



EMN FOCUSED STUDY 2017

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

Estonian national report

Tallinn 2017

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards. The contributing EMN NCP have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.

This document was produced by Barbara Orloff the expert of EE EMN NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.

*Estonian national contact point
Tallinn University
Narva mnt 25
10120 Tallinn
emn@tlu.ee*



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

Draft Common Template of EMN Focussed Study 2017

25th May 2017

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

1 STUDY AIMS AND SCOPE

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

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

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

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

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

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

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

provisions, such as Article 15 of the Return Directive on detention. Conversely, the aim of the study is NOT to make an overall assessment of whether return policies in general are an effective instrument to manage or address migration – be it in the view of EU Member States, the countries of origin or the migrants themselves.

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

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

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

- ★ The 2016 **EMN Study on the 'Return of rejected asylum seekers'**.⁷ The study investigated the specific challenges in relation to the return of rejected asylum seekers and Member State responses to these challenges. The study also investigated national measures to prepare asylum seekers for return during the asylum procedure to anticipate the possibility that their applications would be rejected.
- ★ The 2015 EMN Study on **'Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities'**.⁸ The study looked into the different approaches followed by the Member States to ensure that irregular migrants were informed of options for return, with particular reference to voluntary and assisted voluntary return.
- ★ The 2014 **EMN Study on the 'Use of detention and alternatives to detention in the context of immigration policies'**.⁹ The study aimed at identifying similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of Member States' immigration policies. The study also collected evidence of the way detention and alternatives to detention contributed to the effectiveness of return and international protection procedures.

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

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

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

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

- ★ The **2014 EMN Study on 'Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries'**.¹⁰ The study assessed the extent to which Member States used entry bans and readmission agreements to enhance their national return policies. **Incentives to return to a third country**, while not being covered by a EMN Study, have been analysed in an EMN Inform updated in 2016 that provided an overview of the results of the review of 87 programmes implemented by 23 Member States and Norway to assist migrants to return and to support their reintegration.¹¹

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

2 EU LEGAL AND POLICY CONTEXT

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

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

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

Following the dramatic increase in arrivals of migrants to the EU in 2014 and 2015, a **European Agenda on Migration** was adopted on 17th May 2015.¹⁶ The Agenda set out actions in the areas of humanitarian

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

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

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

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

¹⁴ *Directive 2008/115/EC*, op. cit.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The primary questions the Study will address include:

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

5 RELEVANT SOURCES AND LITERATURE

EU Legislation

- ★ Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals;
- ★ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals;
- ★ Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals.

Commission policy documents

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

EMN Studies

- ★ EMN (2007), 'Return Migration';²⁸
- ★ EMN (2011), 'Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries';
- ★ EMN (2012), 'Practical responses to irregular migration';²⁹

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

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

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

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

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

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

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

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

- ★ EMN (2014), 'The use of detention and alternatives to detention in the context of immigration policies';³⁰
- ★ EMN (2014), 'Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries';³¹
- ★ EMN (2016), 'The Return of Rejected Asylum Seekers: Challenges and Good Practices';³²

EMN Informs

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

EMN Ad-Hoc Queries

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

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

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

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

Other studies and reports

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

6 AVAILABLE STATISTICS

EU level

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

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

National level

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

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

7 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

- one's country of origin; or
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

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

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

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

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

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

Overstay(er): In the global context, a person who remains in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered but then stayed in an EU Member

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

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

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

State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit

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

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

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

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

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

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

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

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

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

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

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

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

8 TEMPLATE FOR NATIONAL CONTRIBUTIONS

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

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

Guidance for filling in the Common Template

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

Please note that a practice may be considered useful or valuable without necessarily meeting the more stringent criteria noted above. However, if they do not meet these criteria, they are not

useful for the synthesis report. Thus, **EMN NCPs should not be reluctant to leave questions on good practices unanswered** where applicable.

EMN FOCUSED STUDY 2017

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

Top-line "Factsheet" (National Contribution)

National contribution (one page only)

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

Current study focuses on the effectiveness of return in Estonia.

The first section of this study gives a contextual overview of the national situation concerning the return of third-country nationals (TCN). In Estonia the return of irregularly staying third-country nationals can be considered a priority and there has been some discussion on the subject in recent years. At the same time the percentage of irregularly staying third-country nationals who have been returned is relatively high with up to 80-90% in recent years, but in Estonian context it should be acknowledged that Estonia has also had small numbers of irregularly staying third country nationals and there have not been many returns carried out to countries with whom European Union does not have an effective readmission agreements.⁴²⁴³

The EU rules have had an important impact on the effectiveness of return in the Estonian context. The Return Directive has been transposed to national legislation whilst the main national measure implementing the Return Directive is the Obligation to Leave and Prohibition to Entry Act (referred to as *OLPEA*). At the same time there have been no major changes in law or policy as a result of migration situation in 2015-2016 nor due to the recommendations issued by the European Commission in March 2017 as most of the recommendations have already been implemented.

The second part of the study provides information on the systematic issuance of return decisions. In Estonia there are two authorities who are responsible for issuing the return decisions - Police and Border Guard Board (referred to as *PBGB*) and Estonian Internal Security Service. The return decisions are issued also to the TCNS whose whereabouts are unknown and who lack identity or travel documents. There are measures in place to effectively locate and apprehend those TCNs whose whereabouts are unknown. Return decisions are also issued when irregular stay is detected on exit and as a general rule return decisions are also issued together with the decision to end the legal stay. In Estonia the return decisions have unlimited duration and the risk of *refoulement* is assessed before enforcing the removal. In Estonia the information that the TCN has to leave and reach a specific third country is provided in the return decision.

The next part of the study examines the practices and criteria to determine the risk of absconding. The elements of risk of absconding were stipulated in the Estonian legislation during the transposition of the Return Directive. The *OLPEA* stipulates the surveillance measures to minimize the risk of absconding.

⁴² Postimees, Ele Russak: tegelikult saadetakse EList välja keskmiselt vaid ligi pool lahkumiskohustusega välismaalastest, 29.02.2016. <http://arvamus.postimees.ee/3600827/ele-russak-tegelikult-saadetakse-elist-valja-keskmiselt-vaid-ligi-pool-lahkumiskohustusega-valismaalastest>

⁴³ Postimees, Eksperdid: tõhus tagasisaatmise süsteem on rändepoliitika alustala, 19.06.2017 <http://arvamus.postimees.ee/4151583/eksperdid-tohus-tagasisaatmise-susteem-on-randepoliitika-alustala>

The main challenge for the PBGB in relation to the risk of absconding is the assessment of trustworthiness on the TCN.

The fourth section of this study concentrates on the effective enforcement of return decisions. With regards to mutual recognition of return decisions issued by another MS or issuing the EU travel documents there has been very little practice in Estonia. The detention of TCNs in the context of the return procedure is possible, but it is considered an extreme measure, which may be applied only as a last resort. The overall maximum authorized length of detention is 18 months, which was transposed to national legislation with the Return Directive. The TCN can be detained by the PBGB or the Estonian Internal Security Service up to 48 hours without the authorization from the administrative court. If it is necessary to detain a TCN for a longer period, the administrative court has to give an authorization. The lawfulness of detention is reviewed by a judge *ex officio*. In Estonia there is currently one specialized detention center, but according to plans a new detention centre will be opened in 2018.

The fifth section of the study gives an overview of the procedural safeguards and remedies in the process of return. In Estonia the principle of *non-refoulement* is systematically assessed as part of the procedure to take a return decision. It is possible to appeal the return decision in the court in ten days as of the date of notification of the return decision, but the appeal itself does not have an automatic suspensive effect. However, the court may order interim relief and suspend the enforcement of the return decision. A judicial hearing is provided to the TCN, but he or she does not have to attend the hearing in person.

The next part provides information on family life, children and state of health in relation to return procedures. Administrative authority that is carrying out return proceedings is required to take into account the specific needs of minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The best interest of the child are always assessed and taken into account. In the event a return of an unaccompanied minor has no prospect, he or she will be issued a temporary residence permit. It is possible to postpone the return on the grounds of health issues, including pregnancy. Example of good practice is the possibility to provide reintegration support to vulnerable persons to be returned.

