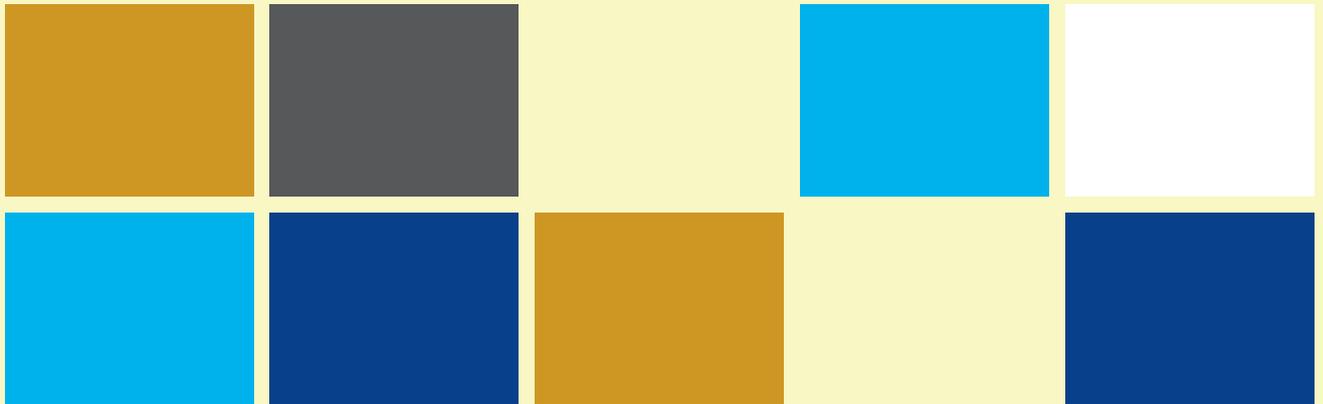




## Returning Rejected Asylum Seekers: challenges and good practices



CZECH | REPUBLIC



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COMMON TEMPLATE

## 1 STUDY AIMS AND RATIONALE

### 1.1 STUDY AIMS

The overall aim of the study is to inform the target audience (e.g. practitioners, policy officers and decision-makers at both EU and national level including academic researchers and the general public), Frontex, the European Commission and the European Asylum Support Office (EASO) on Member States' approaches to the return of rejected asylum seekers<sup>1</sup>, examining existing policies and identifying good practices.

More specifically, the Study aims to:

- Map the estimated **scale of rejected asylum seekers** and in particular identify to what extent discrepancies exist between those effectively returned or not;
- Obtain an insight into Member States' **actions to ensure that increasing numbers of rejected asylum seekers are being returned**, identifying any recent changes to policy;
- Examine which measures Member States take, **when rejected asylum seekers are issued an enforceable return decision**, to encourage return;
- Provide an overview of the **challenges to return** and the **measures taken to deal with such challenges**, identifying good practices;
- Examine Member State **approaches** to rejected asylum seekers **who cannot be immediately returned**;
- Examine to what extent Member States' **return policies are linked to the asylum procedure**; specifically whether (a) Member States implement measures to ensure that claims considered unfounded lead to the swift removal of concerned persons and whether (b) Member States apply specific approaches during the asylum procedure to prepare asylum seekers for return should their claim be rejected;
- Draw conclusions as to whether Member States **tailor return policies** to rejected asylum seekers, if so how, and what has worked well;
- Identify any **good practices** that Member States have in place to return rejected asylum seekers.

### 1.2 RATIONALE

The number of applications for international protection has **significantly increased** in recent years **especially in 2014/2015**. Based on Eurostat data, between 2009 and September 2015 there were 3.3 million asylum applications in the European Economic Area (EEA)<sup>2</sup>. The number of applications more than doubled between 2009 (287,000) and 2014 (662,000), with a sharp increase witnessed especially since 2013. In 2015, more than double the number of applications for asylum were lodged compared to 2014, reaching a total of 1.39 applications.<sup>3</sup>

The continuous increase of applications is a direct result of conflict and instability in the Southern Mediterranean and Middle East (notably Syria, Iraq, Afghanistan), though applications have also increased from Kosovo, Nigeria and Eritrea.<sup>4</sup> Whilst many applications are indeed lodged by applicants with a real need for international protection, **around half of the applications are**

<sup>1</sup> Within the framework of this study "asylum seeker" is defined in line with the global context as "a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments" (see the EMN Glossary V 3.0) and in this sense includes persons who apply for international protection in general. In view of this, the concept of 'rejected asylum seeker' includes those whose application for international protection is considered to be neither eligible for refugee status nor subsidiary protection.

<sup>2</sup> EEA (28 EU member states + Norway, Liechtenstein, Iceland) + Switzerland

<sup>3</sup> Eurostat, 'Asylum Statistics (Data extracted on 2 March 2016)', available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) [last accessed on 12 March 2016].

<sup>4</sup> Eurostat database on asylum applications (asyl\_app)

**considered as unfounded** and are, ultimately, **rejected**. For example, in 2015 an average of 47% of applications were rejected which amounts to 628,000 third country nationals (TCNs).

**Asylum seekers** who receive more than one negative decision on their application for international protection usually no longer have a legal right to stay in the EU and they are subsequently issued a return order. In accordance with the EU Return Directive<sup>5</sup>, a third-country national who does not fulfil, or no longer fulfils the conditions of stay or residence in the EU should **return or be returned** to their country of origin, a country of transit or to another third country, to which they voluntarily decide to return and in which they will be accepted. However, currently, a large gap exists between the number of TCNs ordered to leave the EU, and those who are effectively returned. For example, in 2014 **less than 40%** of irregular migrants who were ordered to leave **actually departed**<sup>6</sup>.

As a result of the high increase in asylum applications, the number of **rejected asylum seekers has, in turn, also significantly increased**. Given that it is expected that the number of applications **will continue to increase** in particular in the short-term (next 1–2 years), it is of crucial importance to strengthen Member State capacity to return those who have had their application rejected in order to maintain trust in the EU's asylum system as a system providing protection to those who need it. This was called for in the EU Action Plan on Return which in particular also emphasised the need to link the return policy to the asylum procedure as a priority action in this regard<sup>7</sup>.

The added-value of this Study lies in its aim to **understand why rejected asylum seekers are not returned and which measures** Member States take **to enhance the return of rejected asylum seekers**. The study should also show the measures taken at different stages throughout the process: during the asylum procedure, at the point of rejection, and once rejected. It will do this by mapping existing policies and identifying good practices (i.e. measures that have proven particularly effective in managing challenges to return of rejected asylum seekers) in Member State approaches to the return of rejected asylum seekers and taking stock of what has worked well and why.

## 2 SCOPE OF THE STUDY

### 2.1 SCOPE OF THE TARGET GROUP

The overall focus of the target group is primarily on **rejected asylum seekers who have been issued an enforceable return decision** following one or more negative decisions on their application for international protection (for the purpose of this study referred to as 'asylum application'). This group includes, in some Member States, asylum applicants who have not yet exhausted all of their appeals, but who are still required to return, having been issued a return decision.<sup>8</sup> The study will also investigate, to a lesser extent, national measures to prepare **asylum seekers in the asylum procedure** for return in case their application would be rejected. This is because, as indicated in the EU Action Plan on Return, the swift and effective return of rejected asylum seekers is dependent on coherence between return and asylum policy. Finally, the study also aims to examine Member State approaches to **rejected asylum seekers who cannot return or be returned immediately**.

<sup>5</sup> 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, OJ L 348 of 24.12.2008

<sup>6</sup> COM(2015) 453 final, "EU Action Plan on Return"

<sup>7</sup> COM (2015) 453 final, p. 5.

<sup>8</sup> In some Member States (e.g. LT, PL) failed asylum applicants can only be issued a return decision on receiving a *final* rejection of their application, whereas in others (e.g. AT, NL, SE, SK) a failed applicant can be returned *before* all appeals are exhausted, e.g. if their asylum application is considered manifestly unfounded.

## 2.2 SCOPE OF MEMBER STATES' "APPROACHES"/POLICIES TO REJECTED ASYLUM SEEKERS

The Study examines Member States' approaches to enhance the return of rejected asylum seekers taken at **different stages of the asylum procedure**, most notably:

- Measures taken to inform asylum-seekers of the possibility of assisted voluntary return early on and at all stages of the asylum procedure (starting from the lodging of the asylum-application);
- Measures at the point of rejection;
- Measures once rejected;
- Measures if the return of the concerned person has proven *de facto* temporarily not possible.

**During the asylum procedure:** Focus is placed on mapping Member States' measures to ensure that unfounded claims lead to swift removal in accordance with the Asylum Procedures Directive. It will build on the findings of the 2015 EMN Study on the dissemination of information on voluntary return and will in particular examine if Member States have specific *approaches* to engaging with asylum seekers to facilitate return should their application be rejected;

**At the point of rejection:** Focus is on mapping Member States' activities related to the issuance of rejection and return decisions, the provision of information when rejected, the rights/support provided to rejected asylum seekers, i.e. basic material aid e.g. accommodation, medical care etc. (both in the short and long term);

**Once rejected:** Focus is on mapping the main challenges to the return of rejected asylum seekers and on identifying measures that Member States implement to manage or prevent such challenges from arising. The aim is to identify good practices, as well as, if relevant, to identify challenges against which Member States have no effective mitigation measures.

**Where return is not immediately possible:** Focus is on identifying Member States' approaches for dealing with those who cannot be immediately returned and the measures taken to facilitate return in the future.

