



## **Ad-hoc query on national practice in the field of acceptance of return decision made by another Member State**

**Requested by EE EMN NCP on 5<sup>th</sup> May 2011**

**Compilation produced on 7<sup>th</sup> June 2011**

**Responses from Austria, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (13 in Total)**

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

### **1. Background Information**






Lately, there have been some cases, when an alien with a return decision issued by another Member State tried to leave EU territory through Estonia. Estonia's practice is to accept return decisions made by other Member States and allow the alien to cross external border. Estonia does not check the authenticity of the return decision and does not ask additional information from the Member State that issued the return decision. Estonia also does not inform the Member State about alien's border crossing. We would like to know more about other Member States' practices in relation to this, if possible by **31<sup>st</sup> May 2011**:

1. Does Your country accept a return decision made by other Member States?
2. Do you check the authenticity of the return decision? If yes, explain how?
3. Do you inform the Member State about alien's border crossing?
4. Please forward us the specimen of the return decision, if possible.

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**2. Responses**

		Wider Dissemination? <sup>1</sup>	<ol style="list-style-type: none"> <li>1. Does Your country accept a return decision made by other Member States?</li> <li>2. Do you check the authenticity of the return decision? If yes, explain how?</li> <li>3. Do you inform the Member State about alien's border crossing?</li> <li>4. Please forward us the specimen of the return decision, if possible.</li> </ol>
	<b>Austria</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Estonia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1) Yes, we accept return decisions made by other Member States.</li> <li>2) No, we don't check authenticity of the return decision.</li> <li>3) No, we don't inform.</li> <li>4) <a href="#">precept to leave</a></li> </ol>
	<b>Finland</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1) No. Finland does not accept return decisions made by other EU MS.</li> <li>2) No. See above.</li> <li>3) No.</li> <li>4) N/A</li> </ol>
	<b>Germany</b>	<b>Yes</b>	<p>Return decisions passed by other Member States can be accepted within the framework of Council Directive 2001/40/EC of 28 May 2001. As to whether a return decision by another Member State is definitely recognised, depends on the requirements of above-mentioned Directive and the circumstances of the individual case. The responsible authority verifies among others the authenticity of the return decision of another Member State within that given framework. If the return decision of another Member State is accepted, the foreigner's obligation to leave the country is enforceable and the foreigner may be deported on grounds of § 58 sect. 1 of the German Residence Act.</p> <p>The issue as to whether to inform other Member States of the foreigner's expulsion, deportation or voluntary return after a return decision has been passed, was the point of discussion during the meeting of the Council Working Group on Expulsion, the last meeting of which was on 29 April 2011. We would like to refer to the negotiation protocol attached. The point of views in regard of this initiative taken by the Member States are already known.</p> <p>It is because of the federative organisation of the Federal Republic of Germany that we are not able to provide a standard (commonly applied) specimen of the return and deportation decision.</p>
	<b>Hungary</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1) According to the Hungarian migration regulation the immigration authority may abstain from ordering expulsion of those third-country national, who was expelled by decision of the other authority of the Member States of European Union because of:</li> </ol>

