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Ad-Hoc Query on 2022.24 Issuing an entry ban to a third-country national who is a legal resident in another EU Member State

Requested by EMN NCP Netherlands on 4 May 2022

Responses from Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden plus Norway (22 in Total)

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1. BACKGROUND INFORMATION

The Highest Court on Administrative Matters (hereinafter referred to as the Court) has asked questions to the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst - IND) in two appeal cases.

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Both cases concern third-country nationals who have the right of residence (not asylum related) in another Member State, to whom the IND has imposed a return decision and an entry ban on the grounds of serious public policy.

One of the explicit questions of the Court is to be informed on the procedures in other EU member states when issuing an entry ban to a third-country national with a right of residence in another Member State.

Please note that beneficiaries of international protection are excluded from the scope.

For this reason, the Netherlands would like to ask EMN Member States to answer the following questions. Given the relatively short deadline before the court date, we would appreciate to receive your answer before 25 May 2022.

We would like to ask the following questions:

- 1. Does your Member State differentiate between legal bases for entry bans based on the return directive (with an EU-wide effect), and entry bans that only regard the national territory?**
- 2. In your Member State, is it possible to issue an entry ban to a third-country national with legal residence in another Member State who has been issued a return decision in accordance with article 6(2) of directive 2008/115/EC?**
Available choices: Yes, No, Not Applicable
- 3. If you answer YES to Q.2 and if applicable, can you please differentiate between different types of entry bans (i.e. with different durations or reasons)?**
- 4. When issuing an entry ban to a third-country national with legal residence in another Member State, does your Member State register the TCN because of the entry ban immediately in SIS, or do you first register the TCN in your national system / list of alerts before entering into consultations?**


We would very much appreciate your responses by **25 May 2022**.

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2. RESPONSES

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		Wider Dissemination ²	
	EMN NCP Belgium	Yes	<p>1. Entry bans in such cases are limited to the national territory and will not be registered in SIS. Only registration in General Police database and Immigration database.</p> <p>2. Yes YES but limited to national territory.</p> <p>3. Such national entry bans will be limited to reasons for public order or national security. It depends on the offense how high this entry ban will be (from 3 up to 20 years, taking into consideration all elements “à charge” and “à décharge” for the person; is there an aspect of violence in the offense, has there been recidivism, has the offender family in Belgium, are there medical issues, are there mitigating circumstances, ...).</p> <p>4. Only registered in national systems since they are limited to Belgium.</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. Yes. Please bear in mind that Bulgaria is not part of the Schengen Area. The Law on Foreigners in the Republic of Bulgaria implements the requirements of the Directive 2008/115/EC.</p> <p>2. Yes A national entry ban is issued.</p> <p>3. There are different reasons for issuing an entry ban. Some of them are when the third-country national poses a threat to national security or public order. An entry ban in the national territory is issued for a period of up to 5 years. When the third-country national poses a serious threat to public order or national security, the entry ban may be longer than 5 years.</p> <p>4. N/A</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. Yes. The Ministry of the Interior will issue a warning to a third-country national who is staying illegally in the Republic of Croatia and has a residence permit in an EEA Member State that he is obliged to leave the Republic of Croatia without delay and go to an EEA Member State where he has a residence permit. The warning will determine the period in which the third-country national is obliged to leave the Republic of Croatia and that period will began from the day of the delivery of the warning. If the third-country national does not leave the Republic of Croatia, a return decision will be made.</p> <p>2. Yes</p> <p>3. A third-country national who poses a threat to public order, national security and public health may be expelled with a ban on entering and staying in the Republic of Croatia for a period of 3 months to 20 years and ordered to be forcibly removed or set a deadline for voluntary departure. In this case, third-country national does not have to issue the, above mentioned, warning.</p>

