



**Ad-Hoc Query on Removal Orders for illegally residing third-country nationals**

**Requested by FR EMN NCP on 3<sup>rd</sup> February 2010 (to LU, BE, ES, DE, IT, UK, NL only)**

**Compilation produced on 16<sup>th</sup> February 2010**

**Responses from [Belgium](#), [France](#), [Germany](#), [Italy](#), [Luxembourg](#), [Netherlands](#), [Spain](#) and [United Kingdom](#) (8 in Total)**

*Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

**1. Background Information**

Since the French government is going to present a bill in order to transpose European legislation into French law, the Ministry of Immigration would like to know about practices and measures undertaken by Member States regarding the return of illegally-residing foreigners once they are not entitled to reside anymore in the MS.

1. What is the deadline an illegally-resident third-country national (TCN) who has received an expulsion order needs to meet to apply for a new visa in order to be authorized to enter again your State?
2. How quickly does an illegally-resident third-country national who has received a deportation order have to leave your country?

It would be very much appreciated if we could receive your answers **by Monday 8<sup>th</sup> February 2010**.

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**2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Belgium</b>	<b>Yes</b>	<p>1. For a TCN who received an order to leave the Belgian territory: no fixed term: TCN, when obeyed the order, can apply for a visa immediately after his/her arrival in home country. TCN of course has to meet the criteria/conditions. In case of a forced removal: TCN has to refund the travel costs before he can receive a visa.</p> <p>2. The order to leave the territory stipulates how much time the recipient has to leave the territory, however there is no uniform time limit foreseen in the Aliens Act:</p> <ul style="list-style-type: none"> <li>• five days in general (eight days when the Return Directive will be applied)</li> <li>• thirty days for asylum applicants whose request has been rejected, and for applicants whose application for family reunification has been rejected, TCN who have been residing in Belgium for a long time, medical cases, minors (at least 30 days).</li> <li>• for a TCN with a legal status in a neighboring country (e.g. France): it is possible that no time limit is given, so that the TCN is obliged to leave the territory immediately (with the return directive this will no longer be possible: minimum 7 days)</li> <li>• forty five days for people who have filed an application according to the procedure for victims of human trafficking</li> </ul>
	<b>France</b>	<b>Yes</b>	<p>1. After receiving an expulsion order, an illegally-resident TCN can ask for a new visa in the French embassy once he is back to his country. <b>There is no fixed term</b> an illegal foreigner has to respect after being expelled. Nevertheless, in the framework of the directive 2008/115/EC on return of illegal immigrants, French authorities are thinking of introducing a time limit during which a foreign national who has received an expulsion order will not be entitled to apply for a visa to enter into French territory.</p> <p>2. An illegally-resident third-country national who has received a deportation order has to leave France within a <b>month</b>. In some cases which happen to be quite limited (decree of deportation from the country: arrêté préfectoral de reconduite à la frontière) the term is fixed to <b>48 hours</b>. These cases concern foreign nationals who reside illegally on the territory without any residence permits, and foreigners who represent a threat to public order.</p>
	<b>Germany</b>	<b>Yes</b>	<p>1. A foreigner who has been expelled, that is to say who has received an expulsion order may no longer enter and remain in Germany even if he/she would have a legal right to do so for other reasons. This ban on entering and remaining applies for an indefinite period, but may be time-limited at any time at the request of the foreigner. A time limit is however ruled out if the foreigner has been expelled because of a crime against peace, a war crime or a crime against humanity (the same applies in the event of deportation because of a particular danger to the security of the state or a terrorist danger emanating from the foreigner). Short-term exceptions from this may be permitted during the ban on entering and remaining if imperative reasons require the presence of the foreigner in Germany or refusal to grant an exception would constitute an unreasonable hardship. Such exceptions are ruled out for the above cases, in which also no time limit may be handed down. The legal basis is constituted by section 11 of the Residence Act (<i>Aufenthaltsgesetz</i>).</p>

