



**Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)**

**Requested by Estonian NCP on 15 October 2014**

**Compilation produced on 9th December 2014**

**Responses from Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Sweden, United Kingdom (19 in Total)**

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**1. Background Information**

Our Ministry of Interior is in the process of implementing the EU directives 2013/33/EU and 2013/32/EU into our national legislation. They are working on new legal proposal based on changes from Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. Changes we are planning to implement into our national legislation concern the so-called reception directive article 8 b) detention of person while there is a risk of absconding and Dublin III regulation No 604/2013 article 28 (2) when there is a significant risk of absconding. Thus, the interest of our Ministry is to have an overview of how MS have or will describe the objective criteria in their legislation regarding person's risk of absconding in asylum procedure.


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Does your national legislation stipulate objective criteria to identify risk of absconding in the context of EU directive 2013/33/EU art 8 and Dublin III article 28? If yes, what are these criteria?


Do they differ from risk of absconding criteria in return context?

We would very much appreciate your responses **as soon as possible**, the latest by **3<sup>th</sup> November 2014**.






## 2. Responses

		Wider Dissemination?	
	<b>Austria</b>	<b>Yes</b>	<p>Current Austrian legislation provides different grounds for detention for asylum-seekers, including those subject to a Dublin procedure. Art. 76 para 2 Aliens Police Act (APA) provides that individuals may be detained as a procedural guarantee in connection with the issuance of a return decision, an order to remove, or to guarantee removal if:</p> <ul style="list-style-type: none"> <li>• Prior to applying for international protection, an enforceable return decision, order to remove, expulsion, or residence ban has been imposed (if, for example, an individual who applies for international protection has already received a return decision);</li> <li>• It can be assumed – on the basis of the results of the interview, the search, and the identification procedures – that the individual’s application for international protection will be rejected, as Austria lacks responsibility for its assessment (Dublin cases where another Member State is deemed responsible, for example in case of a Dublin hit);</li> <li>• Proceedings for the issuance of a measure terminating residence according to Art. 27 Asylum Act have been initiated (the asylum-seeker was informed that it is intended to reject the application);</li> <li>• An enforceable – though not final – return decision has been issued (for example, an application for international protection was rejected).</li> </ul> <p>According to Art. 76 para 2a APA, individuals shall be detained “if necessary to secure the procedure for the issuance of a measure terminating residence or the removal, unless barred by reasons lying in the person of the asylum-seeker”, and:</p> <ul style="list-style-type: none"> <li>• The asylum-seeker has violated their duty to report according to Art. 15a Asylum Act (in certain cases, for example, if the asylum-seeker has been informed that their application is likely to be rejected, they must report to the police periodically) more than once;</li> <li>• The asylum-seeker, against whom a procedure for the issuance of a measure terminating residence was initiated, has violated the duty to cooperate according to Art. 13 para 2 of the Federal Office for Immigration and Asylum Procedures Act (reporting obligation for homeless asylum-seekers);</li> <li>• The asylum-seeker has filed a subsequent application (Art. 2 para 1(23) Asylum Act) and the protection against removal was lifted according to Art. 12a para 2 Asylum Act;</li> <li>• The asylum-seeker has left the initial reception centre without permission according to Art. 24 para 4 Asylum Act, and one of the conditions of para 2 (1-4) (listed above.) are present;</li> </ul>




