



Ad-hoc query on transposition of the Return Directive

Requested by EE EMN NCP on 11th May 2011

Compilation produced on 14th June 2011

Responses from Austria, Estonia, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Netherlands, Poland, Romania, Sweden, United Kingdom (13 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

Estonia has transposed the Return Directive (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), but would like to specify how some of the provisions of the Return Directive have been transposed in other Member States.

- 1) How are cases related to an alien arriving at the external border without a valid legal basis? Are these aliens also issued a return decision? Is an accelerated procedure used in such cases?
- 2) How is implementation of the entry ban regulated? Is it done by an official? For what period is it possible to apply the entry ban?
- 3) Is the entry ban subject to an appeal? How is that regulated?

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2. Responses

		Wider Dissemination? ¹	<ol style="list-style-type: none"> 1) How are cases related to an alien arriving at the external border without a valid legal basis? Are these aliens also issued a return decision? Is an accelerated procedure used in such cases? 2) How is implementation of the entry ban regulated? Is it done by an official? For what period is it possible to apply the entry ban? 3) Is the entry ban subject to an appeal? How is that regulated?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Estonia	Yes	<ol style="list-style-type: none"> 1) A return decision Estonia (hereinafter precept to leave) shall be issued to an alien who is staying in Estonia without a basis for stay (including the abovementioned group). If a precept to leave is imposed at the border check point to an alien leaving Estonia whose permitted period of stay on the territory of a member state of the Schengen Convention has expired then the term for voluntary compliance with the obligation to leave is not assigned by the precept to leave and the justification of the precept to leave shall only reveal the legal basis but not the factual basis, related circumstances or relevant considerations. 2) In the precept to leave the prohibition on entry shall be applied with regard to an alien for three years as of the date of compliance with the precept to leave. If the term for application of the prohibition on entry provided in subsection 1 of this section is disproportionate taking account of all the relevant circumstances, the prohibition on entry may be applied in the precept to leave for a shorter term or leave it unapplied. 3) The Minister of the Interior, or a higher official of the Ministry of the Interior authorised by the Minister shall revoke the prohibition on entry or shorten the period of validity of the prohibition on entry at the justified request of the alien or on the justified proposal of a governmental authority or a state agency administered by a governmental authority or at the request of the competent authority of a member state of the Schengen Convention, except Estonia, if the circumstances forming the basis for application of the prohibition on entry have changed or ceased to exist, or for humanitarian reasons if this does not pose a threat on national security or public order.
	Finland	Yes	<ol style="list-style-type: none"> 1) In accordance with Section 147a of the Aliens Act an alien arriving at the external border without a valid legal basis is issued a return decision without voluntary return option. If there are suspicions of forged travel document or other, the case will be subject to criminal investigation. 2) Entry ban will be imposed in accordance with Aliens act Section 150 by border or police official or Migration service depending on length of the ban and other circumstances. Maximum period is 5 yrs but under certain circumstances it can also be until further notice. If the alien has resided in Finland less than three months, Police and Border Guard are responsible for imposing the entry ban. Maximum period is in these cases two years. In other cases Finnish Immigration Service will impose the entry ban which is served along the decision on removal. 3) Decisions can be appealed to the Administrative Court. Entry ban imposed by the Border Guard is, however, effective once

¹ A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the [Compilation for Wider Dissemination](#) the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			denounced and the alien may be removed from the country regardless of appeal unless the Administrative Court bans the implementation.
	Germany	Yes	<ol style="list-style-type: none"> 1) The rejection at the border of foreigners who do not meet the requirements for entry into the Federal territory takes place in accordance with the arrangements regulated in Annex V to the Schengen Borders Code. This rejection does not fall within the scope of the Directive on the return of illegally staying third-country nationals, as the persons concerned have not yet entered the Federal territory and are thus not staying illegally within the meaning of Art. 2 (1) of the Directive. 2) The entry ban is a legal consequence of expulsion, deportation and removal, which generally lead to an alert for the purpose of refusing entry in the Schengen Information System (SIS). In direct application of the Directive on the return of illegally staying third-country nationals (implementation in domestic law is not yet complete), a time limit is to be imposed on the entry ban upon application by the foreigner. The period of validity of the entry ban is not generally permitted to exceed five years. The foreigner may file the application for imposition of a time limit on the entry ban at any time; he is to be informed of this possibility. 3) Appeals may be lodged by recourse to administrative law against the decision on expulsion, deportation and removal and against refusal to impose a time limit on the entry ban.
	Hungary	Yes	<ol style="list-style-type: none"> 1) The power of expulsion of police is just outside the border, besides four conjunctive conditions are satisfied, which are: <ul style="list-style-type: none"> • the illegal border crossing or attempted • it is detected by the police officer on border region • and during border control activities • there is an applicable readmission agreement. <p>The expulsion must be ordered by a decision, which must be disclosed with the person in his/her mother language or another foreign language which he/she understands also orally, as well as he /she will receive a copy. The duration of the expulsion and the associated entry and residence ban must be noted in the passport. Depend on many things that the third-country national when has to leave the territory of EU (for example: suitable document for travel, the conditions of expulsion are valid). There is such case when the person may be deported without custody, this is available in 24 hours.</p> 2) Unless otherwise prescribed in the relevant law, exclusion shall be ordered in conjunction with expulsion ordered under immigration laws, for maximum 5 years. This must be calculated from date of living the territory of the EU MS. The entry and residence ban must be ordered, because the police expulsions are implemented with removal. Independent entry and travel restrictions must be imposed if the authority has paid in advance the costs of removal, and the client has not assumed it. In this case the duration of the prohibition will be determined by the ordering immigration authority, which may be maximum three years and may be extended up to an additional three years occasionally. The ban should be removed immediately, if the causes of ordering cease. The person can not appeal against imposed prohibition. Third-country nationals who are subject to exclusion shall be admitted to the territory of the Republic of Hungary by permission of the immigration authority ordering the expulsion or the authority ordering the exclusion under special circumstances for a single entry and stay for a duration consistent with the purpose of entry, not exceeding three months, while the exclusion shall remain in effect. The request for such entry permit shall be submitted in writing to the competent consulate officer permanent in ordinary place of residence or in nationality of the country. 3) Expulsion orders may not be appealed; however, a petition for judicial review may be lodged within eight days of the date when the resolution was delivered. The court shall adopt a decision within fifteen days upon receipt of the petition. If the court grants the claim, the ordered entry bans connection with the expulsion will also be deleted. The ordered entry bans connection with the

