

FINAL OPEN Summary of EMN Ad-Hoc Query No. [2019.105]

Return of third country nationals with a residence permit obtained through legal migration channels (study, work and family purposes)

Answered by AT, BE, BG, CZ, DE, FI, FR, HR, HU, IT, LV, LT, LU, NL, SE, SI, SK and UK

Launched on 16 December 2019 by the EMN NCP NL

KEY POINTS TO NOTE

- ★ All (Member) States (**AT, BE, BG, CZ, DE, FI, FR, HR, HU, IT, LV, LT, LU, NL, SE, SI, SK and UK**) have national legislation and/or internal guidelines on this topic. Mostly, this entails national legislation and/or internal guidelines on the return of third country nationals in general.
- ★ In most (Member) States (**AT, BE, BG, FI, FR, HU, IT, LV, LU, NL, SE, SK, SI and UK**) the third country national with a residence permit for study, work and/or family purposes is informed about the return process once their residence permit is withdrawn and/or expires and is not renewed. The situation differs in several (Member) States (**CZ, HR, LT, LV**). **DE** did not provide information.
- ★ Only in **BE, FR, IT, NL** and **SE** (specific) initiatives are undertaken to support or raise awareness among involved stakeholders (public bodies, municipalities, NGOs) in regards to the return of third country nationals with a former residence permit for study, work and/or family purposes.

BACKGROUND

Over the last decade priority has been given in the Netherlands to the return of rejected asylum seekers and third-country nationals in criminal detention, and only to a limited extent to return of third country nationals who had overstayed their residence permit obtained through legal migration channels (study, work and family purposes) and whose permits have been revoked or not renewed. In recent years, this has changed. Currently, a project called 'Terugkeer van Reguliere Vreemdelingen'¹ (started in 2018) in the Netherlands is being carried out to put more focus on the return of third country nationals who (tried to) obtain a residence permit through legal migration

¹ Return of third country nationals who (tried to) obtain a residence permit through legal migration channels (i.e. study, work and family purposes)

channels (i.e. study, work and family purposes) and whose permit has ended, revoked or not renewed. Therefore the third country nationals no longer have the right to stay in the Netherlands and are obliged to leave the country. This project ensures the development of a 'governance mechanism', whereby prioritization of supervision, enforcement and return of the third country nationals process is achieved.

Currently, there is no comprehensive overview of measures by Member States regarding this group of migrants. The Netherlands would like to know how other Member States return third country nationals whose permit in legal migration cases (i.e. study, work and family purposes) have been revoked or not renewed. For the Netherlands it would be helpful to see how Member States deal with this issue and which are the (national) policies implemented. Additionally, this could also help to gather information on this subject since in practice nationality and identity documents are (mostly) known in legal migration cases, which may differ from asylum cases. Therefore, the results of this ad-hoc query will be used to further enhance the project that deals with this matter.

MAIN FINDINGS

Q1. Is the applicable process when returning third country nationals with a former work, study or family reunification permit which was withdrawn/non-renewed, laid down in national legislation or internal guidelines? Yes/No. If yes, briefly specify which legislative documents/internal guidelines regulate the procedure in both cases.

All (Member) States (**AT, BE, BG, CZ, DE, FI, FR, HR, HU, IT, LV, LT, LU, NL, SE, SI, SK and UK**) have national legislation and/or internal guidelines. Mostly, this entails national legislation and/or internal guidelines on the return of third country nationals in general (e.g. procedure guidelines when a permit was not renewed or withdrawn, grounds for non-renewal or withdrawal).

SE also specifically mentioned that there are no guidelines for a non-renewed permit. Please see the compilation of the ad-hoc query for the specific return procedure of the (Member) States.

Q2 & Q3. If the residence permit (i.e. study, work or family purposes) of a third country national is withdrawn and/or expires and it is not renewed, what actions are undertaken by the competent authorities to return the third country national to his/her country of origin? Please briefly describe all relevant steps.

Procedure

Most (Member) States (**AT, BE, BG, CZ, DE, FI, FR, IT, LT, LU, NL, SK** and **UK**) apply (in general) the same procedure when returning a third country national with a former residence permit for study, work or family purposes (both when non-renewed or withdrawal).

However, five (Member) States have stipulated that different procedures and/or circumstances apply (**HR, HU, LV, SI** and **SE**). For example, in **HR**, if the residence permit is withdrawn, the return of the third country national has become enforceable which needs to be done by the Croatian authorities. If the residence permit has expired, the police administration and/or police stations of the Ministry of the Interior are not obliged to take official action after the expiration of the residence permit. In **SE**, when the residence permit is withdrawn, the Swedish Migration Agency initiates an investigation and the third country national is informed in writing, connected with an order to leave the country. However, no procedure is applicable when the permit is not-renewed.

