

Spain
2017

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



GOBIERNO
DE ESPAÑA

MINISTERIO
DE ASUNTOS EXTERIORES
Y DE COOPERACIÓN

MINISTERIO
DE JUSTICIA

MINISTERIO
DEL INTERIOR

MINISTERIO
DE EMPLEO
Y SEGURIDAD SOCIAL

The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/38/EC and is cofinancially supported by the European Union.

Its objective is to meet the information needs of EU institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

The Spanish NCP is composed by experts from the Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation, and Ministry of Justice and the General Prosecutor's Office. It is coordinated by the Deputy General Directorate for Legal Affairs of the General Secretariat for Immigration and Emigration.

Contact

Deputy General Directorate for Legal Affairs of the General Secretariat for Immigration and Emigration.

(Co-ordinator of the National Contact Point for the European Migration Network)

José Abascal, 39. 28071 Madrid

E-mail: rem@meyss.es

Internet:

<http://extranjeros.empleo.gob.es/en/EuropeanMigrationNetwork/index.html>

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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.

In Spain, the derogation provided for by article 2.2 of the Return Directive applies to third-country nationals who are subject to a refusal of entry, third-country nationals who are apprehended or intercepted while irregularly crossing the external border, 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. The main differences with the Directive's procedures concern detention of persons subject to a refusal of entry, and the impossibility to impose an entry ban to those apprehended or intercepted while irregularly crossing the external border.

No recent changes in the legal and/or policy framework have taken place. There is a strong pressure from some sectors of the civil society to ban detention of returnees and close all detention centres.

Return decisions are issued by the Government Delegate /Deputy Delegate. Detention must be requested from the judge, who takes into account all relevant circumstances when assessing the need to resort to detention.

Regular reporting to the authorities, submission of documents and the obligation to stay at a certain place are the most commonly used alternatives to detention.

Mutual recognition is foreseen in the Spanish Alien Law. In principle, a return decision issued by another Member State can be directly enforced.

The European travel document for return is currently not being used with any third country. It was sometimes used in the past and could be resorted to again in the future, if accepted by a third country.

The overall maximum detention period is 60 days. Detention takes place exclusively in specialised detention facilities.

Return decisions can be appealed before the administrative and the judicial authority. Judicial appeal does not have an automatic suspensive effect; suspension has to be requested from the judge.

Return of children follows a totally different procedure, which takes into account the best interest of the child as a priority. Their rights are guaranteed by the Public Prosecutor specialized in minors. In order to determine the best interest of the child, reports are requested from the Embassy of the country of origin and from the regional institution under which the child is placed, taking into account all relevant elements. Minors who cannot be returned are granted a right to stay.

The enforcement of a return decision can be postponed on the grounds of health issues. Normally, pregnancy is always a cause of postponement. Minors, families with children, pregnant women, persons with a medical condition, victims of trafficking and victims of gender violence are categories of vulnerable persons whose needs are addressed throughout the return procedure.

Minors are not detained and families with children almost never.

A period of voluntary departure is granted depending on the case, according to the conditions established in the Directive. No periods shorter than 7 days are granted, and those shorter than 15 days are an exception.

Entry bans are imposed on all return decisions. When the obligation to return has been complied with, the entry ban can be revoked. With this aim, returnees have to report at the border or in the Consulate. This is also a method to verify the period of voluntary departure has been complied with. An entry ban starts applying on the day in which the third-country national leaves the EU. Only then is it entered into the SIS.

If a TCN ignores an entry ban, it can be sanctioned only through administrative procedures, with a new return decision and the entry ban starting to count again from zero.

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.

Alien Law (Organic Law 4/2000)

Alien Law Regulation (Royal Decree 557/2011)

Regulation on Detention Centres (Royal Decree 162/2014)

Several internal instructions

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?¹ Yes

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

None.

¹ Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b)).

