EMN INFORM

A brief overview of recent findings on return

1. INTRODUCTION

In the context of Directive 2008/115/EC 'return' means the process of a third-country national going back, whether in voluntary compliance with an obligation to return, or enforced, to his or her country of origin, or a country of transit or voluntarily to another third country in which he or she will be accepted. An effective return policy, implemented within the framework of the Charter of Fundamental Rights and based on the preference for voluntary return, has become an essential building block for a sustainable and credible policy approach to managing migration flows to the EU, and to tackle irregular migration.

This EMN Inform provides an overview of current aspects of return principally in EU Schengen Member States and Norway including statistics (see Section 10). Whilst the United Kingdom and Ireland are not Schengen Member States, where relevant, information has been included from these countries in order to provide a more comprehensive overview of the EU Member States. Information has been drawn from EMN sources: EMN Annual Policy Reports 2012, the EU's 4th Annual Report on Immigration and Asylum 2012, EMN Country Factsheets 2012 plus EMN Ad-Hoc Queries.

2. WHAT EU LEGISLATION REGULATES RETURN?

The Return Directive establishes a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State. The timeframe for its implementation was 24th December 2010; all States bound by the Directive[1] except Iceland had notified full transposition to the Commission by the end of 2012.

Who does the Return Directive (2008/115/EC) apply to?

The Directive applies to third-country nationals staying illegally on the territory of a Schengen Member State. However, such Member States may decide not to apply this Directive for some groups of third-country nationals. These include those subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended in connection with an irregular external border crossing and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(a)); or those subject to return as, or as a consequence of a national criminal law sanction, or who are the subject of extradition procedures (Article 2(b)). A certain proportion of States taking part in the Directive however have not applied these options in their transpositions. [2]

Article 10 of the Return Directive provides for the return and removal of unaccompanied minors. It guarantees assistance to the minor with due consideration being given to the best interests of the child, and return of a minor can only take place once the Member States authorities are satisfied that s/he will be returned to a member of his or her family, a nominated guardian or that adequate reception facilities are in place in the State of return. In practice, Member States apply different policies to the situation of unaccompanied minors[3]. Return of unaccompanied minors can take place in many (Member) States (e.g.

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[1] Denmark, Ireland and United Kingdom are not taking part in the adoption of the Directive.

[2] Ad-Hoc Query 473 2013 on Article 3 of the Return Directive: out of 19 respondents, 9 MS had not elected to transposed articles 2(a) and (b) (BG, EE, FI, FR, DE, HU, IT, LT, SK); 6 did apply the options (BE, LV, LU, NL, SI, SE); 2 respondents do not apply the Directive at all (UK, NO); 2 chose not to disseminate their responses.

[3] Ad-Hoc Query 439 2012

Belgium, **Finland**, **France**[4], **Germany**, **Hungary, Italy, Netherlands**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **Norway**), subject to the satisfaction of appropriate and adequate reception and care conditions in the country of return.

Return is not enforced in some Member States (e. g. **Belgium**, **France** (where it is prohibited in law) and **Slovak Republic**); in others forced return is possible, (e.g. **Finland**, **Germany**, **Hungary**, **Italy Malta**, **Netherlands**, **Sweden**, **Norway**), but may in practice take place only rarely (e.g. **Finland**, **Germany and Italy**).

3. WHAT WAS THE SCALE OF RETURN IN 2012?

The highest number of forced return measures were implemented by Schengen Member States **Spain** (18 863) and **Germany** (12 069) -see Table 1. **United Kingdom undertook high numbers of forced** return measures also in 2012 (31 309). The numbers of third-country nationals returned through voluntary return in Schengen Member States were highest in **Germany** (13 995) and **Sweden** (12 099) - see Table 2. **United Kingdom** also returned high numbers under voluntary return programmes in 2012 (19 178). Under assisted voluntary return programmes, returnees were highest in **Germany** (7 546), **Belgium** (4 508)- see Table 3. Statistics on return practices for unaccompanied minors are provided in Table 4.

