



European Migration Network

Ad-Hoc Query on Return Directive

Requested by BE EMN NCP on 17th February 2010

Compilation produced on 22 March 2010

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Malta, Portugal, Slovak Republic, Spain, Sweden, United Kingdom (16 in Total)

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

1. Background Information

The Belgian Government is planning to amend the Belgian Immigration Law, in order to comply with the EU Return Directive 2008/115 of December 16, 2008.








The Immigration Office searches best practices and examples of the transposition in national legislation of the next two Return Directive articles:

- Article 11 : entry ban: the Belgian Government wants to develop criteria, in order to establish which category of persons should receive which entry ban (e.g. a person who has been overstaying his visa would receive a shorter entry ban period than a person who has used fraudulent documents in order to obtain a residence permit). Belgium seeks examples of similar "escalation systems" for entry ban, both for specific categories as for the length of the entry ban.
- Article 15, 1, a : risk for absconding: the Belgian Government wants to establish categories of persons, for whom it has been assessed that there is a risk for absconding and, as such, should be detained prior to forced return (e.g. using falsified documents, working without permit, ...). Belgium seeks examples of categories of persons who may abscond and are therefore detained prior to removal.

Since this law amendment has to be submitted to Parliament, the Belgian Immigration Office requests the EMN partners kindly to answer before Saturday, March 6, 2010.

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



2. Responses¹

		Wider Dissemination? ²	1. How will/does your country regulate entry bans according to Article 11 EU Return Directive 2008/115 (specific categories, length of entry ban, suspension, withdrawal,...) 2. Are (will) “categories of persons who may abscond” (be) defined in the legislation of your country and how? (Article 15, 1, a : risk for absconding)
	Austria	No	The EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Belgium	Yes	Transposition of the Return Directive into national Aliens Act is still under consideration.
	Czech Republic	No	The EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Estonia	Yes	Estonian Ministry of Internal Affairs is working out the policy regarding the Return Directive 2008/115 and negotiations on this are still in progress. Estonia is planning to implement the Directive by the end of this year on 24 th December.
	Finland	Yes	Transposition of the Return Directive into national Aliens Act is still under consideration in Finland. There will be amendments to the law which are yet to take their form.
	France	Yes	1. French legislation has no provisions concerning ‘entry bans’ within the meaning of Article 11 of the Directive. The legal interdiction from French territory is not comparable to entry bans as it is a complementary penalty delivered by the criminal court sanctioning given offences. The constitutional obligation of transposition is likely to involve the introduction into the French law of an administrative measure of entry ban in cases and according to terms that will only be decided during the parliamentary debate. In any case, such measure will meet the standards set by the Directive, particularly with regard to its maximum duration of 5 years. It will also be submitted to the respect of constitutional principals. 2. French legislation relating to the right of entry and residence of foreigners has no provisions concerning the concept of ‘risk for absconding’.
	Germany	Yes	Preliminary remark: A decision on how directive 2008/115/EC on the return of third-country nationals is to be implemented has yet to be reached in Germany.



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

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."




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

			<p>1. Under existing law a foreigner who has been expelled, removed or deported may not enter Germany and take up residence here (statutory ban). Expulsion, removal or deportation generally also leads to an alert for the purpose of refusing entry in the Schengen Information System (Article 96 (3) of the Convention Implementing the Schengen Agreement), thus also giving rise to a ban on entry into the entire territories of the Schengen countries. Under the ban on entry and residence applying to the German federal territory a residence title will not be issued, regardless of whether the conditions pertaining to an entitlement to such a title are met. While in principle the ban is not subject to any time limits, a time limit is generally granted in response to a corresponding application from the foreigner concerned. No time limit is applied where the foreigner has been deported from the federal territory on account of a crime against peace, a war crime or a crime against humanity or due to a special or terrorist threat, however. By way of exception, the foreigner may be permitted to enter the federal territory briefly, should his or her presence be required for compelling reasons or where the refusal of permission would constitute undue hardship.</p> <p>2. A foreigner may be placed in custody by judicial order for a period of no longer than six weeks if a decision on deportation cannot be reached immediately and deportation would be complicated substantially without such detainment. To safeguard deportation, a foreigner may be placed in detention pending deportation by judicial order for a period of up to six months. This period may be extended by a maximum of twelve months. Grounds for such detention are</p> <ul style="list-style-type: none"> - an enforceable requirement to leave the federal territory on account of the foreigner having entered the territory unlawfully, - a deportation order which has been issued due to a special or terrorist threat, but which is not immediately enforceable, - failure of the foreigner to provide notification of a change of his or her place of residence following expiry of the period allowed for departure, - failure to appear at the stipulated location on a fixed date for deportation, - evasion of deportation by other means, or - a well-founded suspicion that the foreigner intends to evade deportation. <p>Detention pending deportation is not permissible where deportation cannot be carried out within the next three months for reasons for which the foreigner is not responsible.</p> <p>The competent authority may also detain the foreigner where, in accordance with the above-stated grounds for detention, there is a strong suspicion that the foreigner intends to evade deportation, the judicial order for detention pending deportation cannot be obtained in good time and there is a well-founded suspicion that the foreigner also intends to evade detention pending deportation. The foreigner is subsequently to be brought before a judge without delay for a decision on the order for detention pending deportation, however.</p>
	Ireland	Yes	Ireland does not participate in the Return Directive 2008/115/EC
	Latvia	Yes	<p>The Republic of Latvia has not transposed the Return Directive provisions yet, but currently amending the national legislation in accordance with Return Directive requirements, the European Commission recommendations on application the Return Directive declared as well as best practice of EU Member States presented during the Contact Committee on “Return Directive” meetings are taken into consideration.</p> <p>Immigration Law now stipulates that when issuing the expulsion order it is possible to determine for the alien the time period of prohibition of entry up to 3 years (for a month, half year and a year etc. – depending of the violation), but in case of forcible expulsion it is possible to determine the time period of prohibition of entry from 3-5 years. In practice when an alien has violated the period of stay</p>


