



Good Practices in the return and reintegration of irregular migrants: Belgium's entry bans policy & use of readmission agreements

Focused Study of the Belgian Contact Point of the
European Migration Network (EMN)

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The European Migration Network was set up with the purpose of providing up-to-date, objective, reliable and comparable information concerning asylum and migration for the European institutions, national authorities and other stakeholders.

The Belgian National Contact Point is a mixed point composed of experts from the Immigration Office, the Federal Migration Centre, the Office of the Commissioner General for Refugees and Stateless Persons and Fedasil (Federal Agency for the reception of asylum seekers).

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The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway



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Introduction - Belgian study and EU comparative study

This is the Belgian Contribution to the EMN focused study on the use of entry bans and readmission agreements by Member States in their efforts to implement effective return policies, identifying any examples of good practice.

The information used for this report exclusively comes from the Immigration Office (expert interviews; annual reports, internal notes and presented statistics), "Kruispunt Migratie Integratie"¹ and the Federal Migration Centre.

Other EMN National Contact Points (NCP's) produced a similar report on the topic for their (Member) State.

The different National reports were prepared on the basis of a **common template** to ensure, to the extent possible, comparability. On the basis of all national Contributions a **Synthesis Report** is produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCP's. The Synthesis Report gives an overview of the topic in all (Member) States. Entry bans and readmission agreements are distinct measures that serve different purposes within the return process. The return process starts with the imposition of a return decision on an irregular third-country national. A return decision can be accompanied by an entry ban, prohibiting the third-country national concerned from re-entering the territory. An entry ban is defined as an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision. A EU readmission agreement is an agreement between the EU with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the third country or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation; a bilateral readmission agreement on the contrary is an agreement or any other arrangement (Memorandum of Understanding, exchange of letters, et cetera) concluded by an EU Member State with a third country.

The obligation for states to readmit their citizens is enshrined in international law. Readmission agreements, whether EU, or separate bilateral readmission agreements, aim to facilitate the effective removal process of irregular third-country nationals. Readmission Agreements are typically applicable regardless of the individual's willingness to return. The EU synthesis report will therefore explore the degree to which Readmission Agreements are used to carry out forced returns as well as the degree to which they facilitate voluntary returns. Finally, reintegration assistance aims to ensure the sustainability of returns by providing returnees with different forms of socio-economic support to promote their self-sufficiency e.g. vocational training, employment and education. This support may already start within the host country or following removal in the country of origin.

This study is as such mainly concerned with the implementation of an effective return process. The Study does not focus on the EU's external policy on migration and asylum within which Member States' readmission agreements are embedded.

More in particular, the **aim of this EMN study** (Synthesis Report) is to:

1. Analyse similarities and differences between Member States concerning the legal framework on entry bans by reviewing the grounds for the imposition of entry bans (including review of the criteria/indicators used to decide whether particular grounds apply in individual cases); the categories of third-country national who can be imposed

¹ <http://www.kruispuntmi.be/>

- an entry ban; the territorial scope of entry bans; as well as the authority responsible for the imposition of an entry ban;
2. Explore the practical application of entry bans by mapping; the methods for informing third-country nationals of the imposition of an entry ban; possibilities of appealing entry bans; reviewing whether Member States make use of a graduated approach (including withdrawal/suspension of entry bans and not just their imposition) and in what circumstances; and, investigating cooperation mechanisms between Member States including existing information-sharing tools;
 3. Analyse the effectiveness of entry bans by reviewing available statistical evidence on the impact of entry bans, exploring practical challenges to the implementation of entry bans; and identifying any good practices;
 4. Explore the practical application of readmission agreements by reviewing the use of readmission agreements between the EU or Member States on the one hand and third countries on the other hand, distinguishing between agreements concluded by EU and by Member States separately on a bilateral basis and specifying the extent to which such agreements are used in the context of forced and voluntary returns;
 5. Collecting (new) statistical evidence on the use of readmission agreements, exploring practical challenges to their implementation and identifying good practices for their use.

BACKGROUND INFORMATION ON THE EU LEGAL AND POLICY FRAMEWORK

Since 1999 the EU has been working to develop a comprehensive approach on migration and asylum. The return of irregular third-country nationals, is an important aspect in the fight against irregular migration and essential to the credibility of the EU common migration and asylum policy. The Hague Programme (2004-2009) called for the development of a coherent return policy and the Stockholm Programme (2010-2014) reaffirmed this need by calling on the EU and its Member States to intensify the efforts to return irregular third-country nationals by implementing an effective and sustainable return policy.

The main legal instruments for EU return policy include EU Readmission Agreements (EURAs) and the 2008 Return Directive. EURAs impose reciprocal obligations on the contracting parties to readmit own nationals as well as in certain circumstances third country nationals or stateless persons who stayed on or transited through the territory of the other party. They further set out technical and operational criteria for this process. Their potential contribution to an active return policy has long been recognised. Since 1999, the Council has issued negotiating Directives to the Commission for 21 third countries. Since the entry into force of the Lisbon Treaty, the conclusion of Readmission Agreements has an explicit legal basis (Article 79(3) of TFEU).

The Return Directive, adopted in 2008, lays down common EU standards on forced return and voluntary departure. The Directive has a two-fold approach: on the one hand, it stipulates 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, the importance of implementing return policy with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of 'non-refoulement' is greatly emphasised. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.