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			4. The third-country national with an entry ban (serious threat to public policy, public security or national security) will be registered in national system.
	EMN NCP Cyprus	Yes	<p>1. No.</p> <p>2. Yes</p> <p>3. N/A. There is no differentiation between different types of entry bans</p> <p>4. Only in the national system, as Cyprus is not a full member of the Schengen area.</p>
	EMN NCP Czech Republic	Yes	<p>1. Yes, but only with regard to EU nationals and their family members (CZ only) and third country nationals (EU wide). No further distinction is applied on the basis of the Return Directive.</p> <p>2. Yes</p> <p>3. The reasons are listed in 6/2, national thresholds are up to 3 years, up to 5 years and up to 10 years (only in cases of serious threat to public order). In case of further questions we can deliver the translation of the reasons which is quite extensive.</p> <p>4. First, the TCN is registered in the national system (after the return decision with the entry ban is “valid”) and after the return decision is enforceable (later moment than “valid”), then SIS. The consultation procedure is done in accordance with applicable EU legislation.</p>
	EMN NCP Estonia	Yes	<p>1. In Estonia both types of entry bans can be imposed, i.e. entry bans that apply to the entire Schengen territory or only to an Estonian territory. Entry bans that are imposed to a third country national ordered to leave Schengen area are entered into the SIS database and they are valid in the entire Schengen area. The territory is limited only to Estonia, when the admitting country is other Member State, i.e. if person has a legal basis for residence or temporary stay in other Member State of the Schengen Convention. In this case</p>

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			<p>an alert on entry ban is entered into national register.</p> <p>2. Yes</p> <p>3. Estonian legislation provides different reasons for imposing an entry ban to a third country national with legal residence in the other Member State. Entry bans which are restricted to the territory of Estonia may be applied:</p> <ul style="list-style-type: none"> • if a third country national staying in Estonia without legal basis was returned from Estonia (for up to 5 years); • if a third country national poses a risk to public order or national security (duration is not limited); • as supplementary punishment on the offender (for up to 10 years); • as international sanction of the Government of the Republic (duration is not limited). <p>4. An alert on entry ban is entered to the SIS database if the third country national is obliged to leave Schengen area. If the validity of the entry ban is restricted only to the territory of Estonia, alerts are entered into national database.</p> <p>For the consultation between Member States under Regulation 2018/1861, SIRENE contact point is used. In Estonia it is situated in the Police and Border Guard Board.</p>
+	EMN NCP Finland	Yes	<p>1. No, Finland does not differentiate between legal bases for these. We make use of the same legal basis for both Schengen and national level entry bans (Aliens Act Section 15). In principle, an entry ban is imposed for the whole Schengen area. However, an entry ban is restricted to Finland if the alien has a residence permit in another Schengen State, and the permit is not withdrawn.</p> <p>2. Yes</p> <p>3. In a decision on refusal of entry, denial of admittance or stay [or deportation], an entry ban may be imposed on an alien. (Aliens Act, Section 150)</p>