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

			specified in visa, expulsion order is issued to alien and the time period of prohibition of entry is determined, which is mainly from a month until a year. The maximum time period of prohibition of entry – 5 years is determined to aliens with forged travel documents and information about them is entered into SIS in accordance with the provisions mentioned in the Article 96 of the Schengen Convention
	Lithuania	Yes	<p>Note: The draft law which will transpose the directive 2008/115 is still under preparation (it is being assessed now by various state institutions), therefore the regulation which is foreseen in the present draft may be altered during the deliberations at the Government or the Parliament.</p> <p>According to the present draft law:</p> <ol style="list-style-type: none"> 1. The entry ban can be imposed to aliens who no longer fulfil the requirements of legal stay or residence for a maximum period of 5 years. Every particular case will be examined individually, and the length of the entry ban will be determined according to the circumstances of every particular case. However, the draft foresees a possibility to impose an entry ban which exceeds 5 years, in case where the alien poses a serious threat to the state security or public order. The other parts of the procedure are foreseen to remain the same as they are according to the present regulation: the alien has the right to ask the Migration department to exclude him/her out of the list of persons who are forbidden to enter Lithuania (that is, to remove the entry ban), he also has the right to address the court, etc. 2. At the moment it is not foreseen to establish any list of categories. Aliens can be detained only in order to remove them from the territory. The removal will be carried out only in cases when the alien hasn't departed voluntarily (which shows that they avoid the return) or when they have entered the territory illegally and they stay/reside there illegally (which is a sufficient ground to believe that there is a risk of absconding).
	Malta	Yes	<p><u>General</u> - Malta is still in the process of drafting amendments to the Immigration Act (Cap 217 of the Laws of Malta) in order to transpose the provisions of the said Directive and, therefore, no definite decisions have been taken on a number of aspects. The following replies, therefore, may be subject to change in future.</p> <p>At present, entry bans are imposed on all over stayers, even those who leave voluntarily and present themselves at the airport. The entry-ban remains valid for a period of 5 years. Any requests for entry prior to the 5-year ban are considered on their own merits by the Principal Immigration Officer.</p> <ol style="list-style-type: none"> 1. How will/does your country regulate entry bans according to Article 11 EU Return Directive 2008/115 (specific categories, length of entry ban, suspension, withdrawal,...) <p>Malta intends to adopt the provisions relating to the entry ban more or less on the same lines as those of the Directive. Therefore, return decisions will be accompanied by an entry ban in the cases mentioned in Article 11(1).</p> <ol style="list-style-type: none"> 2. Are (will) “categories of persons who may abscond” (be) defined in the legislation of your country and how? (Article 15, 1, a : risk for absconding) <p>The risk of absconding is not defined in Maltese legislation. A decision has yet to be taken as to whether this will be defined.</p>