The Return Directive stipulates different types of return measures. First, a broad distinction can be made between voluntary and forced return, with the Directive emphasising that voluntary return is preferred, although it also acknowledges the inevitable need for efficient means to enforce returns where necessary.

Article 11 of the Return Directive stipulates one concrete return measure: entry bans. It is emphasised in the preamble to the Return Directive that the effect of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all concerned States. This is however not an obligation and is left to the discretion of Member States. Some of the relevant elements of the provision are briefly summarised in the table below:

Provisions	Description
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Article 11 (1)	
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	Return decisions shall be accompanied by an entry ban:
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(a) If no period for voluntary departure has been granted, or

(b) If the obligation to return has not been complied with

In other cases return decision may be accompanied by an entry ban.

Article 11 (2)

Member States shall determine the length of the entry ban which may not exceed five years.

Article 11 (3) Member States may withdraw or suspend an entry ban:

- If the returnee can demonstrate that he/she left the territory in full compliance with a return decision.
- If the third-country national constitutes a victim of trafficking in human beings who has been granted a residence permit pursuant to Council Directive 2004/81/EC, he/she shall not be subject of an entry ban provided that the third-country national concerned does not represent a threat to public policy, public security or national security.
- In individual cases, certain categories of cases, or for other reasons

Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

The provision leaves thus a certain degree of discretion to Member States as to the implementation of entry bans.

Member States are free to: a) define the categories of third-country national (only in particular cases); b) determine the exact length of the entry ban; and c) withdraw or suspend entry bans in some (undefined) cases. Entry bans can therefore be used as a coercive policy measure - sending a signal prior to arrival that it does not pay to come to the EU irregularly, or more as an "incentive" by withdrawing or suspending entry bans in certain circumstances.

Although the Return Directive does not include an explicit provision on readmission agreements, it includes a reference to it in Recital 7, emphasising the need for EU and bilateral agreements with third countries to facilitate the return process.

It follows that whilst the EU acquis provides some common elements to the way that Member States should carry out their return policies, Member States are still left some discretion as to which measures to apply, in what circumstances, and how to implement these.

Section 1 Entry bans

This section reviews the national legal framework for imposing entry bans, in particular the grounds for issuing an entry ban (including criteria/indicators for assessing whether the grounds apply in individual cases), the categories of third-country national who can be issued such a ban, and the territorial scope of the entry ban. It also provides an overview of the authorities responsible for the imposition and decision-making of entry bans. The practical implementation of entry bans is explored by reviewing the extent to which Member States use a graduated approach, where entry bans are withdrawn or suspended depending on individual circumstances and the category of third-country national. Cooperation between Member States when implementing entry bans is addressed by reviewing whether Member States enter an alert into the SIS following imposition of an entry ban and by reviewing the information exchange/consultation processes including existing information sharing mechanisms between Member States. The section finally also includes questions about the perceived or actual effectiveness of entry bans, the main challenges associated with entry bans and any evidence of good practice.

SECTION 1.1 NATIONAL LEGAL FRAMEWORK ON ENTRY BANS: GROUNDS FOR IMPOSITION OF ENTRY BANS AND CATEGORIES OF THIRD-COUNTRY NATIONAL SUBJECT TO ENTRY BANS

Q1. In Belgium, 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 (but exceptions exist, for humanitarian reasons)

- 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

Q2a. What are according to national legislation in Belgium the grounds for imposing entry bans?

Table 1.1: Grounds for imposing entry bans

Grounds for imposing entry bans	Yes/No	Information on the criteria/indicators used to decide whether particular grounds apply in individual cases
Risk of absconding ²	Yes (Law change in development)	Indicators used : 1° Identity hiding, caused by a lack of collaboration, or caused by the use of fake documents or misleading information or declarations, within the scope of a previous application for authorization or admission to remain or during an identification, in view of

² As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

		<p>a removal;</p> <p>2° If the TCN clearly states that the return decision will not be obeyed to;</p> <p>3° The fact that the person concerned did not report his presence on the territory to the competent authorities;</p> <p>4° The non-execution of a removal decision in the past or opposition against the execution of a removal decision or a new irregular presence after removal;</p> <p>5° The fact that the preventive measures, as stipulated in article 74/4 §2 of the law, in view of preventing the risk of absconding are not complied with;</p> <p>6° A change of residence during the imposed period to leave the territory, in application of article 74/14 §1, without informing the authorities hereof;</p> <p>7° The fact that several times an invitation of the authorities to present oneself has not been complied with;</p> <p>8° Not disposing of habitual residence or residence that is known from the authorities or the refusal to announce the place of residence;</p> <p>9° Being subject of a return decision in another Member State;</p>
The third-country national concerned poses a risk to public policy, public security or national security ³ .	Yes	<p>An entry ban</p> <ul style="list-style-type: none"> - Up to 6 years may be imposed if the TCN has been condemned to a criminal sentence of less than 1 year imprisonment. - An entry ban up to 8 years may be imposed if the TCN has been condemned to a criminal sentence of at least 1 year imprisonment.
The application for legal stay was dismissed as manifestly unfounded or fraudulent ⁴		<p>Fraudulent application: Yes</p> <p>Unfounded application: No</p>

³ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

⁴ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

The obligation to return has not been complied with ⁵	Yes	
Other	Yes (decided on a case-by-case basis)	Some examples: working without work permit/moonlighting; public order offense but the TCN has not been condemned yet.