Section 7 examines the implementation of voluntary departure. In Estonia the period of voluntary departure is automatically granted with the return decision. Taking into account the individual circumstances, the term for voluntary departure is from 7 to 30 days and it is also possible to refrain from granting a period of voluntary departure or extend the deadline of voluntary departure on grounds stipulated in OLPEA.

The final part of the study concentrates on the conditions to impose an entry ban. In Estonia an entry ban is automatically imposed in case the return decision is issued with exception of humanitarian reasons. In case of voluntary departure the maximum length of entry ban is three years. Five-year entry ban may be imposed to third-country national who was not given a period for voluntary departure (e.g. for reasons of public order or national security). The entry ban starts applying on the day on which the third-country national leaves the EU and the alerts are entered into the SIS systematically. The main challenge related to applying entry bans, is with name transcriptions and new travel documents with a new name which may cause a situation where no alert turns up.

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

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

scale of the main issues concerning return (e.g. number of third country nationals ordered to leave and of third country nationals returned following an order to leave).

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

Obligation to Leave and Prohibition on Entry Act is the main national measure implementing the Return Directive.

In addition, the provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in the OLPEA, taking account of the specifications provided for in the OLPEA. State Legal Aid Act sets out the conditions of and procedure for the receipt of legal aid. Code of Administrative Court Procedure provides the competence of administrative courts, the procedure for recourse to administrative courts and the administrative court procedure.

The Supreme Court of Estonia has given an interpretation on how the regulations on return and international protection relate to one another. The Supreme Court found that after the Administrative court has decided to dismiss the appeal against the Police and Border Guard Board's decision to reject the application of international protection, the person no longer has the status of an asylum seeker and his or her detention under the AGIPA is no longer possible. If the grounds for detention still occur, it is possible to detain the person under the OLPEA.⁴⁴

Q2. [EC Recommendation (8)] Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?⁴⁵ No

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

Estonia chose not to apply the Article 2(2) of Return Directive within its relative national legislation.

If Yes, please describe:

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

N/A

⁴⁴ Estonian Supreme Court's decision no 3-3-1-54-16

⁴⁵ Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b).

Q3. Please indicate any recent changes in the legal and/or policy framework (i.e., as a result of the migration situation in 2015-2016 or the European Commission Recommendation issued in March 2017).

There have been no major changes in law or policy as a result of the migration situation in 2015-2016. Most of the recommendations issued by European Commission in March 2017 are already implemented in practice.

In 2016 a new provision was enacted to the Obligation to Leave and Prohibition on Entry Act according to which the risk of escape of a TCN occurs if a TCN has left without permission the residence, assigned to him or her, or another member state of the Schengen Convention.⁴⁶ Additionally starting from 01.05.2016 at the request of the Police and Border Guard Board the administrative court can extend the term of detention of a returnee in the detention centre by four months at a time but for no longer than for 18 months as of the day of detention of the returnee, taking into account the ground for detention.⁴⁷ Previously the possible extension period was two months at a time.

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

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

Yes, the return of irregularly staying third-country nationals can be considered a priority in Estonia. There are some policy documents concerning the return of TNCs. Pursuant to the Internal Security Development Plan 2015-2020, one of the objectives of Estonia is to detect and return the persons staying illegally in Estonia.⁴⁸ Also, the national programme of the Asylum, Migration and Integration Fund (AMIF) has set an objective, based on the key priorities of the national security policies, to promote the voluntary return processes and contribute to the implementation of forced return operations.⁴⁹

In Estonia the percentage of illegally staying third-country nationals who have been returned is relatively high with up to 80-90% in recent years, but Estonia has also had small numbers of immigrants and there have not been many returns carried out to countries with whom European Union does not have an effective readmission agreements.⁵⁰

There has been some debated on the subject of return. Current Estonian Minister of the Interior Mr Andres Anvelt has made a statement that return is the best way to handle the migration crisis as it helps to refute the myth that Europe will accept everybody including those who are not in need of protection.⁵²

⁴⁶ OLPEA § 6⁸

⁴⁷ OLPEA § 25

⁴⁸ Internal Security Development Plan 2015-2020, available at:

https://www.valitsus.ee/sites/default/files/content-editors/arengukavad/taiendatud_siseturvalisuse_arengukava_2015-2020.pdf

⁴⁹ National programme of the Asylum, Migration and Integration Fund, available at:

https://www.siseministerium.ee/sites/default/files/dokumendid/VVO/programme_2014ee65amnp001_4_1_en.pdf

⁵⁰ Postimees, Ele Russak: tegelikult saadetakse EList välja keskmiselt vaid ligi pool lahkumiskohustusega välismaalastest, 29.02.2016. <http://arvamus.postimees.ee/3600827/ele-russak-tegelikult-saadetakse-elist-valja-keskmiselt-void-ligi-pool-lahkumiskohustusega-valismaalastest>

⁵¹ Postimees, Eksperdid: tõhus tagasisaatmise süsteem on rändepoliitika alustala, 19.06.2017 <http://arvamus.postimees.ee/4151583/eksperdid-tohus-tagasisaatmise-susteem-on-randepoliitika-alustala>

⁵² ERR, Anvelt: tagasisaatmine on parim viis rändekriisi leevendada, 26.03.2017, <http://www.err.ee/586163/anvelt-tagasisaatmine-on-parim-viis-randekriisi-leevendada>

Similarly it has been discussed that effective return system is the basis of legitimate policy on international protection.⁵³

Section 2: Systematic issuance of return decisions

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

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

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

The main authority which is responsible for issuing return decisions is Police and Border Guard Board. Estonian Internal Security Service has power to issue and enforce return decisions in order to perform functions provided for in the Security Authorities Act.

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

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

a) The Administrative Procedure Act⁵⁴ provides the possibility to publish the resolution contained in a return decision in a national daily newspaper if there is no information concerning the address of a participant in proceedings or the participant in proceedings does not reside at the address known to the administrative authority and his or her actual whereabouts are unknown, and the document cannot be delivered in any other manner. However, the return decision can be only issued if the third-country national was granted the right to be heard.

⁵³ Postimees, Eksperdid: tõhus tagasisaatmise süsteem on rändepoliitika alustala, 19.06.2017 <http://arvamus.postimees.ee/4151583/eksperdid-tohus-tagasisaatmise-susteem-on-randepoliitika-alustala>

⁵⁴ Administrative Procedures Act § 31 lg 1 p 2

b) No, to issue a return decision there does not have to be documentary proven identity of the person and the return decision can be issued based on the information available on that moment. If some elements of the identity change during the proceedings the previous decision will be amended.

Before the transposition of the Return Directive, it was possible to return the TCN in certain cases without a return decision. When the Return Directive came into force, the authorities started to issue every irregularly staying TCN a return decision as an administrative act.

Q6b. In connection with Q6a a) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown? **Yes**

If Yes, please elaborate on the type of measures

As the numbers of irregularly-staying third-country nationals have been relatively low, it has been possible to use an individual approach. Regular monitoring is being done to ensure that foreigners who have entered the country with a visa or other grounds, have left the country in due time.⁵⁵

In Estonia, there are police officials in border units of prefectures who are specially trained for issues related to irregular migration, migration surveillance (control) and return.⁵⁶

Different authorities are involved in migration control through notification obligations provided by Aliens Act⁵⁷. For example:

- local government authorities are required to notify the Police and Border Guard Board about a TCN who is staying or is being employed illegally without a legal basis;
- educational institutions are required to notify the Police and Border Guard Board of a failure of a TCN who has received a temporary residence permit for study to commence the studies within the prescribed term, of noncompliance with the curriculum to the extent required for holding a residence permit for study, of the exmatriculation from the educational institution, of the discontinuation or disruption of studies or of the conclusion of the contract of traineeship with a TCN or the discontinuation of the concluded contract of traineeship;
- employers are required to notify the Police and Border Guard Board of the commencement of employment by a TCN, of a failure to conclude a contract forming a basis for work relations with the TCN who has registered short-term employment, of a failure of a TCN to commence employment, of any change in the conditions of employment determined in the temporary residence permit for employment, of the premature termination of the contract forming the basis for work relations and of the actual termination of employment of a TCN.

In addition, all natural and legal entities who are providing work in Estonia must register their employees in the Tax and Customs Board register. The Police and Border Guard Board has access to this register to carry out migration controls or conduct risk assessments of illegal employment.