## 3 EU LEGAL AND POLICY CONTEXT

Since the conclusion of the Tampere Programme (1999), the EU has been working to develop a comprehensive approach on migration and asylum. Both the establishment of a **Common European Asylum System** (CEAS) as well as the **return of irregular third-country nationals** (including rejected asylum seekers), are important building blocks of such common policy. The following will briefly set out both the legal and policy context of the CEAS as well as the EU's policy on return.

### 3.1 COMMON EUROPEAN ASYLUM POLICY

Since the conclusion of the *Tampere Programme* in 1999, the EU has been working towards the development of a CEAS. A first set of legislative instruments was adopted between 2000 and 2005 and together they formed the first phase of the CEAS<sup>9</sup>. The evaluation of the first generation legislative instruments revealed, however, **significant weaknesses** of the instruments resulting

<sup>9</sup> The instruments included the Qualification Directive (Directive 2004/83/EC), the Reception Conditions Directive (Directive 3003/9/EC), the Asylum Procedures Directive (Directive 2005/85/EC), the Dublin Regulation (Regulation No 343/2003), the EURODAC Regulation (Regulation No 2725/2000) and the Temporary Protection Directive (Directive 2001/55/EC).

in **wide divergence** within the EU in terms of transposition and implementation. Consequently, in 2004 *the Hague Programme* requested that a second phase of the CEAS be characterised by: i) better and more harmonised standards of protection through further alignment of Member States' asylum laws; ii) effective and well-supported practical cooperation, and; iii) a higher degree of solidarity and responsibility among the Member States on the one hand and between the EU and third countries on the other hand.

In 2010, *the Stockholm Programme* underlined the need to establish "a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection".

The Stockholm Programme stipulated the goal for the CEAS to be that an asylum application in one Member State follows a **similar process** and leads to a **similar outcome** as in any other Member State, and that a **similar treatment** is afforded to applicants during the examination of their asylum application. Thus, similar cases should lead to similar outcomes, independent of the Member State in which the application is lodged<sup>10</sup>.

A second set of legislative instruments was adopted between 2008 and June 2013<sup>11</sup>. This second generation EU asylum legislation package provides the legal basis for **greater harmonisation and higher quality standards**. Besides the formulation of common rules, **practical cooperation** facilitating coherent application of rules, **solidarity** and **responsibility** were underlined to be of crucial importance for the development of the CEAS. To advance practical cooperation, Regulation 439/2010 established the European Asylum Support Office (EASO) which was inaugurated in Malta in June 2011. EASO's role is to support and assist Member States by facilitating, coordinating and strengthening practical cooperation amongst EU Member States to create consistent operational practice.

The 2014 Commission Communication<sup>12</sup> emphasised the **effective transposition and coherent implementation** of the second phase legislative instruments as a political priority in the coming years<sup>13</sup>.

Subsequently, following the significant increase in asylum applications, the Commission presented the **European Agenda on Migration**<sup>14</sup> in May 2015, which stipulated several actions and priorities to face the challenges stemming from these new arrivals. The Commission then adopted packages of measures to relieve the pressure on national asylum systems, including:

- Emergency relocation mechanism to relocate 40.000 asylum seekers from Italy and Greece<sup>15</sup>;
- Emergency relocation mechanism to relocate another 120.000 asylum seekers from Italy and Greece<sup>16</sup>;
- A permanent crisis relocation mechanism under the Dublin system<sup>17</sup>.

<sup>10</sup> COM(2014) 154 final, at [http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an\\_open\\_and\\_secure\\_europe\\_-\\_making\\_it\\_happen\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf)

<sup>11</sup> The second generation legislative instruments include: the Recast Dublin Regulation (Regulation (EU) No 604/2013); Recast EURODAC Regulation (Regulation (EU) No 603/2013); Recast Qualification Directive (Directive 2011/95/EU); Recast Asylum Procedures Directive (Directive 2013/32/EU); Recast Reception Conditions Directive (Directive 2013/33/EU); Asylum and Migration Fund (Regulation (EU) No 516/2014).

<sup>12</sup> Ibid, COM(2014) 154 final

<sup>13</sup> Other priorities include the stepping up of responsibility and solidarity, prevention and handling of crises, as well as addressing external challenges and legal routes to access asylum in the EU.

<sup>14</sup> COM(2015) 240 final, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm)

<sup>15</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece

<sup>16</sup> Council Decision (EU) 2015/1601 of 22 September 2015

<sup>17</sup> COM(2015) 450 final, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal\\_for\\_regulation\\_of\\_ep\\_and\\_council\\_establishing\\_a\\_crisis\\_relocation\\_mechanism\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/proposal_for_regulation_of_ep_and_council_establishing_a_crisis_relocation_mechanism_en.pdf)

These new instruments represent a key development in the CEAS, in general, and in the measures available to the EU and the Member States to respond to a refugee/migration crisis or emergency.

### 3.2 RETURN

The development of a coherent return policy was emphasised by the Hague Programme. The Stockholm Programme reaffirmed this need by calling on the EU and its Member States to intensify the efforts to return irregular third-country nationals by implementing an effective and sustainable return policy.

The main legal instrument for EU return policy is the 2008 Return Directive. The Return Directive, adopted in 2008, lays down common EU standards on forced return and voluntary departure. The Directive has a two-fold approach: on the one hand, it stipulates that Member States are obliged to issue return decisions to *all* TCNs staying irregularly on the territory of a Member State, including rejected asylum applicants. On the other hand, it emphasises the importance of implementing return policy with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of '*non-refoulement*'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees<sup>18</sup>.

The Return Directive stipulates different types of return measures. A broad distinction can be made between voluntary and forced return, with the Directive emphasising that voluntary return is preferred, although it also acknowledges the inevitable need for efficient means to enforce returns where necessary.

Following the dramatic increase in arrivals of migrants to the EU through the Mediterranean in 2014 and 2015, the European Agenda on Migration was adopted on 17 May 2015, calling for better migration management related to humanitarian response, international protection, irregular migration and return issues. The Agenda includes firm language encouraging Member States to step up their efforts to effectively return irregular migrants. Similarly, the Council Conclusions of 25–26 June echoed the firm language and called for all tools to be mobilised to increase the return rate. Subsequently, the **EU Action Plan on Return** was adopted on 9<sup>th</sup> September. It is streamlined across two strands: i) enhancing cooperation *within* the EU; ii) enhancing cooperation with *third countries* (origin and transit) and stipulates a variety of measures. In order to increase the effectiveness of return, the Plan calls for enhancing voluntary return efforts, stronger enforcement of EU rules, enhanced sharing of information on return, increased role and mandate for Frontex as well as the establishment of an "integrated system of return management". The latter has been taken forward by the EMN Return Expert Group (REG) which constitutes the platform for providing strategic guidance, whilst Frontex carries responsibility for the operational coordination for the implementation of the integrated return management.

## 4 PRIMARY QUESTIONS TO BE ADDRESSED

The primary questions the Study addresses are:

- What is the estimated scale of rejected asylum seekers returned and the scale of those who could not return / be returned in each Member State?

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<sup>18</sup> E.g. the EU Charter of Fundamental Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 Convention against Torture and other Cruel, Inhuman and degrading treatment or punishment and the 1951 Geneva Convention related to the Status of Refugees as amended by the 1967 New York Protocol.

- Have Member States responded to ongoing increases in the number of asylum applications by introducing new measures to ensure that asylum seekers not eligible for international protection or another status can be swiftly returned?
- What measures are taken to encourage the return of rejected asylum seekers who receive an enforceable return decision?
- What are the main challenges to return specific to rejected asylum seekers and which measures have proven effective in managing these challenges?
- What different approaches do Member States take towards rejected asylum seekers who cannot immediately return / be returned?
- To what extent are Member States' return policies linked to the asylum procedure? Do Member States have procedures for claims deemed to be unfounded? Is there a different procedure for removal or returns concerning persons deemed to have an unfounded claim? Do Member States have specific policies/approaches in place to target asylum seekers still in the application procedure to encourage their return or prepare them for return should their application be rejected?
- Do any good practices exist in Member State approaches to return rejected asylum seekers?

## 5 RELEVANT SOURCES AND LITERATURE

### **EMN Studies**

The following EMN study from 2015 describes Member State policies and practices at disseminating information on voluntary return options, particularly those policies and practices which target irregular migrants not in contact with the authorities:

- EMN (2015) Dissemination of information on voluntary return: How to reach irregular migrants not in contact with the authorities. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/info\\_on\\_return\\_synthesis\\_report\\_20102015\\_final.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/info_on_return_synthesis_report_20102015_final.pdf) - *This study provides some information relevant to the present study on approaches to rejected asylum seekers. For example, it describes Member States' policies and practices to disseminate information on voluntary return options to asylum seekers and rejected asylum seekers, though since this was not the focus of the study the information is not comprehensive for all Member States. The study finds that some Member States (e.g. AT, BE, CZ, FI, SE) have a policy in place to provide information on voluntary return (and sometime return counselling) to asylum seekers residing in reception centres. The study also provides information on how a return decision is issued (by whom, in what format) and the content of information accompanying the return decision.*

The following EMN study looked at how Member States try to reduce irregular migration at different stages of the migration cycle:

- EMN (2012) Practical responses to irregular migration. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/irregular-migration/00a\\_emn\\_synthesis\\_report\\_irregular\\_migration\\_october\\_2012\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf) - *The study investigated how Member States try to reduce migration by preventing it from happening in the first place through cooperation with, information dissemination and development work in third countries, by trying to prevent it at the border, by trying to identify those staying irregularly in the Member States and by returning those who are found to be irregularly staying. It also looked briefly at how Member States treat irregular migrants who cannot return / be returned. While the study looked more broadly at irregular migration, it includes information relevant to the situation of rejected asylum seekers.*

