AD HOC QUERY ON 2020.22 Duty of instruction pursuant to European Court of Justice ruling of 19 June 2018, case C-181/16 "Gnandi"

Requested by EMN NCP Germany on 3 April 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden plus Norway (23 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

In the ruling of the European Court of Justice of 19 June 2018 in the case C-181/16 ("Gnandi"), the Court states that while a Member State can adopt a return decision following a negative decision on an asylum application, that Member State is required to provide an effective remedy in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if an appeal is lodged, until a decision is taken by the judicial body.

According to this ruling, Member States are required to inform the applicant that, until a ruling has been taken by the First instance court on the appeal:
- removal is not allowed,

- the order to leave the country cannot be enforced,
- the period for voluntary departure will not start to run,
- detention in preparation for removal will not be implemented,
- entitlements arising from Directive 2013/33/EU laying down standards for the reception of applicants for international protection will continue to apply.

The Federal Administrative Court affirmed in its rulings of 20 February 2020 (BVerwG 1 C 1.19 inter alia) that this duty to provide information also applies to the German asylum process.

2. Questions

1. Do you provide a deadline for the implementation for voluntary return and which is the deadline for executing it? In which cases your MS does not grant this deadline?

2. In your country, does the refusal of international protection application entail a return decision pursuant to Directive 2008/115/EC on the return of illegally staying third country nationals?

3. In what concrete form have you implemented the obligations to provide information, as specified by the ruling of the European Court of Justice C-181/16? Can you please state the exact wording?

4. Were legislative measures necessary in your country in order to implement the obligations to provide information?

5. Have the wording and/or legislative implementation measures been the subject of court rulings? What was the outcome of the litigation?

We would very much appreciate your responses by **3 July 2020**.

3. Responses

[1]

[1] If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

		Wider Dissemination[2]	
	EMN NCP Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Belgium	Yes	1. In general a deadline is given to the person who received a negative international protection decision. This deadline is in many cases 30 days but can also vary "made for measure" depending on the specific case. Deadlines may also be prolonged upon motivated request (e.g. additional time necessary to organise the return, health related issues, ...). A deadline could be refused in case of risk of absconding (see possible motives in the Qualification Directive, which are also foreseen in the Immigration Law of 15/12/1980, article 1, § 2, which enumerates 11 motives). 2. The return decision is a separate administrative act, since the refusal of international protection application is decided by the Commissioner General of Refugees and Stateless Persons (an independent body), and the administrative follow up is decided by the Immigration Office (e.g. if the applicant for international protection is a student, he could remain under the status of student, even though his application for international protection has been refused, provided that he is still under the legal conditions to carry on his studies). 3. Every return decision is accompanied by a flyer which entails the obligations and the rights of the returnee (see also www.sefor.be) : You received an order to leave the territory. This means you need to leave Belgium.

[2] 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."

			Lots of questions which we would like to answer for you. · When do you have to leave the country? · Where can you go? · Where can you get the necessary travel documents? · What will happen if you do not leave? · How can you pay for your journey? · What are my rights if I have been working illegally? · What are your rights? · What do you have to do? 4. There is a Ministerial Circular Letter of 10/06/2011 which explains what has to be done to provide the information, in accordance of the Immigration Law of 15/12/1980, article 62, first paragraph. 5. Belgian legislation has been amended in relation to the issuance of removal orders for an applicant for international protection who is illegally resident in the Kingdom before the EUCJ delivered its judgment in the Gnandi case. Before March 22, 2018, an applicant for international protection illegally staying in the Kingdom immediately received an order to leave the territory after the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) had made a refusal decision in relation to the application for international protection. A from March 22, 2018, the law of November 21, 2017 amending the law of December 15, 1980 on access to the territory, stay, establishment and removal of foreigners (the Immigration Law) and the law of January 12, 2007 on the reception of applicants asylum and certain other categories of foreigners entered into force. Article 52/3 therefore provides: "§ 1st. The Minister or his delegate gives the foreigner staying illegally in the Kingdom and who has filed an application for international protection, the order to leave the territory, justified on the basis of one of the grounds provided for in Article 7, paragraph 1, 1 ° to 12 °, after the CGRS has refused the request for international protection, declared it inadmissible or closed the examination of the request, and that the time limit for appeal referred to Article 39/57 has expired, or if such an appeal has been lodged within the prescribed period, after the Aliens Litigation Council has rejected the appeal in application of Article 39/2, § 1, 1 °. If this is a second or more subsequent request for international protection and if the CGRS has declared it

			inadmissible on the basis of Article 57/6, § 3, paragraph 1, 5 °, the order to leave the territory is issued after this decision of inadmissibility. This order to leave the territory is brought to the attention of the person concerned in accordance with article 51/2. If the person concerned is kept, this order is brought to his attention in the place where he is kept. § 2. In the case referred to in article 74/5, § 1, 2 °, the Minister or his delegate decides that the foreigner is not admitted to enter the Kingdom after the CGRS refused or declared inadmissible the request for international protection on the basis of article 57/6/4, paragraph 1. The foreigner is returned subject to article 39/70. These decisions are notified in the place where the foreigner is kept. § 3. If the alien referred to in paragraphs 1 and 2 is already the subject of an expulsion or refoulement order which has not yet been followed up at the time of filing the request for protection international, the Minister or his delegate renounces taking a new expulsion or refoulement measure but in accordance with articles 49/3/1 and 39/70, the enforceability of the measure already taken is suspended for the duration of the processing of the application for international protection. When the enforceability of the removal order already ordered is no longer suspended in accordance with articles 49/3/1 and 39/70, the Minister or his delegate may, if he considers it necessary, extend the period granted to the foreigner to voluntarily leave the territory. Neveetheless, the "Gnandi" judgment had an impact on the case law since certain files which fell under the old legislation and practice (delivery of the return decision after the CGRS decision but before the Council for Alien Law Litigation (CALL) judgment ruling on the application for international protection) were still pending before the CALL. Indeed, the CALL, according to the law of 15.12.1980, can only exercise control over the legality of a decision, by examining the legality of the decision according to the elements available to the administration at the time when she took it. Therefore, the CALL withdrew from this judgment that it had to take into account any change in circumstances between the adoption of the return decision and the closure of the application for international protection by the CALL, provided that it has a significant impact on the assessment of the situation with regard to the directive. Consequently, the CALL, when deciding on a return decision taken before it has closed the international protection request, asks at the hearing if the foreigner has elements to assert that would have occurred during this period time and could have a significant impact on the assessment of the situation (compared with Article 5 of the Directive in particular). The Council of State considered that the CALL should verify that, on the day of the return decision, the guarantee of suspension of the execution of the return decision pending the outcome of the appeal against the CGRS's decision was fulfilled.

	EMN NCP Bulgaria	Yes	1. Yes. According to the Foreigners in the Republic of Bulgaria Act: Article 39b (1) The order imposing the coercive administrative measure under Article 39a, paragraph 1, items 1 and 2, shall specify a period of between 7 and 30 days wherein the foreigner is to fulfill voluntarily his/her obligation to return. (2) To be granted a period of more than 30 days to leave Bulgaria voluntarily, the foreigner shall file an application to the relevant competent authority which issued the order referred to in paragraph 1, which shall pass a ruling and notify the foreigner within three days. In such cases, the specific circumstances in each individual instance shall be taken into consideration, such as: duration of stay, health status, needs of vulnerable groups, children attending school, and other family and social relations. The time limit for leaving Bulgaria voluntarily may be extended by up to one year. (3) When the foreigner has been allowed to leave voluntarily, but there is the risk that he/she might go into hiding, the competent authority which issued the order referred to in paragraph 1 may issue an order for daily appearance at the territorial structure of the Ministry of Interior exercising jurisdiction over the place of residence of the foreigner. (4) In case the person poses a threat to national security or public order, the relevant competent authority shall not grant a period wherein such person can leave voluntarily. Article 44b (1) Where immediate expulsion or return of a foreigner to the border is impossible, or where execution of the said measures has to be postponed for reasons of legal or technical nature, the authority who has issued the order imposing the coercive administrative measure shall postpone the execution of the said measure until the lapse of the obstacles to the execution thereof. According to the Asylum and Refugees Act: Article 67. (1) Coercive administrative measures, such as "withdrawal of the right to stay in the Republic of Bulgaria", "refoulement", "expulsion" and "prohibition on entering the Republic of Bulgaria" shall not be enforced before the procedure has been completed with a final decision. 2. Yes. According to the Foreigners in the Republic of Bulgaria Act: Article 41, bullet 4: Return shall be required where, with regard to a foreigner, there is a final decision for refusal, termination or withdrawal of international protection or asylum, or with regard to whom the proceedings under the Asylum and Refugees Act have been terminated by a final decision, unless the termination was decreed against a