Elements taken into account

Due to the many differences in return procedures of (Member) States when a residence permit (study, work or family purposes) is withdrawn or not-renewed, no comprehensive overview of the differences can be given. However, elements that are part of the procedure in (Member) States during the return procedure include the following:

- Issuance of a return decision/obligation to return the third country national;
- First voluntary return and if not possible, forced return (with a possibility for detention);
- Inclusion of a departure period (which sometimes may be waived);
- Check on appliance of the principle of non-refoulement;
- Put on a wanted list for the purpose of ending his/her stay;

- Possibility to appeal a decision;
- Monitoring mechanisms²;
- Imposing an entry ban;

Please see the compilation of the ad-hoc query for the specific return procedure of the (Member) States.

Q4. Which authority/authorities is/are involved in returning third country nationals with a former work, study or family reunification permit? Please explain their role in the return process (f.e. check on removability, takes proof of ID, enforcing the decision, monitoring, forced return, informing on the decision, other).

There is a wide range of authorities in many (Member) States involved in returning third country nationals with a former work, study or family reunification permit. For example, this includes the Police, enforcement authorities, border guards, specialized (im)migration authorities, et cetera. For a complete overview, and their specific roles, please see annex 1.

Q5. Are third country nationals with a residence permit for study, work and/or family purposes informed about the return process once their residence permit is withdrawn and/or not renewed? Yes/No. If yes, please describe how information is provided (i.e. through a letter, orally when the letter is notified, etc.).

Information provided

In most (Member) States (**AT, BE, BG, FI, FR, HU, HR, IT, LV, LU, NL, SE, SK, SI** and **UK**) the third country national with a residence permit for study, work and/or family purposes is informed about the return process once their residence permit is withdrawn and/or not renewed. The situation differs in several (Member) States. In **CZ** and **LT** the third country nationals are not informed individually. Additionally, in **FR** and **LV**, when the residence permit is withdrawn and/or was denied a renewal, the third country national is informed, however this is not the case when the residence permit expires and hasn't requested renewal. **DE** could not provide information on this matter.

Means of communication and content

Third country nationals with a former residence permit for study, work and/or family purposes are informed (mostly) in writing (whose permit has been withdrawn, expired or refused for renewal).

² **FI** and **LV** have indicated that they are using the Ombudsman to monitor the third-country national's return. **LV** hereby indicates that this happens upon forced departure. **LT** does this by checking local information systems, registering the address details at departure and the main home address previously indicated, and looking at the third-country national who has left the country. **SK** does the monitoring together with NGOs through a contract.

Additionally, some (Member) States (**BE, HU, SE**) also indicated possibilities to inform the individual in person. **FI** indicated that the Police or the Border Guard informs on the information about the decision orally.

The information stated in the letter and/or given in person differs in (Member) States. Decisions include information about the decision itself, time for departure, explanations about the consequences, appeal possibilities and/or fill out a form about identity and documents. Additionally, **FR** and **LU** indicate that the elements may be communicated in a language which the third country national understands.

Q6. Are there initiatives undertaken in your (Member) State to support or raise awareness among involved stakeholders (i.e. public bodies, municipalities, NGOs) in regards to the return of third country nationals with a former residence permit for study, work and/or family purposes? Yes/No. If yes, please describe which organizations are involved, goals and (if possible) results.

Several (Member) States have indicated that information is provided to the public and/or public bodies (**CZ, FI, FR, HU, SI, SK** and **UK**) among stakeholders to provide support or raise awareness (e.g. through websites, et cetera). For example, in **FR**, information on forced / voluntary return is provided to all TCNs subject to a removal order (illegally staying or with a former residence permit) through the French office for immigration and integration - OFII – website on voluntary returns, in various locations with the support of local NGOs or stakeholders (for example in retention centers through NGOs and OFII agents, through public officers in Prefectures, in asylum centers, etc.) for forced and voluntary returns. **LV** indicated that several governmental organizations work together on this subject and produce statistics in this regard.

In **BE, FR, IT, NL** and **SE** (additional) initiatives are undertaken to support or raise awareness among involved stakeholders (public bodies, municipalities, NGOs) to the return of third country nationals with a former residence permit for study, work and/or family purposes. In **BE** local staff is trained. Additionally, Fedasil does not specifically target these groups but outreach projects are conducted in several Belgian cities. In **IT** relevant initiatives have been undertaken in the field of the voluntary return. In particular, the Italian Ministry of Interior has promoted a project (in 2018) which included important measures of reintegration (so called AVRR) for 900 third country nationals. In **NL** a project called 'Terugkeer van Reguliere Vreemdelingen' (started in 2018) in the Netherlands is being carried out to put more focus on the return of third country nationals who (tried to) obtain(ed) a residence permit through legal migration

channels (i.e. study, work and family purposes) and whose permit has ended, been revoked or not been renewed. This project ensures the development of a 'governance mechanism', whereby prioritization of supervision, enforcement and return of the third country nationals process is achieved. In **SE** the Swedish Migration Agency and the universities and university colleges of Sweden are collaborating in several different groups.³

No initiatives

The other (Member) States (**BG, CZ, FI, HU, HR, LV, LT, LU, SK, SI** and **UK**) have not mentioned specific projects and/or initiatives target at other stakeholders in order to prioritize/support the return of third country nationals with a former residence permit for study, work and/or family purposes.