Other relevant, but less recent, EMN studies comprise:

- EMN (2011) Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries
- EMN (2010) The Different National Practices concerning granting of Non-EU Harmonised Protection Statuses
- EMN (2007) Return Migration

### **Studies and reports**

The following study provides information on some of the main obstacles to return:

- Goodman, S., Burke, S., Liebling, H., and Zasada, D. (2015). 'I Can't Go Back Because If I Go Back I Would Die': How Asylum Seekers Manage Talk about Returning Home by Highlighting the Importance of Safety. *J. Community Appl. Soc. Psychol.*, 25, 327–339. – *This study presents four case studies of asylum seekers to emphasise how considerations of a lack of safety in the return country drive asylum seekers' unwillingness to return.*

The following study examines the challenges and special considerations associated with return children:

- ECRE and Save the Children (2011) Comparative Study on Practices in the Field of Return of Minors: <http://www.ecre.org/component/downloads/downloads/369.html>

The following study describes and evaluates a pilot project aimed at encouraging the return of young Afghanis from the UK:

- Robinson, K. & Williams, L. 2014. 'Positive Futures – A pilot project to develop and test a model to assist Appeal Rights Exhausted Care Leavers to consider Assisted Voluntary Return. Evaluation Report'. Accessed online: <http://www.secouncils.gov.uk/wp-content/uploads/2012/04/Positive-Futures-Evaluation-Report-Final-18-Aug.pdf> – *the study reviews a pilot project aimed at encouraging young Afghanis who are leaving care in the UK (where they stayed as unaccompanied minors) to be returned to Afghanistan when they have no appeals remaining on their application for asylum. The project aimed to encourage young Afghans to volunteer for Assisted Voluntary Return by giving them some extra training and skills that would be useful once back in Afghanistan. The authors argue that the project was unsuccessful since the young Afghanis targeted had not fully understood that they must commit to return to Afghanistan in order to receive the training. The authors argue that a longer term approach is required.*

The following studies investigate the situation of rejected asylum seekers who cannot be removed:

- Ramboll (2013) Study on the situation of third country nationals pending return/removal in the EU Member States and the Schengen Associated Countries. Available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013\\_sudy\\_report\\_on\\_immigration\\_return-removal\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf)
- Fundamental Rights Agency (2011) Fundamental rights of migrants in an irregular situation in the European Union. Available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1827-FRA\\_2011\\_Migrants\\_in\\_an\\_irregular\\_situation\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf)
- Fundamental Rights Agency (2011) Migrants in an irregular situation: access to healthcare in 10 European Union Member States. Available at: [http://www.compas.ox.ac.uk/media/PR-2011-FRIM\\_Healthcare.pdf](http://www.compas.ox.ac.uk/media/PR-2011-FRIM_Healthcare.pdf)
- Cuadra, C-B. (2011). 'Right of access to health care for undocumented migrants in EU: a comparative study of national policies'. Accessed online. <http://eurpub.oxfordjournals.org/content/22/2/267> – This study describes the policies regarding the right of access to health

care for undocumented migrants in 27 EU Member States into less than minimum, minimum and more than minimum (minimum refers to the extent to which entitlements are congruent with human rights standards). The study concludes that international obligations articulated in human rights standards are not fully met in the majority of Member States.

- EMN (2007) Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/illegally-resident/0\\_emn\\_synthesis\\_report\\_illegal\\_immigration\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/illegally-resident/0_emn_synthesis_report_illegal_immigration_final_en.pdf)

### **EMN Ad-Hoc Queries**

The following (recent) EMN AHQs are relevant to this Study:

- Handing over of personal documents in the framework of the asylum and return procedure – *requested 11<sup>th</sup> March 2016*
- Member States' policies to handle the influx of asylum seekers – *requested 3<sup>rd</sup> February 2016*
- Obstacles to return in connection with the implementation of the Return Directive – *requested 21<sup>st</sup> January 2016*
- The right of residence provided for TCNs to whom international protection application has been rejected – *requested 30<sup>th</sup> December 2015*
- Effective remedies regarding a refusal to accept subsequent applications from unsuccessful asylum applicants – *requested 25<sup>th</sup> November 2015*
- Enforcement of expulsion decisions – *requested 11<sup>th</sup> December 2015*
- Cooperation on readmission I and II – *requested 11<sup>th</sup> November 2015*
- Abuses in requests for asylum – *requested 30<sup>th</sup> October 2015*
- Return and reintegration to Eastern Africa – *requested 30<sup>th</sup> October 2015*
- Return and reintegration to Western Africa – *requested 14<sup>th</sup> July 2014*
- Readmissions of irregular migrants to Western and Central Africa – *requested 7<sup>th</sup> May 2015*
- Return and reintegration to the Western Balkans – *requested 3<sup>rd</sup> March 2015*
- Return of rejected asylum seekers to North Darfur and Somalia – *requested 15<sup>th</sup> May 2014*
- Returns of rejected asylum seekers to the Democratic Republic of the Congo – *requested 9<sup>th</sup> April 2014*
- Returns of rejected asylum seekers to Iran – *requested 12<sup>th</sup> March 2014*
- Returns of rejected asylum seekers to Afghanistan, Algeria, Iraq and Nigeria – *requested 2014.*

### **Other sources of information**

- EMN (2015) "Tableau de Bord" of cash and in-kind assistance programmes offered in EU Member States to third-country nationals to encourage return and reintegration in countries of return. *The Tableau de Bord demonstrates that in most Member States (AT, BE, BG, CZ, DE, EE, EL, ES, FI, IE, LV, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, UK) asylum seekers who withdraw their requests and rejected asylum seekers are eligible for AVR(R).*
- Ruz, C. (2015). 'What happens to failed asylum seekers?'. BBC News Magazine. Accessed online: <http://www.bbc.co.uk/news/magazine-33849593> – *this news article explains why one of the main obstacles to return is the challenge in obtaining emergency travel documents.*
- Dearden, L. (2015). 'Norway paying asylum seekers to return home as refugee crisis continues'. Accessed online: <http://www.independent.co.uk/news/world/europe/norway-paying-asylum-seekers-to-return-home-as-refugee-crisis-continues-a6763496.html> – *This news article describes Norway's new policy (in response to the increase in asylum applications) to target asylum seekers who have not been rejected to return home voluntarily. The policy is to provide economic assistance to those willing to return home either on rejection or whilst still in the asylum procedure. The number of applicants taking up AVR has more than doubled as a result.*

## 6 AVAILABLE STATISTICS

### *EU level*

The following statistics are available through Eurostat, and may be indicative of the scale of the problem (i.e. the number of asylum applications received and the number of applications rejected). The statistics cannot, however, be used to estimate the number of rejected asylum seekers not returned within the specified time period. This is because Eurostat data on returns is not disaggregated as to the status of the returnee. It is also because there is no one-to-one relationship between the asylum applications rejected and return decisions carried out in a particular year (because administrative processes can straddle more than one year).

Number of asylum applications (by nationality)

Number of rejected asylum applications (by nationality)

Number of return decisions (by nationality)

Number of return decisions effectively carried out (by nationality)

Number of forced returns (by nationality)

### *National level*

The following data would be very useful for this study, and should be included as far as possible:

(Estimated) number of rejected asylum seekers issued an enforceable return decision

(Estimated) share of rejected asylum seekers issued a return decision who were effectively returned

(Estimated) share of rejected asylum seekers out of the total number of TCNs issued a return decision

Total number of rejected asylum seekers who, despite having been imposed a return decision, continue to reside in the EU because they could not be effectively returned

## 7 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0<sup>19</sup> unless specified otherwise in footnotes.

**'Applicant for international protection'**: is defined as "a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken".

**'Application for international protection'**: is defined as "a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU, that can be applied for separately".

**'Assisted voluntary return'** is defined as "the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee with the component of financial support to a foreigner"

**'Asylum seeker'** is defined in the global context as a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments; and in the EU context as a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken.

<sup>19</sup> Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf)

**'Compulsory return'** in the EU context is defined as "the process of going back – whether in voluntary or enforced compliance with an obligation to return – to:

- one's country of origin; or
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Synonym: Forced return

**'Final decision'**: is defined as "a decision on whether the third-country national or stateless person be granted refugee status or subsidiary protection status by virtue of Directive 2011/95/EU (Recast Qualification Directive) and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome".

**'Forced return'** is defined as "the enforcement of the obligation to return, namely the physical transportation out of the country". (Source: definition of 'removal' in Article 3(5) of the Return Directive).

Synonym: Removal

**'Irregular stay'**: is defined as "the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State".

**'Regularisation'**: Is defined as "in the EU context, state procedure by which illegally staying third-country nationals are awarded a legal status". Source: ICMPD: Study on Regularisations in Europe, 2009

**'Rejected applicant for international protection'**: is defined as "a person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period".

**'Return decision'**: is defined as "an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return".

**'Return'**: is defined as "the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous".

**'Risk of absconding'**: is defined as "in the EU context, existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is subject to return procedures may abscond".

**'Subsequent application for international protection'** is defined as "a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn their application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Art. 28 (1) of Directive 2013/32/EU."

**'Third-country national'**: is defined as "any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code".

**'Voluntary departure':** Compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.

**'Voluntary return':** is defined as "the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee"

**'Vulnerable person':** is defined as "minors, unaccompanied minors disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation".