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			<ul style="list-style-type: none">- An entry ban is imposed if no time limit has been set for voluntary return, or if the alien has not left the country voluntarily within the fixed time limit. An entry ban may be imposed in a separate decision if the alien has not left the country voluntarily within the fixed time limit. (Entry bans imposed for the aforementioned reasons are usually for two years).- An entry ban may be imposed if the applicant is a danger to public order or security (e.g. for crimes committed). An entry ban is imposed for a fixed term of no more than five years or until further notice. An entry ban may be imposed until further notice on an alien who has been sentenced to punishment for a serious or professional offence if he or she is a danger to public order or security. <p>When considering an entry ban and the duration of the entry ban, account shall be taken of the facts on which the decision is based and the facts and circumstances otherwise affecting the matter as a whole. Matters such as the best interest of the child, and the protection of the family life are considered. As regards entry ban on the basis of the criminal activity of the alien account shall be taken of the seriousness of the act and the detriment, damage or danger caused to public or private security. When considering an entry ban and its duration, account shall also be taken of whether the alien has any such family or work ties to Finland or to another Schengen State that would suffer unreasonably from the entry ban. When considering an entry ban and its duration for an alien whose application for international protection has been dismissed or rejected, the facts on which the dismissal or rejection was based and whether the alien has, by his or her own actions, hampered the processing of his or her application for asylum may also be taken into account. (Overall consideration, Aliens Act Section 146).</p> <p>All entry bans, regardless of duration or reason, are registered in the SIS, except in the case that the other MS does not withdraw the residence permit of the TCN in question.</p> <p>4. In principle, an entry ban is issued for the whole Schengen area and it is registered in the SIS at the time of the decision. After a decision is taken, Finland initiates Schengen negotiations with the Member State, where the TCN in question has legal residence. If the Member State does not withdraw the residence permit they have issued, Finland will then remove the Schengen area entry ban from the SIS and will register the TCN in the national register. The Schengen negotiations can also be started before a decision is taken. If the negotiations are finalised before the decision in Finland is taken and the other MS does not withdraw the</p>
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			residence permit they have issued, then the TCN is registered only in the national register and not in the SIS.
	EMN NCP France	Yes	<p>1. YES</p> <p>The entry ban as provided for in Article 11 of Directive 2008/115/EC is transposed as a return ban in Article L. 612-6 et seq. of the Code on Entry and Residence of Foreign Nationals and Right of Asylum. This measure entails a ban on entry, movement and residence throughout the territory of the European Union and is combined with a return decision. It is entered into the Schengen Information System in accordance with Article L. 613-5 of the same code.</p> <p>There are also bans limited to the national territory. Articles L. 622-1 et seq. of the CESEDA provide for the administrative measure of prohibition of movement on French territory. This measure is accompanied by a decision to hand over to another Member State and only allows the foreign national concerned to be banned from entering, moving and staying in France. The prohibition of movement on French territory cannot, however, be applied to a foreign national who has exercised his or her right to mobility, except if his or her stay in France constitutes an abuse of rights or if his or her behaviour represents, with regard to public order or public security, a real, current and sufficiently serious threat to a fundamental interest of society.</p> <p>2. Yes</p> <p>3. Yes and No. As the entry ban has a European scope, it cannot be issued against a foreign national as long as he/she has a right of residence in another Member State.</p> <p>Where a foreign national has a right of residence in another Member State, that Member State should be consulted on the retention or withdrawal of that right.</p> <ul style="list-style-type: none"> • If the Member State maintains the right of residence, the foreign national will have to return to that Member State and may be subject to a surrender decision to the authorities of that State, which may be accompanied by a ban on movement limited to French territory. • If the Member State withdraws the right of residence, France will issue a return decision which may include an EU-wide entry ban in accordance with Article 11 of the Return Directive. <p>The prohibition of movement on French territory cannot exceed three years and is issued taking into account</p>

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			<p>the length of time the foreign national has been present in France, the nature and length of his or her links with France, whether or not he or she has already been subject to a removal order and the threat to public order.</p> <p>In France the entry ban, of a maximum duration of 5 years (3 years + a possible extension of 2 years), is issued in the event of a return decision without a deadline for voluntary departure or, where applicable, in the event of non-compliance with the deadline for voluntary departure. The duration of the ban takes into account the length of the foreign national's presence on French territory, the nature and length of his or her links with France, whether or not he or she has already been subject to a removal order and the threat to public order posed by his or her presence on French territory.</p> <p>4. If a surrender order is issued, any associated travel ban on French territory will be entered in the national list of alerts.</p> <p>If a return decision is issued, any entry ban will be entered in the SIS. Alerts are issued after consultation with the Member State which originally granted the residence permit, at the time the relevant measure was issued.</p>
	EMN NCP Germany	Yes	<p>1. No, Germany does not. Currently, we make use of one legal basis both for entry basis with an EU-wide effect, and entry bans with a national effect.</p> <p>2. Yes</p> <p>3. If a TCN is registered in SIS and has a residence permit issued by another Member State, a subsequent consultation is commenced according to Art. 25 of the Convention implementing the Schengen Agreement. If the issuing MS does not withdraw the residence permit, the SIS registration is withdrawn, and the entry ban is saved in the national German register.</p> <p>The duration of an entry ban is determined on a case-by-case basis. The duration is generally up to five years, but can be longer, e.g. in cases of national security or criminal convictions. In exceptional cases of national security, the ban can be unlimited.</p>