Q2b. What are the national grounds based upon which your Member State can decide **not** to issue an entry ban?

Table 1.2: Grounds for not imposing entry bans

Grounds for not imposing entry bans	Yes/No	Information on the criteria/indicators used to decide whether particular grounds apply in individual cases
Humanitarian reasons	Yes	Decided on case-by-case basis: elderly people, families with minor children, non-accompanied minors,...
Right to family life (Article 8 ECHR)	Yes	On a case-by-case basis
Health reasons	Yes	Case-by-case (if for medical/psychological reasons a return to Belgium may be appropriate)

Table 1.3: Categories of third-country national who can be issued an entry ban

Categories of third-country national who can be issued an entry ban⁶	Who comply voluntarily with return decision	Who do not cooperate with return decision
Third-country nationals staying illegally on the territory of a Member State (including residence/visa over-stayers, rejected applicants for international protection, third-country nationals who	No (always)	Yes

⁵ As stipulated in the Return Directive Article 11(1)(b).

⁶ Based on Article 2 Return Directive.

entered the territory illegally)		
Third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code	No	No
Third-country nationals 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	No	No (at the external border an entry ban is never issued)
Third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction	Yes (if the TCN has been condemned)	Yes
Other TCN with revoked residence permit	Yes (sometimes)	Yes
Moonlighting	Yes (sometimes)	Yes

Q4. Specification of the territorial scope of entry bans that are imposed by Belgium, i.e. do they apply to the entire EU territory or do they only cover the national territory?

In principle entry bans apply to the entire EU territory (territory which covers the Schengen acquis) unless the TCN has residence right in another MS or in case of application of the Dublin-regulation (then the territorial scope is limited to Belgium).

Q5. Which institution(s) in Belgium decides whether or not to issue an entry ban on third-country nationals who are the subject of a return decision?

Only the Immigration Office may decide to issue entry bans.

SECTION 1.2 PRACTICAL APPLICATION OF ENTRY BANS

Q6. Who informs third-country nationals of the imposition of the entry ban and what procedure is used to convey this information?

The TCN is informed either by (1) the Immigration Office directly (as part of the return decision) or (2) the police or the municipalities (notification of the decision of the Immigration Office).

Q7. Do third-country nationals who have been imposed an entry ban have the possibility to appeal the decision?

Yes, this is specified in article 39/2 § 2 + 39/82 of the Immigration Act. Appeal can be lodged to the Council for Alien's Law Litigation (CALL). This appeal is non-suspensive. The entry ban is meanwhile subject of extensive jurisprudence of the CALL, in particular in relation to the length of the entry ban. For example, the CALL judged that the person who is affected by an entry ban, may still have interest in an appeal after

forced removal, because the possible annulment of this ban may still of benefit for him⁷. It also seems that the Immigration Office may not automatically impose an entry ban with the maximum possible period that is foreseen by the law. It has to justify this, taking into account the particular circumstances of the file⁸.

Besides, when justifying the period of the entry ban, the right to private and family life (article 8 of the ECHR) has to be respected^{9 10}

The CALL pronounced also judgment about the period of entry bans when elements of public order are invoked. It judged for example that the right to private and family life was violated when the authorities did not take into account the existence of a family when determining the period of the ban¹¹.

Q8. Please indicate whether entry bans can be withdrawn or suspended in your Member State, specifying the categories of third country national who may be withdrawn/suspended from an entry ban, and explain the circumstances or reasons for this by filling out the table 3.4 below:

Table 1.4: withdrawal and suspension of entry bans

Categories of third-country national who can be exempted from an entry ban	Entry ban can be withdrawn or suspended (Y/N)	Criteria/indicators used
Third-country nationals who can demonstrate that they have left the territory of the member State in full compliance with a return decision	Yes	If 2/3 of the entry ban period has passed (art 74/12 Immigration Act of 15/12/1980 – humanitarian grounds)
Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC (provided they do not represent a threat to public policy, public security or national security)	Yes	See Circular letter victims of Human Trafficking. If the TCN has been issued a residence permit or in case of voluntary return after closing of the procedure.
Minors	Not applicable (minors are not issued entry bans)	
Unaccompanied Minors	Not applicable (minors are not issued entry bans)	

⁷ By contrast, in this case, the applicant has no interest anymore in challenging the decision to order to leave the territory. CALL, 30 November 2012, nr. 92.527.

⁸ See for example CALL, 27 November 2012, nr. 92.111.

⁹ CALL, 30 November, nr. 92.552.

¹⁰ CALL, 15 January 2013, nr. 95.142; CALL 14 March 2013, nr. 98.799 and CALL, 26 April 2013, nr. 101.886.

¹¹ CALL, 14 March 2013, nr. 98.799; CALL, 9 November 2012, nr. 91.251; CALL, 30 November 2012, nr. 92.552; CALL, 2 February 2013, nr. 96.520.

Disabled people	Yes	Case-by-case (humanitarian reasons)
Elderly people	Yes	Case-by-case (humanitarian reasons)
Pregnant women	Yes	Case-by-case (humanitarian reasons)
Single parents with minor children	Yes	Case-by-case (humanitarian reasons)
Persons with serious illness	Yes	Case-by-case (humanitarian reasons)
Persons with mental disorders	Yes	Case-by-case (humanitarian reasons)
Persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence (e.g. victims of female genital mutilation)	Yes	Case-by-case (humanitarian reasons)
Other humanitarian reasons	Yes	If a right to family reunification has risen after the issuing of an entry ban.
Other individual cases or certain categories of cases for other reasons	Yes	Case- by-case

Q9. Is the institution responsible for the imposition of the entry ban the same as the authority that is competent to decide on withdrawal/suspension?