			foreigner for whom there is a decision for readmission into the Republic of Bulgaria and the proceedings were not renewed. 3. Code of Administrative Procedure Article 26. (1) The known individuals and organizations concerned, other than the applicant, shall be notified of the initiation of the proceeding. If the time limit for close of the proceeding exceeds seven days, the notification shall include information on the latest date on which the act must be issued. 4. No. The Code of Administrative Procedure provides for: Article 34. (1) The administrative authority shall afford the parties an opportunity to inspect the documents under the case file, as well as to take notes and obtain excerpts or, depending on the technical possibilities available, copies at their own expense at any time during the proceedings, including after their close, with the issue of an individual administrative act pursuant to the National Archives Stock Act. (2) Upon request by a party with impaired vision, the authority shall familiarize the said party with the content of the case file by means of reading or in another suitable way, depending on the technical facilities available. (3) The administrative authority shall afford the parties an opportunity to express an opinion on the evidence collected, as well as on the requests submitted, setting a time limit which may not exceed seven days. The parties may submit written requests and objections. (4) The administrative authority may not apply Paragraphs (1), (2) and (3) solely in case the addressing of the matter brooks no delay, in order to ensure the life or health of individuals or to protect important State or public interests. The administrative authority shall state the reasons for non-application of Paragraphs (1), (2) and (3) in the reasoning of the act issued. 5. No. Bulgarian administrative legislation provides for the order for notification and participation of the TCN in every stage of the procedure of issuing return decision.
	EMN NCP Croatia	Yes	1. Yes, the deadline for voluntary return is set between 7 and 30 days in accordance with the Foreigners Act, depending on circumstances of the case. According to the Article 37 (1) of the International and Temporary Protection Act, by a decision on the

			application or a decision on the cessation or revocation of international protection, a decision is also rendered on a measure to ensure return pursuant to the provisions of the Foreigners Act. Article 37 (2) of the International and Temporary Protection act states "When prescribing measures to ensure return referred to in paragraph 1 of this Article, priority shall be given to voluntary departure, unless the application was dismissed as clearly unfounded (Art. 38, paragraph 1, point 5) or if a subsequent application is dismissed as inadmissible (Art. 43, paragraph 2)." 2. See answer to question 1. 3. Conditions on which the rejected applicant with the deadline for voluntary return can appeal the decision are stated in writing in the decision itself. Informing the rejected applicant about his or her right to appeal against a negative decision and about the nature of this appeal is part of the standard decision delivery procedure where the applicant is in more details informed about the right to remedy. 4. No. 5. No.
	EMN NCP Cyprus	Yes	1. Yes, up to 30 days. 2. Yes, except if there are other humanitarian reasons. 3. Information after the rejection af an asylum application is given in two ways: a) with the rejection letter, which states: You are kindly informed that, you are entitled to a judicial recourse before the Administrative Court for International Protection (address: 5 Kosti Palama, 1096, Nicosia, Tel: 22747500) in accordance with Article 146 of the Constitution, within 75 days from the date of the receipt of this letter. Please note that, you or your legal adviser, have the right upon request, to have a one-time access to the information in your personal file, upon the basis of which the decision has been made.

b) with information leaflets, which state:

What happens if my application is rejected?

- If your application is rejected, you will receive a letter explaining the reasons of the rejection.
- You have the right to appeal against this rejection, within the time limit stated in the rejection letter.

PART 4: Appeal Procedures

What if I don't know the asylum procedure and how to appeal the negative decision?
Provision of legal and procedural information free of charge on procedures before the Asylum Service
You have the right for free legal and procedural information on the procedures before the Asylum Service. Upon request, the Asylum Service will provide you with legal and procedural information FREE OF CHARGE, including at least, information on the procedure in the light of your personal circumstances and in case of a negative decision, a clarification of the reasons for such decision and information for the appeal.

When can I appeal?

- You have a right to appeal if your application for international protection is rejected.
- If you have been granted subsidiary protection, you can still appeal against the decision which rejects your claim for refugee status.
- The rejection letter states how many days you have to submit your appeal, starting from the day you received the rejection letter. You must submit your appeal within this time limit. Otherwise your appeal will not be accepted.

Where do I appeal?
You can appeal before:

1. the Administrative Court for International Protection. You can appeal before the Administrative Court for International Protection according to the Article 146 of the Constitution of the Republic, within 75 days of the receipt of the decision letter rejecting your application for international protection. You can appeal to the Administrative Court for International Protection, either against the decision of the Asylum Service, or the Refugee Reviewing Authority's decision. The procedure at the Court is not free of charge. You have however the right to seek free legal aid according to the Legal Aid Laws.

			Contact information: Telephone: (+357) 22747500 Fax: (+357) 22747537 Address: Costi Palama 5, 1096, Nicosia, Cyprus Am I entitled to free legal aid before the Administrative Court for International Protection? If you appeal before the Administrative Court for International Protection and you lack sufficient resources to hire a lawyer/legal adviser, then you have the right to seek free legal aid, according to the Legal Aid Laws. Contacts details of the legal aid provider: Chief Registrar of the Administrative Court Charalambou Mouskou str. 1404 Nicosia Tel.: +357-22865741 Fax.: +357-22865780 Email: chief.reg@sc.judicial.gov.cy 4. No. 5. No.

	EMN NCP Czech Republic	Yes	1. Yes, the deadline for the implementation for the voluntary return is usually between 7 and 60 days. If there are national security and public order concerns the deadline for the voluntary return may not be granted or lower than 7 days. 2. No, the return decision is issued in the separate administrative procedure. Nevertheless we are thinking of the change in this regard. 3. The foreigner is informed about the possibility of appeals against both decisions (negative asylum decision, return decision), suspensive effects directly from the wording of the decisions, because information on further possible steps in appeals is an obligatory part of every administrative decision. Persons concerned are also informed about the other aspects mentioned in the ruling preferably during the whole procedure. As regards exact wording, following provisions of Act No. 500/2004 Col., on Administrative Procedure can be stated: Section 4 paragraph 2 The administrative authority shall, in connection with its act, provide the person concerned with adequate information on his/her rights and obligations, if this is necessary due to the nature of the act and the personal circumstances of the person concerned. Section 68 paragraph 1 The decision contains the statement part, justification and information for the participants,. Section 68 paragraph 5 The information shall state whether it is possible to file an appeal against the decision, within what period it is possible to do so, from which date this period is calculated, which administrative body decides on the appeal and to which administrative body the appeal is filed. 4. No 5. No

	EMN NCP Estonia	Yes	1. Yes, the term to compliance with the obligation to leave for voluntary return is from 7 to 30 days. The deadline can be extended by up to 30 days at a time if the settled time turns out to be too disproportionately burdensome for an TCN, taking account of: 1) the duration of the stay in Estonia of a person obliged to leave; 2) impact on a child attending school; 3) family and social relationships of a person in Estonia and 4) other relevant circumstances. 2. Yes. The Police and Border Guard Board (the PBGB) is issuing three decisions in one administrative act- a negative asylum decision, a return decision and a decision to impose an entry ban will be issued to a person. The return decision and the entry ban shall be automatically suspended and take effect only after the final decision on the international protection has been made. 3. Administrative act, mentioned in previous answer shall be given to person in written form. Person has a right to receive counselling throughout his asylum procedure, where a general information about legal measures will be explained. Counselling is organised in accommodation centres, detention centre and, if person lives outside of an accommodation centre, in a place agreed with the advisor. 4. No. 5. No.
	EMN NCP France	Yes	1. YES, Article L. 511-1 of the Code for the entry and stay of foreign nationals and of the right of asylum (CESEDA) provides a 30-days deadline for the foreign national to leave France voluntarily as from the issuance of the removal order. For exceptional cases, the Prefect can decide to extend this deadline over 30 days (and further extend this first extension) if this appears necessary based on a case by case study. On the other side, the competent authority may refuse to allow a deadline for voluntary return based on three cases listed in Article L 511-1 of the CESEDA :