# **NATIONAL CONTRIBUTION OF THE CZECH REPUBLIC**

## INTRODUCTION

Returns of foreigners without a valid residence permit to the country of their origin represent one of the priorities of Czech migration policy. This study is focused on different approaches to foreigners whose application for international protection has been rejected. In the Czech Republic the process of return of rejected applicants for international protection does not differ from the process of return of other third country nationals. Moreover, as regards return, **rejected asylum seekers do not represent specific burden for Czech authorities requiring introduction of any specific procedures or measures tailored to this group.**

In the Czech Republic, **the return decision (decision on administrative expulsion)**<sup>20</sup> is always an independent decision, not included or joined with other administrative decision such as the decision on international protection. Therefore it is important to underline that the Czech Republic does not separately monitor statistical data on the numbers of rejected applicants for international protection who did not return or who could not be returned. The figures of rejected applicants for international protection are not statistically monitored in relation to the figures of persons who were issued with a return decision. Also, the figures of rejected applicants for international protection that were issued with a return decision and were subsequently returned are not monitored. **Returns related statistics are only available on all third country nationals.**

In vast majority of cases in the Czech Republic, **a return decision (decision on administrative expulsion) immediately precedes the lodging of an application for international protection.** Its enforceability is postponed until the procedure for international protection is completed, which means all legal remedies have been exhausted. Thus, if a person has the status of an applicant for international protection, then he/she cannot be returned.

Under specific conditions, a return decision can also be issued once the procedure for international protection has been completed. Such cases concern a rejected asylum seeker who was given a time period during which he/she was required to (voluntarily) leave the territory of the Czech Republic – usually in the duration of approximately 1 month. In case a concerned foreigner has not left the territory of the Czech Republic within the specified time period and was then found to be illegally present in the territory, then he/she is issued with a return decision in the form of administrative expulsion.

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<sup>20</sup> For the purposes of this study, a return decision refers to the decision on administrative expulsion stipulated by the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic, as amended.

**Appeal against the return decision and also legal actions against the decision in the matter of international protection have – in most of the cases – suspensive effect** and the person is authorised to remain in the territory of the Czech Republic until the procedure is completed.

In reaction to the increased number of foreigners coming to the Czech Republic in 2015, various **new measures** were introduced with the aim to facilitate returns of these foreigners. Basically, the capacity of accommodation facilities (mainly of detention centres) including staffing has increased. As regards returns, cooperation with particular embassies has been strengthened with the aim to set up practical cooperation. As a consequence of that, the number of conducted returns has increased. However, in vast majority of cases, foreigners coming in 2015 or residing in the territory illegally **were refusing to lodge an application for international protection.**

The Czech Republic has been facing **challenges** stemming mainly from insufficient cooperation from the side of some third countries, for example in the matter of issuance of replacement travel documents for foreigners who shall be returned.

# section 1

## OVERVIEW OF THE NATIONAL SITUATION

*This section of the Report will provide information on the national situation and the scale of the problem, i.e. the number of rejected asylum seekers in comparison to the number of rejected asylum seekers effectively returned (voluntary and enforced). It sets out the context for the Study and the measures that can be taken during the asylum procedure as well as the approaches to rejected asylum seekers.*

**Q1.** To what extent is the non-return of rejected asylum seekers considered a major issue in your Member State? Is the return of rejected asylum seekers a national policy priority? Please provide qualitative evidence e.g. from reports, political debate and media reports (*quantitative evidence is requested in subsequent questions so should not be covered here*)

**R**eturns of foreigners not possessing any legal residence permit including rejected asylum applicants is a priority for the Czech Republic. Security of inhabitants of the Czech Republic and effective law enforcement in the areas of irregular migration, return policy and organized crime related to smuggling and trafficking in human beings are among main principles of the Strategy on Migration Policy of the Czech Republic which was approved by the government in session on July 29, 2015.

„Maintaining effective return policy while assuring transparency, respect to human rights and dignity” represent one of the goals defined at the national level. Simultaneously, “supporting common return policy of the European Union, mainly achieved by effective cooperation in the framework of dialogue with third countries – primarily through negotiation and implementation of readmission agreements or via participation in common activities at the EU level, including activities coordinated by Frontex” represent main goals at the EU level.

Generally, **rejected applicants for international protection do not represent any significant burden for Czech authorities.** Therefore, an introduction of any new or

specific measures and procedures tailored to this particular group was not considered necessary. Thus, statistical data on the figures of rejected applicants for international protection who were not or could not be returned (also see below) are not monitored separately. Also, no official analysis or study on this matter has been elaborated.

**Q2.** Please provide national statistics available on:

- The total number of rejected asylum seekers who were issued an enforceable return decision in 2011–2015 disaggregated by sex;<sup>21</sup>
- The number of rejected asylum seekers who were effectively returned from your Member State to third countries in 2011–2015 (if possible disaggregated by sex and by type of return (voluntary/assisted voluntary/forced)).

The information on the total number of rejected asylum seekers returned, as well as data for the top ten citizenships of rejected asylum seekers in your Member State in the period 2011–2015 disaggregated by sex are requested.

These statistics are not available.

The figures of foreigners who were issued with a return decision are not monitored in relation to the figures of rejected applicants for international protection. Also, the figures of rejected applicants for international protection who were issued with a return decision (decision on administrative expulsion) and who were subsequently returned are not monitored. Data on the history of the applicant can be obtained from the information systems only regarding the individual applicant – information systems do not provide this information in connection to all concerned persons.

The Czech Republic has only the figures of those applicants for international protection who withdrew their application or whose application was rejected and who at the same time requested assistance for the realisation of voluntary return. Nevertheless, these figures concern all voluntary returns of rejected applicants for international protection, meaning that also persons who were not issued a decision on administrative expulsion are included in those figures.

**Returns related statistics are only available on all third country nationals.**

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<sup>21</sup> As outlined in section 2.1 of this Common Template, this group includes rejected asylum seekers who may yet be able to appeal the decision on their asylum case, but who are nonetheless obliged to return under return legislation.

**Q3.** Please provide national estimates, disaggregated by sex, of (a) the share of rejected asylum seekers out of the total number of TCNs issued a return decision in 2011–2015 and (b) the share of rejected asylum seekers issued a return decision who were effectively returned, by indicating whether the share is:

- a) Between 90 to 100%
- b) Between 51 to 90%
- c) Between 31 to 50%
- d) Less than 30%

These estimates may be made available through national studies, or may be identified through consultation with relevant national authorities for the purpose of this study.

Even though the debate between the relevant national authorities took place, experts on the matter concluded that they do not have sufficient data to provide national estimates.

**Q4a.** If available, please provide any national estimates on the total number of rejected asylum seekers disaggregated by sex who, despite having been imposed a return decision, continue to reside in your Member State during the period 2011–2015 because they could not be returned (see also sections 3 and 4)?

The Czech Republic does not monitor such data.

**Q4b.** Please provide, if possible, a breakdown of the statistics described in 4a by **reason for non-return**. If statistics are not available disaggregated by reason, please describe any qualitative evidence of the main reasons in your Member State for the non-return of rejected asylum seekers described in 4a. *Reasons may include the successful or on-going appeal of the asylum decision, the successful or on-going appeal of the return decision, problems with readmission, returnee resistance, etc. Please note that more detailed questions on challenged to return are outlined in section 4.*

In the Czech Republic, the return decision is usually issued before the commencement of the procedure for international protection and thus its enforceability is postponed

until the time when the procedure for international protection is completely finalised, meaning when all legal remedies have been exhausted. Therefore, this cannot be regarded as a reason why the concerned person has not returned as he/she is not obliged to do so as a return decision is not enforceable.

Not all rejected applicants for international protection are issued with a return decision (decision on administrative expulsion). If a return decision does not precede the lodging an application for international protection, it is then issued only if the person concerned – after the finalisation of procedure for international protection – does not leave the territory of the Czech Republic within the specified period of time given for the voluntary departure and is then found to be illegally present in the territory of the Czech Republic. The time period given to leave the territory differs; approximately it counts to 1 month.

The Foreign Police do not always enforce the administrative expulsion of persons issued with a return decision. The main reasons why returns cannot be carried out are described in the section 3.

*CZ Note: The question is misleading in the context of our practice. An appeal against the return decision and also a legal action against the decision in the matter of international protection have suspensive effect and thus a person is entitled to remain in the territory of the Czech Republic. According to the Czech Republic, this cannot be regarded as a reason why the person has not returned – the decision is not enforceable and thus the person does not have the obligation to leave the territory.*

## section

## MEMBER STATES' POLICIES AND MEASURES VIS-À-VIS REJECTED ASYLUM SEEKERS AT THE POINT OF REJECTION

*The purpose of this section is to describe at what stage of the asylum procedure an asylum seeker can be issued an enforceable return decision and what happens when the enforceable return decision is issued.*

### SECTION 2.1: HOW ASYLUM DECISIONS TRIGGER THE ISSUANCE OF THE RETURN DECISION

**Q5** At what stage in the asylum decision-making procedure can an enforceable return decision (i.e. one that can lead to the return of the asylum seeker) be *issued*? Please select one of the following options:

- a) after the first instance decision (all applications for international protection);
- b) after the first instance decision (only for applications for international protection considered unfounded – e.g. if they are lodged by an applicant from a safe country of origin);
- c) after *some* appeals on the asylum decision have been lodged, but before *all* possibilities for appeal on the asylum decision have been exhausted;
- d) only after *all* asylum appeals have been exhausted;
- e) under other circumstances (*please describe*).

e) The return decision can be issued at any stage (depending on the reason why it is issued). The enforceability of the issued decision is postponed by lodging an application for international protection. The decision is usually issued before the commencement of the international protection procedure, but it can be issued even after its finalisation. Regarding the last mentioned option, it can only be issued at the moment when the concerned person does not leave the territory of the Czech Republic within the time period determined by law or specified by the return decision and is then found to be illegally present in the territory of the Czech Republic.