If Yes, please describe:

- a) The categories of third-country nationals to whom this derogation applies (third-country nationals who are subject to a refusal of entry AND/OR third-country nationals who are apprehended or intercepted while irregularly crossing the external border AND/OR third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures);
- b) How the return procedure applied in such cases differs from standard practice (*e.g.*, *a period for voluntary departure is not granted, appeals have no suspensive effect, etc.*)

a) This derogation applies to third-country nationals who are subject to a refusal of entry, third-country nationals who are apprehended or intercepted while irregularly crossing the external border, third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.

b) The main differences concern detention of persons subject to a refusal of entry, and the impossibility to impose an entry ban to those apprehended or intercepted while irregularly crossing the external border.

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).

None.

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

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

There is a strong pressure from some sectors of the civil society to ban detention of returnees and close all detention centres.

At the same time, there is a strong pressure from EU institutions and agencies (Commission, Frontex) to make wider use of detention.

Spanish legislation on the matter requires some amendments, but the political situation in Parliament would block any progress.

Section 2: Systematic issuance of return decisions

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

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

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

The Government Delegate or Deputy Delegate in the province.

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*)

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*

If Yes, please elaborate on the type of measures

Enforcement of return decisions is a competence of the National Police. Thus, the relevant police inquiry procedures can be used.

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

No

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

It is legally and technically possible, but not practical, since the person would lose the eventual flight/ferry connection.

Additionally, voluntary departure is a reason for not imposing (or revoking) an entry ban, and someone detected on exit is actually leaving voluntarily.

Thus, the whole procedure would have no sense and could only impair effective return, which is against the spirit of the Directive.

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? *No*

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

Negative decisions on residence permits are accompanied by a general statement that the person is obliged to leave. However, a specific return decision requires a separate 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*

Yes, Spanish legislation specifically contemplates the possibility that third-country nationals irregularly staying on our territory may be authorized to stay or reside in Spain on the grounds of humanitarian reasons, special bonds with Spain (if certain conditions are complied, a certain period of time remaining in Spain, a work contract, family ties....) and exceptional circumstances: collaboration with public authorities, reasons of national security or public interest.

These assumptions don't have a special type of residence permit.

Anyone, of any nationality, that fulfils the requirements could obtain de residence permit.

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

In this sense, Organic Law 4/2000 provides the possibility of a temporal residence permit by exceptional circumstances (art 31.3) for the foreigners being in Spain in the event of rooting, international protection, humanitarian reasons, collaboration with the authorities and reasons of national security or public interest.

Royal Decree 557/2011 builds on this provision, detailing the requirements and situations of exceptional circumstances.

The authorization by rooting reasons are work reasons, social roots and family ties. Applicants have to fulfil several conditions, depending on the type of rooting.

- In the case of social roots: a continued stay in the country for 3 years, absence of any criminal record in Spain and in the country of origin, an employment contract signed with an entrepreneur with a duration of at least one year, family ties with other legal residents in Spain or a report issued by the regional authorities demonstrating his/her social integration.
- In the case of work reasons, a court decision recognising the existence of labour relations for at least 6 months, absence of criminal records and a stay in Spain of at least 2 years.
- In the case of family ties, the foreigner has to be parent of a minor with Spanish nationality, being this minor in charge of the applicant; or in the case of sons of parents who had been originally Spaniards.

The authorization by reasons of international protection are very exceptional and different from the common reasons provided by international protection normative (Law 12/2009). This authorisation is issued by the Ministry of Interior on the motion of the Inter-ministerial Commission of Asylum and Refugee Policy.

The authorization by humanitarian reasons includes several situations: victims of some types of offences with the aggravating circumstance of racism, anti-Semitism or other type of discriminations included in the Criminal Code; victims of domestic violence (in both cases a final judicial resolution is required); foreigners with a sudden and serious disease, which needs a special treatment not available in the country of origin; and cases where returning for a visa in the country of origin involves a danger for the person or the family.

The authorization by reasons of collaboration with public authorities, reasons of national security or public interest relates to the collaboration with administrative, police and judicial authorities. These authorities could invite the competent bodies to issue a residence permit for the person under such circumstances.