Inspections carried out by PBGB are based on risk assessment as well as on an ad-hoc basis without prior notice. Regarding the risk assessment of illegal employment of third-country nationals the main actor is Estonian Police and Border Guards Board (PBGB) in cooperation with Estonian Tax and Customs Board and Labour Inspectorate. Based on the joint risk assessment the PBGB establishes an annual work plan which includes specific targeted actions as well as joint inspections with the Labour Inspectorate

⁵⁵ Interview with PBGB expert on 26.06.2017

⁵⁶ PBGB 30.08.2017 response to EMN inquiry

⁵⁷ Aliens Act: <https://www.riigiteataja.ee/en/eli/506072017004/consolide>

and Tax and Customs Board. In 2015 over 600 and in 2016 over 400 inspections were conducted to discover illegal stay and work in Estonia.

In accordance with the Law Enforcement Act⁵⁸ the police has right to stop any person and require him or her to present a valid identity document, to obtain statements enabling the establishment of identity, including information on the person's place of residence, and to obtain biometric data for the comparison. Under the Aliens Act the PBGB has also right to interview the third-country national, his or her family members and other persons and agencies concerned, and enter into the person's dwelling or other room or area with the permission of the person in order to verify the facts of the application for, holding, application for extension and revocation of the legal basis for a temporary stay, residence and employment in Estonia of the TCN. If an official has apprehended illegally staying TCN then all relevant information is entered into the electronic system.

The return official checks regularly the information about the possible return of the TCN. There are also regular reminders from the system about the case to the official (i.e. the deadline for voluntary departure is closing or is exhausted). If the TCN has returned voluntarily or has been returned by force the system is updated with a date of return of the TCN.

For location and identification of whereabouts of TCN-s, Estonian PBGB cooperates with different ILO-s and cooperation partners in other EU MS-s using National Coordination Centre (NCC).⁵⁹

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

Yes

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

As a general rule a return decision is issued when irregular stay is detected on exit. In case of *force majeure* (e.g the flight has been cancelled) a TCN has legal right for temporary stay and he or she will not be issued a return decision.

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

Yes.

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

As a general rule return decision is issued together with the decision to end the legal stay, for example in cases where TCNs are sentenced for committing a crime it is possible to annul the residence permit, make a return decision and apply an entry ban in one decision.⁶⁰

Q8. Does the legislation in your Member State foresee the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on their territory? **Yes**

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

Pursuant to the Aliens Act it is possible to issue as an exception a temporary residence permit on humanitarian grounds to a TCN. This provision states that in exceptional circumstances a TCN may be granted a temporary residence permit if in the course of the proceedings relating to the entry of a TCN

⁵⁸ Law Enforcement Act § 32: <https://www.riigiteataja.ee/en/eli/507122016001/consolide>

⁵⁹ PBGB 30.08.2017 response to EMN inquiry

⁶⁰ PBGB 30.08.2017 response to EMN inquiry

into Estonia, his or her temporary stay, residence and employment in Estonia or the obligation to leave Estonia of a TCN it has become evident that the refusal of entry or requiring a TCN to leave Estonia would be unduly burdensome to him or her, the TCN lacks the possibility of getting the residence permit in Estonia on another basis, TCN's permanent residence in Estonia is in accordance with public interests and the TCN does not constitute a threat to public order and national security.⁶¹ Granting of a residence permit on these grounds is exceptional, and a person cannot apply himself or herself for such a residence permit, but a TCN can emphasize the circumstances why s/he needs the Estonian residence permit during another procedure performed by the Police and Border Guard Board. In addition, a person has a possibility to apply for other legal basis of stay, provided that the respective legislative criteria are met.

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

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

N/A

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

If Yes, please describe such mechanism:

Individual circumstances and changes in individual situation are taken into account before issuing a return decision as well as enforcing removal. Screening is carried out regularly. Return is postponed immediately if the circumstances indicating that removal is not possible, appear. The authorities carrying out return procedure are required to suspend the removal of a third-country national, if it would violate the principle of *non-refoulement*. If the person concerned asks for asylum, the return procedure is suspended until a decision on his/her asylum application has been made at the court.⁶²

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

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

Yes, the information that the TCN has to leave and reach a specific third country is provided in the return decision.

Section 3: Risk of absconding

This section will examine Member States' practices and criteria to determine the risk of absconding posed by third-country nationals who have been issued a return decision (to the extent that it has not

⁶¹ Aliens Act Article 210³

⁶² PBGB 30.08.2017 response to EMN inquiry

been covered in previous EMN studies/outputs),⁶³ as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).

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

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

Table 1 Assessment of the risk of absconding

Elements/ behaviours	Yes/No	Comments
Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints	Yes	According to law ⁶⁴ upon the issue of a return decision or detention of a TCN the risk of escape of a TCN is assessed. The risk of escape of a TCN occurs if: the TCN has submitted false information or falsified documents upon application for the legal basis for the stay in Estonia or the extension thereof, for the Estonian citizenship, international protection or identity document; The elements of risk of absconding were stipulated in to OLPEA during the transposition of the Return Directive.
Violent or fraudulent opposition to the enforcement of return	Yes	The risk of escape of a TCN occurs if the TCN has not left Estonia or a member state of the Schengen Convention after the term has expired for voluntary compliance with the obligation to leave imposed by the precept to leave (i.e national authorities have the obligation to enforce return decision);
Explicit expression of the intention of non-compliance with a return decision	Yes	The risk of escape of a TCN occurs if: the TCN has notified the Police and Border Guard Board or the Estonian Internal Security Service of his or her non-compliance with the return decision;
Non-compliance with a period for voluntary departure	Yes	The risk of escape of a TCN occurs if: the TCN has not left Estonia or a member state of the Schengen Convention after the term has expired for voluntary compliance with the obligation to leave imposed by the return decision;
Conviction for a serious criminal offence in the Member States	Yes	The risk of escape of a TCN occurs if: 4) the TCN has repeatedly committed intentional criminal offences or

⁶³ For example, the EMN Focussed Study 2014 on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'; the Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)" (Requested by Estonian NCP on 15 October 2014); and the "Ad-Hoc Query on the Return Directive (2008/115/EC)article 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

⁶⁴ OLPEA § 6⁸ (2)

		has committed a criminal offence for which he or she has been sentenced to imprisonment;
Evidence of previous absconding	Yes	The risk of escape of a TCN occurs if: a TCN has left without permission the residence, assigned to him or her, or another member state of the Schengen Convention.
Provision of misleading information	Yes	The risk of escape of a TCN occurs if: there is a reasoned doubt regarding the identity or citizenship of the TCN; The risk of escape of a TCN occurs if: the TCN has submitted false information or falsified documents upon application for the legal basis for the stay in Estonia or the extension thereof, for the Estonian citizenship, international protection or identity document;
Non-compliance with a measure aimed at preventing absconding	Yes	The risk of escape of a TCN occurs if: 5) the TCN has not complied with the surveillance measures applied with regard to him or her to ensure compliance with the return decision;
Non-compliance with an existing entry ban	Yes	The risk of escape of a TCN occurs if: 7) the TCN has entered into Estonia during the period of validity of the prohibition on entry applied with regard to him or her;
Lack of financial resources	No	
Unauthorised secondary movements to another Member State	Yes	The risk of escape of a TCN occurs if a TCN has left without permission the residence, assigned to him or her, or another member state of the Schengen Convention.
Other (please describe)	Yes	The risk of escape of a TCN occurs if: the TCN has been detained due to illegally crossing the external border of Estonia and he or she has not been issued the permit or right to stay in Estonia;

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

- a) Regular reporting to the authorities; *Yes*
- b) Deposit of an adequate financial guarantee; *No*
- c) Submission of documents; *Yes*
- d) Obligation to stay at a certain place; *Yes*
- e) Other (please describe)

According to law⁶⁵ in order to prevent the risk of escape the Police and Border Guard Board may, by a precept or a decision, require a TCN to comply with surveillance measures and to make a penalty payment. The surveillance measures are 1) residing in a determined place of residence (option d); 2) appearing for registration at the Police and Border Guard Board at prescribed intervals (option a); 3) appearing at the Police and Border Guard Board to clarify circumstances ensuring compliance with a precept; 4) notifying the Police and Border Guard Board of the changes of residence of the TCN and of his or her prolonged absence from the place of residence; 5) notifying the Police and Border Guard Board of the changes in the TCN's marital status. 6) depositing of a travel document of a foreign country or an identity document of a TCN at the Police and Border Guard Board or the Security Police (option c);