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








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			<ul style="list-style-type: none"> <li>• serious and effective breach of and risk of the national security or public safety,</li> <li>• conviction under the laws of the country where the resolution was adopted for an offence punishable by a penalty involving imprisonment of at least one year,</li> <li>• suspicion of committing of serious crime, or</li> <li>• failure to comply with the regulations on the entry or residence of foreign nationals.</li> </ul> <p>The return decision is implemented by the immigration authority under the provisions of the Hungarian law. The immigration authority shall order the expulsion of a third-country national, who:</p> <ul style="list-style-type: none"> <li>• has crossed the frontier of the Republic of Hungary illegally, or has attempted to do so;</li> <li>• fails to comply with the requirements set out in this Act for the right of residence;</li> <li>• was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;</li> <li>• whose entry and residence represents a threat to national security, public security or public policy;</li> <li>• whose entry and residence represents a threat and is potentially dangerous to public health;</li> </ul> <p>2) On the basis of instruments of third country national and other documents, as well as through the SIRENE office in the Office of Immigration and Nationality is the competent authority for exchanging information.</p> <p>3) See reply to question no 2.</p> <p>4) Please find attached our specimen of the return decision.</p> <p align="center">   </p> <p align="center">kiut határozat20.doc kiut határozat 5.doc</p>
	<p><b>Latvia</b></p>	<p align="center"><b>Yes</b></p>	<ol style="list-style-type: none"> <li>1. Immigration law of the Republic of Latvia defines that if there is information that a return decision taken by another EU MS is in effect in relation to a foreigner, the competent authority upon evaluation of the facts of the matter and communication with this EU MS, can take a decision regarding the recognition of the referred to decision. This provision is not put into practice, as there is no developed mechanism on acceptance of return decisions taken by another MS. Currently in case if the State Border Guard detects an alien with return decision taken by another MS, it, if it is necessary, communicates with the competent authority of that MS and allows an alien to leave the EU territory.</li> <li>2. In case of necessity, the State Border Guard communicates with the competent authority of the MS that took a return decision on the circumstances of the decision taken.</li> <li>3. The State Border Guard does not inform the MS on the alien's border crossing. After the adoption of the EC Recommendations on the standard form for recognising a return decision for the purposes of transit by land, the State Border Guard will inform the contact point of the appropriate MS about the exit of an alien.</li> <li>4. There is no a specimen of the return decision in Latvia.</li> </ol>
	<p><b>Lithuania</b></p>	<p align="center"><b>Yes</b></p>	<ol style="list-style-type: none"> <li>1. Yes.</li> <li>2. No.</li> </ol>


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			<p>3. No.</p> <p>4. Obligation to leave</p> <p> Ipareigojimas_isvykti_pvz.pdf</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>1. This would not be in line with a literal interpretation of the directive. However, we note that there are counsel proposals to do so on voluntary basis. In practice, due to the geographic location, the problem does not arise in the Netherlands. See also the report 7257/11 MIGR 38 COMIX 139 9154/11 MIGR 91 COMIX 264, par 2. Transit by land of returnees</p> <p>2. We would contact the authorities that have issued the decision.</p> <p>3. No.</p> <p>1. Apart from it being in Dutch, we have at this moment a temporary format which will change.</p>
	<b>Portugal</b>	<b>Yes</b>	<p>2. Yes, based on a request by the applicant MS, done in the specific Schengen form (Obs. Due to PT geographic situation, these returns are executed by air border only).</p> <p>3. The confirmation of the situation is done in the framework of the request analysis. Despite, the “authenticity” of the return decision is a responsibility of the applicant MS.</p> <p>4. Yes.</p> <p>5. Return decisions are adopted on an individual basis. There is no “specimen”.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. Yes, the Slovak Republic does accept a return decision made by other Member State.</p> <p>2. Yes, competent police units contact national SIRENE office.</p> <p>3. National SIRENE Bureau informs SIRENE Bureau of the competent Member State about foreigner’s presence in the territory of the Slovak Republic.</p> <p>4. Please find attached.</p> <p> percept to leave - template.pdf</p>
	<b>Slovenia</b>	<b>Yes</b>	<p>1) Yes, we accept return decisions made by other Member States. It has been introduced into our national legislation.</p> <p>2) We check authenticity of the return decision.</p> <p>3) No, we don’t inform country that issued return decision.</p> <p>4) Form is not yet available.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>1) The Swedish Migration Board does not accept return decisions from other MS.</p> <p>2) No.</p> <p>3) No, only indirectly when the Migration Board poses a request according to the Dublin Regulation; the other M.S. then receives information that the alien has passed the border.</p>

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	<b>United Kingdom</b>	<b>Yes</b>	It is very unlikely that a Member State would send any returns via the UK, as we would expect any MS to inform us of any instance in which a person who had been returned was to travel through the UK, so none of these questions would apply. If the returnee tried to enter the UK they would be examined with a view to admissibility, but it is unlikely that they would be allowed to enter the UK.
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