4. CAN ANY TRENDS IN RETURN BE IDENTIFIED?

For those countries where statistics were available for earlier years it is possible to examine some recent trends in return. Between 2010 and 2012, the highest percentage decreases in forced returns were reported in **Slovak Republic**, (54%), **Hungary** (50%) and in **Latvia** (45%). Other notable decreases in forced returns were reported in **Austria** during the same period. The highest increases in forced returns were recorded in **Portugal** (827%), **Estonia** (197%) and in **Romania** (142%); other countries reporting increases were **Sweden**, **Belgium**, **Lithuania**, **Italy**, **Malta** and **Cyprus**. Very significant increases in voluntary returns were reported between 2010 and 2012 in **Latvia**, **Romania**, **Poland**, **Italy**, **Portugal, Finland** and **Spain** and there were also increases in **France** and **Cyprus.** Voluntary returns decreased in **Austria**, **Malta** and **Slovak Republic**. Whilst trend data is limited, the numbers of **assisted voluntary returns** have **increased** in **Estonia** (over 300%) and **Finland** (36%) and also in **Lithuania**, **Italy**, **Belgium**, **Portugal** and **Norway** (since 2011). Numbers of assisted voluntary returns have **decreased** in **Spain**

(57%), **Poland** (54%) and **Austria** (33%), and also in **Hungary**, and since 2011, in **Slovak Republic**, **Sweden** and **Latvia**.

5. HOW DO MEMBER STATES APPLY RETURN POLICIES IN PRACTICE?

What national initiatives have been introduced to strengthen return?

Member States also strengthened their return processes through national initiatives. Examples from 2012 include:

★ **Czech Republic** set up the "Return Centre" in as a common platform for strategic management of voluntary returns, as well as the implementation and coordination activities such a return counselling, dissemination of information on the voluntary return programmes and the organisation and effectiveness of voluntary returns. The Return Centre acts as a coordination hub for all the governmental agencies involved in return and is administered by the International Organization for Migration (IOM).

★ Relevant ministries and implementing organisations in **Latvia** cooperated to improve the organisation or practice on return. National ministries, regional authorities, IOM, aviation authorities and the Council for Refugees, amongst others, were included.

★ In **Italy**, a network of public and private organisations (RIRVA) was launched in order to test, in cooperation with the Ministry of Interior, the functioning and strengthening of the national referral system connected to AVR, also in line with recently approved guidelines for the implementation of voluntary and assisted return programmes.

Do Member States cooperate on return practices?

Cooperation takes place in a number of ways to develop a common EU approach. For example, many Schengen Member States are represented at the Contact Committee of the Return Directive which functions as a forum for discussion and exchange of information on return practice, with the ultimate goal of harmonising the interpretation and application of EU legislation on return.

Several Member States, including non-Schengen, also undertook initiatives to cooperate to strengthen specific areas of return practice:

★ **Austria**, **Finland**, **Ireland**, **Lithuania**, and **Slovak Republic** plus 10 other Member States participated in the "Voluntary Return European Network" (VREN) which is funded by the Return Fund and will be taken over by the EMN.

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[4] In France only voluntary return of UAMs is possible following a specific request of a judge in the framework of a family reunification in the country of origin or in a host country.

- ⭐ **Czech Republic** held meetings with the Polish Border Guard to share best practice on so-called "Annex 39" voluntary returns (i.e. specific types of return by land).

- ⭐ **Portugal**, **Slovenia** and **Sweden** participated in forums to exchange good practices on return.

- ⭐ **Belgium**, **Netherlands** and **Romania** participated in **EURINT** project, which has the aim of improving the process of identification and establishing nationality in return.

- ⭐ In October 2012, **Netherlands** and **Belgium** presented a joint proposal to the GDISC Return Conference in Budapest, and separately to Frontex, to start a follow-up project on the basis of the EURINT experiences, in which more countries participate in a network.

- ⭐ **Netherlands**, **Sweden**, **United Kingdom** and **Norway** also participated in the ERPUM project which is aimed at ensuring adequate reception for unaccompanied minors returned to Afghanistan and Iraq.

- ⭐ **Belgium**, **Germany**, **France** and **Sweden** continued to participate in the **Netherlands-**led European Reintegration Instrument (ERI)[5], financed by the European Return Fund, to facilitate permanent reintegration after independent or forced return.

- ⭐ In 2011, **Spain** took part in the design of citizen attention procedures to return to countries of origin, along with the Ministry of Labour from Peru.

How have innovations such as the EU VIS added value?

The EU Visa Information System (VIS) has been implemented since October 2011 in the Member States. The EU VIS consists of a central IT system and communications infrastructure that links the central system to national systems and allows Schengen States to exchange visa data.