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			expulsion may be withdrawn by police ex officio and on request, if the continuation is not justified subject to the significant changes of the circumstances.
	Italy	Yes	Please note that provisions of the Return Directive Directive (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) have not yet been transposed in Italy.
	Latvia	Yes	<ol style="list-style-type: none"> 1) Due to the terms of the Return Directive the Immigration Law provides a rule which states that if the alien's irregular residence in the Republic of Latvia has been detected in time when he/she is leaving the country, crossing the external border and it is impossible up to departure of International flight to issue the return decision, the State Border Guard officer informs the alien that a return decision will be issued to him. The return decision can be supplemented with an entry ban to Latvia and with a decision on an entry ban to Schengen territory. In this case, the Head of the State Border Guard or the authorized officer within 10 days of the alien's departure date issues return decision. The Return decision comes into force from the day of issuance. The Return decision is being sent to the address given by alien. Following the above, a return decision to an alien who is illegally residing in Latvia will be issued even if he /she is already leaving the country and has been detected on the external border. Accelerated procedure is not foreseen for issuance of a return decision. 2) In these cases official, who is responsible for the issuance of the return decision, can decide to set an entry ban for alien or not. It depends from the circumstances of the particular case. The entry ban can be set from 30 days up to 3 years. 3) In accordance with the Immigration Law the return decision and the decision on the entry ban can be appealed in subordinate order to higher administrative authority.
	Luxembourg	Yes	<p>We cannot answer at the moment this query because Luxemburg has not yet transposed the Return Directive. Nevertheless, the bill (projet de loi N° 6218) is being discussed by the Parliament (Chambre de Deputés). The bill probably will be voted in June 2011.</p> <p>According to the bill (No. 6218) that is being discussed in Parliament that probably will be voted on June 2011 the answers to your questions are as follows:</p> <ol style="list-style-type: none"> 1) A return decision will be taken against the foreigner that arrives to the external border (in Luxembourg the only external border is the international airport) that does not fulfill the requisites for entry and short term stay. The return decision will oblige the foreigner to leave the country immediately, if the public officials decide to execute the decision immediately (Modification to article 111(3) of the Law of Free Movement of Persons and Immigration). 2) The return decision can be completed with an entry ban with a maximum duration of five years that can be issued in the return decision or in a separate decision. The entry ban is taken by a decision of the ministry and he will take the decision on a case by case basis. The entry ban can be issue for more than five years if the foreigner represents a serious threat to the public order, public safety or national security. 3) The entry ban is not subject to an appeal. Nevertheless, the person that been the object of an entry ban can demand the lifting of the entry ban after a reasonable time (the delay will be considered according the circumstances) or in any case after three years of expulsion of the foreigner. He will have to demonstrate that the material circumstances have changed. The Ministry has 6 months to decide.