Yes

SECTION 1.3 COOPERATION BETWEEN MEMBER STATES

Q10. Does Belgium enter an alert into the SIS when an entry ban has been imposed on a third-country national? (e.g. see Article 24 (3) of Regulation No 1987/2006 – Schengen Information System)?

Please specify whether;

- a) Alerts are entered into the SIS as standard practice
- b) Alerts are entered into the SIS on a regular basis
- c) Alerts are entered into the SIS on a case-by-case basis

b) Alerts are entered on a regular basis (for those TCN who were returned by force and for those who have been issued an entry ban of more than 3 years).

Q11a. Does your Member State share information on the use of entry bans with other Member States?

- | | |
|--|-----|
| a) Your Member State exchanges information as a standard practice | No |
| b) Your Member State exchanges information on a regular basis | No |
| c) Your Member State exchanges information on a case-by-case basis | Yes |

c) Belgium shares information on the use of entry bans on a case-by-case basis (in case of SIS-requests)

Q11b. Following information is shared with other Member States:

- a) Number of entry bans imposed : no
- b) Identity of the individuals who have been imposed an entry bans : yes
- c) Reasons for imposing the entry bans : yes
- d) Decision to withdraw an entry ban and reasons for this : no
- e) Decision to suspend an entry ban and reasons for this : no
- f) Any other information: no

B and c): see point 11a.

Q11c. Information is shared with other Member States via the SIS and via e-mail

Q12a. Article 11 (4) stipulates that "where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement". Please describe the processes how these consultations take place; indicate which authorities are involved as well as the method of consultation.

The Immigration Office launches the consultation process to the other member states via "SIRENE"¹² (operated by the Federal Police) to find out for which reasons the third-country national has been issued an entry ban (in case of public order and public security, to know the severity of the facts). The Immigration Office and the Federal Police are involved in the consultation process.

Q12b. Has Belgium ever issued a residence permit or any other authorisation offering a right to stay to a third-country national who is the subject of an entry ban imposed by another Member State? If yes, please indicate the number of residence permits issued to third-country nationals in these circumstances.

Yes, but there are no exhaustive statistics available regarding this issue.

In 2013, 45 residence permits have been issued to third country nationals who were the subjects of an entry ban. However, this figure is not complete as one should add the number of residence permits issued to TCN

¹² SIRENE is an acronym for 'Supplementary Information Request at the National Entry'

family members of EU-citizens who were subject to an entry ban (figure which is not available).

Q12c. In case Belgium has issued a residence permit or any other authorisation offering a right to stay to a third-country national who is the subject of an entry ban imposed by another Member State, please specify the circumstances based on which such decisions were taken.

In case of a right of residence provided by the law (in case of family reunification or international protection), this right takes precedence over the entry ban.

SECTION 1.4 EFFECTIVENESS OF ENTRY BANS

Q13. Belgium has never conducted any evaluations of the effectiveness of entry bans:

Table 1.5: Entry ban's effectiveness

Aspects of the effectiveness of entry bans	Explored in national evaluations (Y/N)	Main findings
Contribute to preventing re-entry	Not applicable	
Contribute to ensuring compliance with voluntary return	Not applicable	
Cost-effectiveness of entry bans	Not applicable	
Other aspects of effectiveness		Although no real evaluation has ever been undertaken, the finding emerges that the effectiveness diminishes or disappears if the TCN to whom an entry ban has been imposed does not return (cannot be returned)

Q14. The following indicators could be used in order to measure the effectiveness of entry bans as a means for enhancing the ability of (Member) States to carry out sustainable returns, or provide proxy measures of their effectiveness. If your Member State collects any statistics that would permit the population of these indicators, please indicate this is the case and provide the statistics for the last 5 years.

Table 1.6: National statistics on entry bans

Indicators	2009	2010	2011	2012 (as of 01/07 onwards)	2013

Number of entry bans imposed	/	/	/	3.289	9.178
Number of decisions to withdraw an entry ban				Not available	Not available
Number of decisions to suspend an entry ban				Not available	Not available
Number of persons who are the subject of an entry ban who have been re-apprehended inside the territory (not at the border)				Not available	Not available
Proportion of persons issued an entry ban who have returned voluntarily – out of the total number of persons that were issued an entry ban				Not available	Not available
Proportion of persons who were not issued an entry ban who have returned voluntarily – out of the total number of persons that were imposed a return decision					There is only an indicative figure available: +/- 11%

Q15. Please indicate whether Belgium 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 1.7: Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Y/N	Reasons
It is difficult to ensure compliance with entry bans on the part of the third-country national concerned	Yes	In Belgium entry bans enter into force at the time of notification (and not at the time of implementation of the order to leave the territory). Many persons who were issued an order to leave the territory and an entry ban are not returned by force; they remain on the territory and consequently the entry ban, which is entered into force, has no effect.
It is difficult to monitor compliance	Yes	Monitoring is only possible for those who

with entry bans		are returned by force or via an AVR-program (not for those who return independently).
It is difficult to secure the cooperation of other MS in the implementation of entry bans	No	
It is difficult to secure the cooperation of the country of origin in the implementation of entry bans	Not applicable	
Other challenges	No	

Q16. Please describe any examples of good practice in Belgium's implementation of entry bans, identifying as far as possible the reasons why the practice in question is considered successful.