Q14. Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

According to the PBGB even if the person corresponds to the criteria for risk of absconding it does not mean that the TCN is automatically detained. Individual assessment of each case is always conducted. Nevertheless, according to the practice, assessment of trustworthiness of the person can be challenging.⁶⁶

Q15. Please describe any examples of good practice in your Member State's determination of the existence of a risk of absconding, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

An example of good practice according to the Police and Border Guard Board is that all the decisions on detention undergo judicial review within 48 hours starting from when the TCN was detained.⁶⁷

Section 4: Effective enforcement of return decisions

This section of the Synthesis Report will present Member States' practices in relation to the effective implementation of return decisions. In particular, it will examine the following issues (to the extent that they are not already covered by previous EMN studies and recent EMN Ad-Hoc Queries): the application of the principle of mutual recognition of return decisions by the Member States (as provided for by Council Directive 2001/40/EC⁶⁸ and Council Decision 2004/191/EC;⁶⁹ the use of detention and alternatives to detention in return procedures (as per Article 15 of the Return Directive); the extent to which emergency situations have led national authorities to apply derogations from the standard periods

⁶⁵ OLPEA § 10 (1) and (2)

⁶⁶ PBGB 30.08.2017 response to EMN inquiry

⁶⁷ Interview with PBGB expert on 26.06.2017

⁶⁸ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001

⁶⁹ Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 60, 27.2.2004.

of judicial review and general detention conditions (Article 18 of the Return Directive); and the use of European travel documents for return in accordance with Regulation 2016/1953.⁷⁰

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

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

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

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

In order to prevent the risk of escape the Police and Border Guard Board may, by a precept or a decision, require a TCN to comply with surveillance measures and to make a penalty payment. The penalty payment may be imposed after the ninetieth day as of the date of issue of a precept. Penalty payment shall be imposed pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act unless otherwise provided for by the OLPEA.⁷¹

In practice the penalty payment is not a measure that has been often used, but when it has been applied the sum is usually around 300 euros.⁷²

SECTION 4.1. MUTUAL RECOGNITION

Q17. [EC Recommendation (9) (d)] Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory? [Yes](#)

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

OLPEA⁷³ provides that TCN with regard to whom a decision has been made by a member state of the Schengen Convention on imposing an obligation to leave the country and this decision is valid and the term for voluntary leaving from the country has expired shall be expelled from Estonia without issuing a precept to leave. Estonia has not applied this provision so far – there is lack of information about the return decisions issued by other Member States.

If Yes, does your Member State:

- a) Initiate proceedings to return the third-country national concerned to a third country; [Yes/No](#)
- b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision; [Yes/No](#)

⁷⁰ Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994, OJ L 311, 17.11.2016

⁷¹ OLPEA § 10

⁷² PBGB 21.09.2017 response to EMN inquiry

⁷³ OLPEA § 14 (2)

c) Other (*please specify*)

In practice Estonia has had no cases because of lack of information about the return decisions issued by other Member States.

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

N/A

SECTION 4.2 TRAVEL DOCUMENTS

Q18. [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?⁷⁴ Yes

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

A person to be returned lacking a valid travel document to cross the state border may be issued a European Union travel document of uniform format for return recognized by the admitting country. The EU return document can be issued if the readmission of the person has been accepted by the third country.⁷⁵

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

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

As there have been very few cases in practice, it is not possible to make any generalizations.

Estonia does not have significant experience in the use of ETD. So far ETD-s have been rarely used. The biggest problem with the ETD-s is their acceptance rate. ETD-s can be used in practice with third countries with whom there is above average cooperation in the field of return/readmission, but with those countries the use of ETD-s is not usually necessary and vice versa.⁷⁶

Q19. In your Member State, what is the procedure followed to request the third country of return to deliver a valid travel document/ to accept a European travel document? Please briefly describe the authorities responsible for carrying out such requests (where relevant, for each type of document, e.g. laissez-passer, EU travel documents...) and the timeframe within which these are lodged before third countries.

Migration Unit of PBGB (2 officials) in close cooperation with the Ministry of the Foreign Affairs is responsible for organising travel documents for removal/readmission purposes. In case the embassy of a third country does not issue a travel document, the PBGB attempts to obtain the document through different cooperation platforms, e. g through EURINT network or using the help of the EURLO liaison officers⁷⁷. The practice depends on whether the third-country national is cooperating with the authorities or not. If the TCN is cooperating in acquiring the travel documents, it can take a few weeks up to a few months to receive the document. In the Readmission Agreements there is usually a timeline during which time the third country should respond. Usually it is up to 2 weeks.⁷⁸

SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

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

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

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

In accordance with Estonian law the detention of a person is an extreme measure, which may be applied

⁷⁴ Ibid

⁷⁵ OLPEA § 20¹

⁷⁶ PBGB 21.09.2017 response to EMN inquiry

⁷⁷ PBGB 30.08.2017 response to EMN inquiry

⁷⁸ PBGB 21.09.2017 response to EMN inquiry

only as a last resort, when other surveillance measures do not ensure the enforcement of the expulsion. The PBGB is required to take into account the specific needs of minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture. As a rule unaccompanied minors are provided substitute home service by the Social Insurance Board during his or her stay in Estonia. Victims of trafficking are referred to the Social Security Board for services designed for traumatized and trafficked persons.

The detention of a person for more than 48 hours is decided by an administrative court. The administrative court may authorise the detention of the third-country national and his/ her placement in the detention centre for up to two months. The detention is reviewed by administrative court at reasonable intervals of time (at least every 4 months) *ex officio*.

Unaccompanied minors and victims of trafficking are not detained.

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

- a) If there is a risk of absconding; **Yes**
- b) If the third-country national avoids or hampers the preparation of a return or removal process; **Yes**
- c) Other (*please specify*).

A TCN may be detained if the application of surveillance measures provided for in OLPEA does not ensure the efficiency of the compliance with the obligation to leave and, primarily, in the case:

- 1) there is a risk of escape of the TCN (option a);
- 2) the TCN does not comply with the obligation to co-operate (option b) or
- 3) the TCN does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.⁷⁹

Q21. How often does your Member State make use of detention for the purpose of removal? Please complete the table below for each reference year (covering a 12-month period, from 1st January to 31st December).⁸⁰

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

	2012	2013	2014	2015	2016	Comments
Total number of third-country nationals	93	84	49	92	67	

⁷⁹ OLPEA § 15 (2)

⁸⁰ The following (Member) States provided quantitative information on the use of detention for the period 1st January 2012 -31st July 2016 through the EMN Ad-Hoc Queries on the 'Use of Detention in Return Procedures - Requested by COM on 30th November 2015' and 'Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1st January-31st December 2016.

placed in detention						
Number of third-country nationals placed in detention (men)	88	76	45	73	57	
Number of third-country nationals placed in detention (women)	5	8	4	19	10	
Number of families in detention	1	1	0	5	0	
Number of UAMs in detention	<u>2 TCNs*</u>	<u>1 TCN*</u>	<u>1 TCN*</u>	<u>3 TCN*</u>	<u>1 TCN*</u>	<p>*In the absence of identification documents, these TCNs were placed to detention centre due to suspicion of the personal details, including age, given by the migrants.</p> <p>After age assessment and being determined as minors, they were released immediately and referred to SOS Children's Village.</p>

Q22a. [EC Recommendation (10) (b)] In your Member State, what is the overall maximum authorised length of detention (as provided for in national law or defined in national case law)?⁸¹

According to the law⁸² the person to be returned may be detained with the permission of court up to six months if the basis provided for in subsection 15 (2) of OLPEA and principles specified in subsection (1) of OLPEA exist. In the cases provided for in paragraph 25(2) of OLPEA the maximum period of detention may be 18 months. The person is released immediately if the basis for detention has ceased to exist or the term for detention has expired. In these cases the surveillance measures may be applied to avoid risk of absconding.