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

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

Q10. Does your Member State have any mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of *refoulement* before enforcing a removal? *Yes*

If Yes, please describe such mechanism:

The returnee can request the revocation of the return decision by the Government Delegate/Deputy Delegate. The enforcement of the return decision can be appealed at judicial level.

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*

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),² 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	Yes	All these elements, included in recommendation 15, are circumstances to be taken into account by the judge, explicitly or implicitly, when assessing the need to resort to detention.

² 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).

refusing to provide fingerprints		
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	Yes	
Provision of misleading information	Yes	
Non-compliance with a measure aimed at preventing absconding	Yes	
Non-compliance with an existing entry ban	Yes	
Lack of financial resources	Yes	
Unauthorised secondary movements to another Member State	Yes	
Other (please describe)		

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

- a) Regular reporting to the authorities; *Yes*
- b) Deposit of an adequate financial guarantee; *No*
- c) Submission of documents; *Yes*
- 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. 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/EC³ and Council Decision 2004/191/EC;⁴ 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 2016/1953.⁵

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? *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*

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

Mutual recognition is foreseen in the Spanish Alien Law. In principle, a return decision issued by another Member State can be directly enforced.

If Yes, does your Member State:

³ 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

⁴ 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.

⁵ 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

- 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*)

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

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?⁶ *No*. The European travel document for return is currently not being used with any third country. It was sometimes used in the past and could be resorted to again in the future, if accepted by a third country.

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.

The National Police, at central or local level, contacts the Consulate of the third country. The request is made as soon as possible, in order not to extend detention (when imposed) unnecessarily.

SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

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

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

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

⁶ Ibid

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*).

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).⁷

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					7597	
Number of third-country nationals placed in detention (men)					7084	
Number of third-country nationals placed in detention (women)					513	
Number of families in detention					0	
Number of UAMs in detention					0	

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)?⁸

⁷ 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.

⁸ 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.

60 days

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

Please elaborate under which circumstances:

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

a) Judicial authorities; *please specify*

Instructing judge of the place of apprehension.

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.*

Detention can be reviewed both ways. However, with a maximum detention period of only 60 days, such reviews are of little relevance.

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.)?

No automatic review is foreseen.

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*

The judge that ordered detention.

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.⁹ 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		6	
Number of places available in detention centres per category of third-country nationals	Men	1234	
	Women	172	
	Families		
	Unaccompanied minors		
	Total	1406	

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)? **Yes**

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

⁹ Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016⁹ and provide only updated information in response to this question.

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? *No*

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? *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 police or immigration authorities at regular intervals)	Third-country nationals subject to reporting obligations are required to report to the National Police either regularly or only once, when the return decision is expected to be ready for notification. When reporting, the person has to present an identification document and sign the reporting protocol.
Obligation to surrender a passport or a travel document	Yes. Upon reception, a written document is issued, which will be valid as identification document for police purposes.
Residence requirements (e.g. residing at a particular address)	Yes. Residence in a particular place (normally a given municipality).
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</i>	No.

<i>guarantor (e.g. family member, NGO or community group)</i>	
Electronic monitoring (e.g. tagging)	No
Guarantor requirements <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	No.
Release to care worker or under a care plan	No.
Community management programme	No.
Other alternative measure available in your (Member) State. Please specify.	

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*

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*
- b) Administrative authority; *Yes*
- 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*

If Yes, please specify whether the deadline is:

- c) *One month;*

Q35. [EC Recommendation (12) (c)] In your Member State, does the appeal against a return decision have a suspensive effect? *No, but it can be requested from the judge.*

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, an administrative hearing*

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?

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

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

Minors, families with children, pregnant women, persons with a medical condition, victims of trafficking, victims of gender violence.

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?

Return of children follows a totally different procedure, taking into account the best interest of the child. Their rights are guaranteed by the Public Prosecutor specialized in minors.

Q41. In your Member State, what elements are taken into account to determine the best interest of the child when determining whether a return decision should be issued against an irregularly staying minor (aside from the assessment of the *non-refoulement* principle)?