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			4. Initially, only the entry and residence ban is registered in the national system (INPOL). In such a case, an additional alert would only be issued in the SIS if the person concerned also loses his or her legal residence in the other EU member state.
	EMN NCP Greece	Yes	<p>1. Yes, in our country the legal basis for the entry ban based on the return directive with validity throughout the EU is different from those entry bans that concern the Greek territory according to the national law (law 3386/2005, law 3907/2011, law 4251/2014, Joint Ministerial Decisiob 4000/4/32-λα as changed with JMD 4000/4/32-ν and JMD 4000/2/14-ιθ) and European legislation (EU 2018/1861., EU 1987/2006 and JHA 533/2007)</p> <p>2. Yes</p> <p>3. The distinction between the different types of entry bans is made by the reason(s) for registration (administrative deportation, public order reasons, national security reasons, violation of residence permit limits) as defined in existing national and European legislation (see Q 1)</p> <p>4. In our country, when an entry ban is issued to a third-country national with legal residence in another Member State, the entry ban is usually registered first in the national directory, followed by the consultation and finally, depending on the outcome, the registration is made in SIS II</p>
	EMN NCP Hungary	Yes	2. Yes
	EMN NCP Italy	Yes	<p>1.It depends on the type of expulsion decision taken. In the case of non-EU citizens who are illegal on national territory and also on European territory, the re-entry ban obviously concerns the whole European territory. If, however, the foreign citizen is married to a non-Italian EU citizen and is expelled from the national territory, the re-entry ban applies only to our territory and not to the European territory.</p> <p>2. Yes</p>



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			<p>3. The duration depends on the type of decision taken, in general it can be three to five years. In some cases of decision taken for reasons of state security, it can be as long as 15 years.</p> <p>4. It is first registered in the national system and then transferred to SIS through application cooperation between systems.</p>
	EMN NCP Latvia	Yes	<p>1. In accordance with the law, legal bases for entry bans based on return directive (with EU-wide effect) and entry bans that only regard the national territory may have the same legal basis and be different. For example, if an entry ban is attached to a return decision, always both the national entry ban and entry ban with an EU-wide effect are imposed at the same time. If the entry ban is not linked to the return procedure (for example, a person poses a threat to national security or public order and safety, a visa has been refused, a visa has been annulled or revoked, etc.), the third-country national may be the subject of a national entry ban only or of a national entry ban and entry ban with an EU-wide effect simultaneously. In these cases a decision may be taken on a case-by-case basis to impose or not to impose an entry ban with an EU-wide effect. Criminal court may impose only national entry ban.</p> <p>2. Yes</p> <p>3. If the third-country national has a valid residence permit of another Member State or another document, which gives him or her the right to stay there, and the third-country national is going without delay to the territory of the relevant Member State, return decision will not be issued and no national entry ban and no entry ban with EU-wide effect will be imposed. However, if that person poses a threat to national security or public order and safety, a separate decision may be taken to impose a national entry ban for a specified or unspecified time period.</p> <p>4. Only national entry ban may be imposed to a third-country national with legal residence in another Member State, if he or she poses a threat to national security or public order and safety.</p>