**Q6.** If the return decision can enter into force *before* all asylum appeals have been exhausted, how often, in practice does this lead to the applicant being returned? (e.g. in all cases, most cases, some cases, rarely, never)?

**N**ever.

If a legal action against the decision in the matter of international protection automatically has a suspensory effect or in case a person asks for its suspensory effect (suspensory effect is not automatic in all cases), the person cannot be returned even if the return decision is legally effective (as it is not enforceable).

**Q7a.** Is the authority responsible for issuing the return decision in your Member State the same as the authority who is responsible for making decisions on the application for asylum? *Yes/No*

If no, how do these authorities coordinate and communicate to ensure that asylum decisions trigger the return procedure at the right time? *Please describe any coordination arrangements and how they work in practice.*

**T**he authority responsible for the issuance of return decision (the Foreign Police) is not responsible for the decision in the matter of international protection (the Ministry of the Interior is the authority responsible in this matter). In case a foreigner is held in the detention centre, then the Foreign Police is informed about the finalisation of the international protection procedure by the Department for Asylum and Migration Policy of the Ministry of the Interior. In other cases, when a foreigner is not placed in the detention centre, such data can be obtained from available information systems (AZYL – Asylum, CIS – Foreigners’ Information System).

**Q7b.** When a decision on an asylum application triggers a return decision, how soon after the rejection is the return decision issued? Please select among the following options:

- a) The return decision is issued at the same time the decision rejecting the asylum application enters into force/becomes executable.
- b) The return decision is issued within 24 hours of the rejection decision entering into force/becoming executable.
- c) The return decision is issued within a week of the rejection decision entering into force/becoming executable.
- d) The return decision is issued within a month of the rejection decision entering into force/becoming executable.

Please provide further details on current practice in your Member State, in particular if not covered under the options above

**I**n vast majority of cases, a return decision (decision on administrative expulsion) usually precedes the lodging of an application for international protection.

**Q8.** In your Member State, is it possible to use the information that is obtained from the applicant in the course of the asylum procedure for the purposes of facilitating return? *Yes/No*

*If yes, is such information regularly used? (for example, documentation and declarations that were made as part of the asylum claim, family connections stated, etc. may be used after a return decision has entered into force as supporting evidence for the purpose of establishing identity and obtaining travel documents to the relevant (consular) authorities of the third country)*

**Y**es, it is possible and used in practice – however, the Police also can verify and obtain most information from available information systems.

Moreover, the Department for Asylum and Migration Policy of the Ministry of the Interior always issues (at the request of the Police) a **legally-binding opinion** for the decision-making in the matter of administrative expulsion by which it states whether the concerned foreigner can leave the territory of the Czech Republic to the country of return (evaluation of non-refoulement).

## SECTION 2.2: IMMEDIATE CONSEQUENCES FOR REJECTED ASYLUM SEEKERS REQUIRED TO RETURN

**Q9.** What are the immediate consequences for the rejected asylum seeker of the return decision entering into force? Please answer this question by completing the table below.

**Table 2.1: The immediate consequences for the rejected asylum seeker of the return decision entering into force**

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
<b>Accommodation</b>			
Can the applicant stay in reception centres once rejected? Yes/No	Yes	Yes	
If you stated yes above, please indicate for how long after receiving the return decision they can stay in the reception centre (e.g. X days or 'until the return decision is enforced and the individual returns')	<p>To remain in the centre is possible until the return is carried out in case a rejected applicant for international protection applies for voluntary return.</p> <p>The existence of return decision does not have any impact on the possibility to stay in the centre.</p>	<p>The time period during which foreigners can remain in the centre differs as follow:</p> <p>If a rejected applicant for international protection applies for voluntary return, then this person remains in the center for the period necessary for the organisation of return – on average for the period of one month from the moment when the decision in the matter of international protection is delivered to the participant of the proceedings. The total period also depends on the fact whether the foreigner is in possession of a valid travel document. If not, then the period is being prolonged until documents are being secured.</p>	

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
<b>Accommodation</b>			
<i>If you stated no above, are they accommodated elsewhere (e.g. special open return centres) or elsewhere? Yes/No and – for yes, briefly describe accommodation service provided</i>	N/A		
<b>Employment</b>			
<i>Are rejected applicants entitled to access / continue accessing the labour market? Yes/No</i>	No		
<i>If yes, please indicate for how long after receiving the return decision they can continue to work (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	N/A		
<i>If yes, please describe any specific conditions attached to their employment</i>	N/A		
<b>Welfare</b>			
<i>Are rejected applicants entitled to receive any social benefits?</i>	Yes		
<i>If yes, please briefly describe what these benefits are</i>	<p>Foreigners can receive <b>exceptional immediate aid</b> (as one of the three benefits of assistance available for persons in material need).</p> <p>A person receives exceptional immediate aid from the state in case he/she is not entitled to other assistance in material need, namely to living assistance and the housing supplement, but still the person has so little money that he/she is exposed to the risks of bodily harm (for example he/she is not in possession of money necessary to buy medicine and basic food). In such cases exceptional immediate aid is paid out in the amount which settles an income of an applicant about the aid to the subsistence level. In case of a dependent child to the level of living minimum. Aid can be provided repeatedly.</p>		

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
<b>Welfare</b>			
<i>If yes, please indicate for how long after receiving the return decision they can continue to receive the benefits (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	Aid can be obtained repeatedly.		
<b>Healthcare</b>			
<i>Are rejected applicants still entitled to healthcare? Yes/No</i>	<p>Yes. – in cases when the time period for leaving the territory of the Czech Republic specified in the return decision (decision on administrative expulsion) is still ongoing.</p> <p>No. – in cases when a foreigner has not been issued a return decision yet (if the decision in the matter of international protection has been made and the period for leaving the country (voluntarily) is still ongoing – in such cases a foreigner is issued a departure order).</p>		
<i>Does it include all healthcare or only emergency healthcare?</i>	It includes healthcare which is urgent and necessary specified by the §176a of the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic, as amended.		
<b>Education</b>			
<i>Are rejected applicants still entitled to participate in educational programmes and/or training? Yes/No</i>	Yes. Compulsory (and free of charge) school attendance for children is required until the departure from the country.		
<i>If yes, please indicate for how long after receiving the return decision they can continue to participate in educational activities (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	Yes. Compulsory (and free of charge) school attendance for children is required until the departure from the country.		
<b>Other?</b>			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	N/A		

**Q10.** When a rejected asylum seeker receives an enforceable return decision, what measures does the Member State take to enforce the return decision and prevent absconding (e.g. regular reporting)?

**R**egarding rejected applicants for international protection, a return decision (decision on administrative expulsion) can be enforced by imposing special measures for the purpose of leaving the territory (remaining in the registered place of stay, submitting financial guarantees, reporting at the Police) and in case of the violation of the imposed measure the concerned foreigner can be placed in the detention centre.

### SECTION 2.3 POSSIBILITIES FOR APPEALING THE RETURN DECISION

**Q11.** Are asylum seekers who have received an enforceable return decision able to lodge an appeal on the decision, before being returned? *Yes/No*

If yes, under what conditions can the appeal be lodged?

**I**f there is still the possibility to appeal against the return decision, the decision is not enforceable. Moreover, if a person has the status of an applicant for international protection, any return cannot be carried out.

If a decision in the matter of administrative expulsion is issued, the issuance itself does not make the decision to be immediately legally effective and enforceable. There is a time period during which a person can appeal against the return decision – during this period the decision is not enforceable and the return thus cannot be carried out. An appeal against the return decision and also legal actions against the decision in the matter of international protection have a suspensory effect.

**Q12.** How frequently does an appeal on the return decision prevent the return of rejected asylum seekers (e.g. in all cases, most cases, some cases, rarely, never)? Do rejected asylum seekers appealing their return have a better chance of a positive decision on their return appeal than other third-country nationals required to return appealing the return decision? *Yes/No (and please explain your response)*

**E**ssentially in all cases.

Rejected applicants for international protection who have appealed against the return decision, do not have a higher chance that their appeal will be allowed in comparison to other third country nationals who have also made an appeal against the return decision.

#### **SECTION 2.4 POSSIBILITIES FOR LODGING SUBSEQUENT ASYLUM APPLICATIONS**

**Q13.** Are asylum seekers who have received an enforceable return decision able to lodge a subsequent application in your Member State, before being returned? *Yes/No*

If yes, under what conditions can the subsequent application be lodged

**YES.**

The subsequent application cannot be lodged if the subsequent application has not been lodged during the time when the return is carried out (this condition applies for every subsequent application).

The application can be lodged during the first seven days of the stay in the detention centre – this condition does not apply to refugees “sur place”.