The entry ban fits within the Belgian process of a integrated return policy. This process of integrated return took shape in i.a. the SEFOR –project. SEFOR ('**SE**nsitization, **FOL**low-up & **R**eturn') was put into operation by the Immigration Office and is responsible for the follow-up of all files concerning an order to leave the territory. Via the website www.sefor.be, SEFOR provides concerned and/or interested TCN's and other social assistant services with information, in 22 languages, on the consequences of an 'order to leave the territory' and the possibilities for voluntary return. SEFOR intends also to coordinate and interlink voluntary and forced return more efficiently. For that purpose, SEFOR works closely with local authorities. When a negative decision is taken, the TCN is summoned to present himself before the local authorities, where he/she has to sign the order to leave the country. Local authorities are obliged to inform the person about removal procedures and the possibilities for voluntary return. Additionally, the municipality has the obligation to transfer an identification form about the person concerned to SEFOR. The TCN concerned must inform the municipality about the date and destination of his/her return and additionally has to provide a copy of his return-ticket.¹³ The municipality is obliged to verify if the person left his place of residence and has to send a report to SEFOR. In the case individuals do not obey such orders, SEFOR actively tries to identify and localize these persons for the purpose of forced removal.

If the TCN chooses not to collaborate with SEFOR an entry ban may be imposed with all possible negative consequences in view of a possible return. The entry ban increases the pressure to comply with a return decision.

Another important fact is that the entry ban may be put into action in the struggle against fraud, inconvenience and criminal activities. Via a cascade system the periods of the entry ban which are imposed vary according to the degree of the facts. Towards convicted criminals, this is 8 years, which makes it possible to safeguard not only the Belgian territory but the whole Schengen area.

¹³ In the case the TCN does not present himself to the local authorities after issuing an order to leave the territory or the date of the order has elapsed, the municipality (the local police) has to initiate a control of the dwelling of the TCN, which is carried out by the local police. The municipality has the duty to transfer this information to SEFOR.

Section 2. Readmission agreements¹⁴

This section investigates the practical application of EU and separate bi-lateral readmission agreements of Belgium with third countries. In particular, it attempts to ascertain how frequently EU and bi-lateral readmission agreements are used, any practical challenges Belgium has experienced when carrying out return on the basis of readmission agreements and to what extent readmission agreements have been effective in ensuring the removal of irregular third-country nationals.

SECTION 2.1 INSTITUTIONAL SET-UP

Q17. Following authorities are responsible for making applications for readmission to third countries in individual cases of forced and/or voluntary return

Forced return: Immigration Office

Assisted voluntary return: FEDASIL (Federal Agency for the Reception of Asylum Seekers, responsible authority in Belgium for the voluntary return policy)

SECTION 2.2 EU READMISSION AGREEMENTS

Q18. Available statistics on the number of readmission applications that Belgium has submitted on the basis of **EU readmission agreements**..

Table 2.1: National Statistics on the total number of readmission applications under EU Readmission Agreements

	Total number of readmission applications made based on EURAs				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	277	457	N/A (put into use of new statistical programme)	1.139	Not applicable	Not applicable	Not applicable	Not applicable
Own nationals	277	457	N/A	1.138	N/A	N/A	N/A	N/A
Third-country nationals (including stateless persons)	0	0	0	1	N/A	N/A	N/A	N/A

Remark: voluntary return: not applicable because falls beyond the scope of EU Readmission Agreements.

¹⁴ Please note that this Section only concerns readmission agreements with third countries and that any other readmission agreements with EEA countries are outside the scope.

Table 2.2: National Statistics on the number of readmission applications made under EU Readmission Agreement to Serbia

SERBIA	Number of readmission applications made to Serbia based on EURAs				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	90	153	N/A	175	NA	NA	NA	NA
Own nationals	90	153	N/A	175	N/A	N/A	N/A	N/A
Third-country nationals (including stateless persons)	0	0	N/A	0	N/A	N/A	N/A	N/A

Table 2.3: National Statistics on the number of readmission applications made under EU Readmission Agreement to FYROM

FYROM	Number of readmission applications made to FYROM based on EURAs				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	21	128	NA	76	NA	NA	NA	NA
Own nationals	21	128	N/A	76	N/A	N/A	N/A	N/A
Third-country nationals (including stateless persons)	0	0	N/A	0	N/A	N/A	N/A	N/A

Table 2.4: National Statistics on the number of returns under EU Readmission Agreement to Pakistan

PAKISTAN	Number of readmission applications made to Pakistan based on EURAs				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	NA	NA	NA	297	NA	NA	NA	NA
Own nationals	N/A	N/A	N/A	297	N/A	N/A	N/A	N/A
Third-country nationals (including stateless persons)	N/A	N/A	N/A	0	N/A	N/A	N/A	N/A

Q19. Practical obstacles experienced by Belgium when implementing EU Readmission Agreements (general and/or only in relation to certain third countries).