One of the objectives of the VIS Regulation[6] is to help to identify persons who may not / no longer fulfil the conditions for entry, stay or residence in an EU Member State and it allows the authorities competent for carrying out such checks access to certain VIS data for verification and identification purposes[7]. The Regulation[8] allows such data to be made available to a third country for the purpose of proving the identity of third-country nationals for the purpose of return. Whilst VIS has been recently implemented across the EU, several Member States (**France**, **Hungary**, **Poland** and **Slovak Republic**), are already using the VIS for such identification purposes[9].

6. HOW DO MEMBER STATES ENCOURAGE VOLUNTARY RETURN?

To encourage voluntary return, Member States make use of the means provided by the European Return (RF) Fund to implement innovative measures encouraging voluntary return. Those measures are eligible for co-funding of up to 75% under priority 3 of the Strategic Guidelines for the RF. Voluntary departure appears to be the preferred option of return, in line with the Return Directive, and is reflected in the way Member States programme their EU assistance. Under the national Annual Programmes, more than half of the total funds programmed (excluding technical assistance) are related to voluntary return. The ratio of voluntary return (as opposed to forced return) of all effective returns carried out in 2011 was 41.5 %. Similar figures are expected for 2012[10].

Member States have worked together or with countries of return to add value to their national programmes:

- ⭐ **Austria** cooperated with **Belgium**, **France** and the **Netherlands** to implement a project (MAGNET) on Job Placement Assistance for third-country nationals returning voluntarily to the Kurdistan Region of Iraq.

- ⭐ **Estonia** carried out a project on raising the competence of officials involved in return procedures of third-country nationals, focusing on cultural differences, psychological behaviour and best practices in return. The project included training and learning based on best practices from other Member States, as well as two study-visits to **Hungary** and **Austria**.

- ⭐ Cooperation on return of migrants in **Estonia**, **Latvia** and **Lithuania** to support effectiveness of Return Operations by land was further developed in 2012 by the creation of the Operational Information Exchange Network on Voluntary Return amongst the migration and Border Guard authorities of the three countries. The network ensures the fast exchange of information on return operations by land in the Baltic region.

- ⭐ A multilateral meeting was held in **Italy** with diplomatic-consular representatives from 13 third countries in order to present the Italian Voluntary Assisted Return system, as part of the RIRVA project on "Return and cooperation with third countries".

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[5] Commission Staff Working Paper accompanying the Communication on the 4th Annual Report on Immigration and Asylum 2012 SWD(2013) 210 final
[6] (EC) No 767/2008, Article 2(e)
[7] Articles 19(1) and 20(1)
[8] Article 31(2)

[9] EMN Ad-Hoc Query 483 2013
[10] 10 Commission Staff Working Paper accompanying the Communication on the 4th Annual Report on Immigration and Asylum 2012 SWD(2013) 210 final

How is Assisted Voluntary Return (AVR) implemented in the Member States?

In 2012, many Member States continued implementing existing Assisted Voluntary Return (AVR) programmes:

⭐ In **Austria**, IOM implemented seven country-specific AVR and Reintegration (AVRR) programmes (including five with EU RF co-financing). The AVRR programme in Moldova had an emphasis on the prevention of (re-) trafficking of minors and youth.

⭐ In **Finland** the "Developing Assisted Voluntary Return Programme in Finland" (DAVRiF) project aims to develop systematic and equal assisted voluntary return services and practices and will continue into 2013 within the framework of the "Voluntary Return and Return Assistance from Finland" project to ensure the continuity of voluntary return activities.

⭐ In **Italy**, IOM Rome continued to implement AVR programmes such as: PARTIR (III and IV), RIVAN II, MIRAVE, REMPLOY I and II. Other AVR programmes were implemented by Virtus Italia (ODISSEO II) and by Cefa (REMIDA and "REMIDA II"). An ad-hoc programme for North Africa was completed by the Civil Protection Department of the Ministry of Interior.

⭐ The State Border Guard in **Latvia** signed a cooperation agreement with IOM on the implementation of voluntary return projects, and in **Slovak Republic**, such projects have been implemented each year with IOM under a cooperation agreement signed in 1996.

⭐ **Portugal** added value to its AVR processes by developing various practical guides for returnees, including a brochure on how to set up small businesses in the country of return plus information to returnees to Brazil under partnerships set up by IOM to facilitate business development there.

7. HOW DID MEMBER STATES WORK WITH FRONTEX IN 2012?

Frontex has assisted Member States implementing necessary measures, including joint return operations, in accordance with the applicable Union law on return. In 2012, Frontex co-ordinated 39 joint return flights with a total number of 2 110 returnees[11].

