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# **Study on the effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards**

**EMN Study**

**EMN Annual Conference, Sofia (Bulgaria), 31 May 2018**

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# 1. EMN study rationale and context

- ❖ Main legal instrument regulating the EU's return policy is the **2008 Return Directive**.
- ❖ The rate of **effective returns** to third countries dropped from 36.6% to 36.4% from 2014 to 2015. Moreover, if return to Western Balkans is disregarded, the EU return rate drops further to 27%.
- ❖ March 2017: **Commission's Communication on a more effective return policy** and attached Recommendation called for a stronger enforcement of EU rules on return to increase the effectiveness of return in the EU
- ❖ September 2017: **Commission Recommendation** updating the "Return Handbook" to provide guidance to Member States' competent authorities for carrying out return related tasks.



## 2. Study Aims

- ❖ Analysis of the **impact of EU rules and standards** – or equivalent – in Member States, including case law
- ❖ **Comparison of the measures** in place in Member State to implement EU rules and standards – or equivalent incl. Commission 2017 Recommendations
- ❖ Provide an overview of the **challenges** and 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*

### 3. National measures implementing the Return Directive or equivalent standards


- ❖ 15 Member States (AT, BE, DE, EE, EL, FI, FR, HR, HU, IE, IT, LU, NL, SE, UK) reported recent **changes in their national legal and/or policy** framework following the 2014-2015 migration situation.
- ❖ **All participating EU Member States transposed the Return Directive into their national legislation**, while two (IE, UK) implemented equivalent standards as they are not bound by the Directive.
- ❖ Some Member States reported specific judicial practices or interpretations of national and international Courts rulings related to the implementation of the Return Directive.
- ❖ **National debates around return** are taking place in all the Member States (implementation of forced and voluntary returns, vulnerable groups, or pre-removal detention).

## 4. Systematic issuance of return decision

- ❖ Recommendations 5 and 24(d): The majority of MS **issued return decisions** even when the whereabouts of the third-country national were unknown, the third-country national was not in possession of identity and travel documents, or the irregularity of the stay was detected during an exit check.
- ❖ Recommendation 5(c): In 17 MS (AT, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IT, LT, LU, MT, NL, SE, SI , UK), the return decision is issued **together with the decision to end the legal stay** of a third-country national.
- ❖ Recommendation 6: Return decisions had **unlimited duration** in 12 MS (BE, DE, EE, ES, FI, FR, IE, LT, LU, NL, SI and SK). 20 Member States (AT, BE, CY, CZ, EE, ES, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SI, SK and UK ) reported having a mechanism in place to take into account changes in the individual situation of third-country nationals concerned before enforcing a removal.



## 5. Risk of absconding

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- ❖ Recommendation 15: Most Member States included objective criteria **determining a risk of absconding** in their national legislation. In some Member States, elements were not explicitly listed in law but were still considered as rebuttable presumptions.
  - ❖ **Main challenge:** Assessment of the risk of absconding (subjective nature, high standards imposed by national courts).

## 6. Effective enforcement of return decisions

- ❖ Recommendation 11: 15 Member States reported that they imposed **sanctions** in cases where a TCN intentionally obstructed the return process (AT, BE, CZ, DE, EE, FI, FR, IE, IT, MT, LU, NL, SE, SK, UK). Sanctions were mostly **fines** and/or **imprisonment**.
- ❖ Recommendation 9(d): 17 Member States indicated that their national legislation offered the **possibility to recognise** a return decision issued against a third-country national by another Member States (AT, BE, CZ, DE, EL, ES, EE, FI, FR, HR, LT, LU, LV, MT, SI, SK). However, several Member States reported that this is **rarely used**.
- ❖ Recommendation 9(c): Several Member States reported that they could make use of **EU travel documents** (AT, BE, DE, EE, FI, FR, LT, LU, LV, NL, SI and UK) but their acceptance by third country was variable.



## 6. Effective enforcement of return decisions (2)

- ❖ Recommendation 10(a): All the responding MS could **make use of detention** under certain conditions during return procedures, with some exceptions concerning certain categories of TCN (e.g. vulnerable persons)
  - ❖ In 2016, the UK, FR and EL were the Member States with the highest number of TCNs ordered to leave and subsequently placed in detention.
- ❖ Recommendation 10(b): A majority of MS provided in their national legislation for a **maximum initial period of detention of six months** that could be adapted by judicial authorities to the individual circumstances of the case, as well as for the possibility to further prolong detention **until 18 months**.
- ❖ Recommendation 10(c): MS measured the capacity in their detention centres by counting the number of beds available (AT, BE, CY, CZ, DE, ES, FI, FR, HU, IT, LU, NL, SE, SI, SK, UK) or the squared meters available per detainee (EE, EL, FR, HR, LT, LV). All member States use **alternatives to detention**.



