

***Summary of the LT ad-hoc query on TCNs who could not be expelled from the State due to lack of identification/return documents***

*Based on answer of 18 NCPs*

- 1. Can a decision to expel or return a third-country national who is unlawfully present in the country be issued in cases where the identity of a third-country national has not been confirmed?**  
Absolute majority of the MS issue an administrative decision regarding return to a third country national who is unlawfully present on the territory of the MS even if his/her identity has not been confirmed. The decision is issued on the data provided by the person and can be corrected if new information is received. However, the expulsion cannot be implemented since identity is not confirmed and it is not possible to receive travel documents. Some MS expect such third country nationals to leave voluntarily on their own initiative (**Belgium**) or provide for extended periods for voluntary return (**Cyprus** provides 1-3 months period). **Latvia** can issue a return decision only to third country nationals whose identity is confirmed. **Sweden** does not issue a return decision in such cases.
- 2. What legal status is available to such a third-country national who could not be expelled/ returned from your MSe due to lack of identification and who can no longer be detained due to the 18 months rule?**  
In the majority of MS such third country nationals are considered as unlawfully present or irregularly staying. In some MS they receive a status: **Malta** may issue a temporary residence permit, **Austria, Germany, Slovak Republic** may issue a tolerated stay card/permit.
- 3. What rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national who receives this document?**  
In the majority of MS only basic welfare support is available (emergency health care, accommodation, social support). Absolute majority of MS do not allow such third country nationals the right to work. Only in **Germany, Luxembourg, Malta** a right to employment may be granted in special cases or for limited period of time.
- 4. Are there any obligations imposed on a third-country national who can neither be expelled from your MS nor detained any longer due to the 18 months rule? If yes, what are those obligations?**  
MS impose a variety of obligations including:

  - Obligation to cooperate
  - Obligation to report to the police
  - Obligation to depart voluntarily, to leave the territory of the MS
  - Obligation to stay at certain address or prohibition to leave a particular address.
- 5. In 2014-2015, how many third-country nationals who could no longer be detained due to the 18 months rule could neither be expelled from your MS due to lack of identification or return documents?**  
Absolute majority of MS do not have the possibility to provide such data. In **Germany** the number of third country nationals who could not be expelled due to missing documents is 37.000.

**6. In your opinion, would issuance of residence permits to third-country nationals who can no longer be detained due to the 18 months rule and neither can be expelled due to lack of identification or return documents lead to the abuse and continuous hiding of their true identity?**

In general MS consider that issuing documents confirming the stay in a MS of such persons may encourage certain people to prolong the process, hide their identity and avoid return. It may also be considered as a pull factor. **Germany** suggested that the best solution for this dilemma is to obligate the third country national to actively support the identification process. A law that obliges the person to fully cooperate would give a useful tool to the state that seeks to confirm identity. At the same time it would be a step stone for the third country national to legally obtain a staying permit if the political or humanitarian circumstances would make his expulsion impossible. By connecting the two laws one could minimize the cases of third country nationals obtaining a legal status by actively prolonging the bureaucratic process. **Slovak Republic** stated that issuing a document confirming the status of a person may help in monitoring their movement.

**7. Examples of your good practices in confirming the identity of Vietnamese citizens' and obtaining documents necessary for their return.**

**Belgium:** foster a smooth collaboration with countries of origin;

**Estonia:** signing of memorandums of understanding;

**Hungary:** foreign representation holding interviews via phone vis-à-vis in the detention centres;

**Latvia:** good relationships with the Vietnamese embassy based in Stockholm

**Netherlands:** has a bilateral agreement with Vietnam since 2009. Requests for identification are sent (by email and post) to the Dutch embassy in Hanoi, which forwards it to the Immigration Department of Vietnam. In general, documented requests receive a positive result.

**Sweden:** has experience from inviting task forces from Vietnam to Sweden which have all proven to be very successful as many identities could be verified and many travel documents delivered. The task forces were all delegations from the Ministry of Public Security (MPS) who interviews the returnees in order to verify citizenship and/or identities. The delegations have been able to verify the returnees as Vietnamese and approvals were given for both documented and undocumented persons. The Vietnamese delegations have had the mandate to issue ETC immediately after citizenship is verified, without the involvement of the Vietnamese Embassy.

**Norway:** invite immigration authorities to Norway to identify the applicant. The delegation then has a conversation with the applicant and issues a travel document in the name provided as long as they are convinced the person is in fact from Vietnam. This process actually took place in April, 2016, and all 10 persons presented were verified.