**Q14.** Is the fact that the application was lodged *after* a return decision was issued taken into account in assessing the *credibility* of the subsequent application? *Yes/No*

If yes, does the issuance of the return decision make a negative decision on the subsequent application more likely? *Please refer to studies or governmental documents that provide evidence of these effects*

**NO.**

## section

## 3

## CHALLENGES TO THE RETURN OF REJECTED ASYLUM SEEKERS AND MEMBER STATES' POLICIES TO MANAGE THESE CHALLENGES

*The purpose of this section is to discuss some of the factors that can prevent the return of rejected asylum seekers and to identify any good practices to managing or preventing these. The description of the challenges to return will build on the results of EMN AHQs and other literature, as identified in section 5 of the background/context to this Common Template.*

*The section also asks Member States to identify specific challenges which have proven difficult to address and for which no effective measures have, to date, been identified.*

*The box below lists the identified challenges to return which the remainder of this section will build on.*

### **Main challenges to return**

The Ad-Hoc Queries as listed in section 5 of the background to this Common Template requested information on the main challenges to return as under the Return Directive. National responses indicate that Member States consider the main challenges to both voluntary and forced return to include:

**Resistance** of the **third-country national** to return, which can take the form of:

- Physical resistance and restraint
- Self-injury (including hunger striking)
- Absconding

Note that third-country nationals may resist return for a variety of reasons including poor employment prospects on return, poverty and poor infrastructure in the country of return, levels of corruption in the country of return etc. and it may be relevant to address these drivers in trying to mitigate the challenge, as well as trying to address the challenge itself;

**Refusal** by the **authorities** in **countries of return** to readmit their citizens, particularly when they have been returned forcibly (*inter alia* Afghanistan, Eritrea,

Ethiopia, Rwanda and South-Central Somalia refuse to accept their nationals returned forcibly against their will);

**Refusal** by the **authorities** in **countries of return** to issue travel documents;

**Refusal** by the **authorities** in **countries of return** to issue identity documents;

Problems in the **acquisition of travel documents** – especially when no copies of the originals are available (and e.g. identification can only be verified through fingerprints) or when citizenship is complex (e.g. involving married couples from different countries or citizens who were born in another country);

**Administrative and organisational challenges** due to e.g. a lack of Member State diplomatic representation in the country of return, which can slow down administrative procedures (e.g. make any obligatory consular interviews costly and challenging to arrange) and make negotiations more difficult.

Additionally, in preparing this Common Template, members of the Advisory Group have indicated that the following is a challenge to return:

**Medical reasons** – i.e. if the returnee has a medical problem rendering travel difficult or impossible.

**Q15.** Are there any other challenges to return that your Member State experiences which are not mentioned in the box above? *Yes/No*

**NO.**

**Q16.** In general, Member States undertake a broad range of measures to manage challenges to implementing return. Examples of measures that are undertaken, matched to the challenges, are mapped in the table below.

Please indicate with yes/no which measures your Member State implements and, if necessary, include other measures not (yet) listed in the table. If relevant, add comments to further explain your Member States' policy related to a specific measure.

Challenges to return	Challenges to return Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
Resistance of the returnee to return	Development AVRR programmes	Yes	No
	Detaining rejected asylum seekers to prevent absconding	Yes	No
	Physical force	Yes	No
	Surprise raids to enforce removal	No  There are ongoing residential checks targeted at revealing foreigners illegally residing in the Czech Republic with the aim to carry out their subsequent return. However, such controls are not targeted only at rejected applicants for international protection as they address all foreigners as such.	No
	Delay or cancellation of the return procedure	<i>CZ note: The Czech Republic does not regard this measure as a measure managing a challenge. If a foreigner shows resistance, then the delay or cancelation of the return does not seem as a way to manage a challenge.</i>	
	Other?	X	X
Refusal of authorities in countries of return to readmit citizens	Readmission Agreements (EU and/or national)	Yes	No
Refusal by the authorities in countries of return to issue travel documents	Bilateral cooperation with third countries/ establishment of diplomatic relations	Yes	No
Refusal by the authorities in countries of return to issue identity documents	Establishment of representations in third countries	No	No

Challenges to return	Challenges to return Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
	Offering positive incentives, e.g. aid packages, to third countries' authorities	No	No
	Applying political pressure on third countries' authorities	The topics of returns and dealing with irregular migration represent common component of bilateral dialogues.	No
	Delay or cancellation of the return procedure	<i>CZ note: The Czech Republic does not regard this measure as a measure managing a challenge. If a foreigner shows resistance, then the delay or cancelation of the realisation of return does not seem as a way to manage a challenge</i>	
	Other?	X	X
Problems in the acquisition of travel docs	Repeating fingerprint capture attempts/using special software to capture damaged fingerprints	No	No
	Using interpreters to detect cases of assumed nationalities	No	No
	Detention	Yes	No
	Offering positive incentives, e.g. aid packages to third countries' authorities	No	No
	Applying political pressure on third countries' authorities	The topics of returns and dealing with irregular migration represent common components of bilateral dialogues.	No
	Delay or cancellation of the return procedure	<i>CZ note: The Czech Republic does not regard this measure as a measure managing a challenge. If a foreigner shows resistance, then the delay or cancelation of the realisation of return does not seem as a way to manage a challenge.</i>	
	Other?	X	X

Challenges to return	Challenges to return Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
Administrative/ organisational challenges	Budget flexibility	Yes	No
	Coordination arrangements between authorities	Yes	No
	Designation of a Service Provider in third countries	No	No
	Establishment of a diplomatic representation in third countries	No	No
	Delay or cancellation of the return procedure	X	X
	Other?	X	X
Medical reasons	Organising medical transfer	Yes	No
	Facilitating medical support in the country of destination	No	No
	Medical supervision during travel	Yes	No
	Delay or cancellation of the return procedure	X	X
	Other?	X	X
Other challenges? Please describe and add rows if necessary	Please specify	Please specify X	Please specify X

**Q17.** From your experience, can you indicate if there are any challenges which affect the return of *rejected asylum seekers* more greatly than third-country nationals in general? *If there is no difference in the efficacy of returning rejected asylum seekers vis-à-vis third-country nationals in general please specify "no difference".*

**N**o difference.

**Q18.** Has your Member State recently introduced any new measures/policies to ensure the return of third-country nationals (e.g. following the exceptional flows of asylum seekers arriving in the EU since 2014)?

**D**ue to significantly increased numbers of foreigners coming to the Czech Republic various measures were introduced in 2015. In vast majority of cases, foreigners apprehended in the territory of the Czech Republic illegally were refusing to lodge an application for international protection in this country.

In these circumstances, the capacity of accommodation centres – mainly of detention centres – (including staffing) has been increased.

Moreover, in relation to implementation of returns, the cooperation with embassies of the countries whose nationals represent the heaviest burden to the Czech Republic has been strengthened. It concerns mainly embassies of Iraq, Pakistan, and Afghanistan. Enhanced cooperation basically aimed at setting cooperation and generally at increasing the number of implemented returns.

The introduction of conducting of consular interviews at the Directorate of Foreign Police Service (instead of in detention centres which was the previous practice) also supported the realisation of returns.

The Czech Republic also joined the common activities of the Member States at the European level, such as projects EURINT<sup>23</sup> and EURLO<sup>24</sup>.

<sup>23</sup> <http://www.eurint-network.eu/>

<sup>24</sup> EURLO aims at stimulating country of origin-focused operational cooperation, notably through Return Liaison Officers in key countries.

**Q19.** Are you able to identify, from the measures as set out in the table above, any good practices, i.e. measures that have proven particularly effective in overcoming challenges to return of rejected asylum seekers specifically?

**A**ll above-mentioned measures stated in the Question 18 are generally connected to the returns of foreigners illegally residing in the Czech Republic whose majority has not lodged an application for international protection in the Czech Republic at all.

**Q20.** Are there any challenges to return which your Member State has so far been unable to address effectively through any counter-measures? *Yes/No*

If yes, please describe the most pressing challenges here and explain why they are so challenging in practice, elaborating on why the counter-measures implemented have not proven effective.

**YES.**

The Czech Republic faces a number of challenges in connection to returns of foreigners. We can mention for example insufficient cooperation from the side of some states to which the foreigners are to be returned. For instance, some embassies do not cooperate as regards the issuance of replacement travel documents by impeding or obstructing the issuance of new passports which are necessary for the returns to be carried out.

## section

## 4 WHAT HAPPENS WHEN RETURN IS NOT IMMEDIATELY POSSIBLE?

*The purpose of this section is to present an overview of the approaches followed by the Member States to deal with those rejected asylum seekers who, for various reasons, cannot return/be returned. It focuses in particular on the status granted and the conditions of stay available to this group.*

**Q21.** If it becomes clear that a rejected asylum seeker cannot return / be returned, does a national authority official acknowledge this? Yes/No

If no, what happens? Can the rejected asylum seeker continue to be issued return orders even though it has been established that they cannot be immediately returned, or is it communicated to the police/enforcement authorities that the person should be left to remain temporarily?

**YES.**

The impossibility to return has to be acknowledged by the administrative body. Otherwise, the concerned person is regarded as illegally present in the territory of the Czech Republic. If a person claims that she/he cannot return, the person can apply for a long-term visa – **leave to remain** according to the Act. No. 326/1999 Coll., on Residence of Foreign Nationals in the Territory of the Czech Republic, as amended.

If a foreigner has been already issued a return decision (decision on administrative expulsion), he/she can ask for the determination of a new time period necessary for leaving the territory of the Czech Republic.

The possibility to leave the territory of the Czech Republic is also being examined during the prospective procedure in the matter of administrative expulsion in cases a person has been detected by the Police to be illegally present and has not applied for any residence status.

With respect to the international obligations and commitments, if the impossibility to return is acknowledged, the foreigner is issued ex officio a long-term visa – leave to remain in the territory of the Czech Republic. The person shall subsequently lodge an application for international protection.

**Q22a.** If it is formally acknowledged that a person cannot be (immediately) returned, who makes this formal decision? On the basis of which criteria is the decision made?

**T**he Ministry of the Interior – if a person himself/herself applies to remain in the territory.

The Police – in the framework of procedure in the matter of administrative expulsion if a person illegally present in the territory of the Czech Republic is detected. Legally-binding opinion on the possibility to leave the territory of the Czech Republic issued by the Ministry of the Interior of the Czech Republic serves as the background for the procedure.