AT & DE could not provide information.

Q7. If the return of third country nationals with a former work, study or family reunification permit which was withdrawn/non-renewed is not enforced; is it tolerated that the third country nationals may stay in your (Member) State? Yes/No. Please explain (f.e. is it tolerated, is a specific scheme or pardon created at a later stage for this group of migrants, et cetera).

Most (Member) States that answered this ad-hoc query indicate that return decisions must be enforced, however made clear that exceptions to prolong the stay of the third country national and/or to not enforce a return decision are possible.

The following exceptions to the obligation to return are mentioned by the (Member) States (please see below). The abbreviation of the name of the (Member) States indicate which (Member) States have answered which exceptions. It may be the case that some exceptions also are applicable to other (Member) States, e.g. due to international law, et cetera. However, this is not described as such, since only the exceptions mentioned by (Member) States are noted.

- If removal is not permitted or possible for legal or factual reasons (**AT, DE, FI, NL**);
- Regularization requests (**BE**);
- Personal and/or family matters (**BE, BG, HU**);
- Illness/medical reasons (**BE, BG, FI, NL, LU, SI**);
- Waived requirements for certain groups (**FR, NL**);
- Decision of temporary postponement and/or suspensive appeal (**FR, HR, NL**);

³ Examples include yearly information meetings, work groups, pilot projects, etc. Meeting with security branches in Sweden. Meetings with Ministry of Foreign Affairs and Ministry of Justice.

- Non-refoulement⁴ (**CZ, LT, SK**);
- Lack of ID (**CZ**);
- Apply to the Prefect for a period of time (between 7 and 30 days) necessary to organize a voluntary departure (**IT**);
- Humanitarian reasons (**DE, LT**);
- New residence permit (**LV**);
- For criminal proceedings (**DE**);
- Technical or logistical reasons beyond the control of the third-country national (**LU**);
- Article 8 ECHR (**CZ**);

SE and **UK** did not indicate – in general – such exceptions.

EMN NCPs participating: Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovakia, Slovenia, Sweden and the United Kingdom⁵ (18 in total).

Disclaimer: The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of the EMN The Netherlands and does not necessarily represent the official policy of an EMN NCPs' Member State. The responses are interpreted by EMN The Netherlands to write this summary.

⁴ Applicable and applied in all (Member) States due to international law.

⁵ Due to Brexit the UK is no longer part of the EMN.

ANNEX I: AUTHORITIES INVOLVED IN THE RETURN PROCEDURE¹

(Member) State	Authorities	Purpose and/or goals
AT	Federal Office for Immigration and Asylum	<ul style="list-style-type: none"> • Issuing a return decision against a third-country national • Responsible for all preparatory measures for return, such as the procurement of replacement travel documents
	Regional Police Directorates	<ul style="list-style-type: none"> • Carries out the return decision
BE	Immigration Office	<ul style="list-style-type: none"> • Competent authority for forced returns for every step in the procedure
	Federal Police	<ul style="list-style-type: none"> • Responsible for forced removal if the person needs to be escorted
	Fedasil	<ul style="list-style-type: none"> • In charge of the reception of applicants for international protection and voluntary return
BG⁶		<ul style="list-style-type: none"> • Imposing of compulsory administrative measures
CZ	Ministry of the Interior	<ul style="list-style-type: none"> • Non-prolongation, cancellation of legal stay and assisted voluntary returns
	Police	<ul style="list-style-type: none"> • Return decision, detention, decision on monitoring, forced return, IDs • Removability check (in cooperation with the Ministry of the Interior)
DE	Aliens Office	<ul style="list-style-type: none"> • Determine whether a residence permit exists / does not exist and, if necessary, threatens deportation
	BAMF	<ul style="list-style-type: none"> • Determines whether a residence permit exists / does not exist and, if necessary, threat of deportation
	Federal Police	<ul style="list-style-type: none"> • Enforcement
FR	Prefect of the Police (in Paris) or prefect of the competent department	<ul style="list-style-type: none"> • The administrative authority competent for the pronouncement of removal orders and the determination of the country of return is the Prefect of the department competent for the TCN's residence • Competent to impose presentation obligations and to designate a place of residence
	Minister of Interior / French Office for Immigration and Integration	<ul style="list-style-type: none"> • The conditions for granting and the amount of return assistance are determined by the Minister responsible for immigration, after consulting the French Office for Immigration and Integration (OFFI) who implements this aid.
FI	Police and Finnish Border Guard	<ul style="list-style-type: none"> • The service of negative decisions are done by the police or border guard. • We go through all the issues you mentioned above in order to make sure that the return can be implemented. • In general, if the returnee has not committed any crimes, he / she has a valid travel document, the person may return to his / her own country without the involvement of the police. • If the person does not want to live the country, then we consider to escort him / her.
	Ombudsman	<ul style="list-style-type: none"> • In Finland the Non-Discrimination Ombudsman monitors removals from the country.
HR	Border Police Directorate (Detention Centre for Foreigners)	<ul style="list-style-type: none"> • Imposing forced return and/or detention
HU	Alien Policing Units	<ul style="list-style-type: none"> • Responsible for conduction first interviews with the TCNs, collect all the data of the person and the case itself