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			<ul style="list-style-type: none"> <li>• A notification according to Art. 29 para 3(4-6) Asylum Act (for example, if the authority intends to reject the application; or intends to lift the protection of removal) was made and the asylum-seeker has violated the territorial restrictions according to Art. 12 para 2 Asylum Act (limited to area of regional administrative body);</li> <li>• A rejecting decision according to Art. 4a or 5 Asylum Act (Dublin cases) was issued or the protection against removal is not provided according to Art. 12a para 1 Asylum Act.</li> </ul> <p>The general ground applicable in the return context is provided in Art. 76 para 1 APA and states that non-Austrian citizens may be arrested and detained; “provided that such action is necessary as procedural guarantee in connection with the issuance of a return decision, an order to remove, an expulsion, or a residence ban until commencement of enforceability thereof, or to guarantee removal. Detention pending removal may be imposed on individuals lawfully resident in the federal territory if, on the basis of certain facts, it may be assumed that they are likely to abscond.”</p> <p>In addition to these legal grounds, case law of Austrian high courts provides an interpretation of these grounds in light of fundamental and constitutional rights that is legally binding.</p>
	<b>Belgium</b>	<b>Yes</b>	<p>The risk of absconding, as stipulated both in article 28 (2) of the Dublin III regulation No 604/2013 and in article 8 of Directive 2013/33/EU, must still be defined in the Immigration Act (Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals).</p> <p>As regards the Dublin III regulation, as mentioned in the Belgian reply to the DE EMN NCP AHQ on detention in Dublin III cases, article 28 is applied in Belgium, as provisions of the regulation are directly applicable since its entry into force on 1 January 2014. Nevertheless article 51/5 §4 of the Immigration Act must soon be adapted. The adapted provision will not in principle provide for the same definition than that of the risk of absconding defined in the framework of the transposition of the return directive. In fact, the risk of absconding within the meaning of article 28 of the Dublin III regulation is defined as a <u>significant</u> risk of absconding. Please read the complete Belgian answer to the DE EMN NCP AHQ from 11 July 2014 for further information on this matter.</p> <p>As regards the Directive 2013/33/EU, it should not be forgotten that it must be transposed for 20 July 2015. Draft legislation will be adopted to transpose relevant provisions, inter alia from article 8 of this Directive. The definition of the risk of absconding determined in the framework of the asylum procedure must still be examined within the current government (recently sworn in - in October 2014). It is premature at this stage to communicate a draft text relating to this definition and to mention whether or not it will differ from that of the risk of absconding within the meaning of the return directive.</p> <p>Sources:</p> <ul style="list-style-type: none"> <li>- <i>Immigration Office – Study Unit</i></li> <li>- <i>Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.</i></li> <li>- <i>Regulation (EU) N° 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)</i></li> <li>- <i>Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)</i></li> </ul>






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	<b>Bulgaria</b>	<b>Yes</b>	<p>Currently, the Law on asylum and refugees does not provide objective criteria for identification of risk of absconding. SAR cannot hold persons in detention, including applicants for international protection. The detention of persons is within the competence of the Ministry of Interior.</p> <p>In the proposed amendment to the Law on Asylum and Refugees, Article 8 (3) of Directive 2013/33/EU will be taken into account and this article will be transposed in the national legislation in accordance with the criteria laid down in it:</p> <p>(a) in order to determine or verify his or her identity or nationality;</p> <p>(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;</p> <p>(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;</p> <p>(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;</p> <p>(e) when protection of national security or public order so requires;</p> <p>(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.</p>
	<b>Cyprus</b>	<b>Yes</b>	Our national legislation does not currently include any criteria for the risk of absconding in the context of EU recast directives and Dublin regulation (2013/32, 2013/33 and 604/2013). Please note that, we are in the process of adopting the recast directives, therefore criteria for this purpose will be introduced in our national legislation before July 2015.
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Estonia</b>	<b>Yes</b>	At the moment Act on Granting International Protection to Aliens regulates only that risk of absconding is one of grounds to detain person, but objective criteria to risk of absconding is described only in return context.
	<b>Finland</b>	<b>Yes</b>	<p>In Finland, risk of absconding is one of the grounds to detain person (Aliens Act, Section 121). Furthermore, no time limit is set for voluntary return if there is a risk of absconding (Aliens Act, Section 147a).</p> <p>Section 121a of the Finnish Aliens Act sets out provisions on assessing the risk of absconding. A central aspect in assessing the risk of absconding is taking the person's overall situation into consideration. A risk of absconding may apply if the interim measures used have proved to be insufficient. The interim measures include:</p> <ul style="list-style-type: none"> <li>• the obligation to report at regular intervals to police or border control authorities;</li> <li>• requiring the alien to hand over his or her travel document and travel ticket to police or border control authorities or to give them the address where he or she may be reached; and</li> </ul>