The Police – if the person asks for the determination of a new period for leaving the territory.

**Q22b.** Is an official status granted to individuals who cannot be (immediately) returned? (if no status is granted, please write "no status granted"). In what circumstances may this be granted?

**Y**es. If a foreigner cannot return, then the status (visa for over 90 days – leave to remain) is granted.

**Q22c.** If a status is granted, what advantages and disadvantages does the granting of such status to those who cannot return/be returned bring to the authorities of your Member State? *(e.g. advantages may include the possibility to maintain contact with the non-returnee in case return becomes viable in the future, the possibility for the non-returnee to contribute to society in the Member State, etc. and disadvantages may include the increased pressure on resources and the threat to the credibility of the asylum system)*

**A**s such situation does not happen often it does not have any significant impact on the authorities of the Czech Republic.

**Q23.** What rights are available to rejected asylum seekers who are not able to return immediately? *Please answer this question by completing the table below.*

**N**ote:

The table takes into consideration the status of persons who were already issued a visa for the purposes of "leave to remain". The data do not only concern rejected applicants for international protection

**Table 2.1: Rights and services available to rejected asylum seekers who cannot be immediately returned**

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
<b>Accommodation</b>			
<i>Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/No</i>	No	No	
<i>If you stated yes above, please describe the circumstances under which the accommodation can be provided</i>	–	–	
<b>Employment</b>			
<i>Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No</i>	Yes		
<i>If you stated yes above, please describe the circumstances under which they can access the labour market</i>	They need to be in possession of work permit.	–	
<b>Welfare</b>			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes/No</i>	Yes		
<i>If you stated yes above, please briefly describe what these benefits are</i>	Foreigners can receive exceptional immediate aid (as one of the three benefits available as an assistance for persons in material need)		
<i>If you stated yes above, please briefly describe under what conditions these benefits can be provided</i>	<p>A person in material need is defined by §2 of the Act No. 111/2006 Coll., on Assistance in Material Need, as amended. As it is a general norm, it does not concern only exclusively rejected applicants for international protection.</p> <p>The state of affairs of rejected applicants for international protection is well described by paragraph 6: (6) as a person in material need can be regarded a person who at a given time with respect to</p>		

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
	<p>his/her unsatisfactory social background and insufficient financial means is unable to successfully solve his/her situation and is thus endangered by social exclusion, if particularly:</p> <p>a) is released from detention, custody or imprisonment, or</p> <p>b) is released after the termination of treatment on addictive diseases from the medical facility of the healthcare service provider, psychiatric hospital or from the treatment facility for addictive diseases , or</p> <p>c) is released from the school facility of institutional education or protective education or from foster care when coming of age, respectively at the age of 19, or</p> <p>d) his/her vital needs are not satisfactorily met as regards the fact that the person is without shelter, or</p> <p>e) a person whose rights are endangered by criminal activity of another person.</p>		
<b>Healthcare</b>			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to healthcare? Yes/No</i>	Yes. They are participants of public health insurance if they cannot secure health insurance otherwise.	In vast majority of cases, persons are able to secure health insurance on their own.	
<i>Does it include all healthcare or only emergency healthcare?</i>	<p>If they can afford securing commercial insurance, medical procedures are covered as regards the terms and conditions anchored in the contract.</p> <p>If they are the participants of the public health insurance, basic procedures are covered by the public health insurance.</p>		
<b>Education</b>			
<i>Are rejected asylum seekers who cannot be immediately returned still entitled to participate in educational programmes and/or training? Yes/No</i>	They have access to the education system in Czech language as persons legally residing in the Czech Republic.		

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
<p><i>If you stated yes above, please briefly describe under what conditions they can participate in educational <b>programmes and training</b></i></p>	<p>Foreigners generally have (according to the Act No. 561/2004 Coll., on Pre-school, Basic, Secondary, Tertiary Professional and Other Education (the Education Act), as amended)), access to:</p> <p>According to the Section 20 (paragraph 2):</p> <p>a) basic education including institutional education and protective education provided that they <b>legally reside in the Czech Republic,</b></p> <p>b) meals that are provided at schools, school clubs organised by a school facility in order to further develop hobbies and interests of pupils, regular day school attendance, and in the case of pupils of a basic school, to relevant grades of a secondary school or relevant grades of a conservatory;</p> <p>c) secondary education, tertiary professional education, including institutional education and protective education provided that they legally reside in the Czech Republic;</p> <p>d) pre-school education, basic artistic education, language education and school services under this Act if they are in possession of a <b>residence permit of the Czech Republic exceeding ninety (90) days</b> and reside in the Czech Republic, or are persons who are permitted to reside in the Czech Republic for the purpose of research, recognized refugees, applicants for international protection, or persons granted subsidiary or temporary protection.</p> <p>According to the paragraph 3.</p> <p>(3) Persons specified in sub-section 2 (c) and (d) shall become children, pupils or students of a relevant school or a school facility under the conditions according to this Act if they prove to the <b>head teacher of the school or school facility that they legally reside in the Czech Republic</b></p>		

Questions	...according to law	...as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
	<p><b>no later than the commencement date of education or provision of school services.</b> Legal residence shall be proven by a document specified under the special legal regulation.</p> <p>These persons can also study at the <b>university</b>.</p>		
<b>Other?</b>			
<p><i>Are any other measures taken which are relevant to mention here? Please describe</i></p>			

**Q24.** In terms of status and/or rights, does your Member State make a difference between those who cannot return / be returned through no fault of their own and those who are considered to have hampered their own return? *Yes/No*

If yes, (i.e. if you differentiate between these two groups), please describe the reasons for this differentiation and the method used to distinguish the two.

**YES.**

Persons who have hampered their own return are then illegally present in the territory of the Czech Republic and they are not provided with any status. In the majority of cases, return is hampered by the foreigner in the detention centre. This can lead to the extension of detention even for the period exceeding 180 days (up to 545 days).

**Q25.** Can persons who are not immediately returnable also be eligible for regularisations?  
Yes/No

If so, under what circumstances?

**T**he Czech legislation does not recognize regularisation.

The possibility to apply for a long-term visa for the purposes of leave to remain (toleration visa) is described in the previous answers.

**Q26.** Does your Member State regularly assess the possibilities of return for rejected asylum seekers who could not immediately return/be returned? If so:

- a. What are the mechanisms for this assessment?
- b. How regularly is it undertaken?
- c. Which types of persons does it cover (i.e. does it cover all persons who cannot return/be returned or only those not granted a status)?
- d. Is there a point at which an alternative to return (e.g. regularisation) becomes possible? If so, on what criteria is it decided that the alternative to return should apply?

a)+b) The Department for Asylum and Migration Policy of the Ministry of the Interior always issues (if requested by the Police) the legally-binding opinion necessary for the decision in the matter of administrative expulsion which determines whether leaving the country is possible (evaluation of non-refoulement).

c) All foreign nationals who cannot (be) return(ed)

d) The Czech legislation does not recognize regularisation (see also Q21)

According to the Czech legislation, the return decision is issued separately (not as a part of the decision in the matter of international protection), on the grounds of legitimate reasons before the commencement of the procedure for international protection or if a concerned foreigner acts in the way foreseen by the law, then after the negative decision on the application for international protection. In both cases, the foreigner is issued a departure order and also the time period during which he/she is obliged to leave the territory of the Czech Republic is determined.

If legitimate reasons are met, the concerned foreigner can be detained for the purposes of the execution of administrative expulsion (meaning the execution of the return decision). In such cases, the Police are obliged to regularly confirm that the reasons for detention are still persisting. The Police are also obliged to take steps leading to foreigner's departure from the territory of the Czech Republic – such steps should be even taken repeatedly if not previously successful.

**Q27.** Do you have any evidence that rejected asylum seekers who could not be immediately returned were eventually returned during the period 2011–2015? *Evidence may include government reports, studies conducted by research institutes or migrant rights groups or testimonies of returned individuals.*

**S**uch data are not available.

## section

## 5

## LINKING RETURN POLICY TO THE ASYLUM PROCEDURE: MEMBER STATES' POLICIES AND MEASURES TO ENSURE THAT UNFOUNDED CLAIMS LEAD TO SWIFT REMOVAL AND TO PREPARE ASYLUM SEEKERS FOR RETURN

*This section aims to explore interlinkages between the national asylum systems and Member States' return policies. It aims to provide an overview of: 1) measures that Member States have in place to ensure that unfounded claims lead to the swift removal of the concerned person (in line with the EU Return Package and Article 31(8) of the Asylum Procedures Directive), and; 2) existing national approaches/ practices to prepare asylum seekers for (voluntary) return before a final decision on the asylum application has been taken.*

### SECTION 5.1 ACCELERATED PROCEDURES

*According to recital 20 of the recast Asylum Procedures Directive (Directive 2013/32/EU), "in well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive". Accelerated procedures can help Member States to facilitate a swift return for asylum seekers whose applications are likely to be rejected. This sub-section explores whether – and under what circumstances – Member States use accelerated procedures.*

**Q28.** Did your Member State make use of accelerated asylum procedures, as stipulated in Art. 31 (8) of the recast Asylum Procedures Directive 2011–2015? *Yes/No*

If yes, for what reasons/in what circumstances does your Member State make use of such accelerated procedures? Please complete the table below. *Please indicate in the "comments" column if the measure is no longer applied, describing, if possible, why the measure was discontinued.*

Grounds for accelerating the examination procedure	Is it policy <sup>25</sup> which accelerates the examination procedure when the application presents these characteristics? <i>Yes/No</i>	If policy, is the policy applied in practice to date? <i>Yes/No</i>	How often does this happen in practice? <i>in all cases, most cases, some cases, rarely, never</i>	What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal?
Applicant only raised issues not relevant to the examination	Yes	If the reasons exist, then they are applied in practice.	In some cases.	In general, terms are partially shorter and not all legal actions have automatically a suspensory effect.
Applicant is from a safe country of origin	Yes			
Applicant can return / be returned to a safe third country in line with Art. 38 of the Asylum Procedures Directive or equivalent national law	Yes, addressed by the inadmissibility of the request.			
Applicant misled the authorities by presenting false documents/ information, withholding of info/ docs	Yes			
Applicant destroyed documents intentionally to make assessment difficult	Yes			
Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI)	Yes			

<sup>25</sup> It is an act, not a policy.