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

Elements considered	Yes/No	Comments
Child's identity	Yes	For all these issues, reports are requested from the Embassy of the country of origin and from the regional institution under which the child is placed.
Parents' (or current caregiver's) views	Yes	
Child's views	Yes	
Preservation of the family environment, and maintaining or restoring relationships	Yes	
Care, protection and safety of the child	Yes	

Situation of vulnerability	Yes	
Child's right to health	Yes	
Access to education	Yes	
Other (please describe)		

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*

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

Either a return decision is issued or a residence permit is granted.

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

ES will participate in a specific action funded by FAMI along with other EU MS. Some of the aims of the project are linked to the reintegration of unaccompanied minors:

- Fostering the reintegration of minors in their country of origin by way of reintegration projects, in accordance with their best interest and, in particular, through family reunification.
- Reintegrating minors through the educational system and through professional training. In this regard, a pilot centre dedicated to welcoming unaccompanied minors to their country of origin could be financed.

The European Commission gave its agreement to this project on 20 March, 2015. Its implementation is foreseen for the period from 2018 to 2022.

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

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*)

The third country national is examined by a doctor hired by the competent national authority.

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

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

The authority issuing the return decision.

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

If Yes, for how long is the medication provided?

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*)

Normally, pregnancy is always a cause of postponement.

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.

The judge deciding about detention has to take into account these 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.

Minors are not detained and families with children almost never. Pregnant women are normally not detained, since this is a cause of postponement. In case of serious illness, detention isn't applied either.

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? *No*

OR

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

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

A period of voluntary departure is granted depending on the case.

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?¹⁰

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

¹⁰ 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'.

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*
- b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent; *Yes*
- c) When the person concerned poses a risk to public policy, public security or national security; *Yes*
- d) Other (*please specify*)

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

Between 7 and 30 days. Only exceptionally shorter than 15 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*

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*)

Not specified in our law.

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; *Yes*
- b) The existence of children attending school; *Yes*
- c) The existence of other family and social links; *Yes*
- 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*

If Yes, please describe:

The returnee must report to the border check authorities or the consulate in order to have the entry ban cancelled.

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

Table 6: Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
Insufficient length of the period for voluntary departure	No	
Absconding during the period for voluntary departure	Yes	
Verification of the departure within the period of voluntary departure	Yes	In spite of the possibility to have the entry ban cancelled
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?

Entry bans are imposed on all return decisions.

- 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
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Risk of absconding ¹¹		
The third-country national concerned poses a risk to public policy, public security or national security ¹² .		
The application for legal stay was dismissed as manifestly unfounded or fraudulent ¹³		
The obligation to return has not been complied with ¹⁴		When the obligation to return has been complied with, the entry ban can be revoked.
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?

10 years

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

Yes

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

5 years

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

Please specify whether;

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

¹² As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

¹³ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

¹⁴ As stipulated in the Return Directive Article 11(1)(b).

- 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*)

It is entered when it starts applying

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*

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

The possibility to issue return decisions on exit is not used, but if applied, it would involve issuing an entry ban.

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

c)No

It can be sanctioned only through administrative procedures (a new return decision and the entry ban starts counting again from zero).

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

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

Table 8 The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry		
Contribute to ensuring compliance with voluntary return ¹⁵		
Cost-effectiveness of entry bans		
Other aspects of effectiveness (please specify)		

¹⁵ i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

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

Table 9 Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	In some cases	
Monitoring of the compliance with entry bans	No	
Cooperation with other Member States in the implementation of entry bans ¹⁶	In some cases	Linked with the different practices for entering entry bans in the SIS
Cooperation with the country of origin in the implementation of entry bans	No	Not relevant
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.)

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?

Problems linked to national procedures remain secondary to those posed by readmissions by third countries.

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

They have an important harmonizing effect at EU level, which can reduce pull factors for irregular migration.

¹⁶ This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

ANNEX 1 – SENSITIVE INFORMATION

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



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