			1- the TCN's behavior represents a threat for the public order 2- the TCN has been refused the issuance of their residence permit (or receipt of residence permit or temporary authorization) because their application was clearly fraudulent or unfounded 3- if there is a risk of absconding and consequently of non respect of the removal order. In addition to the risks and the assessment criteria mentioned in the Return Directive and in Article L 511-1 of the CESEDA, the law of 10 September 2018 has added additional criteria to consider this risk of absconding: - the TCN's irregular entry in France (except for late issuance of the residence permit); - irregular stay on the territory following the entry on the territory of the expiry of the residence permit; - the TCN's declared intention not to respect the removal order; - previous absconding after a removal order; - proof of an irregular secondary movement; - insufficient guarantees for representation such as refusal for fingerprints, provision of false information, lack of permanent and effective residence, previous non respects of surveillance measures. If a deadline for voluntary return has been issued but the absconding is proved, the Prefect can interrupt the deadline. 2. YES the asylum applicant is allowed to remain in France until there is a decision regarding their asylum application. During the processing of the application, the TCN is issued with a statement attesting the related rights. This right of stay is extended through the extension of this statement after the refusal decision in first instance during the appeal process and until the appeal final decision is taken. However Article L743-2 provides some exception to this right of stay which can be refused or withdrawn: 1. The French Office for the protection of refugees and stateless persons (OFPRA) has taken a decision on inadmissibility for the following reasons: if the applicant has been issued with an internationa protection in another EU member state ; if the applicant benefits from an effective international protection in a third country to which he can be returned; 2. the applicant has withdrawn their asylum applications; 3. the competent authority has taken a termination decision; 4. the applicant has filed a first review request which has been refused for inadmissibility, in order to prevent the removal order; 5. the applicant has filed a new review request after the final refusal of the first request; 6. the TCN is subject to a definite extradition decision to a third country different from their home

			country or subject to a surrender decision based on an European Arrest Warrant or from an International Penal Court request; 7. the OFPRA has taken a refusal decision or a decision on inadmissibility regarding an asylum application still under process at the date when the removal order, the territory ban or the administrative prohibition from the territory was issued or if the asylum application was filed after the issuance of this decision.. 3. Arts L. 743-3 et L.743-4 of the CESEDA provide the possibility for the asylum seeker whose right to stay has been terminated after the OFPRA decision and who has been issued with a removal order to request to the administrative judge to interrupt the consequences of this decision until the end of the appeal deadline and if the National Court for the asylum right has been referred, to wait until the issuance of the final decision. This request can be filed even when the removal order has been issued before the OFPRA decision and is definite. The deadline to file such a request has suspensive effect. The same rules apply for the provision of information on this type of appeal process as for general rules of information on available remedies and deadlines. It should be provided at the same time as the removal order. Otherwise even if the removal order remains valid, the deadline for appeal cannot start and the removal order cannot be executed if this is remedy with automatic suspensive effect. 4. YES the law of 10 September 2018 has modified the CESEDA (arts L. 743-4 et L. 571-4) and the Code for Administrative Justice (article L 777-4) in order to implement an effective appeal process allowing the asylum applicant whose right to stay has been terminated to interrupt the removal order in order to file an appeal request with the National Court for the Right of asylum, and until the final decision is taken. 5. The competent services are not aware of such court rulings filed by individuals. A contentious request was filed within the State Council but it was rejected based on the fact that the measures only draw conclusions necessary for its legal process.

	EMN NCP Germany	Yes	1. In our legal system we have a regular deadline of 30 days for voluntary return. In special cases (e.g. application was considered to be manifestly unfounded) we have a deadline of 1 week. 2. Yes, the rejection of asylum applications always entails a removal warning or removal order. 3. The Federal Republic of Germany has not implemented the duty to provide information as yet. This enquiry is being submitted in connection with the planned implementation. 4. See answer to question 3. 5. See answer to question 3.
	EMN NCP Hungary	Yes	1. See the attached document emn_2020_22.docx 2. See the attached document 3. See the attached document 4. See the attached document 5. See the attached document
	EMN NCP Ireland	Yes	1. Ireland does not participate in the Return Directive 2008/115/EC. No deadline for implementation of voluntary return is specified in Irish legislation. Voluntary return is possible up until the point a deportation order is made. The legal framework for return of protection applicants is set out in the International Protection

			Act 2015. Under the International Protection Act 2015, if an applicant has been refused both international protection (refugee status and subsidiary protection status) and permission to remain on non-protection grounds, a period of 5 days is granted from the decision to refuse permission to remain for the person to indicate an intention to avail of voluntary return. An applicant may also choose to withdraw a protection application or appeal and opt for voluntary return. A deportation order will not be issued if the individual is seen to be making a reasonable effort to remove themselves voluntarily in accordance with the stated intention, and other factors don't apply (posing a threat to security of the State or being convicted of a serious criminal offence posing a danger to the community of the State). A different legal framework applies to return for other illegal migrants outside the protection process under the immigration Act 1999. Under section 3 of the Immigration Act 1999, an illegal migrant is first issued with a letter of intention to deport and is a given a period of 15 days to make representations as to grounds for possible leave to remain. If leave to remain is refused, a deportation order will be issued subject to the prohibition on refoulement. Voluntary return is possible up to the point that the deportation order is made. A deportation order is accompanied by a letter in which the individual is informed that they should depart from the State within 28 days from the date of the letter. A date is also given to the individual to present to the Garda National Immigration Bureau if they have not departed from the State within that time period. 2. Ireland does not participate in the Return Directive 2008/115/EC. A deportation order can be made under section 51 of the International Protection Act 2015, subject to the prohibition on refoulement, after an application for international protection (refugee status and subsidiary protection status) and permission to remain is refused. 3. Not appliocable as Ireland does not participate in Directive 2008/II5/EC. 4. Not applicable. 5. Not applicable.

	EMN NCP Italy	Yes	1. Yes. The period for voluntary departure starts to run when the decision refusing the international protection's claim become definitive or after 30 days without proposing appeal against the negative decision. The national regulation provides that the expulsion order is immediately enforceable (art. 13 para 3 of law 286/1998), but the expelled foreigner (such as asylum seekers, following a final negative decision on international protection's application) might be allowed to remain in Italy only if he applies to the Prefect for a period of time (between 7 and 30 days) necessary to organize a voluntary departure (art. 13 co. 5). This period may be extended, where necessary, for a period commensurate with the specific circumstances of the individual case, such as the length of stay in the national territory, the existence of minors attending school or other family and social ties, and admission to voluntary and assisted return programme. These deadlines are not granted if there are grounds for the immediate forced expulsion, such as in case of manifestly unfounded/fraudulent/subsequent application, flight risk, expulsion as a result of penalty or as criminal sanction (art. 13 co. 4). 2. Yes, the refusal of international protection application implies a return decision. The enforceability of the return decision is suspended if the asylum seeker appeals to the Courts against the rejection decision taken by Territorial asylum authorities within 30 days from the notification of the first instance decision (art. 35/35 bis of law 25/2008). In this case the applicant has the right to remain in Italy and to benefit from reception's standard, until the decision of the Court. Existing grounds to apply the principle of non- refoulement are assessed by the asylum authorities and recorded in the negative decision to allow the issuance of the correspondent temporary permit of stay. The suspension of the enforceability of the return decision is not automatic in case of: applicant's detention; inadmissibility or manifestly unfounded application; application submitted with the sole purpose to delay or prevent the enforceability of an expulsion order. Then, against a negative decision of the ordinary Court, the applicant may only lodge another appeal before the Court of Cassation, but this appeal does not automatically suspend the enforceability of the decision (see Q.5). 3. See Q. 4. In addition to what said in Q. 4, it may be interesting to highlight that in the administrative decision issued by the Territorial asylum authorities there is specific paragraph about the possibility to appeal (with explanation

			about forms, terms for proposing appeal and the enforceability of the decision). 4. After entering in Italy, the foreigner has the right to receive all the information about the possibility to ask for international protection. When submitting the asylum application, the competent police office distributes a practical guide, drafted by National Commission for Asylum, containing all the indications regarding (art. 10 comma 1 and 2 of Law 25/2008): a) Phases of asylum procedure, included the possibility to appeal in front of a judge a refusal decision of the administrative authority and the consequent suspensive effect of the appeal: art. 35 of Law 25/2008; b) Rights and duties of the asylum seekers during the procedure; c) The right to medical and reception assistance; d) The possibility to contact UNHCR and others human rights organizations to be supported in every step of the procedure. Other information concerns: reception, assessment of the application and possible outcomes, rights and duties after recognition of protection, residence permits. All this information is communicated in a language understandable by the claimant, who has the right to be assisted by an interpreter and a cultural mediator (see: https://www.interno.gov.it/it/temi/immigrazione-e-asilo/protezione-internazionale/guida-pratica-richiedenti-protezione-internazionale-italia). Art.10-bis of Law 25/2008 extends the abovementioned rights to migrants who ask for asylum in the border and transit zones, where it is guaranteed the presence of UNCHR's officials and other protection institutions. Then, article 6 of Law 142/2015 (and art. 2 of Regulation concerning the management of Center for return) extends the right of information to foreigner in detention. About detention, some specifications may be necessary: - an applicant shall not be detained for the sole purpose of examining the asylum claim (art. 6 comma 1 law 142/2015). Detention is allowed only in certain cases established by art. 6 of law 142/2015, such as: flight risk, reasons of public order and security, terrorism, serious reasons for considering the foreigner guilty of a crime against peace, a war crime and a crime against humanity. Otherwise, the applicant has to be housed in a reception centre. - When an asylum seeker is detained, the procedure for recognition of international protection is accelerated (art. 28 c. 1 lett. c of law 25/2008) and it must be defined within a period of no more than six months (art. 28 bis c. 3 of law 25/2008), the decision of first instance may be notified pending the detention. In this case, after appealing the rejection within 15 days (not 30 days as normally), the applicant remains in