Twenty Member States (**Austria**, **Belgium**, **Bulgaria**, **Germany**, **Greece**, **Spain**, **Finland**, **France**, **Hungary**, **Ireland**, **Italy**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Romania**, **Sweden**, **United Kingdom**) and two Schengen associated countries (**Switzerland**, **Norway**) participated in these flights. Countries of return were Armenia, Colombia, Ecuador, Georgia, Ghana, Gambia, Kosovo, Nigeria, Pakistan, Serbia, Ukraine and Uzbekistan. Out of the 39 joint operations, in 18 of these, at least one of the participating Member States provided for monitoring in accordance with their national legislation. 38 of the joint return operations were co-financed by Frontex.

France, **Ireland**, **Lithuania**, **Poland**, **United Kingdom** and **Norway** participated in joint return operations that were not led by Frontex [12]. In **Latvia**, two officials of the Latvian State Border Guard participated as observers in a joint return operation to Kosovo with an aim to obtain experience and best practice in forced return, escorting and handing over of returnees to the representatives of competent institutions after arriving at the country of return.

8. WHAT IF THIRD COUNTRY NATIONALS CANNOT BE RETURNED?

Member States may be confronted with significant numbers of third country nationals who cannot be returned in practice, even when a return decision has been taken. The Commission carried out a comparative study[13] on the situation and treatment of this category of "non-removable returnees". The results, presented in January 2013, show that a number of Member States foresee channels and conditions through which persons with a postponed return/removal order may enter a regularisation procedure, provided they fulfil certain conditions, such as a minimum length of stay, co-operation and absence of public order concerns.

Under the Return Directive, participating Member States are required to fully respect the principle of non-refoulement[14] (Articles 5 and 9). As a result, Member States operate specific policies in relation to certain countries where the risk to the individual of return are identified. For example, **the majority of Member States** do not forcibly return Palestinians to Gaza and / or the West Bank[15]. Member States in general adjust their national approaches according to the situation, for example, in the case of Syria, where several Member States suspended their return programmes (e.g. in light of increasing security risks.[16]

9. RETURN IN THE ASYLUM AND MIGRATION FUND (AMF)

In the field of return, the AMF would further support fair and effective return management with emphasis on voluntary return, promote a more strategic focus on EU standards through implementation of actions linked to the requirements of the EU *acquis* on return and through co-operation with other Member States.

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[11] SWD(2013) 210 final

[12] SWD(2013) 210 final

[13] Study on the situation of third-country nationals pending return / removal in the EU Member States and the Schengen Associated Countries.

[14] Refoulement is the return by the State of an individual to the territory of another State in which s/he may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or would run the risk of torture. Source: EMN Glossary Version 2.

[15] EMN Ad-Hoc Query 434 2012

[16] EMN Ad-Hoc Query 325 2011

10. STATISTICS ON RETURN

This section provides a short overview of facts and figures in relation to return. Sources include statistics gathered by Eurostat (where available) and Member States' national statistics.

Table 1: Third country nationals returned as part of forced return measures, 2010-2012

MS	2010	2011	2012
AT[17]	2,577	2,190	1,853
BE	1,668	2,150	2,151
BG	N/A	N/A	837
CY	3,097	3,500	3,192
CZ	N/A	330	N/A
DE	N/A	N/A	12,069
DK	511	1,215	N/A
EE	66*	111*	155*
ES	N/A	21,955	18,863
FI	2,248	2,252	2,440
FR[18]	11,975	11,760	12,785
HU	2,019	890	1,011
IE	343	280[19]	302[20]
IT	4,329	5,756	5,943
LT	137	125	236
LU	59	25	N/A
LV	94	50	51
MT	231	N/A	266
NL	N/A	N/A	N/A
PL	508**	625*	512
PT	133	690	1,234
RO	290	410	703
SK	594	389	273
SI	N/A	N/A	80
SE	1,868	2,495	2,893
UK	N/A	N/A	31,309*
NO	3,204	2,986	2,511[21]

Source: National contributions to EMN Annual Policy Report;
* Information provided by EMN National Contact Points;
** Incomplete data