⁶ Multiple organizations and authorities: namely Chairperson of the State Agency for National Security and the Directors of the "National Police", "Border Police" and "Fighting Organised Crime" Chief Directorates, the Directors of the Metropolitan and Regional Directorates, the Director of the Migration Directorate, the Directors of the "Border Police" Regional Directorates at the Ministry of Interior

	Unit of Coercive Measures and Return of the Directorate of Aliens Policing of the National Directorate-General for Aliens Policing	<ul style="list-style-type: none"> Organize the return operations, including conducting identification procedure and obtaining travel documents for undocumented third-country nationals who are illegally staying in Hungary Organize and coordinating voluntary returns (in cooperation with the IOM) Organizing and participating in forced returns (removal operations) by air of third-country nationals who are subjects of individual removal orders (JRO-s, SRO-s, commercial flights)
IT	Prefect	<ul style="list-style-type: none"> Competent to issue an expulsion decree
	Quaestor	<ul style="list-style-type: none"> Orders to foreigner to leave voluntarily the national territory within 7 days
LV	Office of Citizenship and Migration Affairs	<ul style="list-style-type: none"> Inform the State Border Guards about the possible illegal stay of the third country national and request appropriate procedural steps Issuance of a return decision
	State Border Guard	<ul style="list-style-type: none"> Possibly detain the third country national or decide to apply an alternative measure to detention.
	Ombudsman	<ul style="list-style-type: none"> Supervising the removal
LT	Migration Department	<ul style="list-style-type: none"> Taking decisions on the return of an alien to a foreign country (country of origin) or on expulsion from Lithuania
	State Border Guard Service	<ul style="list-style-type: none"> Taking decisions on the return of an alien to a foreign country (country of origin) or on expulsion from Lithuania Monitoring of the enforcement of the decision on the return of the alien shall be monitored by the authority that issued the decision and the decision on the forced return of the alien
LU	Directorate of Immigration Foreigners Department	<ul style="list-style-type: none"> Examines the case and decides if the residence permit shall be revoked or not renewed. The recommendation of the Directorate of Immigration, Foreigners Department is passed to the Minister in charge of Immigration that takes the decision, which is notified to the third-country national in her/his place of residence.
	Grand-ducal Police	<ul style="list-style-type: none"> Verifies that the third-country national has left the territory
	Return Department of the Directorate of Immigration	<ul style="list-style-type: none"> Place third country nationals in the Detention Center in order to prepare the forced removal Takes the travel and ID documents of the third-country national (who is going to be returned by the escorts) and will check the removability of the individual
NL	Immigration- and Naturalisation Service	<ul style="list-style-type: none"> Withdraws (or does not renew) the residence permit, accompanied by the return decision
	Repatriation and Departure Service	<ul style="list-style-type: none"> Investigates options for departure, possibly conducts additional identity checks and checks the removability. Then the actual departure will take place, possibly under the supervision of the Royal Netherlands Marechaussee
	National Police (AVIM)	<ul style="list-style-type: none"> Enforces possible detention
SE	Swedish Migration Agency	<ul style="list-style-type: none"> Informs the applicant of the decision and hands a case of to the police if the person is not returning voluntarily (for forced return)
SI	Police	<ul style="list-style-type: none"> They verify if there are no grounds for the "non-refoulement" or other reasons not to act accordingly. They verify identity and make relevant provisions for the travel document, make a formal announcement and provide other information to the country of return and transit if applicable. Monitoring is provided by NGOs under contract.
UK	Home office	<ul style="list-style-type: none"> All actions are taken by the Home Office