			the Return Centres until the Court decides if suspend or not the enforceability of the previous decision, according to art. 6, c. 7 of law 142/2015 (in case of detained applicant, the suspension is not automatic). If the Court suspend the enforceability of the rejection, the foreigner loses the state of asylum seeker and he can be expelled and, eventually, detained for other 180 days because the reason of his detention is changed (art. 6 c. 6 of law 142/2015). Otherwise, if the enforceability of the rejection is suspended, the applicant must not be expelled, but he remains in the Return Centre until the publication of the outcome of the appeal. Anyway, if the Court rejects the appeal, the foreigner is no more considered an asylum seeker and he can be expelled or detained again for 6 months. 5. A very interesting case regards the Court of Milan, which orders a preliminary referral to the Court of Justice on the matter of enforceability of the negative decree on asylum application taken by the ordinary Court, which decided on the appeal against the administrative decision (C-422/2018, 27 September 2018). According to art. 35 bis of law 25/2008 (as modified by law 46/2017), while the appeal against administrative decision automatically suspends its enforceability (see Q.2), the appeal against the judicial negative decree issued by the ordinary Court (which has to be proposed before Court of Cassation) does not have the same automatic suspensive effect. In this case, suspension has to be ordered by the judge of first instance (who decides on the appeal against administrative decision) only upon applicant's request and only if there are "reasonable grounds" of appeal. The Court of Justice states that the national regulation does not conflict with the interpretation of the Directive 2013/32/EU, in the light of art. 47 of The Charter of Fundamental Rights.
	EMN NCP Latvia	Yes	1. Yes, there is deadline. A time period of seven to 30 days for the fulfillment of the obligation of voluntary return. 2. No 3. N/A. The voluntary return decision is issued only when the asylum procedure is definitively concluded.

			4. N/A 5. N/A
	EMN NCP Lithuania	Yes	1. Yes. The Law of the Republic of Lithuania on the Legal Status of Aliens proclaims that the decision to return to a foreign country, after assessing the foreigner's ability to depart as soon as possible and if s/he cooperates with the competent authorities in the matter of return, lays down a period from 7 to 30 days from the date of adoption of the decision and obliges the foreigner to depart from Lithuania voluntarily. That period may be extended due to circumstances specified in the Article 128(1)(1) to (3) and (2)(3), (4) of the Law, however, the total period of the voluntary departure should not exceed 60 days. If there is a reason to believe that a foreigner may abscond in order to avoid return, then a period of less than 7 days can be provided or no time limit for voluntary departure shall be granted. 2. The fact that a decision is taken not to examine an asylum application or not to grant asylum, does not mean that there is a ground to return the foreigner to a foreign country. However, if the circumstances specified in Article 125(1) or (2) or Article 126(1) of the Law on the Legal Status of Aliens are established, e.g. the foreigner is illegaly present, the decision not to examine the asylum application or the decision not to grant asylum shall be accompanied by a return decision. 3. The Law of the Republic of Lithuania on the Legal Status of Aliens provides that the implementation of an appealed decision is suspended when an application for asylum is received from an alien who has arrived in Lithuania from a safe third country, this application is not examined and the alien is returned or expelled from Lithuania to a safe third country; or when the foreigner is refused asylum, except the case when the decision on the application is adopted after urgent examination, the examination is discontinued or the asylum granted is withdrawn and the foreinger is expelled or returned to a foreign country. In other cases, the enforcement of the appealed decision may be suspended by relevant administrative court on enforcement measures. If the expulsion decision from Lithuania is accompanied by a decision refusing asylum, the decision shall also contain the information that if a foreigner does not agree with this decision, s/he can appeal against it to the Vilnius Regional Administrative Court within 14 days from serving this decision. If s/he intends to lodge an appeal, but cannot afford the costs of legal assistance, a lawyer can be assigned free of charge. (This is not an

			official translation). 4. There was no need to change the legislation. 5. There were no national court rulings regarding wording or legislative implementation measures.
	EMN NCP Luxembourg	Yes	1. With regard to international protection, Article 34 (2) of the amended law of 18 December 2015 on international protection and temporary protection (Asylum Law) provides a deadline for the implementation for voluntary return and the deadline for executing it. It states that: “A decision of the Minister is equivalent to a return decision, with the exception of decisions under Article 28(1) and (2) (d). The order to leave the territory issued in such cases shall state the time limit for leaving the territory and the country to which the applicant will be returned in the event of ex officio enforcement. In order to comply with the order to leave the territory, the applicant has a period of 30 days from the day the return order becomes final and may apply for a return assistance scheme for this purpose. The applicant is obliged to leave the territory without delay after the return decision has become final if his/her behaviour constitutes a danger to public order, public security or national security. If necessary, the Minister may grant a period for voluntary departure of more than 30 days, taking into account the circumstances of each case, such as the length of stay, the existence of children in school and other family and social ties. Articles 103, 111(3) (c), 112, 116, 117, 118 and 120 to 132 of the amended Act of 29 August 2008 on the free movement of persons and immigration (Immigration Law) apply. By way of exception to the above, no time limit shall be granted to an applicant who has already been previously notified of a return decision pursuant to Article 111 of the abovementioned Act of 29 August 2008.” 2. Yes. Article 34 (2) of the Asylum Law states that a negative decision shall be equivalent to a return decision. 3. The Grand-Duchy of Luxembourg complied with the duty to provide information already before the ruling of the European Court of Justice C-181/16. In fact, article 34 (1) of the Asylum Law states that “Any negative decision is reasoned in fact and in law and the possibilities of appeal are communicated in writing to the applicant”.

			In addition to the possibilities of appeal, the negative decision specifies that the rejected applicant for international protection (AIP) is obliged to leave the territory in a deadline of 30 days from the date on which this decision becomes final to her/his own country or to any other country where s/he is authorised to stay. The rights of the rejected AIP are preserved until a final decision has been made – a ruling has been taken by the First instance administrative court on the appeal, and if applicable, the Administrative Court. These rights have been laid down in the following articles of the national laws: article 35 (1) et (2) of the Asylum law, article 36 (1) of the Asylum Law, article (2) b) in accordance to article 8 of the amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection (Reception Law), article 6 (6) of the Reception Law, as well as articles 109, 111, 113, 114, and 115 of the Immigration Law. It follows from the national laws that until a ruling has been taken by the First instance court on the appeal: - removal is not allowed, - the order to leave the country cannot be enforced. However, this is subject to some exceptions, which are stipulated in article 36 of the Asylum Law. - the period for voluntary departure will not start to run, - detention in preparation for removal will, in principle, not be implemented. In fact, as long as a final decision has not been taken, the applicant is still in possession of his/her document attesting to his/her status as applicant of international protection. This document proves that the applicant is legally on the Luxemburgish territory and the Directorate of Immigration does not have any legal basis to detain the applicant, - entitlements arising from Directive 2013/33/EU laying down standards for the reception of applicants for international protection will continue to apply. Furthermore, every applicant of international protection receives, at the moment of lodging his/her application, a leaflet explaining the whole international protection procedure. In this leaflet, a whole chapter is dedicated to a possible return. In the same vein, the rejected applicant of international protection is receives an IOM document explaining the voluntary return and is given the possibility to make an appointment with the Return Unit. 4. No.

