-bans are automatically imposed on all return decisions other than under a); *Yes/No*
- c) Entry bans are issued on a case by case basis on all return decisions other than a); *Yes/ No*

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

Table 7: Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
Risk of absconding ⁵³		
The third-country national concerned poses a risk to public policy, public security or national security ⁵⁴ .		
The application for legal stay was dismissed as manifestly unfounded or fraudulent ⁵⁵		
The obligation to return has not been complied with ⁵⁶		
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?

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

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

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

⁵⁵ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

⁵⁶ As stipulated in the Return Directive Article 11(1)(b).

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

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

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

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

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

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

Please specify whether;

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

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

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

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

- a) Yes, a misdemeanor
- b) Yes, a criminal offence
- c) No

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

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

Table 8 The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry		
Contribute to ensuring compliance with voluntary return ⁵⁷		
Cost-effectiveness of entry bans		
Other aspects of effectiveness (please specify)		

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		
Monitoring of the compliance with entry bans		
Cooperation with other Member States in the implementation of entry bans ⁵⁸		
Cooperation with the country of origin in the implementation of entry bans		

⁵⁷ 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?

⁵⁸ This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

Other challenges (please specify and add rows as necessary)		
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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.)

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?

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

ANNEX 1 – SENSITIVE INFORMATION

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