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Ad-Hoc Query on 2023.13 Time of presence on the MS territories for AVR

Requested by EMN France on 8 March 2023

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Spain, Sweden plus Switzerland (21 in Total)

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1. BACKGROUND INFORMATION

As part of its discussions on the possible development of the assisted voluntary return system in France, the French Office for Immigration and Integration (OFII) wishes to know the practices of the other Member States concerning the time of presence on their territory in the context of assisted voluntary return.

We would like to ask the following questions:

1. is there a time limit for presence on the territory of the Member State to benefit from assisted voluntary return? YES/NO
2. If YES to question 1, is it laid down in law? in practice? please specify the applicable legal basis
3. If YES to question 1, what is the duration of this presence in the territory?
4. What are the means used to ensure compliance with this deadline? Is the foreign national responsible for justifying this deadline or are the authorities competent?
5. Is a removal order (obligation to leave the territory) or a ban on re-entry systematically issued in case of allocation of assisted voluntary return?


We would very much appreciate your responses by **5 April 2023**.

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2. RESPONSES




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		Wider Dissemination	
	EMN REG Practitioners Austria	Yes	<p>1. NO Note: In line with the priority of voluntary return, there is no time limit on the duration of stay in the state territory in Austria for claiming voluntary return. During the ongoing asylum or aliens law procedure up to 1 month after the return decision has become final, an increased return assistance is paid. After the one-month period has elapsed, voluntary return may continue to be granted and supported to a lesser extent.</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. n/a Note: In order to motivate more persons to return voluntarily, mandatory return counselling is envisaged in various case constellations, such as when a return decision is issued against an illegally residing third-country national. A renewed request to participate in return counselling (direct mailing measures), return counselling in detention and other initiatives are also intended to promote voluntary return.</p> <p>5. In most cases of assisted voluntary return, a return decision already exists. If no such decision exists, because the departure is initiated during the ongoing proceedings, a return decision can also be issued after the voluntary departure, provided that a hearing has already been obtained from the departed person. If there are reasons that also require the issuance of an entry ban (e.g. criminal conviction), a</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.



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			return decision in connection with an entry ban will be issued even in the case of a voluntary departure.
	EMN REG Practitioners Belgium	Yes	<ol style="list-style-type: none"> 1. NO 2. NA 3. NA 4. NA 5. No. never.
	EMN REG Practitioners Bulgaria	Yes	<ol style="list-style-type: none"> 1. No, every illegally staying third country national can benefit from assisted voluntary return with no regards to his/her presence on the territory of the Member State. This include people with issued return decisions or without. 2. 3. 4. 5. No, there is no obligation to issue a return decision or ban on re-entry issued automaticlly. Every case is individual and its possible person to re-entry with legal grounds.
	EMN REG Practitioners Croatia	Yes	<ol style="list-style-type: none"> 1. 1. NO, there is no time limit. Return decision provides a period for voluntary departure between seven and thirty days. The period for voluntary departure can be extend by thirty days period. 2. n/a



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			<p>3. n/a</p> <p>4. n/a</p> <p>5. Yes, removal orders are issued in case of assisted voluntary return, but re-entry ban are not systematically issued.</p>
	EMN REG Practitioners Cyprus	Yes	<p>1. NO</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5. A return decision with a voluntary departure period, in accordance with the Return Directive is always issued in all cases of assisted voluntary returns. The return decision may include an entry ban, depending on the merits of each case. However, the usual practice is that an entry ban of 3 to 5 years is imposed to persons that receive pre- and/or post-return in cash assistance.</p>
	EMN REG Practitioners Czech Republic	Yes	<p>1. NO.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. To approve the AVR application, at least removal order must be issued in any particular case. However,</p>




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			if conditions given by the law are not met, the person concerned is not issued with re-entry ban solely for the reasons of providing voluntary return assistance.
	EMN REG Practitioners Estonia	Yes	<ol style="list-style-type: none"> 1. No. 2. N/A 3. N/A 4. N/A 5. A return decision with a voluntary departure period, in accordance with the Return Directive is always issued in all cases of assisted voluntary returns. The return decision may include an entry ban, depending on the merits of each case. However, the usual practice is that an entry ban of 3 to 5 years is imposed to persons who receive pre- and/or post-return assistance.
	EMN REG Practitioners Finland	Yes	<ol style="list-style-type: none"> 1. No time limit to be eligible for assisted voluntary return. 2. N/A 3. N/A 4. N/A 5. In Finland removal order is always issued together with negative decision for international protection or other residence application when the person is already in Finland. Re-entry ban can be issued for voluntary returnees depending on each individual case, but in general if the person does not have criminal background and obligies with removal order o re-entry ban is issued. However, there is no clear legislation or rule for this.