Table 2.5 Practical obstacles for the implementation of EU Readmission Agreements

Practical obstacles associated with EU readmission agreements	Yes/No	If yes, please specify whether only in relation to a specific third country, or more of general nature.
Countries of origin do not cooperate in general	No	
Countries do not respect the deadlines	Yes	Russian Federation, Pakistan
Countries do not cooperate in relation to readmission applications of third-country nationals (as opposed to own nationals)	N/A	(only 1 application has been made so far)
Countries do not cooperate in relation to readmission applications of stateless persons (as opposed to own nationals)	N/A	(no application so far)
Countries do not issue travel document to enable readmission/return	No	
Gaps in own (Member) State's administrative capacity to implement readmission agreement	No	
Other obstacles (please add columns as necessary)	No	

Q20. Belgium has never conducted any evaluations of the effectiveness of EU and/or its bilateral readmission agreements.

Q21.

Table 2.6: Indicators measuring the effectiveness of EU Readmission Agreements

Indicators	2009	2010	2011	2012	2013
Number of readmission applications sent	Not available	277	497	Not available	1.139
Number of readmission applications that received a positive reply	n/a	180	296	n/a	869
Number of requests for travel documents in the context of a readmission application	n/a	n/a	n/a	n/a	n/a
Number of travel documents issued by	n/a	n/a	n/a	n/a	n/a

third country after the positive reply					
Number of persons who were effectively returned (included with documents, for persons for whom no readmission request was asked)	314	308	616	789	1.022

Q22. Please provide an assessment of the added value of the EU Readmission Agreements in facilitating the effective returns in comparison with the period before the EU Readmission Agreements were concluded.

Generally spoken, the conclusion of EU Readmission Agreements has led to a better co-operation with the countries concerned. Most countries respect the criteria laid down in the EU RA.

SECTION 2.3 SEPARATE BILATERAL READMISSION AGREEMENTS

Q23. Separate bilateral readmission agreements in place with third countries

Yes (in the framework of the BENELUX only)

Country	Signed	Ratified in Belgium	Ratified in the NL	Ratified in Luxemburg	Entry into force
Armenia	3/06/2009	16/04/2012	7/12/2009	21/01/2010	
Kosovo	12/05/2011		15/12/2011	12/06/2012	
Switzerland	12/12/2003	15/02/2006	20/01/2005	22/12/2006	1/03/2007

Q24. Please provide any available statistics on the number of readmission applications that your Member State has submitted on the basis of separate **bilateral readmission agreements**. Provide only such statistics for the three third countries to which most readmission applications are made.

Table 2.7: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Armenia.

Armenia	Number of readmission applications made to Armenia based on separate bilateral readmission agreements				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	28	188	Not available	256	Not applicable	Not applicable	Not applicable	Not applicable

Own nationals	28	188	n/a	256	n/a	n/a	n/a	n/a
Third-country nationals (including stateless persons)	0	0	n/a	0	n/a	n/a	n/a	n/a

Table 2.8: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Kosovo.

Kosovo	Number of readmission applications made to Kosovo based on separate bilateral readmission agreements				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	Not applicable	640	Not available	123	Not applicable	Not applicable	Not applicable	Not applicable
Own nationals	n/a	640	n/a	123	n/a	n/a	n/a	n/a
Third-country nationals (including stateless persons)	0	0	n/a	0	n/a	n/a	n/a	n/a

Table 2.9: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Switzerland.

Switzerland (no separate statistics for third country nationals per receiving country are available)	Number of readmission applications made to Switzerland based on separate bilateral readmission agreements				How many have concerned voluntary return?			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Own nationals	0	0	n/a	0	n/a	n/a	n/a	n/a
Third-country nationals (including stateless persons)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Q25. Most common problems encountered in the implementation of separate bilateral readmission agreements.

Table 2.10: Practical obstacles experienced under separate bilateral readmission agreements

Practical obstacles associated with separate bilateral readmission agreements	Yes/No	If yes, please specify whether only in relation to a specific third country, or more of general nature.

Countries of origin do not cooperate in general	No	
Countries do not respect the deadlines	Yes	(generally spoken)
Countries do not cooperate in relation to readmission applications of third-country nationals (as opposed to own nationals)	No	
Countries do not cooperate in relation to readmission applications of stateless persons (as opposed to own nationals)	N/A	
Countries do not issue travel document to enable readmission/return	No	
Gaps in own (Member) State's administrative capacity to implement readmission agreement	No	
Other obstacles (please add columns as necessary)	No	

Q26. None of the separate bilateral readmission agreements signed by Belgium include an article encouraging both Parties to promote the use of voluntary return?

The agreements concern only readmission in the framework of forced return.

Q27. Does your Member State prefer to use separate bilateral readmission agreements instead of EU Readmission agreements with particular third countries?

/

Q28. Belgium has never conducted any evaluation of the effectiveness of separate bilateral readmission agreements.

Q29. The following indicators could be used in order to provide (proxy) measures of the effectiveness of separate bilateral readmission agreements.

Table 2.11: Indicators measuring the effectiveness of separate bilateral readmission agreement with Armenia and Kosovo.

Indicators (statistics are only available for Armenia and Kosovo together)	2009	2010 (Armenia only)	2011	2012	2013
Number of readmission applications sent	n/a	28	828	n/a	379
Number of readmission applications that	n/a	13	544	n/a	340

received a positive reply					
Number of requests for travel documents in the context of a readmission application	n/a	n/a	n/a	n/a	n/a
Number of travel documents issued by third country after the positive reply	n/a	n/a	n/a	n/a	n/a
Number of persons who were effectively returned (readmission agreements not yet into force in 2009)	n/a	16	243	223	275

Q30.