It is possible to re-detain the person who has been released from the detention center when there is a prospect of removal in order to carry out removal process (physical transportation out of the Member State). The period of time for the proceeding of the application for international protection shall not be included in the term of detention of the person to be returned.⁸³

The maximum authorized length of detention was stipulated when the Return Directive was transposed to the national legislation. Before that the Estonian Supreme Court had ruled that the detention may not be prolonged if the return has become without perspective or if the detention has become unproportional.⁸⁴

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

Please elaborate under which circumstances:

N/A

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

a) Judicial authorities; *please specify*

The Police and Border Guard Board or the Estonian Internal Security Service may detain a TCN on the basis stipulated by law for up to 48 hours without the authorization of the administrative court.⁸⁵ In case it is necessary to detain a TCN for longer than 48 hours, the Police and Border Guard Board or the Estonian Internal Security Service have to apply for authorization from the administrative court for detention of the person and placement in the detention centre for up to two months⁸⁶ If the removal of the TCN is not possible during the time granted then the administrative court reviews the case and can prolong the period of detention by four months at a time but for no longer than 18 months, taking into account the ground for detention. The prolongation of the period of detention is reviewed *ex officio*.

b) Administrative authorities; *please specify*

The Police and Border Guard Board or the Estonian Internal Security Service may detain a TCN on the basis stipulated by law only for up to 48 hours without the authorization of the administrative court.⁸⁷

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

⁸¹ Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

⁸² OLPEA § 25 (2) and (3)

⁸³ OLPEA § 25 (3)

⁸⁴ OLPEA Draft Law no 793 Explanatory Note p 11

⁸⁵ OLPEA § 15

⁸⁶ OLPEA § 23 (1)

⁸⁷ OLPEA § 15

See above.

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

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

If Yes, how long after the start of detention?

If it is necessary to detain the TCN for longer than 48 hours, the Police and Border Guard Board or the Estonian Internal Security Service is obliged to apply for authorization from the administrative court for detention of the person to be expelled and placement in the detention centre for up to two months.

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

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

N/A

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

The detention is reviewed by court *ex officio*. Additionally the PBGB continuously assesses whether the grounds for detention still exist and the person shall be released from detention if the grounds for detention cease to exist.

Q24b. In your Member State, how often is the stay of a third-country national in detention reviewed (e.g. every two weeks, every month, etc.)?

The administrative court can authorize detention for up to two months at a time. If the removal of the TCN is not possible during the time granted then at the request of the Police and Border Guard Board the administrative court reviews the case again and decides whether to prolong the period of detention by four months at a time or not. If the court makes a decision to prolong the detention for up to four months, the detention will be reviewed again after that period has ended. The aim is to detain the TCN for the shortest period, but at the same time to detain the TCN long enough for an effective return.

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

a) Judicial authorities; *please specify*

In Estonia, the stay of a TCN in detention is reviewed by the Administrative court.

b) Administrative authorities; *please specify*

N/A

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

N/A

Q25. [EC Recommendation (10) (c)] How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31st December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors.⁸⁸ If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

Table 3 Detention capacity as of 31st December 2016

		Situation as of 31 st December 2016	Comments
Number of detention centres		1	According to the current plans new detention centre will be opened in 2018.
Number of places available in detention centres per category of third-country nationals	Men	48	
	Women	32	There are 32 places for women and families altogether.
	Families		There are 32 places for women and families altogether.
	Unaccompanied minors		As a general rule unaccompanied minors are not detained in detention centre. Accompanied minors are accommodated in in Keila SOS Children's Village or in Keila youth facility.
	Total	80	

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

⁸⁸ Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

Harku Detention centre has the capacity to accommodate 80 detainees. Each room is 17m² and accommodates 4 persons. In 2012/13, 20 additional accommodation places were created.

New Detention centre will have the capacity to accommodate 120 detainees. There are 10,1m² rooms for 2 persons and 19,2 m² rooms for 4 persons.

Both detention centres meet the CPT criteria of at least 4m² per person.⁸⁹

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

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

Yes, third-country nationals subject to return procedures can be detained in the specialised detention centre if the grounds for detention exist and the surveillance measures cannot be applied efficiently. The detention must be in accordance with the principle of proportionality and upon detention relevant circumstances related to the TCN shall be taken account of in each case.

In case of unforeseen increase in the number of the detainees, they may be accommodated in separate police detention house or under surveillance outside the detention center. In practice there have been only some cases so far in which Jöhvi police detention centre (66 places) has been used for short term detention of third-country national subject to forced return.⁹⁰

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

N/A

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

Please elaborate on the circumstances in which this happened:

No.

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

No.

Q28c. If Yes to Q28a, please describe the situation(s) in additional detail and provide information on any derogations that your Member State may have decided to apply with respect to general detention conditions and standard periods of judicial review (e.g. *during the emergency situation, third-country*

⁸⁹ PBGB 06.07.2017 response to EMN inquiry

⁹⁰ PBGB 21.09.2017 response to EMN inquiry

nationals had to be detained in prison accommodation in order to increase the detention capacity, the detention was reviewed once a month instead of once a week, etc.)

N/A

SECTION 4.4. USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

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

Table 4 Alternatives to detention

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	Yes. Appearing for registration at the Police and Border Guard Board at prescribed intervals.
Obligation to surrender a passport or a travel document	Yes. Depositing of a travel document of a foreign country or an identity document of a TCN. In case of the deposit of the travel document of a foreign country and an identity document of a person the institution receiving the document for deposit shall issue a certificate about receipt of documents for deposit.
Residence requirements (e.g. residing at a particular address)	Yes. Residing in a determined place of residence;
Release on bail (with or without sureties) <i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	No.
Electronic monitoring (e.g. tagging)	No.
Guarantor requirements <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	No.
Release to care worker or under a care plan	No.
Community management programme	No.

<p>Other alternative measure available in your (Member) State. Please specify.</p>	<ul style="list-style-type: none"> • Appearing at the Police and Border Guard Board to clarify circumstances ensuring compliance with return obligation; • Notifying the Police and Border Guard Board of the changes of residence of the TCN and of his or her prolonged absence from the place of residence; • Notifying the Police and Border Guard Board of the changes in the TCN 's marital status.
---	--

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

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

Main challenges include:

The main challenges in placing TCNs in detention are related to identification. Based on Estonian national legislation TCNs can be detained without a court permission for 48 hours. After the aforementioned period detention can be carried out only on the permission of administrative court. This means that national authorities are obliged to gather relevant information and documentation and present the case to administrative court during the initial 48 hours. In case of larger groups of TCN it has proven to be difficult to reveal credible identity of the person during the initial period of detention.⁹¹

Main obstacles in return resulting in detention of TCN nationals are related to possible absconding, identification and documentation of the person. In case of certain third countries the process of documentation of the person is very difficult if not impossible, therefore resulting in release of the person from detention.

In overall the detention period possible can be considered sufficient in order to carry out he returns of the TCNs. Nevertheless in some cases the detention period can be exhausted before the actual documentation of the person.

An important challenge arises from the maximum detention time limit i.e. 18 months. Persons subject of return deliberately elongate their appealing process in order to either avoid being expelled or await to be released from the detention centre.⁹²

Q31. Please describe any examples of good practice in your Member State's implementation of detention and alternatives to detention, identifying as far as possible by whom the practice in question is considered successful, its relevance, since when the practice has been in place and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

An example of good practice according to the Police and Border Guard Board is that all the decisions on detention undergo judicial review within 48 hours starting from when the TCN was detained.⁹³

⁹¹ EMN Ad-Hoc Query on the Use of Detention in Return Procedures (update) requested by the European Commission on 9th August 2016

⁹² PBGB 06.07.2017 response to EMN inquiry

⁹³ Interview with PBGB expert on 26.06.2017

It has to be noted that in accordance with Estonian law the detention of a person is an extreme measure, which may be applied only as a last resort, when other surveillance measures do not ensure the enforcement of the expulsion. The detention shall be reviewed by administrative court at reasonable intervals of time (at first every 2 months and later at least every 4 months).

All international and non-governmental organisations and bodies have the possibility to visit detention centre. The detention centre is regularly inspected by the Chancellor of Justice.⁹⁴

Section 5: Procedural safeguards and remedies

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

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

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

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

Yes, the authorities carrying out return procedure are required to suspend the removal of third-country national, if it would violate the principle of *non-refoulement*. If the person concerned asks for asylum the return procedure is suspended until a decision on his/her asylum application has been made at first instance court.

When transposing the Return Directive, there was no need to change the existing legislation related to the right for appeal and principle of *non-refoulement* as the legislation already stipulated the right of appeal without suspensive effect.⁹⁵

If No, under which circumstances is it assessed?