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

	Portugal	Yes	Portugal did not transpose Return Directive and there are no formal draft proposal yet. Under the national law the risk for absconding is evaluated by the judge, on a case by case basis. Once the national legal framework does not define “categories of persons who may abscond”, we may presume that this solution will be kept.
	Slovak Republic	No	The EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Spain	Yes	<p>1. The Law on Foreigners, amended by Organic Law 2/2009, of 11 December, in sections 1 and 2 of Article 58 sets forth that removal entails, in addition, the prohibition of entry to Spanish territory.</p> <p style="padding-left: 40px;">Ø Duration.</p> <p style="padding-left: 40px;">The duration of this prohibition is determined in consideration of concurrent circumstances particular to each case, but may not exceed 5 years. However, and exceptionally, when the foreigner poses a serious threat to public order, public security or public health, prohibition of entry may be imposed for up to ten years.</p> <p style="padding-left: 40px;">Ø Procedures.</p> <p>The Law on Foreigners contemplates two administrative procedures for processing a file forexpulsion, the preferential procedure and the ordinary procedure. When the preferential procedure is applied, no time period for voluntary exit (period for voluntary compliance) is granted, and the order for expulsion is to be immediately executed. In those circumstances when the ordinary procedure applies, the decision for expulsion must include a voluntary time period during which the interested party may abandon Spanish territory. The length of this period varies between seven and thirty days, counted as of the moment at which the foreigner is notified of the mentioned decision.</p> <p>The period for voluntary compliance with the expulsion order may be subject to an extension for a prudent length of time, attending to concurrent circumstances of each specific case, as may be the length of the stay, responsibility for children attending school, or the existence of other family and social ties.</p> <p>It is also important to point out that Article 58 of the aforementioned Law considers that under circumstances to be determined in the future Regulations of the Law, the competent authority will not impose prohibition of entry when the foreigner has abandoned national territory during the processing of an administrative disciplinary proceeding for any of the cases contemplated in letters a) and b) of Article 53.1 (the foreigner is in Spain illegally or working in Spain without having obtained a work permit) of the aforementioned Law, or will revoke the prohibition of entry imposed on the same grounds when the foreigner abandons national territory during the voluntary time period.</p> <p>On another hand, Article 64 of Organic Law 2/2009 of 11 December, in its section 4, sets forth that the execution of an order for removal will be suspended upon the filing of a petition for international protection</p> <p>2. When a foreigner is subject to an order for removal due to being in Spain illegally, the preferential procedure will apply if any of the following circumstances concur:</p> <p style="padding-left: 40px;">a) Risk of default.</p>

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

			<p>b) The foreigner avoids or impedes removal, without prejudice to actions in the exercise of one's rights.</p> <p>c) The foreigner poses a serious threat to public order, public security or national security.</p> <p>d) The main result of processing through the preferential procedure is that no time period for voluntary exit is granted.</p> <p>On another hand, Article 62 of Organic Law 2/2009 of 11 December sets forth that once the proceedings against the foreigner originate on the grounds of the foreigner being in Spain illegally, working in Spain without a work permit or participating in the execution of activities against public order or which harm Spain's relationships with third countries or facilitate clandestine immigration, the examining magistrate may request of the competent magistrate of the pre-trial proceedings to prescribe the internment of the foreigner in a confinement centre during the processing of the disciplinary proceeding.</p> <p>Once the circumstances grounds for the internment of the foreigner are defined, the law-maker presents the circumstances which the court authority must consider when deciding as to the internment, according to the following:</p> <ul style="list-style-type: none"> • The risk of default by the foreigner, given the lack of residence or identity documents. In this case, it is understood that the risk of absconding is considered. • The actions of the foreigner for the purpose of impeding or avoiding removal. In this case, it is understood that the risk of absconding is considered. • The existence of prior sentencing or administrative penalties and other pending criminal or disciplinary administrative procedures. <p>Likewise, in the event the foreigner is seriously ill, the magistrate must evaluate the risk confinement may pose to public health or the health of the foreigner.</p>
	<p>Sweden</p>	<p>Yes</p>	<p>Regarding the first question we would like to inform you that the legislative process is still ongoing and that we - for the time being - are unable to answer it. The Commission of Inquiry on detention has made different suggestions regarding this matter, which now is subject to scrutiny at the Swedish government. However, we could inform you that we so far have not taken into consideration the type of "escalation system" that you are mentioning regarding entry bans.</p> <p>When it comes to the second question regarding the matter of defining the categories of persons who may abscond, the situation is the same as the one mentioned above. However, it is rather certain that there will be a definition in the legislation regarding this matter. The suggested circumstances that should be considered are as follows: if the alien has absconded earlier, if the alien has stated that he or she will not leave the country if the asylum application will be rejected, if the alien has used multiple identities and used false documents, if the alien has complicated the asylum application by not giving up his/her identity, if the alien has come up with grounds for asylum that</p>

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

			in all essential parts has been non valid or withheld important information, if the alien at an earlier occasion has neglected an entry ban, if the alien is convicted to crime that which is not categorized as minor offence or, if the alien has been expelled due to committed crime.
	United Kingdom	Yes	<p>1. A person is considered for the General Grounds for Refusal under Para 320 (7) (b) of the rules if they have been dealt with as Immigration offenders or deported from the UK following criminal prosecution and sentence. The length of the ban is dependent on the type of offending and who pays for the cost of the removal. The differing timescales are contained with the paragraph of the rules linked below.</p> <p>http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/</p> <p>2. No, “categories of persons who may abscond” are not formally contained within UK legislation.</p> <p>However, asylum case owners decide on a case-by-case basis whether an applicant is likely to abscond and may increase contact management, increase reporting conditions or detain as a result. For example a case owner may detain an applicant shortly after a Appeal Rights Exhausted (ARE) stage – when an applicant has no further appeals and must return to their country of origin – when they believe the applicant may abscond in anticipation of removal. Other applicants may have their claim processed through the Detained Fast Track (DFT) system, and so are unable to abscond. Cases which are straightforward and capable of being decided “quickly” are considered for DFT.</p>