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			<ul style="list-style-type: none"> <li>• the obligation to give a security to the State for the expenses related to his or her residence and return.</li> </ul> <p>Pursuant to the Aliens Act, an alien is required to notify the authorities of his or her contact details and any changes thereto. The risk of absconding may also apply if an alien has moved to a different place of residence without notifying the authorities of the new contact details.</p>
	<b>France</b>	<b>Yes</b>	<p>Only asylum seekers whose application has been rejected and who have exhausted the appeals process may be subject to a removal order and placed in a detention centre. Risk of absconding criteria are established in article L.511-1, II, 3° of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). In France, the risk of absconding is established when the foreigner:</p> <ul style="list-style-type: none"> <li>- did not apply for a residence permit after having illegally entered the territory;</li> <li>- did not apply for a residence permit while he/she stayed in the territory after the expiry date of his/her visa, or if he/she was exempted from a visa, beyond the three months authorized;</li> <li>- did not apply for the renewal of his/her residence permit over one month after the expiry date of his/her residence permit;</li> <li>- evaded enforcement of a previous removal order;</li> <li>- forged, falsified or established a residence permit, an identity or travel document under an identity other than his/her own;</li> <li>- does not have sufficient ties in France to prevent any risk of absconding, either because he/she does not hold valid identity or travel document, or because he/she did not declare his/her actual place of residence or because he/she did not comply with a previous measure of house arrest.</li> </ul>
	<b>Germany</b>	<b>Yes</b>	<p>According to § 62 paragraph 3, no. 5 of the German Residence Act (Aufenthaltsgesetz), which already corresponds to the Return Directive 2008/115 / EC of 16 December 2008, detention can be arranged (among other things) when there is reasonable suspicion that the alien will evade the deportation. The Residence Act is to be changed, there is a legislative initiative in connection with Art.28 and Art. 2 n) Dublin Regulation.</p>
	<b>Hungary</b>	<b>Yes</b>	<p>The objective criteria of the „risk of absconding” are currently defined in Article 36/E of the Government Decree No. 301/2007. (XI. 9.) Korm. on the Implementation of Act LXXX of 2007 on Asylum.</p> <p>It regulates that the risk of absconding exists if the person does not cooperate with the authorities, in particular if</p> <ol style="list-style-type: none"> <li>a) s/he refuses to make a statement or sign documents;</li> <li>b) s/he supplies false information in connection with his/her personal data; or</li> <li>c) based on his/her statements, it is probable that s/he will depart for an unknown destination, therefore there is reasonable grounds for presuming that s/he will frustrate the realization of the purpose of the asylum procedure or the Dublin transfer.</li> </ol> <p>The same objective criteria are defined in the return context.</p> <p>Moreover, Hungary plans amendments to the a.m. Government Decree in order to ensure that in case of Dublin transfers there should be „a significant risk of absconding” in accordance with Article 28, para (2) of the Dublin III Regulation. Therefore it is also planned to determine the reasons under which there is a significant risk of absconding.</p>