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	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Yes</p> <p>3. The procedure for determining the duration of the ban is specified in Order of the Director of the Migration Department No. 3K-33 of 14 April 2014 Regarding the Procedure for the Evaluation of the Criteria that Are Used in Setting or Shortening the Period of the Ban on a Foreigner's Entry to the Republic of Lithuania or in Deleting Data about a Foreigner from the National List of Foreigners Who Are Banned from Entering the Republic of Lithuania. The duration of the ban depends on the individual circumstances of each case. Thus, according to the said order, the decision regarding a ban on entry should take into account, among other things, the existing family, social, economic and other links with Lithuania; the reasons for refusing to issue or canceling a visa; the duration of and the reasons for irregular stay; previous violations; etc.</p> <p>4. If the ban on entry is issued to a foreigner who has a residence permit issued by another Member State, the foreigner is entered into the National List of Foreigners Who Are Banned from Entering the Republic of Lithuania. If the ban on entry is issued due to a threat posed by the foreigner, consultations are carried out with the Member State that issued the residence permit before listing the foreigner in the Schengen Information System.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Article 112 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) is the only legal base for issuing entry bans. Distinction may be made between entry bans with an EU-wide effect, and entry bans with a national effect.</p> <p>2. Yes</p> <p>3. In principle, article 100 (2) of the Immigration Law states that a third-country national staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State</p>


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			<p>immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of public policy or national security, a return decision shall be issued. In this last case, an entry ban can be issued against the third country nationals for a duration of up to five years (article 112 (1) paragraph 1). A bill has been introduced in the Chamber of Deputies (i.e. Parliament) which provides, among other things, for the introduction of a prohibition of entry into the territory of national order, pronounced optionally or obligatorily, to remedy the situation of irregular stays of third-country nationals who benefit or have benefited from a right of residence in another Member State</p> <p>4. In principle article 112 (1) paragraph 2 of the Immigration Law foresees that the person subject to an entry ban to enter Luxembourg territory is informed that s/he is being signaled in the SIS.</p>
	<p>EMN NCP Netherlands</p>	<p>Yes</p>	<p>1. Currently, we make use of one legal basis both for entry basis with an EU-wide effect, and entry bans with a national effect.</p> <p>2. Yes</p> <p>3. An entry ban is only issued to a TCN with legal residence in another Member State if the TCN is a serious threat to public policy, public security or national security (article 11, paragraph 2, Return Directive 2008/115/EC). It therefore only applies to entry bans with a length exceeding five years.</p> <p>4. The TCN with an entry ban (serious threat to public policy, public security or national security) will be registered in the Dutch national system first (in line with case C-240/17). Then the Netherlands will consult the Member State which issued the residence permit as soon as possible. If the Member State which issued the residence permit is not considering to withdraw the residence permit, the TCN will stay registered in the national system.</p> <p>If the Member State which issued the residence permit withdraws the residence permit, the Netherlands will register the TCN in SIS and the national alert will be deleted.</p>