Grounds for accelerating the examination procedure	Is it policy which accelerates the examination procedure when the application presents these characteristics? <i>Yes/No</i>	If policy, is the policy applied in practice to date? <i>Yes/No</i>	How often does this happen in practice? <i>in all cases, most cases, some cases, rarely, never</i>	What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal?
Applicant lodged an inadmissible subsequent application	Yes, addressed by the inadmissibility of the request.			
Applicant lodged an application to delay or frustrate enforcement of removal	Yes			
Applicant irregularly entered the territory and did not present him/herself to the authorities	No			
Applicant refuses to comply with the obligation to have his/ her fingerprints taken	Yes			
Applicant poses danger to national security or public order	No			
Other? (please specify and add rows if necessary)	<p>A person without having serious reasons states false information about his/her identity or nationality or refuses to give such information.</p> <p>A person is in possession of more than one nationality.</p>			

**Q29.** Does your Member State have a list of safe countries of origin / safe third countries? Yes/No

If yes, when was this introduced and which countries are included?

**YES.**

### **Safe country of origin**

As stipulated by the Act on Asylum, the safe country of origin refers to the country of which the foreign national is a citizen or, if the foreign national is a stateless person, the country of his/her last permanent residence, where the government respects human rights and is capable of ensuring respect of human rights and legal regulations. The safe country of origin is not left by its citizens or stateless for the reasons of persecution for exercising political rights and freedoms or by persons who have a well-founded fear of being persecuted on the grounds of race, gender, religion, nationality, membership of a particular social group or for holding certain political opinions or for the reasons of threatening imminent danger of serious injury. It is a country which has ratified and complies with international agreements on human rights and fundamental freedoms and which allows legal entities supervising the state of compliance with human rights to carry out their activities.

### **Safe third country**

According to the Act on Asylum, a safe third country means a country other than that of which the foreign national is a citizen or, if the foreign national is a stateless person, the country of his/her last permanent residence, where the foreign national had stayed before he/she entered the territory of the Czech Republic and to which the foreign national may return and apply for refugee status pursuant to an international agreement without being subjected to prosecution, torture, inhuman or degrading treatment or punishment. Application can be rejected as clearly unfounded if an applicant for international protection comes from the state which is regarded by the Czech Republic as a safe third country.

The list of safe countries of origin and safe third countries existed for several years in the form of internal regulation. Since December 18, 2015 it was replaced by the decree. This decree defines the list of countries which the Czech Republic regards as safe countries of origin, safe third countries and European safe third countries.

The Czech Republic considers the following countries as safe countries of origin:

1. Albania,
2. Bosnia and Herzegovina,
3. Montenegro,
4. Island,
5. Kosovo,
6. Liechtenstein,
7. Macedonia,
8. Mongolia,
9. Norway,
10. United States of America,
11. Serbia,
12. Switzerland.

The Czech Republic has not established a list of safe third countries. The list is anticipated by the decree, however, it is empty.

The Czech Republic regards the following countries as European safe third countries:

1. Montenegro,
2. Moldova.

**Q30.** Does your Member State implement any other measures to ensure that unfounded claims lead to the swift removal of concerned persons? *Please describe such measures*

If a person is detained, the court which decides on the legal action against the decision in the matter of international protection has a time period of 60 days to make a decision in order to ensure that the review is done while the person is held in detention. Some legal actions (in line with the Procedure Directive) do not automatically have a suspensory effect. The time periods of detention according to the Act on Residence of Foreign Nationals in the Territory of the Czech Republic and on the Act on Asylum are not counted together – according to the Act on Asylum the maximum detention period is 120 days, according to the Act on Residence of Foreign Nationals in the Czech Republic it counts to 180 days (in exceptional cases up to 545 days) – detention according to one of the acts does not have any influence on the possibility of detention according to the other one.

As regards the submission of the third and subsequent application, the right to remain in the territory can be excluded; the person can thus be immediately expelled if in compliance with a principle of non-refoulement. Also, the obligation to secure material

benefits according to the Reception Directive does not apply to such persons. These provisions were introduced by the amendment in compliance with the Procedure Directive which came into force on December 18, 2015.

**Q31.** Have there been any recent changes to policy or practice **to ensure that claims considered unfounded lead to swift removal** (e.g. these may include changes to policy or practices with regard to accelerated procedures and the use of a list of safe countries of origin and/or other measures)? *Yes/No*

If yes, what are these changes? Why were they introduced (please specify if in response to the exceptional increase in asylum applications since 2014)? What are the likely effect of these changes (in particular to what extent will they contribute to ensuring the swift removal of applicants with unfounded claims)?

**YES.**

If a person is detained, the court which decides on the legal action against the decision in the matter of international protection has a time period of 60 days to make a decision in order to ensure that the review is done while the person is held in detention. The time periods of detention according to the Act on Residence of Foreign Nationals in the Territory of the Czech Republic and on the Act on Asylum are not counted together – according to the Act on Asylum the maximum detention period is 120 days, according to the Act on Residence of Foreign Nationals in the Czech Republic it is 180 days (in exceptional cases up to 545 days) – detention according to one of the acts does not have any influence on the possibility of detention according to the other one.

As regards the submission of the third and subsequent application, the right to remain in the territory can be excluded; the person can thus be immediately expelled if in compliance with a principle of non-refoulement. Also, the obligation to secure material benefits according to the Reception Directive does not apply to such persons. These provisions were introduced by the amendment in compliance with the Procedure Directive which came into force on December 18, 2015.

## SECTION 5.2 PREPARING ASYLUM SEEKERS FOR RETURN

**Q32.** Is it part of your Member State's policy on return to, early on and throughout different stages in the asylum procedure, prepare asylum seekers for return should their application be rejected? *Yes/No*

If yes, is this policy formalised in:

- a) official communications,
- b) soft law or is it
- c) standard practice of the authorities?

Please describe the main features of this policy/what it involves (e.g. informing asylum applicants of voluntary return opportunities, making AVR available to all asylum seekers). *Please note that this question is about **policy**. Please do not provide here information on the different approaches to inform asylum seekers about (voluntary) return. Such information is available in the EMN study on dissemination of information on voluntary return and should not be duplicated here, but can be cross-referenced to.*

**Y**es, the answer c).

The person is provided with the information on assisted voluntary return.

**Q33.** Have any recent changes taken place in your Member State policies with regard to *the preparation of asylum seekers for return* during the asylum procedure (notably following the exceptional flows of asylum seekers arriving in the EU since 2014)? *Yes/No*

If yes, please describe such changes.

**A**s regards the applicants for international protection, no significant change has occurred recently in this matter.

Regarding the preparation necessary for the departure of a foreigner from the territory of the Czech Republic, the Act on Residence of Foreign Nationals in the Territory of the Czech Republic has been amended. New amendment states that if a foreign national is

placed in the detention centre, the provider of the centre is obliged to secure – by the approval of a foreign national himself/herself – necessary preparations for the departure (§134 paragraph 5 of the Act on Residence of Foreign Nationals in the Territory of the Czech Republic).

**Q34.** If no specific approaches/measures are currently implemented, is your Member State planning to introduce a specific approach/measures to prepare asylum seekers for return whilst they are still in the asylum procedure?

Please specify when these will be implemented, explain what they will entail and further elaborate on their main drivers? *(E.g. new measures to reach out to newly arriving asylum applicants to inform them of return options will be introduced in July 2016 in response to the exceptional flows of asylum seekers arriving in my Member State).*

**N**o further measures are being currently in preparation.

## section 6

# CONCLUSIONS

*The purpose of this section is to draw conclusions as to the extent to which the Member State has targeted or otherwise appropriate policies and practices in place to ensure the return of rejected asylum seekers. It asks whether, based on the evidence presented in the study, Member State return policies and practices are tailored to rejected asylum seekers and whether any good practices exist in the Member States.*

**Q35.** Based on your answers provided, does your Member State tailor its return policies to rejected asylum seekers, and if so, how?

In general, returns represent one of the priorities of the migration policy of the Czech Republic. This priority encompassed in main strategic documents refers to all third country nationals regardless the fact whether these persons have applied for international protection in the past, or have not.

Foreign nationals whose applications for international protection have been rejected do not represent a heavy burden to the Czech Republic. Thus the introduction of any specific measures or procedures tailored to rejected applicants for international protection is not required.

From the same reason, the Czech Republic does not monitor statistical data on the numbers of rejected applicants for international protection who have not returned or who could not be returned. Also, no official analyses or studies have been elaborated regarding this matter.

**Q36.** Based on the evidence provided, which practices or policies in your Member State can be described as good practice approaches to return rejected asylum seekers?

**T**he Czech Republic has no specific practice targeted to returns of rejected applicants for international protection.

## **Returning Rejected Asylum Seekers: challenges and good practices**

■ ■ ■

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