			5. No.
	EMN NCP Netherlands	Yes	1. In a return decision is determined that the foreign national must return and a period of four weeks for departure is given (see Article 62, paragraph 1 of the Aliens Act). This period can be shortened to 0 days in the following cases (see article 62 paragraph 2 of the Aliens Act): a. there is a risk that the foreign national will avoid supervision; b. the foreign national's application for a residence permit or for the extension of the validity of a residence permit has been rejected as manifestly unfounded or due the provision of incorrect or incomplete information; or c. the foreign national poses a threat to public order, public security or national security. For return decisions that are included in the decision on the asylum application, these provisions are further elaborated in the policy (A3 / 3 Vc); it states that the departure period will not be withheld if there is a decision on a first asylum application, unless one of the circumstances mentioned is applicable. This concern, for example, public policy or an application that has been declared manifestly unfounded because the foreign national comes from a safe country. 2. Yes, the return decision is included in the asylum decision (Article 45 Aliens Act). 3. The return decision (included in the asylum decision) has always included the period for departure. In addition, it has always been stated what the legal consequences of the decision are for the residence of the foreign national and what consequences any legal remedies may have for the right to reside. As a result of the Gnandi judgment, some changes have been made to the practical working method, but no specific provisions have been included in legislation on informing the foreign national. It has been arranged that: - the standard passage included in asylum decisions on the right of residence during the legal remedy period and after the legal remedies has been adjusted - the foreign national retains the right to reception as long as he or she is allowed to stay in the Netherlands as an applicant, but the foreign national is not explicitly informed about this in the asylum decision;

			- the foreign national is not detained under the Return Directive as long as he is allowed to stay in the Netherlands as an applicant, but the foreign national is not explicitly informed about this in the asylum decision. If it concerns a foreign national who had already been detained during the processing of the asylum application, detention will be continued on this ground during the appeal stage. This is also included in the asylum decision. Only after the appeal stage has ended, detention will be converted on the ground of the Return Directive; this is a new measure about which the foreign national is being heard. 4. See question 3. However, a legislative process has been started to bring the current provisions of the Aliens Act more in line with the Gnandi judgment and the decision of 5 July 2018 (C-269/18 PPU). 5. Several statements have been made regarding the Gnandi judgement, but these relate more to the legal provisions on immigration detention and the question of these is in line with the Gnandi judgment. The statements are not particularly related to the provision of information to the foreign national.
	EMN NCP Poland	Yes	1. The decision obliging the foreigner to return specifies the period of voluntary return, which is from 15 to 30 days, counted from the date of delivery of the decision to the foreigner. The decision does not specify the date of voluntary return of a foreigner when: 1) a foreigner is likely to escape or 2) it is required by reasons of national defense or security or the protection of public safety and order. 2. No, the decision to refuse to grant international protection to a foreigner does not contain a return decision. Pursuant to the solutions functioning in Poland, the foreigner is obliged to leave the territory of the Republic of Poland within 30 days from the day on which the decision on: • refusing to grant the refugee status or subsidiary protection, • recognizing the application for international protection to be inadmissible, • discontinuation the proceedings for international protection • depriving a foreigner of refugee status or subsidiary protection became final. And in the case when a decision was issued by a second instance authority - from the day on which the decision was delivered to the foreigner.

			The above does not apply if: 1) on the day of the decision refusing to grant refugee status or subsidiary protection or the decision to discontinue the procedure for granting international protection, the foreigner is staying in a guarded center or in a detention center for foreigners, or 2) the decision on refusal to grant refugee status or subsidiary protection or the decision to discontinue the procedure for granting international protection has been issued in connection with the submission of subsequent application for international protection, or 3) before issuing a decision refusing to grant refugee status to a foreigner or granting subsidiary protection or a decision to discontinue proceedings on granting international protection, proceedings to oblige the foreigner to return were initiated or a decision was issued to oblige the foreigner to return. If the foreigner was given a decision obliging to return, which specifies the date of voluntary return, before issuing the decision on granting international protection, the period of voluntary return is counted from the day on which such decision became final, and in the case of a decision issued by second instance authority - from the day on which the final decision was delivered to the foreigner. Despite the fact that, in the current legal system, the decision to refuse granting international protection to a foreigner does not contain a decision on the obligation of the foreigner to return, the Head of the Office for Foreigners or the Council for Refugees (appeal body) inform the Border Guard authority competent for the place of stay of the foreigner concerned about the discontinuation of proceedings on granting international protection, refusal to grant refugee status and granting subsidiary protection or deprivation of refugee status or subsidiary protection. Based on such information the Border Guard authority may initiate ex officio procedure to obligation the foreigner to return. The obligation to return for reasons related to illegal stay is only possible after the expiry of the 30-day period for leaving the territory of the Republic of Poland. 3. Information on the procedural guarantees referred to in paragraph 65 of the judgment of the Court of Justice of the European Union of 19 June 2018, C-181/16, Sadikou Gnandi, does need not to be provided, because there is no case in the Polish legal order where "the decision obliging to return is issued immediately after the rejection at first instance by the determining authority of the application for international protection, or the decision obliging to return is issued together with this rejection decision in one administrative act "(in the context of a return order based on the circumstances of the illegal stay as a direct consequence of the

			termination of the international protection procedure with a negative result). As indicated in the answer to question 2, the decision refusing to grant international protection to a foreigner does not contain, unlike in the Federal Republic of Germany, a statement (decision) on the obligation to return. Issuing a decision obliging a foreigner to return whose application for international protection has been rejected is possible after the decision issued in this case has become definitive (final). Thus it is impossible to issue a decision on the obligation to return immediately after dismissal of an application for international protection at first instance by the determining authority (in the case of Poland - the Head of the Office for Foreigners) and until the decision in this case become final, the foreigner has the status of an applicant and benefits from the right to remain on the territory of the Republic of Poland. Therefore, the question no. 3 cannot be referred to the solution functioning in Poland. In addition, it should be noted that the proceedings regarding the obligation to return, which were initiated before the foreigner's application for international protection shall be suspended (this does not apply if the foreigner submits subsequent application for protection). At the same time, the decision on the obligation to return issued to a foreigner shall not be executed when proceedings on granting him/her international protection are pending (this does not apply if the foreigner submits subsequent application for protection). 4. Information on the procedural guarantees referred to in paragraph 65 of the judgment of the Court of Justice of the European Union of 19 June 2018, C-181/16, Sadikou Gnandi, does need not to be provided, because there is no case in the Polish legal order where "the decision obliging to return is issued immediately after the rejection at first instance by the determining authority of the application for international protection, or the decision obliging to return is issued together with this rejection decision in one administrative act "(in the context of a return order based on the circumstances of the illegal stay as a direct consequence of the termination of the international protection procedure with a negative result). As indicated in the answer to question 2, the decision refusing to grant international protection to a foreigner does not contain, unlike in the Federal Republic of Germany, a statement (decision) on the obligation to return. Issuing a decision obliging a foreigner to return whose application for international protection has been rejected is possible after the decision issued in this case has become definitive (final). Thus it is impossible to issue a decision on the obligation to return immediately after dismissal of an application for international protection at first instance by the determining authority (in the case of Poland - the Head of the Office for Foreigners) and until the decision in this case become final, the foreigner has the status of an applicant and

			benefits from the right to remain on the territory of the Republic of Poland. Therefore, the question no. 3 cannot be referred to the solution functioning in Poland. In addition, it should be noted that the proceedings regarding the obligation to return, which were initiated before the foreigner's application for international protection shall be suspended (this does not apply if the foreigner submits subsequent application for protection). At the same time, the decision on the obligation to return issued to a foreigner shall not be executed when proceedings on granting him/her international protection are pending (this does not apply if the foreigner submits subsequent application for protection). 5. Until now, the issue of the possible implementation of paragraph 65 of the judgment of the Court of Justice of the European Union of 19 June 2018, C-181/16, Sadikou Gnandi, has not been the subject of an explicit statement of judicial decisions in cases regarding complaints on decisions on obligations foreigner to return.
	EMN NCP Portugal	Yes	1. According to Article 21 (2) of Law 27/2008 (Asylum Law) in its latest version (2014) «the decision of non-admissibility of the request determines the notification of the applicant to leave the country within 20 days, if he/she is in an irregular situation». The same Article (3) states that «if the applicant does not comply with the provisions of the preceding paragraph, SEF [Portuguese Immigration and Borders Service] must promote the process with a view to coercive removal, under the terms provided for in the legal regime for the entry, stay, exit and removal of foreigners from national territory, approved by Law no. 23/2007, of 4 July, amended by Law No. 29/2012, of 9 August. Article 31 (1) of the 'Asylum Law' comes to clarify that, «in the event of a decision to refuse international protection, the applicant may remain in national territory for a transitional period, which cannot exceed 30 days», and (2) that «the applicant is subject to the legal regime of entry, stay, exit and removal of foreigners from national territory as of the end of the period provided for in the preceding paragraph». The Legal regime of entry, stay, exit and removal of foreign citizens from Portuguese territory (Article 138 of Law 23/2007, in its last version, with all changes incorporated), establishes that «[irregular] foreign citizens (...)