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

N/A

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

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

If Yes to c), please specify

⁹⁴ PBGB 30.08.2017 response to EMN inquiry

⁹⁵ Ministry of the Interior response to EMN inquiry

N/A

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

If Yes, please specify whether the deadline is:

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

e) Other (please specify)

According to the legislation the deadline for the third-country national concerned to appeal the return decision is ten days as of the date of notification of the return decision.⁹⁶

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

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

The appeal does not have an automatic suspensive effect. However, the court may order interim relief and suspend the enforcement of the return decision. The authorities carrying out return procedure are required to suspend the removal of third-country national, if it would violate the principle of *non-refoulement*. If the person concerned asks for asylum the return procedure is suspended until a decision on his/her asylum application has been made at first instance court.

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

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

In accordance with the Administrative Procedure Act⁹⁷ the administrative authority shall, before issue of an administrative act or before taking any measures which may damage the rights of a participant in a proceeding, grant a participant a possibility to provide his or her opinion and objections in a written, oral or any other suitable form.

In detention centre and if necessary also in other detention houses the video-conferencing is used while the decision on detention or return is reviewed by the judicial authority.

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

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

⁹⁶ OLPEA § 13 (3)

⁹⁷ Administrative Procedures Act Article 40

It is possible to hold the return hearing together with hearings for rejected residence permit including rejected asylum application.⁹⁸

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

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

In some cases if the presence of third-country national is not possible, his or her legal representative may attend the hearing. If the person wishes not to participate, he or she has to manifestly announce this to the court. Videoconference is very often used.⁹⁹

Section 6: Family life, children and state of health

This section will study Member States' practices on the interpretation and implementation of EU rules relating to: the assessment of the best interest of the child; the assessment of family life; the assessment of the state of health of the third-country national concerned; irregularly staying unaccompanied minors; and the use of detention in the case of minors, as per Articles 3, 10 and 17 of the Return Directive. Questions referring to children below refer both to accompanied and unaccompanied minors, unless specified

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

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

Please differentiate between return and detention if applicable

Administrative authority that is carrying out return proceeding is required to take into account the specific needs of minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.¹⁰⁰ There are screening procedures in place on how to interview a possible victims of trafficking and minors, how and with which authorities and NGO-s to cooperate and proceed.¹⁰¹ Victims of trafficking and unaccompanied minors are not placed in detention centre.

When transposing the Return Directive the definition of the unaccompanied minor was enacted in the OLPEA and the regulation on return of unaccompanied minors was supplemented.¹⁰²

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

Administrative Procedure Act¹⁰³ foresees that a minor is not allowed to perform procedural acts in administrative proceedings independently. In case the unaccompanied minor is apprehended in the territory of Estonia for his or her stay without legal basis, the guardian is immediately involved in the proceedings. In accordance with of the Family Law Act¹⁰⁴ the duties of a guardian shall be performed by the rural municipality or city government of the usual whereabouts of the child.

An unaccompanied minor TCN is provided a substitute home service by the Social Insurance Board during his or her stay in Estonia. Social Insurance Board is responsible for international/national adoption; 24/7 support for local governments and other authorities on crisis child protection cases; monitoring child protection work and assistance; work counselling for child protection workers; development of new

services. The Social Insurance Board has an obligation to prepare a case plan for each unaccompanied minor. A case plan is a written document consisting of an evaluation to a person's need for assistance and the activity plan for application of measures. The case plan of a child is reviewed at least once a year.¹⁰⁵

Unaccompanied minors are placed in Keila SOS Children's Village or in Keila youth facility. The PBGB, Social Insurance Board, SOS Children's Villages and representative of local government have agreed on information exchange and activities to ensure that the unaccompanied minor is placed in SOS Children's Village within shortest possible length of time and that the procedural acts are performed in the best interest of the child (as far as possible the procedural acts are performed by PBGB in SOS Children's Village).¹⁰⁶

The Police and Border Guard Board is responsible for searching of family members of the unaccompanied minor TCN, a guardian or a reception center appointed in the receiving state. If the unaccompanied minor wishes to return voluntarily, the guardian in cooperation with IOM shall organize the return of an unaccompanied minor through AVRR program.

An unaccompanied minor may be returned if the custody of a minor is arranged and the protection of the rights and interests of the minor are ensured in the admitting country. In that case the return of an unaccompanied minor is arranged in coordination with the competent State agencies of the admitting country and in case of necessity with the competent State agencies in the transit country.¹⁰⁷

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

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

Elements considered	Yes/No	Comments
Child's identity	Yes	
Parents' (or current caregiver's) views	Yes	
Child's views	Yes	Every person and every case is assessed separately.
Preservation of the family environment, and maintaining or restoring relationships	Yes	

⁹⁸ PBGB 21.09.2017 response to EMN inquiry

⁹⁹ PBGB 30.08.2017 response to EMN inquiry

¹⁰⁰ OLPEA § 67

¹⁰¹ PBGB 30.08.2017 response to EMN inquiry

¹⁰² OLPEA Draft Law no 793 Explanatory Note p 12

¹⁰³ Administrative Procedure Act § 12 (2) - <https://www.riigiteataja.ee/en/eli/531102016002/consolide>

¹⁰⁴ Family Law Act § 176

¹⁰⁵ PBGB 30.08.2017 response to EMN inquiry

¹⁰⁶ PBGB 30.08.2017 response to EMN inquiry

¹⁰⁷ PBGB 30.08.2017 response to EMN inquiry

Care, protection and safety of the child	Yes	
Situation of vulnerability	Yes	
Child's right to health	Yes	Healthcare is available.
Access to education	Yes	Access to education is provided.
Other (please describe)	Yes	There are various options for legalisation of stay, (provided in Aliens Act). For example, those who attend studies may apply for residence permit for studying.

Q42. In the event a return decision against an unaccompanied minor cannot be carried out, does your Member State grant the minor a right to stay? **Yes**

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

If there is no prospect of return, a temporary residence permit for settling permanently in Estonia can be issued under the Aliens Act.¹⁰⁸

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

If Yes, please describe such policies

In Estonia the reintegration assistance is a vital component of the Voluntary Assisted Return and Reintegration Programme (VARRE) which aims to support returning migrants by providing opportunities for employment, skills development and training, education, and income-generating activities. The programme is not specifically targeted to unaccompanied minors, but it takes into account the individual circumstances and can offer reintegration packages tailored to unaccompanied minors.¹⁰⁹

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

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

Person may be hospitalized until his or her health is stabilized and return is possible.¹¹⁰

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

¹⁰⁸ OLPEA § 210³

¹⁰⁹ Voluntary Assisted Return and Reintegration Programme from Estonia: <http://www.iom.ee/varre/>

¹¹⁰ PBGB 30.08.2017 response to EMN inquiry

- a) The third-country national brings his/her own medical certificate; **Yes**
- b) The third-country national must consult with a doctor appointed by the competent national authority; **Yes**
- c) Other (*please describe*)

TCN can bring his/her own medical certificate if it is available. In case a person is in detention, he or she must consult with a doctor in detention centre.

Returnees have access to all necessary health care services. The data related to health care of detainees are processed by health care provider in the Health Information System. The Health Information System is a database that is a part of the state information system which is accessible to all health care providers and hospitals in Estonia. Thus, the medical record of the detainee can be seen by other health care provider(s) if the detainee needs treatment in a hospital or he/she is accommodated outside the detention center (e.g. in a reception center for asylum seekers).¹¹¹

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

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

No practice.

Q47. When returnees suffer from health problems, does your Member States make provision for the supply of the necessary medication in the country of return? **Yes**

If Yes, for how long is the medication provided?