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	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. Our national law foresees legal bases for Schengen entry bans other than based on the return directive provided within the scope of Schengen acquis (bans based on court decisions and in cases of a threat to public order or national security). Entry bans concerning only the national territory have a separate and distinct legal base.</p> <p>2. Not Applicable A general rule is that the authority competent to issue a decision on imposing the return obligation on a foreigner shall instruct a TCN holding a residence permit or another permit authorising him/her to stay granted by another Schengen country about the obligation to immediately leave for the territory of that State without any consequences (no entry ban). The first exception is when person poses a threat to national security or defence or public order and safety. In this particular matter the Border Guard Unit can issue a decision about transfer a TCN to another Member State of the European Union, a Member State of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area or the Swiss Confederation on the basis of an international agreement on the transfer and acceptance of persons. The second exception is when there is no international agreement on the transfer and acceptance of persons with the Member State country which granted a residence permit (unlikely). In this situation if TCN poses a threat to national security or defence or public order and safety the Border Guard Unit can issue a return decision to country of origin with entry ban.</p> <p>3. As a consequence of issuing a decision about transfer a TCN to another Member State (threat to national security or defence or public order and safety) we enter the foreigners data into national index with one year entry ban. As a consequence of issuing a return decision (threat to national security or defence or public order and safety) to country of origin we enter the foreigners data into national index and to the SIS for the purposes of refusing an entry for 5 years.</p> <p>4. Only in case of second exception mentioned in question no 2. The TCN with an entry ban (serious threat to public policy, public security or national security) will be</p>
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			<p>registered in the national system first. Then we will start the consultation procedure with the Member State which issued the residence permit. If the Member State which issued the residence permit is not considering to withdraw the residence permit, the TCN will stay registered only in the national system.</p> <p>If the Member State which issued the residence permit withdraws the residence permit, we will enter the TCN data also to the SIS system for the purposes of refusing an entry.</p>
	EMN NCP Slovakia	Yes	<p>1. When issuing the decision on administrative expulsion, the police authority issues an entry ban for the territory of the Slovak Republic and also all Member States as it is stated in the Article 77 par. 1, last sentence of the Act on Residence of Foreigners: „The Police Authority in its decision on administrative expulsion, issues an entry ban for the territory of the Slovak Republic and the territory of all Member States...“ When issuing the decision on administrative expulsion together with the entry ban, the notification on the entry ban is automatically shifted from national system to SIS.</p> <p>If it is found out that the foreigner has a valid residence in another Member State, the consultation procedure takes place through the National SIRENE Bureau. Reasons for the alert in the SIS are sent to the Member State where the foreigner has granted residence. Consequently, this Member State reconsiders the foreigner's stay in the country and the result is that, using the standard form, this Member State either requests the deletion of the person from the SIS or cancels his/her residence and the SIS alert remains valid for the whole of Schengen. If a Member State requests the deletion of a person from the SIS, the entry ban is only recorded in the national system and therefore no longer applies to the whole Schengen. This procedure is derived from the Schengen acquis, while the Slovak Republic proceeds in accordance with European legislation.</p> <p>2. Not Applicable See response to question 1.</p> <p>3. See response to question 1.</p> <p>4. See response to question 1.</p>


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	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. We use same legal basis for entry basis with an EU-wide effect and entry bans with a national effect. 2. Yes 3. Entry ban can be issued from one till five years on the basis of different reasons. 4. The TCN with an entry ban will be registered in national system and SIS. Then Slovenia immediately consults (with M form) the Member State which issued the residence permit. If the Member State which issued the residence permit is not considering to withdraw the residence permit, the TCN will stay registered only in the national system. If the Member State which issued the residence permit withdraws the residence permit, the alert will stay in national system and SIS.
	<p>EMN NCP Spain</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. The legal basis is the same (Alien Law), although distinction is made between returns, international conventions and other reasons. Additionally, the Penal Code also foresees entry bans. EU wide effect is only given to entry bans linked to returns. 2. Yes 3. Duration of the entry ban is not related with the fact mentioned in question 2, although it can be long (between 5 and 10 years) if the reason for not granting the possibility to go back to the Member State of residence is public policy, public security or national security. 4. The entry ban is registered in SIS once return takes place.
	<p>EMN NCP Sweden</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. When it comes to criminal cases where entry bans are issued, there will be another legal base. Those cases are dealt with within the frame of criminal law. 2. No

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			<p>3. Not applicable</p> <p>4. No information available</p>
	EMN NCP Norway	Yes	<p>1. Norway has the same legal basis, the Norwegian Immigration Act, for all entry ban issued. However, since Norway has made use of the exceptions in Art.2 2. (a) and (b) of the Return Directive , entry bans, as a consequence of a criminal law sanction, may be national and not EU-wide.</p> <p>2. Yes</p> <p>3. Yes, given that there has been a consultation procedure according to SIS regulation Art.28. If the other MS decides to upheld the residence permit, we put it on our national list and the entry ban will be a purely national entry ban. In principle all kind of entry bans with different durations may be issued given a consultation procedure of SIS Regulation Art.28 has been completed.</p> <p>4. Today we first register the entry ban in our national immigration system. However, this will presumably change with implementation of SIS Recast and a consultation procedure in line with Art.28 will be initiated before registration in our national system. The final procedure is still under consideration and yet to be decided.</p>