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	EMN REG Practitioners France	Yes	<ol style="list-style-type: none"> 1. YES 2. A decree of the minister of the Interior provides for this time limit. 3. the time of presence is 6 months (excluding exceptional circumstances such as rejected asylum seekers under accelerated procedure) 4. The verifications are made at the time of the interview between the candidate for voluntary return and the return counsellor (verification of the applicant's situation in a database; request for supporting documents: transport tickets, documents relating to administrative procedures, medical appointments, etc.) 5. In most cases, an obligation to leave French territory is issued by the Prefecture, but some returns may nevertheless take place without this removal order.
	EMN REG Practitioners Germany	Yes	<ol style="list-style-type: none"> 1. No 2. N/A 3. N/A 4. N/A 5. No, the issuance of a removal order and/or a re-entry ban is independent of the decision whether a third-country national receives assistance for voluntary return.
	EMN REG Practitioners Hungary	Yes	<ol style="list-style-type: none"> 1. No <p>Time limit only applies to the use the option of voluntary return. That is - in line with the Return directive - set out by the return decision and provides appropriate period for voluntary departure of between seven and thirty days.</p>



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			<p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. No</p>
	EMN REG Practitioners Italy	Yes	<p>1. NO</p> <p>2. N.A.</p> <p>3. N.A.</p> <p>4. N.A.</p> <p>5. NO</p>
	EMN REG Practitioners Latvia	Yes	<p>1. No.</p> <p>2. N/a</p> <p>3. N/a</p> <p>4. If the deadline is meant as “deadline of the obligation to leave the territory” – yes, the authority which issued voluntary return decision, is responsible for controlling the compliance of the decision. If necessary, we cooperate with State Border Guard. Also a third country national is responsible for compliance. Otherwise, a decision on forced return follows.</p>


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			5. Yes, in case of allocation of assisted voluntary return, voluntary return decision is issued always. In case of voluntary return decision, question on entry ban is examined (but not systematically imposed). It depends on circumstances and length of violation.
	EMN REG Practitioners Lithuania	Yes	<p>1. NO, but a return decision provides a period for voluntary departure of between seven and thirty days. The period for voluntary departure can be extend by thirty days period.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. A decision on return is made at all times when voluntary assisted return is carried out. A return decision may, but does not necessarily, lead to an entry ban.</p>
	EMN NCP Luxembourg	Yes	<p>1. NO, however after a negative decision (on international protection or other status) and once the order to leave the country has been notified, the concerned persons are systematically invited by the Directorate of immigration to an interview about his/her administrative situation where the necessary return counselling is given. The full AVRR in cash and in kind assistance ("aide complète") is allocated to the person if he/she leaves voluntarily within 30 days after the return counselling interview. After the 30 days, the person is eligible for a reduced basic aid ("aide de base") only.</p> <p>2. N/A.</p> <p>3. N/A.</p>


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			<p>4. N/A.</p> <p>5. NO. The international protection applicant is informed that they can apply for AVR during the procedure so they can apply before their application is decided. With irregular migrants an order to leave the territory is issued but this one is not systematically accompanied by a entry-ban and in voluntary return the later is not</p>
	EMN REG Practitioners Poland	Yes	<p>1. NO</p> <p>Below mentioned foreigners who stayed within territory of the Republic of Poland illegally, may be provided with an assistance in voluntary return financed by the Commander-in-Chief of the Polish Border Guard, in accordance with Article 334 of the Act on Foreigners:</p> <p>1. who applied for refugee status:</p> <ul style="list-style-type: none"> - whose applications have been left without examination for formal reasons, - have been refused refugee status and have not been granted subsidiary protection or permission for tolerated stay; <p>2. who applied for refugee status and then withdrew or did not pursue their claim;</p> <p>3. who applied for asylum and who have been refused asylum in the Republic of Poland;</p> <p>4. who have been issued the decision which indicates an obligation to leave the territory of the Republic of Poland;</p> <p>5. identified as victims of trafficking by an authority competent with respect to conducting procedure on combating trafficking in human beings.</p> <p>The programme of voluntary return is realised by IOM in cooperation with Border Guard on the basis of the Act on Foreigners and Agreement between the Ministry of the Interior and Administration of the</p>