Medications are provided for maximum of 1 month and have to be in accordance with the custom rules.¹¹²

Q.48. Does your Member State postpone return if the third-country national concerned is pregnant? Please specify (*e.g. pregnancy as such is not a cause for postponement, but can be if pregnancy is already advanced, e.g. after eight months*)

It depends on how far the pregnancy is. If the pregnancy is already advanced, the return will be postponed. The postponement depends on the airlines policies on this matter.¹¹³

Q49a. [EC Recommendation (14)] In your Member State, is it possible to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special

¹¹¹ PBGB 30.08.2017 response to EMN inquiry

¹¹² PBGB 30.08.2017 response to EMN inquiry

¹¹³ Interview with PBGB expert on 26.06.2017

needs? Please indicate whether persons belonging to vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Yes, persons belonging to vulnerable groups can be detained (except for unaccompanied minors and victims of trafficking who cannot be detained) in certain circumstances. If detention is not a proper solution in terms of the person's health condition (if informed by the detention centre's medical staff, psychologist, psychiatrist or any other specialist), the person is to be released.¹¹⁴ The detention of a person is an extreme measure, which may be applied only as a last resort, when other surveillance measures do not ensure the enforcement of the return decision. Upon detention all relevant circumstances related to the returnee are taken account of in each case and reviewed by court. An unaccompanied minor TCN is provided a substitute home service by the Social Insurance Board during his or her stay in Estonia. Victims of trafficking are referred to the Social Security Board for services designed for traumatized and trafficked persons.

Q49b. If applicable, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

Children accompanied by parents are placed with permission of administrative court in detention centre if detention has been found unavoidably necessary. In general, families have been released from the detention centre between the detention time from 1,5 weeks to 3 months.

Unaccompanied children are not detained in detention centre but are immediately placed to special childcare units (SOS Children's village).¹¹⁵

Q50. Please indicate any challenges associated with the implementation of the return of vulnerable persons in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

One of the challenges is determining whether a person is a minor or not. In Estonia unaccompanied minors are not detained in detention centre, but in the absence of identification documents and when there has been suspicion of personal details, including age, a few TCNs have been placed to detention centre. After age assessment and being determined as minors, they were released immediately and referred to SOS Children's Village.

Q51. Please describe any examples of good practice in your Member State concerning the return of vulnerable persons, identifying as far as possible by whom the practice in question is considered successful, since when has the practice been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Example of good practice according to the Police and Border Guard Board is the possibility to provide reintegration support to vulnerable persons to be returned.¹¹⁶ In addition to the VARRE program which is available for TCNs who have a voluntary deadline for departure, the PBGB has the possibility to provide

¹¹⁴ PBGB 06.07.2017 response to EMN inquiry

¹¹⁵ PBGB 06.07.2017 response to EMN inquiry

¹¹⁶ Interview with PBGB expert on 26.06.2017

the TCNs with support for travelling back to the third country and subsistence support taking into account the vulnerabilities of the returnees. If the person has sufficient funds, the support is not paid.¹¹⁷

Section 7: Voluntary departure

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

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

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

a) Automatically with the return decision? **Yes**

OR

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

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

According to law¹¹⁸ the term for voluntary compliance with the obligation to leave shall be assigned by the return decision. Taking into account the individual circumstances the term for voluntary departure is from 7 to 30 days.

In Estonia voluntary return of irregular migrants is encouraged since 2010 through Voluntary Assisted Return and Reintegration Programme¹¹⁹. The programme is carried out by IOM and co-funded by the EU Asylum, Migration and Integration Fund (AMIF) and by the Estonian Ministry of the Interior. The programme is open to asylum seekers as well as to irregular migrants and provides needs based support during the pre-departure and post-arrival stages of the return process (counselling, assistance in getting travel documents, travel tickets and planning the journey, reintegration support).

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

- a) The legal/ policy provisions regulating the facilitation of such information;
- b) The actors involved / responsible;
- c) The content of the information provided (e.g. the application procedure, the deadlines for applying, the length of the period for voluntary departure, etc.);
- d) The timing of the information provision (e.g. on being issued a decision ending legal stay/return decision);

¹¹⁷ Ministry of the Interior, AMIF projects:

https://www.siseministerium.ee/sites/default/files/dokumendid/VVO/amif_projektid_0.pdf

¹¹⁸ OLPEA § 7²

¹¹⁹ Voluntary Assisted Return and Reintegration Programme from Estonia: <http://www.iom.ee/varre/>

- e) The tools of dissemination (in person (written), in person (oral), via post, via email, in a telephone call, in public spaces, etc.),
- f) The language(s) in which the information must be given and any accessibility / quality criteria (visual presentation, style of language to be used, etc.),
- g) Any particular provisions for vulnerable groups (e.g. victims of trafficking, unaccompanied minors, elderly people) and other specific groups (e.g. specific nationalities).

N/A

Q53. In your Member State is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?¹²⁰

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

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

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

The PBGB has right to refrain from granting a period for voluntary period and enforce the return decision immediately if certain circumstances listed in paragraphs 7²(2) of the OLPEA are met. Paragraphs 7²(2) 1) to 4) of the OLPEA are based on the provisions set forth in Article 7(4) of the Return Directive. These provisions foresee that the term for voluntary compliance with the obligation to leave may not be assigned and the enforcement of the return decision may be carried out immediately if:

1) there is a risk of escape of a TCN; 2) a TCN has been refused the issue of the residence permit or the granting of international protection because the application for residence permit or the granting of international protection is unjustified; 3) in the proceedings of the issue of the residence permit or granting international protection the TCN has submitted false information or falsified documents about the circumstances relevant in the proceedings; 4) a TCN constitutes a threat to public order or national security;

The specifications stipulated in paragraphs 5) to 7) are applied in accordance with Article 2(2) of the Return Directive. These provisions foresee that the term for voluntary compliance with the obligation to leave may not be assigned and the enforcement of the return decision may be carried out immediately if: 5) a decision to refuse admission into the country provided for in OLPEA has been made with regard to the TCN; 6) a return decision is imposed on a TCN who has been detained due to the crossing of the external border of Estonia illegally and who has not obtained a permit or right to stay in Estonia; 7) a TCN has an obligation to leave Estonia after his or her release from prison.

¹²⁰ Article 7(4) of the Return Directive reads: 'If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days'.

The regulation on voluntary departure and the grounds when the authorities may refrain from granting a voluntary deadline for departure where stipulated in the OLPEA while transposing the Return Directive.

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

According to law¹²¹ the term from 7 to 30 days shall be assigned for voluntary compliance with the obligation to leave by the return decision.

Before the transposition of the Return Directive, the TCN was given 7 days for voluntary compliance with the return decision.

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

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

- a) The prospects of return; **Yes**
- b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; **Yes**
- c) Other (*please specify*)

When determining the duration of the period of voluntary departure all relevant circumstances are taken into account (e.g. the duration of stay, risk of absconding, family and social relationships of a TCN in Estonia etc.).

Q56. Is it part of your Member State's policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? **Yes**

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

- a) The length of stay; **Yes**
- b) The existence of children attending school; **Yes**
- c) The existence of other family and social links; **Yes**
- d) Other (*please specify*)

The term for voluntary compliance with the obligation to leave stipulated in the return decision may be extended by up to 30 days at a time if the compliance with the return decision turns out to be too disproportionately burdensome for a TCN within the term stipulated in the return decision, taking account the duration of the stay in Estonia of a TCN; the impact on a child attending school; family and social relationships of a TCN in Estonia and other relevant circumstances.¹²²

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

¹²¹ OLPEA § 7² (4)

¹²² OLPEA 7² (5)

If Yes, please describe:

PBGB has national entry-exit system called PIKO, where external border crossings of all third-country nationals are recorded. Migration surveillance officers cooperate with ILO-s and colleagues in other Member States.¹²³

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

Table 6: Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
Insufficient length of the period for voluntary departure	In some cases.	Children are at school, no flights at these dates, embassies face difficulties with issuing relevant return documents.
Absconding during the period for voluntary departure	In some cases.	
Verification of the departure within the period of voluntary departure	In some cases.	At the moment there is no common entry –exit system, it is difficult to verify whether the person has departed from other MS. It would be helpful to have a common entry-exit system in place. ¹²⁴
Other challenges (please specify and add rows as necessary)		

Q59. Please describe any examples of good practice in your Member State in connection with the period of voluntary departure, identifying as far as possible by whom the practice in question is considered successful, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

No information available.

Section 8: Entry bans

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

Please note that similar information was requested in the EMN 2014 Study on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission

¹²³ PBGB 30.08.2017 response to EMN inquiry

¹²⁴ Interview with PBGB expert on 26.06.2017

agreements between Member States and third countries'. Please review your Member State contribution to this Study (if completed) and provide only updated information here.