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## 6. Effective enforcement of return decisions (3)

### ❖ All MS implemented some **alternatives to detention**

Alternatives to detention	Member State
Reporting obligations	AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, SE, SI, SK, UK
Obligation to surrender a passport or travel documents	CY, DE, EE, ES, FI, FR, HR, HU, IT, LU, LV, MT, NL, SE, UK
Residence requirements	AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, MT, NL, SI, UK
Release on bail	AT, CY, CZ, FI, LU, NL, MT, SK, UK
Electronic monitoring	DE, LU, UK
Guarantor requirements	HR, HU, LT, NL, UK
Release to case worker or under a care plan	HR, UK
Participation in an NGO project on voluntary return	NL





## 6. Effective enforcement of return decisions (4)

### ❖ Main challenges identified:

- ❖ Complexity of applicable standards (including as defined in extensive case law)
- ❖ Identification of the risk of absconding
- ❖ Costs of maintaining safeguards
- ❖ Risk of absconding when using alternatives to detention

### ❖ Good practices:

- ❖ Initiatives to study the issue of detention
- ❖ Involvement of NGOs and civil society with detainees
- ❖ Good management of detention centres and open centres





## 7. Procedural safeguards and remedies

- ❖ Recommendation 12 (a): The possibility of holding a **joint hearings** on return with other hearings was not possible in nine MS (BE, CY, CZ, FI, HR, HU, LV, LU and SK). In 6 MS (CZ, HR, LT, MT, SI, SK) the hearing has to be **attended in persons** while others provide for alternatives making use of **ICT**:
  - ❖ Videoconference (EE, FR , IT, HU , UK );
  - ❖ Attendance by the legal representative on behalf of the third-country national (EE, EL, LU, UK );
  - ❖ Telephone hearing (NL);
  - ❖ Provision of written comments (FI , FR, LV).
- ❖ Recommendation 12 (c): the appeal has an automatic **suspensive effect** in 11 MS (AT, CY, CZ, DE, EL, FI, FR, LV, SE, SI, SK) with exceptions
- ❖ Recommendation 12(d): 10 MS (BE, DE, ES, FI, IE, LT, LV, NL, SI, UK) took measures to **not duplicate assessment of the principle of non-refoulement**

## 8. Family life, children and state of health

- ❖ Recommendation 13 (a and d): All MS have to a certain extent set **procedures to assess BIC**
- ❖ Recommendation 13 (b): All MS consider **return as a possible solution in the BIC**. However some MS (BE, CY, CZ, FR, IT, MT, SK) as rule do not return minors unless on reasons to maintain family unity, and/or on request of family or the legal guardian. Others (DE, IE) in practice do not return UAM.
- ❖ Recommendation 13 (c): Some Ms support the **return and reintegration of UAM** through government or in-cash support (AT, BE, FI, HR), or AMIF funded programmes (AT, DE, EE, HU, LU, NL, SE, SK, UK)



## 8. Family life, children and state of health (2)

❖ **Recommendation 14:** the majority of MS allows detention of minors only in exceptional cases:

❖ **Detention of unaccompanied minors (UAMs)** is allowed in 7 Member States as a means of last resort (AT, DE, FI, LU, NL, SE, SI).

❖ The **detention of accompanied minors is allowed** (exceptionally) to maintain family unity, to prevent absconding, or only immediately before departure (AT, BE, DE, CZ, EE, FI, FR, HR, HU, LV, LT, LU, NL, SE, SK, UK).



## 9. Voluntary departure

- ❖ Recommendation 17: **The period for voluntary departure** was automatically granted with the return decision in 16 Member States (AT, BE, DE, CY, EE, EL, FI, HR, IT, LT, LU, LV, NL, SE, SI and SK), while 5 MS (CZ, IT, HU, LV, UK) reported that the voluntary returns procedure started following a request submitted by the TCN.
- ❖ Recommendations 18 and 19: all Member States grant a period between 7-30 days. Individual circumstances are assessed to establish the **duration of the period** of voluntary return. Generally the assessment looked at both the prospect of return and the willingness to cooperate with the competent authorities in view of the return.
- ❖ Recommendations 20 and 21: Nearly all Member States indicated that they, at times, **limited** the **time available for voluntary departure** to less than seven days or **waived** the possibility of voluntary return.
- ❖ Recommendation 24(b): Approximately half of the Member States **reported verifying if the TCN had effectively left the EU** after the period for voluntary departure expired.

## 10. Entry bans

- ❖ Majority of MS **impose automatically an entry ban** (as for Article 11(1)RD). Some MS (CZ, EE, ES, HR and IT) automatically impose an entry ban with all return decisions issued. In most MS **the duration of entry bans** do not exceed 5 years in cases where a third-country national breached immigration laws
- ❖ Recommendation 24 (a): in a number of MS the **start date of the entry ban** is from the day the TCN left the EU (AT, CY, EE, ES, HR, HU, IT, LV, MT, SI, SK) while other MS from the day the TCN left the country (AT, CY, EE, ES, HR, HU, NL, LT, UK). Other MS apply it from when the decision is issued (FI, EL, IE). Other from the day the decision is communicated (BE, FR, LU). Others from when the date for voluntary departure has expired (CZ, HR, SK)
- ❖ Recommendation 24 (c): All MS **access SIS II to register alert on entry bans**. Some MS do not do it systematically but rather regularly (BE, FR) or on case by case basis (AT, HU, LT)
- ❖ Recommendation 24 (d): A number of MS issue an **entry ban** if return decision was issued when the irregular stay was detected on exit (CZ, EE, FI, HR, HU, LT, LV, MT, NL, SK, SE)



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# Thank you!

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