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	Netherlands	Yes	<ol style="list-style-type: none"> 1) Aliens refused entry at an external border are excluded by the Netherlands from the implementation of the Return Directive on basis of article 2 a of the Return Directive. So a return decision is not issued. There is no accelerated procedure. 2) The Netherlands don't have yet implemented the entry ban in national law. So at present entry bans are not issued. When implementation is finished an entry ban will be issued by members of the Aliens Police or the Royal Constabulary (Border police) . Also it will be possible that an entry ban is issued at the same time as a rejection of an application for legal stay, in the situation that no period for voluntary return is granted. In that case this will be done by members of the Dutch Immigration Service (IND). Also it will be possible to issue an entry ban in case of criminal offenses. The period for which an entry ban is issued varies from 1 year (overstayer) till 20 years (threat for national security). Of course, as dictated by the directive, it is possible to request a retraction of the entry ban. 3) Yes, an alien can appeal to the court, when issued an entry ban by the Aliens Police, Border Police or IND.
	Poland	Yes	<p>General remark: the new Act on Foreigners, which implements the Return Directive, has not been adopted yet. The information below, if not stated otherwise, refers to the present legislation in force. In case of new law, the legislation process has not been finished yet, which means that final provisions may differ from presented below.</p> <p>Ad. 1. Generally, a foreigner who breaches the immigration law shall be render a decision on expulsion from the territory of the Republic of Poland. This applies also to a foreigner who leaves Poland. In some cases (lack of required visa or residence permit, lack of financial resources, illegal border crossing or abuse of local border traffic regulations) a foreigner, instead of expulsion, may be obliged to leave the Polish territory within 7 days, if the circumstances of the case indicate that he / she shall carry out that obligation voluntarily.</p> <p>New draft law on foreigners eliminates distinction between expulsion and obligation to leave Poland. Instead, there will be a single procedure called “obligation to return”. Under the new law, the obligation to return will be issued i.e. if a foreigner who breaches immigration law, leaves Poland. The issuing authority (Voivode - governmental authority in the region - or Border Guard) and the form of execution (voluntary or escorted) will vary depending on circumstances.</p> <p>Ad. 2. An expulsion results with 5-year entry ban (3 years if the foreigner had covered the costs of expulsion). If a foreigner voluntarily carries out the obligation to leave Poland, the entry ban is being imposed for one year. The decision on expulsion is being issued by the Voivode. The decision on obligation to leave Poland is being issued by the Police or by the Border Guard. After expulsion or after foreigners left Poland voluntarily, the data concerning them are being put into the index of foreigners whose residence on the territory of the Republic of Poland is undesirable (hereinafter called “the index”). The data are put for a respective period of time (1 to 5 years). The index is being managed by the Head of the Office for Foreigners.</p> <p>In accordance with the new draft law on foreigners, an obligation to return will result with a ban on entry to Poland varying from 6 months to 5 years. The obligation will not be issued if the foreigner can be promptly handed over to a third country, pursuant to respective agreement, or if the foreigner may be brought to the border promptly after inadvertent illegal crossing.</p>

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			<ul style="list-style-type: none"> - aliens who failed to respect the return decision and have been removed under escort; (b) 2 years – in the case of an illegal stay from 1 year to 2 years; (c) 3 years – in case of an illegal stay from 2 to 3 years; (d) 5 years – in case of an illegal stay of over 3years. • The limits of prohibitions mentioned above can be reduced to a half for aliens who: <ul style="list-style-type: none"> (a) request assisted voluntary repatriation; (b) cover the expenses incurred by their removal from the territory of Romania; (c) reimburse subsequently to the Romanian Immigration Office the expenses incurred by their removal from the territory of Romania; (d) do not require any expenses related to international transport for their removal from the territory of Romania; • In case of the aliens whose visa or stay right were revoked or annulled because of failure of the purpose declared the limit is 6 months • In case of aliens who previously were granted a visa, temporary or long term stay right by using false information, false or falsified documents or other illegal means the limit is 2 years • In case of aliens against whom the court has ordered the safety measure of expulsion, the duration of the interdiction shall be equal to the duration of the punishment they have been sentenced to, but not less than 3 years. • In case of aliens who entered Romania during the interdiction period the limit is the same which was previously decided, but not less than 5 years • Against aliens who have or attempted to illegally cross the state border, the duration of prohibition shall be of 5 years. • Against aliens who: <ul style="list-style-type: none"> (a) have been notified by international organisations to which Romania is a member, as well as by institutions specialised in combating terrorism that they finance, prepare, support in any way or commit acts of terrorism; (b) there are indications that they are part of organised criminal organisations at international level or that they support in any way the activity of such groups; (c) there are serious reasons to assume that they have carried out or taken part in carrying out acts of violation against peace and humanity or war crimes or crimes against humanity, as provided by international agreements Romania is a part of, the duration of prohibition is 15 years. • Against aliens who: <ul style="list-style-type: none"> (a) have committed offences during previous stays in Romania or other states, against the Romanian state or against a Romanian citizen; (b) have introduced or attempted to introduce illegal aliens to the territory of Romania; (c) have previously broken, in an unjustified manner, the purpose declared when obtaining the visa, or when they entered the country, as the case may be, or the customs regulations, or they crossed or attempted to cross the borders illegally the duration of prohibition is 5 years. <p>3) Prohibition of entry to Romania may be appealed against by the alien within 10 days at the court of appeal responsible for the area where the body, which decided the measure, is located. The appeal does not suspend performance of removal measures. Decision of the instance shall be irrevocable.</p>
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	Sweden	Yes	Sweden is in the process of implementing the Return Directive (Directive 2008/115/EC) to national law. The provisions in this Directive has therefore not yet been implemented/transposed.
	United Kingdom	Yes	The UK has not opted into the Return Directive.