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

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

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

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

Table 7: Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
Risk of absconding¹²⁵	Yes	
The third-country national concerned poses a risk to public policy, public security or national security¹²⁶.	Yes	
The application for legal stay was dismissed as manifestly unfounded or fraudulent¹²⁷	Yes	
The obligation to return has not been complied with¹²⁸	Yes	
Other (e.g. please indicate and add rows as appropriate)		

¹²⁵ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
¹²⁶ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
¹²⁷ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).
¹²⁸ As stipulated in the Return Directive Article 11(1)(b).

<p>Additionally an entry ban may be applied with regard to a TCN if¹²⁹:</p> <p>There is information or good reason to believe that he or she belongs to a criminal organisation, that he or she is connected with the illegal handling or illicit trafficking of narcotics, psychotropic substances or the illegal conveyance of persons across the border or a temporary control line, that he or she is a member of a terrorist organisation or has committed an act of terrorism, or there is good reason to believe that that he or she may commit a terrorist crime or he or she is involved in financing or supporting a terrorist crime or money laundering;</p>	Yes	
<p>He or she is employed or has been employed by the intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state, or there is good reason to believe that he or she is employed or has been employed by an intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state;</p>	Yes	
<p>He or she has received or there is good reason to believe that he or she has received special training in landing operations or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;</p>	Yes	
<p>He or she incites or there is good reason to believe that he or she may incite national, racial, religious or political hatred in Estonia or a foreign state;</p>	Yes	
<p>He or she has been punished or there is good reason to believe that he or she has been punished for a serious crime against humanity or for a war crime, regardless of whether the criminal record has expired or been expunged, and regardless of the expungement of data concerning the penalty from the criminal records database;</p>	Yes	
<p>There is information or a good reason to believe that the TCN has participated or contributed to violation of human rights in a foreign state, which has resulted in the death</p>	Yes	

¹²⁹ OLPEA § 29

¹³⁰ i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

or serious injury of a person, the unfounded conviction of a person in an offence inspired by political motives or other serious consequences;		
He or she has been punished for an intentionally committed criminal offence or for another offence in Estonia or a foreign state, and if the criminal record has neither expired nor been expunged or if data concerning the penalty have not been expunged from the criminal records database;	Yes	
The TCN has violated legislation regulating the stay of TCNs in Estonia or the crossing of the state border by TCNS;	Yes	
The TCN has unperformed obligations to the Estonian state, a governmental authority or local government.	Yes	

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

In case of voluntary departure the maximum length of entry ban is three years. Five-year entry ban may be imposed to third-country national who was not given a period for voluntary departure (e.g. for reasons of public order or national security). When determining the length of the entry ban all relevant circumstances are taken into account. All return decisions are accompanied by EU-wide entry bans. Entry ban may be left unapplied for humanitarian reasons. However, the entry ban is cancelled by the Ministry of the Interior if the third-country national submits evidence showing that he/she has left the Schengen area within the term for voluntary departure.

The maximum validity of the entry ban before transposing the Return Directive was 10 years in case of removal. When transposing the directive it was decided to apply entry ban to all irregularly staying TCNs with the distinction that the TCNs who receive the voluntary deadline for return can apply for annulment of the entry ban. Additionally a right of discretion was foreseen for deciding the duration of the entry ban and it was decided that the maximum validity of the entry ban was 3 to 5 years (in case of expulsion).

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

Yes

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

No information available.

Q62c Does national legislation and case law in your Member State establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry? Yes

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

In case of voluntary departure the maximum length of entry ban is three years. Five-year entry ban may be imposed to a TCN who was not given a period for voluntary departure (e.g. for reasons of public order or national security).

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

a) On the day the return decision is issued; No

- b) On the day in which the third-country national leave the EU; **Yes**
- c) Other (*please specify*)

Alerts on entry ban are entered in SIS when the third-country national has left the EU territory.

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

Please specify whether;

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

In Estonia the return procedures and relevant documents are drawn up and followed on an electronic platform. If an official has apprehended illegally staying TCN then all relevant information is entered into the electronic system. This also includes information about return decision and possible entry ban. The entry ban imposed with a return decision is automatically transferred to national registry with a status "ON HOLD". The entry ban on hold is not visible for operational purposes.

The return official checks regularly the information about the possible return of the TCN. There are also regular reminders from the system about the case to the official (i.e. the deadline for voluntary departure is closing or is exhausted). If the TCN has returned voluntarily or has been returned by force the system is updated with a date of return of the TCN. System automatically updates the entry in the national registry with an enforcement date. In the national registry the date of entry into force of the entry ban is updated and relevant end date is calculated by the system. The status of an entry ban is automatically changed to "VALID" and an alert is automatically created by the system in SIS. Information about the entry ban is immediately visible for operational use.

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

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

Yes, all return decisions are accompanied by an entry ban. Entry ban may be left unapplied for humanitarian reasons.

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

- a) Yes, a misdemeanour
- b) Yes, a criminal offence
- c) **No**

In Estonian legislation the illegal crossing of the Estonian external border is an act that is punishable in itself as a misdemeanor or in case of aggravating circumstances as a criminal offence. A person is considered to have illegally crossed the external border of Estonia in case he or she does not fulfil the legal conditions to enter Estonia, for example in case an entry ban has been issued against him.

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

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

Table 8 The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry	N/A	
Contribute to ensuring compliance with voluntary return ¹³⁰	N/A	
Cost-effectiveness of entry bans	N/A	
Other aspects of effectiveness (please specify)	N/A	

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

Table 9 Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	No	
Monitoring of the compliance with entry bans	No	

¹³⁰ i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

Cooperation with other Member States in the implementation of entry bans¹³¹	No	SIS consultations are carried out usually in good faith and time.
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges (please specify and add rows as necessary)	Yes	Estonia has noted a problem with name transcription, especially with Slavic names, which can be written in different ways. Also some third-country nationals have taken a new travel document with a new name. Because of that there have been some incidents where third-country nationals, who have a valid entry ban, have returned to Estonia or to other Schengen countries with a new name (or name transcription) and therefore no alert has been turned up. To avoid problems with name transcription, Estonia tries to enter to the database possible alias ' of the person 's name.

Q69. Please describe any examples of good practice in your Member State in relation to the implementation of entry bans, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Some good practices of the Police and Border Guard Board when imposing an entry ban:

In Estonian PBGB the police, border guard and migration service duties are all in one organisation. That is why every instance mentioned has access to entry ban information and the entry ban system works efficiently. Also all procedural data bases have automatic SIS alert checks.¹³²

Section 9 Conclusions

This section of the Synthesis Report will to draw conclusions as to the impact of EU rules on return – including the Return Directive and related case law from the Court of Justice of the European Union (CJEU)–on Member States' return policies and practices and on the effectiveness of return decisions issued across the EU.

Q70. With regard to the aims of this study, what conclusions would you draw from your findings?

Estonia already follows most of the European Commission Recommendations of 7th March 2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and the Council. Taking into account that in recent years the percentage of returns of

¹³¹ This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

¹³² PBGB 30.08.2017 response to EMN inquiry

the irregularly staying third-country nationals has been relatively high, the return system in Estonia may be considered effective.

The implementation of the Return Directive in the end of year 2010 brought along many changes in the field of return. Firstly, the number of return decisions increased¹³³ as according to previous national legislation, it was possible to return a TCN also without the return decision (e.g. for public interests etc). When implementing the Return Directive the regulation on issuing the return decisions was amended with the aim of bringing more legal clarity. In addition to amending the voluntary deadline for return, the law now stipulated clear grounds when voluntary deadline for departure may not be assigned and the enforcement of the return decision may be carried out immediately.

Additionally there were other important changes that the transposition of the Return Directive entailed. If previously the deadline for the entry ban was 10 years than in accordance with the directive, the maximum period was changed from 3 to 5 years (depending on the circumstances), but at the same time Estonia decided to impose entry bans to every irregularly staying TCN who received a return decision.

In conclusion, the Return Directive and the EU rules thereof have helped to make the return procedure more transparent and have enhanced the inner coordination.

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

EU rules have had a great impact on transparency of return in the Estonian context and have brought important changes to the relevant legislation making the return system more effective. At the same time, it is difficult to assess to what extent have the EU rules made the national system more effective as it depends also on the third countries' willingness to cooperate.

¹³³ Security Policy 2012; https://issuu.com/siseministeerium/docs/turvalisuspoliitika_2012

ANNEX 1 – SENSITIVE INFORMATION

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