Table 2: Third country nationals returned voluntarily 2010-2012

MS	2010	2011	2012
AT	4,499	3,040	3,209
BE	2,745	3,765	5,470
BG	N/A	N/A	76
CY	966	795	1,135
CZ	N/A	225	N/A
DE	N/A	N/A	13,995
DK	N/A	45	N/A
EE	N/A	N/A	89N/A
ES	N/A	N/A	N/A
FI	234	305	320*
FR	2,423	3,930	4,285
HU	426	410	N/A
IE	461	475	449[22]
IT	563	422	1,424
LT	N/A	N/A	N/A
LU	143	525	N/A
LV	16	1055	2,019
MT	42	N/A	39
NL	N/A	N/A	N/A
PL	718**	5,519*	6,143*
PT	559	585	870
RO	51	130	2,186
SK	130	95	77
SI	N/A	N/A	N/A
SE	N/A	9,740	12,988
UK	N/A	N/A	19,178*
NO[23]	N/A	N/A	N/A

Source: National contributions to EMN Annual Policy Report;
* Information provided by EMN National Contact Points;
** Incomplete data;

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[17] The number of forced return measures refers only to deportations but no forcible returns (*Zurückschiebung*) or rejections at the border (*Zurückweisung*) are included.
[18] Data include supported forced returns
[19] The number refers to deportation orders under Section 3 of Immigration Act 1999 only
[20] The number refers to deportation orders under Section 3 of Immigration Act 1999 only
[21] Norway: These figures represent a combination of Dublin Regulation returns (1978, 1503, 1114) and Forced Asylum returns excluding Dublin (1226, 1483, 1397) figures from 2010 – 2012 in that order.

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[22] From that number a total of 359 were returned through voluntary return and reintegration assistance from the International Organization for Migration (IOM) office in Dublin and 90 benefited from administrative assistance from the Irish Naturalisation and Immigration Service (INIS)
[23] Norway's statistics don't differentiate between assisted voluntary return and voluntary return. Please see table 3

Table 3: Third-country nationals returned through an Assisted Voluntary Return Programme 2010-2012

MS	2010	2011	2012
AT[24]	3,905	2,880	2,601
BE	2,745	3,255	4,508
BG	*N/A*	*N/A*	51
CY	*N/A*	0	49
CZ	*N/A*	225	*N/A*
DE	*N/A*	*N/A*	7,546*
DK	*N/A*	0	*N/A*
EE	7	8	29
ES	4.488	4.760	2.937
FI	234*	305	320*
FR	*N/A*	*N/A*	N/A 3,250?
HU	432*	365*	414*
IE	376	402[25]	359
IT	323	440*	772*
LT	55	47	65
LU	*N/A*	100	*N/A*
LV	*N/A*	75	89
MT	*N/A*	*N/A*	39
NL	*N/A*	*N/A*	*N/A*
PL	1,647*	1,164*	764
PT	N/A	555	562
RO	*N/A*	*N/A*	113
SK	*130*	*95*	54
SI	*N/A*	*N/A*	N/A
SE	*N/A*	1,415	614
UK	*N/A*	*N/A*	3,693*
NO	1,424	1,813	1,750

Source: National contributions to EMN Annual Policy Report;
*Information provided by EMN National Contact Points

Table 4: Return of unaccompanied minors in 2011

MS	Voluntary return	Forced return	Repatriated[26]	Admitted
BE	12	0	*N/A*	*N/A*
FI	0	0	0	115
FR	2	0	80	460
DE	25	*N/A*	*N/A*	N/A
LT	0	0	0	0
LU	*0*	0	*0*	*22*
MT	0	0	0	N/A
NL	20	15	*N/A*	484
SK	*0*	0	0	145
SI	2	0	0	2
ES[27]	12	0	4	3,000*
SE	59	52	*N/A*	1,961
NO	67	N/A	0	532

Source: EMN Ad-Hoc Query 439 2012; information provided by EMN National Contact Points
* Estimate

11. FURTHER INFORMATION

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[24] The figures provided only include those returned through an Assisted Voluntary Return Programme of the International Organization for Migration (IOM)
[25] In addition, 73 people benefited from of administrative assistance from the Irish Naturalisation and Immigration Service (INIS)

[26] In the context of this specific AHQ the term "Repatriated" is understood as when the minor is at the border and has not entered the territory of the given Member State, whereas forced return is understood as when the minor is already on the territory of the Member State. It should be noted that some Member States do not have such data or do not make such differentiation.
[27] The term "forced return" is not used for minors in Spanish law. The procedure applied is "repatriation".