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	<b>Italy</b>	<b>Yes</b>	<p>Italian legislation does not set objective criteria regulating the notion of significant risk of absconding for an asylum seeker whose procedure is still pending. Therefore, the decision on detention is left to the assessment of the Competent Authority of the State on a case by case basis. However, under Legislative Decree No 25/ 2008, Articles 20 and 21, the asylum seeker may be “checked” by sending him/her to a Reception Centre for Asylum Seekers (CARA) :</p> <p>a) When his/her nationality or identity must be verified;</p> <p>b) When he/she has submitted an application after being stopped for escaping or trying to escape border controls, or immediately afterwards;</p> <p>c) When he/she has submitted an asylum application after being stopped and found that he/she is in the country illegally;</p> <p>d) When he/she has submitted an application after being subject to a removal measure on the grounds of illegal entry or illegal stay. The applicant may also be sent to a Centre for Identification and Deportation (CIE), and undergo a more thorough check if:</p> <p>a) He/she is in the conditions provided for by Article 1(F) of the Geneva Convention;</p> <p>b) He/she was convicted in Italy for crimes for which detention is provided when the person is caught in the act, and for crimes related to drugs, sexual freedom, facilitation of illegal immigration to Italy and illegal migration from Italy to other States, and for crimes aimed at recruiting people for the purposes of prostitution or exploitation of prostitution or other illegal activities;</p> <p>c) He/she has already been subject to a removal measure (on grounds other than illegal entry/stay).</p>
	<b>Latvia</b>	<b>Yes</b>	In connection to implementation of EU directives 2013/33/EU and 2013/32/EU, and EU regulations 603/2013 and 604/2013 into our national legislation the new Asylum Law will be developed and in this law the risk of absconding will be one of grounds to detain asylum seeker, objective criteria to risk of absconding is described only in the Immigration Law in return context.
	<b>Lithuania</b>	<b>Yes</b>	The notion of the risk of absconding is the same both for the return procedures and the Dublin procedures. At the moment, draft amendments to the Law on the Legal Status of Aliens are prepared and being discussed in the Parliament – one of those amendments establishes an indicative list of the criteria for determining the existence of the risk of absconding. Since the amendments to the Law are still under discussions, it is not possible to provide with the list of criteria.
	<b>Luxembourg</b>	<b>Yes</b>	<p>Luxembourg has no yet transposed the recast directive 2013/33/EU in national law. A draft bill is being produced and the government expects that the Law will be published in the official journal in June 2015. In Luxembourg the risk of absconding is not foreseen in the Law of 5 May 2006 (Asylum Law), with the exception of article 10 (1) d). A placement in detention can be decided in order not to compromise the effective transfer to the Member State which is responsible for examining the application for international protection.</p> <p>The risk of absconding is also foreseen in the context of return. The risk of absconding, which is assessed on a case-by-case basis, is determined by criteria established by article 111 (3) c) of the Law of 29 August 2008 on free movement of persons and immigration.</p>
	<b>Netherlands</b>	<b>Yes</b>	Directive 2013/33 is not yet implemented in Dutch legislation, and the proposed text is not yet made public at this time. However I can say that ‘Risk of absconding’ is defined uniformly in the implementation of the return directive, the transposition (in so far as this was necessary) of the Dublin regulation and will be transposed in same uniform manner in the reception directive 2013/33. Please note that



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			<p>The definition of risk of absconding is not defined in the EU legislation. MS are therefore free to adopt a definition in their legislation. The Dutch definition is a list of circumstances that imply that a risk of absconding is present. However, this only leads to a legal presumption that there is a risk of absconding (see below).</p> <p>The following reasons would, if at least two are present, be sufficient to assume a risk of absconding. These are qualified as ‘stronger grounds’ to assume a risk of absconding. (article 5.1b, third leg of the Vreemdelingenbesluit)</p> <ul style="list-style-type: none"> <li>· has not entered the Netherlands in the prescribed way or has attempted to do so</li> <li>· has absconded from supervision for a certain time, contrary to Asylum Law,</li> <li>· has previously received a visa, decision, order, or notification which laid out the obligation to leave the Netherlands and has not left the country in line with the time limits prescribed therein,</li> <li>· has not, or not sufficiently cooperated with the determination of his identity and nationality,</li> <li>· concerning his application for entry, has provided false or conflicting information related to his identity, nationality or travel to the Netherlands or another Member State,</li> <li>· has discarded himself, without necessity, of his travel or identity documents,</li> <li>· has used false or falsified documents in the Dutch legal sphere,</li> <li>· is the subject of a declaration of undesirability pursuant to Article 67 of the Alien Act, or is the subject of an entry ban pursuant to Article 66a, seventh paragraph, of the Alien Act.</li> <li>· Has declared that he will not adhere the obligation to return to the member state that is responsible for the review of his asylum application</li> </ul> <p>The following reasons would, if at least two are present, be sufficient to assume a risk of absconding, but only if the state can put forward clarification why this is indeed the case. These grounds are in themselves insufficient and need additional argumentation by the state before they can amount to the conclusion that a risk of absconding exist. These are qualified as ‘weaker grounds’ or mere indications to assume a risk of absconding. (article 5.1b, fourth leg of the Vreemdelingenbesluit)</p> <ul style="list-style-type: none"> <li>· has not fulfilled one or more obligations of Chapter 4, applicable to him or her,</li> <li>· has made several applications for a residence permit, which has not led to an issuing of a residence permit,</li> <li>· does not have a permanent home or place of residence,</li> <li>· does not have sufficient means of existence,</li> <li>· is suspect of or has been sentenced to a crime, or</li> <li>· has been employed contrary to the Alien Employment Act.</li> </ul> <p>As noted above, the presence of these grounds only implies that there is a rebuttable assumption that there is a risk of absconding. The alien should always be allowed to put forward reasons why this presumption should not apply in his or her case. Typically this could be the case when a change of circumstances have occurred in the situation of the alien. This can be in the family situation, health situation or other circumstances that would imply that he now is prepared to facilitate or cooperate with his return, regardless of indications in his dossier. These reasons must be taken into account when determining the risk of absconding.</p>
	<b>Portugal</b>	<b>Yes</b>	No.