Generally spoken, the Immigration Office assesses the co-operation with those countries with which a separate bilateral readmission agreement has been concluded as very smooth since the entry into force of these agreements, and thus clearly providing an added value

Section 3. Entry bans and readmission agreements: understanding the synergies with reintegration assistance

In view of the important role that reintegration assistance can play in ensuring the sustainability of returns, this section wants to examine the dependencies that might exist between entry bans and readmission agreements, on the one hand, and reintegration assistance, on the other hand; it also explores the extent to which decision-makers in charge of issuing entry bans and making readmission applications cooperate with the officials in charge of granting / administering reintegration assistance.

Q31. Do the authorities in charge of imposing an entry ban subsequently consult with and/or inform the authorities in the concerned third country to which the individual is to be returned?

No

Q32. Is it possible in Belgium for returnees who have been the subject of an entry ban to apply for re-integration assistance?

Returnees who have been the subject of an order to leave the territory and an entry ban and who are maintained in a closed centre, remain under the responsibility of the Immigration Office. They cannot apply for reintegration assistance, except if the Immigration Office accepts this on the basis of humanitarian circumstances. Humanitarian circumstances may result from illness, handicap, ageing, lone-parenthood, situation of isolated woman. Decisions are made in this regard on a case-by-case basis and depending on the country of return.

Returnees who have been the subject of an order to leave the territory and an entry ban and who are not maintained in a closed centre, could themselves turn to FEDASIL (Federal Agency for the Reception of Asylum Seekers, responsible authority for the voluntary return policy) saying they are the subject of an order to leave the territory without mentioning the entry ban (which is issued in a separate decision). Given the fact that FEDASIL is not informed by the Immigration Office when entry bans are issued, it is possible that FEDASIL handles applications for reintegration assistance without knowing that the returnees have been the subject of an entry ban.

Q33. In Belgium, the competent authorities involved in making decisions about the use of entry bans and granting of re-integration assistance are not the same.

The Immigration Office takes the decision about the entry ban, FEDASIL, in cooperation with IOM, grants the re-integration assistance.

Q34. No formal cooperation mechanisms have been set up to facilitate coordination? (e.g. Protocols, contracts, conventions, working arrangements, etc.).

The Immigration Office has no specific cooperation mechanism with IOM and FEDASIL for the assistance of individuals who received an entry ban.

However, it may happen that, if IOM or FEDASIL do not succeed in obtaining a laissez-passer for an assisted voluntary return, the Immigration Office launches a readmission application to the concerned diplomatic post. In case the embassy or consulate issues a laissez-passer following this application, this LP may also be used in the framework of assisted voluntary return.

Q35. (If answered no to question 34), do the competent authorities consult with each other when making decisions? If yes, do these consultations take place on a regular basis as a standard practice, or are consultations only made on very few / exceptional occasions?

The competent authorities consult each other on a regular basis as a standard practice.

Q36. Does Belgium offer re-integration assistance to returnees who have been removed on the basis of a readmission agreement?

Yes, this might be possible in case of humanitarian reasons (case- by- case).

Q37. (If answered yes to question 36), are the competent authorities involved in making readmission applications and granting re-integration assistance the same?

No, the Immigration Office launches readmission applications, FEDASIL , in cooperation with IOM, grants the re-integration assistance.

Q38. (If answered no to question 37), have any formal cooperation mechanisms been set up to facilitate coordination? (e.g. Protocols, contracts, conventions, working arrangements, etc.).

The Immigration Office has no specific cooperation mechanism with IOM and FEDASIL in the framework of Readmission Agreements, as voluntary return does not fall within the scope of RA's.

However, it may happen that, if IOM or FEDASIL do not succeed in obtaining a laissez-passer for an assisted voluntary return, the Immigration Office launches a readmission application to the concerned diplomatic post. In case the embassy or consulate issues a LP following this application, this LP may also be used in the framework of AVR.

Q.39 (If answered no to question 38), do the competent authorities consult with each other when making decisions? If yes, do these consultations take place on a regular basis as a standard practice, or are consultations only made on very few / exceptional occasions?

The competent authorities consult each other on a case-by-case basis when deemed necessary.

Section 4 - Conclusions

This study focuses on two return policy measures that are used by Member States in their efforts to implement effective return policies:

- **Entry bans** that accompany return decisions, which are imposed with a view to returning irregular third-country nationals and preventing their re-entry into the EU/host Member State – in accordance with the Return Directive Article 11 and
- **Readmission agreements** whether EU, or separate bilateral agreements, which are reached between Member States and third countries to facilitate the effective removal process of irregular third-country nationals, regardless of the individual's willingness to return.

The use of entry bans in Belgium

Since 2 July 2012¹⁵ Belgian authorities may issue an entry ban annexed¹⁶ to an order to leave the territory to illegally staying third-country nationals. This results from the transposition of Directive 2008/115/CE (Return Directive) into Belgian law¹⁷. According to the new provisions, an entry ban is imposed when no period is granted for voluntary return or when a previous removal order hasn't been complied with. The entry ban is set for a maximum of three years but the period may be extended to 5 years if the person has used fraud to be allowed to stay or to maintain his right of residence, and more than 5 years in case of serious threat to public order or security threat. It is worth noting that Belgium has decided not to issue entry bans to foreigners refused entry at the border.