			shall be notified by SEF to voluntarily depart Portuguese territory within an established time period of 10 to 20 days», that «may be extended by SEF based on the duration of stay, the existence of children attending school and the existence of other family members and social ties, with notification of the extension to the foreign citizen». 2. Yes. According to Article 21 (2) of Law 27/2008 (Asylum Law) in its latest version (2014) «the decision of non-admissibility of the request determines the notification of the applicant to leave the country within 20 days, if he/she is in an irregular situation». 3. Through its Article 19, Law 27/2008 (Asylum Law), establishes a speed procedure whenever a first grid of facts is confirmed, suggesting the applicant requested asylum only to stay in the country. If this circumstance is proved, the request will be refused. If not, the procedure starts, but only after a first admissibility assessment (Article 20). Thereon, the Portuguese Asylum Law is very mindful of the applicants' rights, especially regarding his/her right to be informed and to be heard as interested parties (Articles 24 (2 and 5); and 29 (2 and 6)), through all steps of the instruction procedure, granting even the appointment of a forensic lawyer (Article 25 (4) (who is fully paid by the Portuguese State); and information to the UNHCR (Articles 20 (5); 24 (1 and 5); and 29 (6)), if applicant so wishes. Return procedures are suspended in all the jurisdictional challenge's court instances. As for the requested exact wording, according to Articles 20, 24, 25 and 29 of Law 27/2008 (Asylum Law) in its latest version (2014): «Article 20 - Competence to assess and decide 1 - It is upon SEF's national director to make a reasoned decision on unreasoned and inadmissible applications within 30 days from the date of filing the application for international protection. 2 - In the absence of a decision within the period provided for in the preceding paragraph, the request is considered admitted. 3 - The decision on the application mentioned in the previous numbers is notified to the applicant within two

			days. 4 - Regarding reasoned requests, the decision of admissibility is made by SEF's national director. 5 - The decision referred to in paragraph 1 is communicated to the UNHCR representative and to the CPR [Portuguese Council for Refugees] as a non-governmental organization acting on its behalf, providing that the applicant has given his/her consent. (...) Article 24 - Consideration of the request and decision 1 – SEF communicates the the submission of the application for international protection (...) to the UNHCR representative and to the CPR [Portuguese Council for Refugees] as a non-governmental organization acting on its behalf, whom can interview the applicant if either so wish. 2 - The applicant is informed in writing, in a language that he/she understands or is reasonable to assume that he/she understands, on his/her rights and obligations and on the fact that his/her declarations are valid, for all purposes, as a prior hearing of the interested party. (...) 4 - The SEF national director issues a reasoned decision on requests within a maximum period of seven days. 5 - The decision provided for in the preceding paragraph is notified, in writing, to the applicant, with information on his/her rights of jurisdictional challenge, in a language he/she understands or is reasonable to assume he/she understands, and is communicated to the UNHCR representative and to the CPR as an organization non-governmental agency acting on its behalf, provided that the applicant has given his/her consent. Article 25 - Judicial challenge

			1 - The decision issued by the SEF national director is subject to judicial challenge before the administrative courts, within four days, with suspensive effect. (...) 4 - The interested party enjoys the benefit of legal protection [through] (...) the appointment of a defendant's lawyer for urgent procedures, and may also request the rapid appointment of a forensic lawyer, under conditions to be protocoled between the member of the Government responsible for the Home Affairs and the Bar Association. Article 29 - Decision 1 - At the end of the instruction, SEF prepares a reasoned proposal for granting or refusing international protection. 2 - The applicant is notified of the content of the proposal referred to in the preceding paragraph, and may comment on it within 10 days. (...) 4 - After the expiry of the period referred to in paragraph 2, the duly substantiated proposal is sent to the national director of SEF, who submits it to the member of the Government responsible for the area of internal administration within 10 days. 5 - The member of the Government responsible for the area of internal administration decides within eight days from the date of submission of the proposal referred to in the preceding paragraph. 6 - SEF shall notify the applicant of the decision rendered, in a language which he/she understands or is reasonable to assume that he/she understands, mentioning his/her right under the following article, and communicate it to the UNHCR representative or to the CPR as a non-governmental organization acting on its

			behalf, providing the applicant has given his/her consent.» 4. Portugal acknowledged the specificity of asylum and therefore decided to issue a dedicated law on the subject. However, the right to be informed was already well spread within the Portuguese legal frame and is generally recognised in Portugal as of the utmost importance in a Democratic State. 5. Yes. Three Court Decisions on asylum jurisdictional challenges based on the procedure failures are publicly reported in Portuguese language through «LEGISPÉDIA» in SEF's webpage at (https://sites.google.com/site/leximigratoria/lei-do-asilo), whose commented Laws include Portuguese jurisprudence per article. The first, Acórdão do Tribunal Central Administrativo Sul de 15-10-2015, no Processo 12413/15, arguing that the lawyer was not informed on the date and time of the interview, was rejected, because "there is no justification for invalidating the act that decided on the application for international protection, given that its content is not affected by the neglect of that formality". The second, Acórdão do Tribunal de Justiça de 26 de julho de 2017, no Processo C-348/16, states that "a decision refusing an application for international protection which is manifestly unfounded, dismiss the appeal without proceeding to hear the applicant when the factual circumstances leave no doubt as to the correctness of that decision, provided that, on the one hand, in the procedure at first instance, the applicant is given the possibility of a personal interview in accordance with Article 14 of Directive 2013/32 / EU of the European Parliament and of the Council of 26 June 2013, and the report or the transfer description of that interview, if it took place, has been added to the file, in accordance with the provisions of Article 17 (2) of that directive, and that, on the other hand, the court which hears the appeal can carry out such a hearing is considered necessary for an exhaustive and ex nunc analysis of the matter of fact and of law, provided for in Article 46 (3) of that directive". The third and last is Acórdão do Tribunal Central Administrativo Sul de 11-09-2014, no Processo 11427/14, on the correct counting of deadlines (when the lawyer was notified days after his defendant and the deadline for the appeal would be expired taking into account the applicant's notification). It states that "If a private individual has informed and proved to the Public Administration that he/she is represented by a certain lawyer, with a forensic mandate (...), this can only mean, even for the forensic mandate to have utility and dignity, that it is with the lawyer that Public Administration will begin to deal directly, without prejudice to personally notifying the individual in cases where this is logically justified, such as in summons.

	EMN NCP Slovakia	Yes	1. Following the Act No. 404/2011 on the Residence of Foreigners as amended, Article 83, paragraph 1: A third-country national who has been issued with a decision on administrative expulsion shall be obliged to leave the country within the period specified in the decision. Upon request of the third-country national, the police department shall determine a period to exit the country of no less than 7 days and no more than 30 days from the date of enforceability of the decision; this period of time may be reasonably extended taking into consideration the previous length of residence, personal and family relations or health condition of the third-country national. In the proceedings on administrative expulsion, the police department shall be obliged to advise the third-country national in writing of the possibility of requesting a period to exit the country to be determined. The police department shall set the deadline to exit the country of maximum 90 days from the date of enforcement of the decision pursuant to Article 82 paragraph 9; in justified cases in connection with the implementation of assisted voluntary return, this period may be repeatedly extended. Following the Act No. 404/2011 on the Residence of Foreigners as amended, Article 83, paragraph 2: A police department shall not determine the period to exit the country in the decision on administrative expulsion if: a) it may be assumed that the third-country national would escape or would otherwise obstruct or hinder the execution of the decision on administrative expulsion, especially if he/she cannot be identified; b) the third-country national may be detained according to Art. 88 (acording to the Article 88: if there is a risk of absconding or the third-country national avoids or prevents the preparation process of his/her administrative expulsion to be executed), or c) the third-country national threatens the state security, public order, public health or rights and freedoms of others. In that case the administrative expulsion is enforced by the relevant police department. 2. No, these two are separate - the decision on non-granting of international protection is issued by the Migration Office of the Ministry of Interior of the Slovak Republic and the decision on the administrative expulsion is issued by the respective departments of the Border and Foreign Police in an individual decision.

			3. It should be noted that the obligation to provide the information, as specified by the ruling of the European Court of Justice C-181/16, is not specified in the Slovak legislation. However, the right to stay is stipulated by the Act on Asylum along with the Act on Residence of Foreigners and partly the Administrative Procedure Code. Resulting from the ruling of the European Court of Justice C-181/16 and following the obligation of Member States to provide information to the international protection applicant when the decision on return is taken right after the refusal of the application for the international protection by the first instance authority or within one decision together with the refusal we can state: If a foreigner files an application for granting asylum when the decision on his/her administrative expulsion or forbidden entry enters into force and effect, the police department shall not execute the decision up to the time of deciding about his/her application for granting asylum. In this period, it is not possible to realize the forced return. If the decision on administrative expulsion determined the period to exit the country, this period shall start to run again when the decision about his/her application for granting asylum enters into effect. The decision on the interruption of the proceeding is delivered to the foreigner in question so he/she is informed on the interruption of the administrative expulsion proceeding. S/he is also informed that in this period it is not possible to continue in the expulsion proceeding. In this information the Act on Asylum is also mentioned, under which (Article 22, par. 1) the applicant for asylum has the right to stay on the territory of the Slovak Republic during the asylum procedure until its very end. Under the same Act and Article, the applicant is not entitled to stay on the territory of the Slovak Republic in case of a repeated application for asylum and if the Ministry already rejected the application for asylum (following Article 11 par. 1f) and Article 12 par 2g)) and decided that the applicant filed the application only for the reason to avoid the expulsion. Under the Article 22 of Act on Asylum, the applicant for asylum is entitled to stay in the Slovak Republic also: 1. during the period of filing an administrative claim against the decision on asylum if the filing of the administrative claim does not have a suspensory effect 2. also, when s/he together with the administrative claim files an application for the right to suspensory effect until the decision of the court in this matter 3. during the period to file a cassation claim against the decision of the administrative court which concerns the administrative claim against the decision of the Ministry in the asylum matter 4. also, when s/he together with the cassation claim files an application for the right to suspensory effect until the decision of the court in this matter.