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			National asylum Act only foresees that Risk of absconding is one of the criteria to detain an applicant for international protection based on an individual assessment.
	<b>Slovak Republic</b>	<b>Yes</b>	<p>According to the Article 88 (1) (c) of the Act No 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts, the Police Officer shall be entitled to detain a third country national for the purpose of his/her transfer pursuant to special regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013) if there is a <u>significant risk of absconding</u>. Taking into consideration the above mentioned provision, according to the Article 88a (1) (e), it is possible to detain an asylum seeker for the purpose of preparation and execution of his/her transfer pursuant to special regulation (Dublin Regulation) if there is a substantial risk of absconding.</p> <p>The risk of absconding of a third country national is defined in the Slovak legislation uniformly both for the purpose of dealing with asylum seekers and for the purpose within the scope of the Return Directive as the condition when it can be anticipated, based on the reasonable apprehension or direct threat, that the third country national will escape or hide especially if it is impossible to identify him/her immediately, if he/she has no residence permit pursuant to this Act or if there is a threat of entry prohibition for a period of more than three years (Article 88 (2) of the Act No 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts). The word “significant” in relation to the “risk of absconding” has not been further defined in the Slovak legislation.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>These are the criteria in judging the risk of absconding, according to the Aliens Act, Chapter 1, Section 15:</p> <p>The alien</p> <ol style="list-style-type: none"> <li>1. has previously stayed away, gone into hiding</li> <li>2. has stated that he or she does not intend to leave the country after a decision on expulsion</li> <li>3. has occurred during any identity that has been false/incorrect</li> <li>4. has not helped to clarify his or her identity and thereby hampered the examination of the application for a residence permit</li> <li>5. has deliberately given false information or withheld material information</li> <li>6. has previously been in violation of a re-entry ban</li> <li>7. has been convicted of an offense punishable by imprisonment</li> <li>8. has been expelled following a criminal conviction by a court</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<p>The UK is not signed up to the EU directive 2013/33/EU (Reception Conditions II). The UK also does not participate in Directive 2013/32/EU (Asylum Procedures II)</p> <p>The UK does not list objective criteria for risk of absconding -we do not have specific indicators set out in national legislation that define exactly whether an individual constitutes an “abscond risk”. Instead, the latter concept is set out in case law. Each application will therefore be considered on a case by case basis.</p> <p>The legal basis for detention is provided by Schedule 2 to Immigration Act 1971: we accept that Dublin III imposes specific requirements relating to detention within the Dublin procedure and these are reflected in guidance/instructions given to caseworkers who deal with cases to which the Regulation applies.</p> <p>The UK also does not have objectively defined criteria for risk of absconding in the context of returns in its national legislation.</p>



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