Already before the transposition of the Return Directive, a kind of entry ban existed, more in particular a ban to enter the Belgian territory during 10 years because of serious reasons of public order or national security¹⁸. Until the entry into force of the new return provisions, the measure was used only in a limited way.

In accordance with the Immigration Act and the Return Directive, the Immigration Office assesses each file on a case-by-case basis with regards to the issue, withdrawal and suspension of entry bans. In 2013, more than nine thousand entry bans were issued. In 2013 an information campaign has also been conducted about entry bans.

Belgian immigration authorities consider the entry ban as effective, both in terms of issue for repressive purposes and in terms of waiving or suspension as incentive for voluntary return. Efficiency is obviously still dependent upon whether or not the foreigner effectively returns or not. In fact, the entry ban loses its effect if the third-country national remains on the territory in spite of the order to leave the territory.

According to the Immigration Office, the entry ban is also used in the struggle against fraud, nuisance and criminality. Via a cascade system the period that may be imposed via an entry ban is differentiated in terms of severity. As mentioned above, the Immigration Act provides that an entry ban of more than 5 years may be imposed to a person that presents a serious threat to public order or national security. An entry ban of maximum 8 years is imposed to persons with penal conviction. The use of fraud in an attempt to obtain a residence permit is penalized with an entry ban of maximum 5 years. In principle moonlighting is considered as an element of public order which implies the issuance of an entry ban of maximum 3 years.

The Immigration Office also views the entry ban as consistent with the development of a process of integrated return. This process of integrated return has taken form, amongst others, in the SEFOR-project¹⁹. When a foreigner is issued an order to leave the territory, (s)he receives information on his/her rights and obligations, and

¹⁵ Date of publication and entry into force of the Royal decree of 19 June 2012.

¹⁶ Annex 13 sexies

¹⁷ Immigration Act, Articles 74/11 and 74/12 as modified by the Law of 19 January 2012

¹⁸ Article 20 and following of the Immigration Act.

¹⁹ The SEFOR unit has been created in the Immigration Office on 1 June 2011 to ensure the monitoring of orders to leave the territory. More information on: <http://www.sefor.be>

(s)he is informed about the importance of and possibilities for (assisted or independent) voluntary return as well as the consequences of refusal to return. In fact the foreigner who doesn't comply with the order is sought by the authorities with a view to forced return and s(he) is banned from entering the territory.

Other Belgian stakeholders keep a watchful eye on the use of entry bans by the Immigration Office. According to the Federal Migration Center for example the current use of entry bans raises questions both in terms of its conformity with legal texts and with its impact on fundamental rights of foreigners. As regards the duration of entry bans, the Center pleads for individual decisions reasoned on a case-by-case basis (and no systematic use of maximum durations). As regards the waiving or suspension of entry bans, the Center calls into question the discretionary power left to the Minister to determine (categories of) persons benefiting from it.²⁰ The ADDE (Foreigners' Rights' Association) underlines that the entry ban is a new scheme which practitioners must keep a close watch on. The association finds it necessary to verify that decisions of the Immigration Office duly take into account considerations such as the best interest of the child, the family life and the health of the concerned person.²¹

The entry ban has therefore been subject to extensive case law of the Council for Aliens Law Litigation (CALL). In particular the length (the automatic imposition of the maximum possible period) of the entry ban and the area of tension between the entry ban and the right to family life is subject to case law. The CALL ruled that account must be taken of the reasons for the duration of the entry ban, the respect of private and family life (Article 8 ECHR) and particularly the risk of adversely affecting such right due to the absence of guarantee regarding effective waiving or suspension of the entry ban upon a future request for family reunification submitted abroad.²²

Third country nationals who have been issued an entry ban are in principle excluded from reintegration assistance, although it is possible that, because of humanitarian reasons or because of the division of competences between the different administrations, people, issued an entry ban, do return with reintegration assistance. Figures regarding this subject are however not available.

The use of readmission agreements

Currently, 16 EU readmission agreements have been signed and entered into force. In addition, 5 separate formal readmission agreements are in place between Benelux countries and third-countries. The readmission agreements (EU and BENELUX) have created a framework for identification and return modalities. In some cases these modalities have to be followed strictly, but in other situations, the agreement is only used if a problematic situation arises.

If the bilateral operational cooperation allows applying the modalities in a more flexible way, Belgian authorities surely do this, as the return process may be organized faster and more efficiently and detention in a closed center may be limited in time.

Belgian authorities notice that in practice not all EU readmission agreements function in an optimal way. Because some texts leave substantial leeway for interpretation, it is sometimes difficult to come to a compromise with regards to implementing modalities. However, generally spoken, the conclusion of EU Readmission Agreements has certainly led to a better co-operation with the countries concerned. Most countries respect the criteria laid down in the EU Readmission Agreements.

²⁰ A new legal framework for the return policy in Belgium, Federal Migration Center, June 2014

²¹ ADDE Newsletter, October 2012, pp 2-4

²² CCE, 15 January 2013, n° 95.142 ; CCE, 14 March 2013, n° 98.799 and CCE, 26 April 2013, n° 101.886.

Although it is acknowledged by all Belgian policy makers that readmission agreements or bilateral agreements on administrative cooperation are essential elements of an efficient return policy, some political parties and civil society organizations have reservations regarding the respect of fundamental rights and the (in-) equitable nature of such agreements.