			4. No, it was not necessary to change the legislation. 5. No.
	EMN NCP Slovenia	Yes	1. At the outset we empahize that Slovenia has a system of separate international protection procedure and separate return procedure. Decision, issued in return procedure cannot be issued until the negative decision or order, issued in the international protection procedure becomes final and enforceable. This means the overlapping of the international protection procedure and return procedure cannot occur The following persons are subject to the Foreigners Act and subsequently subject to the return procedure when a decision issued on the basis of International Protection Act becomes enforceable: - a person who has not been granted international protection; - a person whose renewal of subsidiary protection has been rejected; - a person whose international protection status has ceased or has been withdrawn, unless the status ceased because the person obtained Slovenian citizenship. Persons filing a second or any subsequent application for a subsequent procedure after being issued an executable order on the inadmissibility of the first request for a subsequent procedure, or after being issued an executable decision dismissing the subsequent application as unfounded, shall also be subject to the Foreigners Act and subsequently subject to the return procedure. 2. Yes, but return decision can be issued only after the refusal of international protection application becomes final and enforceable. 3. Since in Slovenia the issuance of a return decision is only possible after the decision taken in the international protection procedure becomes final and enforceable (in the case of an administrative dispute against the decision it becomes effective from the date the court ruling becomes final), the obligation from a judgment C-181/16 does not need to be implemented. 4. No.

			5. Link to Adiminstrative court ruling: http://www.sodnapraksa.si/?q=&database%5BUPRS%5D=UPRS&doc_code=&task_cod...
	EMN NCP Spain	Yes	1. Between 7 and 30 days, as established in the Return Directive. The exceptions of the Directive are applied. 2. Not automatically. The applicant is informed of the generic obligation to leave the country in a period of (normally) 15 days. If not complied with, a return procedure can be started. 3. n/a 4. No 5. n/a
	EMN NCP Sweden	Yes	1. The time period for voluntary departure according to the Return Directive is in the Swedish legislation normally four weeks from when the return decision has got legal force, i.e. from when the court has examined the appeal of the return decision. In which cases your MS does not grant this deadline? There are exhaustive criteria in Swedish legislation on situations where a voluntary return is not applicable. These are inter alia, if there is a risk for absconding, when a person is a danger to public order or security, or if an application is handled in an accelerated procedure according to article 31.8 a), b) or e) in the Asylum Procedure Directive (2013/32/EU). 2. Yes 3. No information available

			4. No 5. No
	EMN NCP Norway	Yes	1. Norway issues a deadline for voluntary return. The deadline may vary from 7 to 30 days cf. The Immigration Act Section 90, but is in most cases set at three weeks from when the applicant was informed of the negative decision. Within these three weeks the applicant has to apply for return support. The deadline for executing the voluntary return is 3 months after the person is granted return support. If there are circumstances beyond the control of the applicant, that deadline may be prolonged. There are some exceptions to voluntary return cf. the Immigration Act Section 90 sixth paragraph, in cases where a) there is a risk of absconding; see Section 106 a (the foreign national is not cooperating on clarifying his/her identity or specific grounds for suspecting the foreign national has given a false identity), b) an application has been rejected as manifestly unfounded or as a result of materially incorrect or manifestly misleading information, c) the foreign national is found to pose a threat to public order, d) the foreign national falls within the scope of Section 32 (International cooperation etc. on examination of applications for residence on grounds of protection), e) the foreign national is rejected or expelled at the outer borders of the Schengen area, or f) the foreign national is expelled under Section 66 (Expulsion of foreign nationals not holding a residence permit), first paragraph, (b), (c), (e) or second paragraph, or Section 67 (Expulsion of foreign nationals holding a temporary residence permit), or Section 68 (Expulsion of foreign nationals holding a permanent residence permit). In these cases, the deadline may be set for a shorter time limit than seven days, or the time limit may be dispensed with.

			2. Yes. Norway makes a decision about removal in order to end a legal stay at the same time as it issues a negative decision on protection - in a single administrative act. 3. In the negative decision on international protection, the following information is provided to the applicant: Quote • You must leave Norway within three weeks of receiving information about this decision. (see section 90 fifth paragraph of the Immigration Act). • You must leave the entire Schengen area if you have not been granted permission to reside in another Schengen country (see the Immigration Regulations Section 17-14a). • The deadline for appealing the decision is three weeks. • Your lawyer will help you if you want to make an appeal. • If the UDI does not change the decision, UDI will forward your appeal to the Immigration Appeals Board (UNE). • If you do not complain/make an appeal within the deadline, and do not leave Norway within the time limit set, the police may send you out forcibly. • You have the right to see the documents in your case. Your lawyer has access to all your documents. • You can ask UDI to stay in Norway until the appeal has been processed by UDI and UNE. Your lawyer will request this in the appeal. • If UDI does not give you permission to stay in Norway while the appeal is being processed, you must leave Norway within the time limit stipulated. • You can still stay in an asylum reception center until you leave the country, but after the departure deadline for voluntary return, you will be issued a smaller allowance. Unquote Norway grants suspensive effect of the return decision in most cases; however, this is not done automatically, and there are some exceptions. This is regulated in the Immigration Act Section 90 fifth paragraph:

			"If a foreign national claims a right to protection, see Section 28 (Residence permit for foreign nationals in need of protection - asylum), or otherwise provides information indicating that protection against removal under Section 73 [non refoulement] will apply, an administrative decision may only be implemented before it is final, provided: (a) the application for residence has been refused examination on its merits under Section 32, (b) the applicant has previously had an application for asylum rejected in another country, or (c) the conditions for residence under Sections 28 or 73 are manifestly not met" When it comes to information on return, the following information is provided All asylum applicants are informed of the availability of an assisted voluntary return program both before application and after the first and second negative decision. In the decision in the first instance, the following information is conveyed: "You may apply for economic support and assistance to return to your country. You may apply for support at www.udi.no. You may also apply for support to re-establish yourself in your home country. You will be granted more support if you apply within the deadline for leaving. Enter www.udi.no/retur and type your country of destination and find out what economic support you are entitled to. " "In addition, you may : • get a plane ticket to your home country • get help to obtain a passport and travel documents. You must cooperate on this. • get advice from the International Organization for Migration (IOM). You may contact them on www.iom.no Or telephone: 23 10 53 20." 4. There was no need to take legislative measures in order to implement the obligation to provide information. 5. Not the subject of court rulings.

4. Summary of results

Obligation to provide information in accordance with the judgment of the European Court of Justice of 19 June 2018 in Case C-181/16 "Gnandi" [2020.22]
Answered by AT, BE, BG, HR, CY,CZ, EE, FR, DE, HU, IE, IT, LV, LT, LU, NL, PL, PT, SK, SI, ES, SE and NO
Launched on 3 April 2020 by BAMF DE.

KEY POINTS TO NOTE

- The judgment of the European Court of Justice of 19 June 2018 in Case C-181/16 "Gnandi" relates to the interpretation of Returns Directive 2008/115/EC in the light of the right to an effective remedy, and is applicable to all Member States of the European Union, with the exception of UK, IE and DK. It is additionally applicable to CH, IS, LI and NO.

BACKGROUND

The European Court of Justice found in its judgment of 19 June 2018 in Case C-181/16 ("Gnandi") that connecting the rejection of an asylum application with a return decision is only compatible with Returns Directive 2008/115/EC if there is an effective remedy against rejection of the asylum application and all the effects of the return decision are suspended until expiry of the time limit for bringing such an appeal, and where appropriate until the decision on such an appeal is handed down at first instance.

The asylum seeker is hence said not to be obliged to return until expiry of the time limit, and/or until the decision on an appeal is handed down at first instance. He or she is also said not to be permitted to be removed or placed in detention pending removal, and furthermore to remain entitled to benefit from the rights arising under the Reception Conditions Directive, and should also be entitled to rely on subsequent changes in factual or legal circumstances that occurred after an asylum application has been rejected.

He or she was to be informed appropriately of these rights that are guaranteed to him or her under EU law (obligation to provide information).