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			<p>Republic of Poland and International Organisation for Migration on cooperation in the field of voluntary returns of foreigners leaving the Republic of Poland, signed on 12 July 2005._</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. The foreigner receives a decision on the obligation to return, which sets a deadline of 15-30 days for voluntary return. In addition, the decision orders a ban on re-entry into the territory of the Republic of Poland and other Schengen States and specifies the period of the ban, which ranges from 6 months to 3 years.</p> <p>In addition, the extension by law of the deadline for voluntary return specified in the decision on the foreigner's obligation to return, the end of which would fall during the period of an epidemic emergency or a state of epidemics, to the expiry of the 30th day following the day of cancellation of whichever state was last in force, was adopted.</p>
	EMN REG Practitioners Portugal	Yes	<p>1. No</p> <p>2. N/a</p> <p>3. N/a</p> <p>4. N/a</p> <p>5. Third country nationals benefiting from the assisted voluntary return program shall be subject to an alert for refusal of entry and stay into the national territory, the territory of EU Member States or of those</p>


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			States applying the Schengen Acquis.
	EMN REG Practitioners Slovenia	Yes	<ol style="list-style-type: none"> 1. No. 2. n/a 3. n/a 4. n/a 5. The return decision and the obligation to leave the country are a prerequisite for eligibility for the assisted voluntary return programme. The entry ban is not automatic; It only follows in the event of non-compliance with the deadline for voluntary departure. TCNs are in fact also eligible to apply for assisted voluntary return even after the deadline.
	EMN REG Practitioners Spain	Yes	<ol style="list-style-type: none"> 1. Yes 2. This period is specified in the regulatory basis of the public grants. 3. At least a minimum of three months is required to benefit from this VR Program. However, this period does not apply in cases of special vulnerability with a social report. 4. The migrant who wants to benefit from the VR program needs to annex documentation to prove the permanence in Spain for a minimum of three months. The means permitted to ensure this deadline could be a registration certificate, rental contract, invoices in their name, medical reports or any document that associates the interested party with their stay in the country dated prior to three months. This documentation would be checked by the Ministry of Inclusion, Social Security and Migrations. 5. NO, when the migrant benefits from this program, signing a pledge of non return in three years is


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			compulsory. After the validity of their commitment not to return to the spanish territory, the returnee may request a temporary residence or temporary residence and work authorization, in accordance with the provisions of the Royal Decree 557/2011, of April 20, which approves the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009
	EMN REG Practitioners Sweden	Yes	<p>1. There are no AVR programmes as such in Sweden. The Swedish Migration Agency is however providing assistance for voluntary return in the event of a return decision. The support provided depends on the individual circumstances of the case. The following support is available: information and counselling, logistical support to organise the journey, services to address basic needs, return escort if required, administrative support to complete applications for travel documents and to bear the travel costs. A time limit only exists if the returnee wants to apply for cash support for reestablishment. Post arrival incentives are also available through the Frontex Joint Reintegration Service but there is not time limit for this support.</p> <p>2. The application for cash support for reestablishment needs to be submitted in close connection to when the return decision gained legal force. This is specified in the regulation for cash support for reestablishment (Förordning (2008:778) om återetableringsstöd för viss utlänningar).</p> <p>3. As described in Q2, the application for cash support for reestablishment needs to be submitted in close connection to when the return decision gained legal force. There are however cases when the cash support can be granted even if the above mentioned condition is not fulfilled. This is if it is considered necessary in order to fulfill an international agreement that Sweden has with the country in question or if it is considered of particular importance for a voluntary return to be carried out.</p> <p>4. The competent authority to decide who is entitled to the cash support for reestablishment is the Swedish Migration Agency. The assessment carried out by the Agency, primarily looks at when the application for cash support was submitted in relation to when the return decision gained legal force but</p>

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			<p>also if there are other reasons for granting the support.</p> <p>5. No, however the person who has been granted the support is obliged to reimburse the cash support is she/he does not return or re-enter irregularly to Sweden. Support to facilitate the return is however only provided if there is a return decision.</p>
	EMN REG Practitioners Switzerland	Yes	<p>1. NO, access to return assistance from the beginning.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5. NO, pending asylum cases are stroken out, a temporary protection or refugee status expires and entry bans are not issued in case of voluntary return.</p>