The Federal Administrative Court (BVerwG) found in its judgments of 20 February 2020 (BVerwG 1 C 1.19 et al.) that the beginning of the period with asylum applications that were rejected as manifestly ill-founded, and the information practice of the Federal Office, must be improved in light of the stipulations of the Gnandi judgment.

The question arose for the Federal Office against this background as to how the other (Member) States have implemented the stipulations of the Gnandi judgment.

MAIN FINDINGS

The evaluation shows that in fact only four of the participating States (BE, DE, FR and NL) have reacted to the Gnandi ruling.
The law on asylum has been amended in BE amongst other things such that an asylum seeker whose residence is illegal now also has a right of residence until the removal order becomes non-appealable.
The procedural practice was recently changed in DE such that the enforcement of the removal order is suspended with manifestly ill-founded asylum applications until the time limit for bringing an appeal, or until the first-instance ruling on an injunction has been handed down. Reference is now also explicitly made in the information on remedies to the procedural, protection and participation rights granted in accordance with the Gnandi ruling.
In FR, since 2018, asylum law includes new instances in which the right to stay exceptionally comes to an end before the final outcome of the asylum procedure (article L.743-2 of CESEDA). In those cases, the right to an effective remedy remains as asylum seekers have the right to seize the administrative court to suspend the effects of a return decision until expiry of the time limit for bringing an appeal against the first-instance decision, and where appropriate until the decision on such an appeal is handed down (articles L.743-3 and L.743-4 of CESEDA).
The procedural practice has also been amended in NL. A legal amendment is also planned in order to better harmonise the current provisions of the Aliens Act (Vreemdelingenwet) with the Gnandi judgment and the ensuing judgment of 5 July 2018 (Case C-269/18 "PPU").
9 more (participating) States were not obliged to react because the return decision is not connected with the rejection of the asylum application in those countries (BE, CZ, LV, LT, PL, SI, SK, ES and NO).

Six other (participating) States were not obliged to react because the legal consequences are directly linked to the non-appealability of the rejection of the asylum application (AT, BG, EE, IT, LU and SE).

The matter of enforcement presumably did not apply to five other (participating) States because the deadline for leaving the country of 30 (HR, CY, FR and HU) or 20 days (PT) evidently meets the requirements ensuing from Art. 7 of the Returns Directive 2008/115/EC .
Q1. Do you provide a deadline for the implementation for voluntary return and which is the deadline for executing it? In which cases your MS does not grant this deadline?
Most of the participating (Member) States grant a 30-day period for voluntary return as a matter of principle (BE, BG, HR, CY, EE, FR, DE, HU, IT, LV, LT, LU, NL, PL, SK, ES, SI and NO).

The law on asylum in most of the (Member) States provides for shortening this period in exceptional cases (frequently in cases which are manifestly ill-founded, as well as in security-related cases) (BE, BG, HR, CY, EE, DE, FR, HU, IT, LT, NL, PL, SK, ES, SE and NO).
It is actually possible to extend this deadline in some of the participating (Member) States in hardship cases (incl. FR).
AT has a return period of 14 days. The deadline may be extended on a one-off basis in special circumstances.
CZ has a return period between 7 and 60 days. If there are national security and public order concerns the deadline for the voluntary return may not be granted or lower than 7 days.

PT provides for a 20-day return period.
In many of the participating (Member) States, the period does not start to run until the rejection of the asylum application has become non-appealable (AT, BG, EE, IT, LU, SE and SI).
Q2. In your country, does the refusal of international protection application entail a return decision pursuant to Directive 2008/115/EC on the return of illegally staying third country nationals?
The law on asylum in most of the participating (Member) States – 13 out of 21 – provides for a connection between the rejection of the asylum application with a return decision (AT, BL, HR, CY, EE, FR, DE, HU, IT, LU, NL, PT and SE). CY and DE amongst others provide for an exception to be made.
There is no provision for a connection in the other participating (Member) States (BE, CZ, LV, LT, PL, SI, SK, ES and NO). No obligation to provide information within the meaning of the Gnandi ruling exists with regard to these Member (States).
A connection is however possible in LT and ES as a matter of exception.
Q3. In what concrete form have you implemented the obligations to provide information, as specified by the ruling of the European Court of Justice C-181/16? Can you please state the exact wording?
Asylum seekers in most of the participating (Member) States are informed in the notices at least of the remedies available to them, and where appropriate also of the possibility of receiving (free) legal advice (HR, CY, CZ, DE, EE, FR, HU, IT, LT, LU, NL, PL, PT and NO).
Asylum seekers in some (Member) States (also) receive a separate information sheet or flyer regarding their rights and obligations (incl. AT, BE, CY, DE, IT).In SI those information are part of informational brochure for asylum seekers and information provided to asylum seekers by their legal advisors.
AT (no removals), BE and NL make explicit provision for providing information on the legal impact up to non-appealability or the first-instance ruling within the meaning of the Gnandi ruling in asylum proceedings.
IT (in particular, the National Commission for Asylum) drafted a multilingual practical guide, which has to be distributed by the competent police office to asylum claimers. This guide contains all indications regarding: phases of asylum procedure (included the possibility to appeal before a judge the negative decision of the administrative authority and the consequent suspensive effect of the appeal; rights and duties of the asylum seekers during the procedure; the possibility to contact UNHCR and others human rights organizations to be supported in every step of the procedure; reception, rights and duties after recognition of protection, residence permits.

(Only) NL and DE explicitly consider it to be necessary to make an amendment to the obligation to provide information as a result of the Gnandi ruling.

Reference is now also made in DE as part of the information on remedies to the procedural, protective and participation rights granted in accordance with the Gnandi ruling.
No explicit information is however provided in NL as yet regarding the procedural, protective and participation rights to be granted in accordance with the Gnandi ruling.
LU and PL explicitly do not consider it to be necessary to amend the current procedural practice.
Q4. Were legislative measures necessary in your country in order to implement the obligations to provide information?
No legal amendments were made as a result of the Gnandi ruling in virtually any of the participating (Member) States (AT, BG, CZ, HR, CY, EE, HU, IT, LT, LU, PL, PT, SI, ES, SE, SK and NO).
Only in BE was the law on asylum amended amongst other things such that an asylum seeker whose residence is illegal also continues to have a right of residence until the removal order becomes non-appealable.
The procedural practice has been adjusted in DE such that the enforcement of the removal order is suspended until the time limit for bringing an appeal, or until the ruling on an injunction has been handed down. Reference is now also made in the information on remedies to the procedural, protection and participation rights granted in accordance with the Gnandi ruling. It is planned to amend the Asylum Act (Asylgesetz) in the long term.
In FR, the asylum seeker's Guide has been updated and first-instance decisions on asylum applications have been complemented to specify the legal remedies available and the time limits applicable to them.

Only the procedural practice has so far been amended in NL. A legal amendment is however planned in order to harmonise the current provisions of the Aliens Act with the Gnandi judgment and the ensuing ruling of 5 July 2018 (Case C-269/18 "PPU").
Q5. Have the wording and/or legislative implementation measures been the subject of court rulings? What was the outcome of the litigation?
According to the information available, most of the participating (Member) States do not have any case-law directly related to the Gnandi ruling (BG, HR, CY, CZ, EE, FR, HU, LT, LU, PL, PT, SK, SE and NL).

In DE, the Federal Administrative Court (BVerwG) ruled in its judgments of 20 February 2020 (BVerwG 1 C 1.19 et al.) on the impact exerted by the "Gnandi ruling" on the German law on asylum. The Court found here that the Federal Office had to suspend the enforcement of a notice of intention to remove until expiry of the time limit for bringing an appeal, and/or until the decision on such an appeal is handed down at first instance. The asylum seeker is furthermore to be informed of the procedural, protection and participation rights granted to him or her until the notice becomes non-appealable.
The Supreme Administrative Court (VwGH) in AT addressed the impact of the Gnandi ruling in its ruling of 13 December 2018 (Ro 2018/18/008), and specifically discussed the legal consequences of a remedy that had no suspensive effect. The obligations to provide information where however not discussed.
In IT, Milan District Court ruled on the enforceability of the rejection of an asylum application that was confirmed at first instance against which an appeal was filed. The Court found by ruling of 27 September 2018 (C-422/2018) that enforceability only had to be suspended on application, and only subject to "suitable grounds". So, while the appeal against administrative decision (before the ordinary Court) automatically suspends the enforceability of the rejection, the appeal against the judicial negative decree issued by the ordinary Court (which has to be proposed before Court of Cassation) does not have the same automatic suspensive effect.

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Disclaimer: The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of the EMN Germany and does not necessarily represent the official policy of an EMN NCPs' Member State. The responses are interpreted by EMN Germany to write this summary.

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