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			<p>2. A deportation order is issued in writing in the event of a foreigner not voluntarily complying with his/her obligation to leave the country. A deadline is set for this. This exit deadline is at most six months from the time when no further appeal is available against the obligation to leave the country, and over and above this can only be extended in special hardship cases. If the foreigner is in detention or other public custody subject to a judicial order, and if he/she is to be deported from this detention, no deadline period is required for voluntary exit; deportation is however to be notified at least one week in advance. The legal basis is constituted by sections 50, 58 and 59 of the Residence Act.</p> <p>It is possible to issue an immediately-executable deportation order against foreigners who constitute a special risk to the security of the State or a terrorist danger. Such an order does not provide for voluntary departure, and hence does not contain a deadline for this. The deportation order may however not be executed prior to the expiry of the seven-day appeal period, and not before any appeal that has been lodged has been ruled upon. The legal basis for this is section 58a of the Residence Act.</p>
	<b>Italy</b>	<b>Yes</b>	<p>1. The re-entry ban (reported through the SIS to all Schengen countries) will last 10 years, unless Ministry of Interior special permission, but not less than 5 years (Consolidated Text on Immigration no. 286/1998, art. 13, par. 14). The ban does not apply to an alien deported for illegal entry or residence to which it is issued a nihil obstat for reunification (Lgs. Decree no. 5 / 2007)</p> <p>2. The expulsion is executed with notice to leave the territory of State within 15 days in cases of non-renewal application within 60 days following the deadline, except of those cases where there is a risk that the alien could escape from the obligation to leave the Country (Consolidated Text on Immigration no. 286/1998, art. 13, par. 5). In all other cases it's provided the immediate accompaniment at border. Whereas it's not possible to immediately proceed to the accompaniment at border, it's implemented the detention in the "centers for identification and expulsion" for a maximum period of 180 days.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. Article 124 (exécution des décisions d'<u>éloignement</u>): Si un étranger reçoit un ordre de quitter le territoire et s'il n'obéit pas à cet ordre endéans les délais accordés, l'ordre de quitter le territoire peut être exécuté d'office et l'étranger peut être éloigné du territoire par la contrainte. Passé le délai accordé, une interdiction d'entrée sur le territoire d'une durée maximale de cinq ans est prononcée à l'encontre de l'étranger. La personne faisant l'objet d'une interdiction d'entrée sur le territoire peut introduire une demande de levée de cette interdiction après un délai de trois ans à compter de l'éloignement en indiquant des moyens à établir un changement matériel des circonstances qui avaient justifié la décision d'interdiction du territoire à son encontre.</p> <p>Article 116 (<u>expulsion</u> -&gt; uniquement si un étranger constitue une menace grave pour l'ordre public ou la sécurité publique ou s'il réapparaît sur le territoire malgré l'interdiction d'entrée sur le territoire à son encontre): La décision d'expulsion comporte une interdiction d'entrée sur le territoire d'une durée maximale de dix ans. La personne concernée peut introduire une demande de levée de l'interdiction d'entrée sur le territoire après un délai raisonnable, en fonction des circonstances, et en tout cas après un délai qui représente deux tiers de la durée de l'interdiction d'entrée sur le territoire, à compter de l'éloignement du territoire en invoquant des moyens à établir un changement matériel des circonstances qui avaient justifié la décision d'interdiction du territoire à son encontre. Pour les citoyens de l'UE et leurs membres de famille, ce délai est ramené à trois ans.</p> <p>2. Article 111: Le délai imparti pour quitter le territoire ne peut être inférieur à un mois à compter de la date de notification de la décision</p>

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			de refus. Si le ministre prend une décision de refus de séjour à l'encontre d'un ressortissant de pays tiers, cette décision comporte l'ordre de quitter le territoire sans délai.
	Netherlands	Yes	<p>1. It depends. If there are no criminal records, in general for a period of 2 years. In case of criminal records: 3 to 5 years (depending on several factors). If the person is a threat to national security: 10 years.</p> <p>2. In case of criminal records: immediately but in general 28 days. The Netherlands has orders to leave the country in which a deadline is stated of 1 day (24 hours) or 28 days. The difference in terms depends on for instance the type of residence application that has been made (whether it was a first application or a continued one) or for instance whether the alien has been already admitted to NL territory (or refused at the border).</p>
	Spain	Yes	<p>1. In general (<i>Exception: the competent authority may not impose prohibition of entry when the foreigner has abandoned national territory during the processing of an administrative disciplinary proceeding for 2 types of specific breaches, or must overturn it in these 2 same cases when the foreigner has abandoned national territory within the voluntary time period set forth in the return order</i>), all decisions for expulsion imply the prohibition of entry to Spain. Therefore, while the time this prohibition is in effect (the removal order must specify its duration), the foreigner object of the measure for expulsion may not apply for a visa to enter Spanish territory (theoretically, the foreigner is entitled to apply for a visa, but it will be denied given that grounds for non-admission)</p> <p>For the purpose of reforming Spanish legislation on alien affairs(<i>Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration</i>), Directive 2008/115/EC, of 16 December 2008, of the European Parliament and of the Council on shared standards and procedures in Member States for returning third-country nationals without authorised residence has been transposed, by which to date the duration of the prohibition is <b>determined in consideration of concurrent circumstances particular to each case, but may not exceed 5 years</b>. Exceptionally, when the foreigner poses a serious threat to public order, public security or public health, <b>prohibition of entry may be imposed for up to 10 years</b>.</p> <p>In accordance with the foregoing, it is observed that Spanish legislation has neither specified duration for prohibition of entry (this is, for example, if it is of 1, 2 or 3 years) nor has specified the duration of the prohibition depending on the nature of the breach committed by the foreigner. <b>In this sense, the duration of prohibition of entry shall be that which, for each specific case, is set forth in the decision issued by the competent body within the time period set forth by Law (see the previous paragraph).</b></p> <p>2. In accordance with Spanish legislation in effect which has transposed the previously mentioned <i>Directive 2008/115/EC, of 16 December 2008</i>, the period within which a foreigner object of a decision for expulsion is obligated to leave Spanish territory depends on the nature of and the proceedings corresponding to said breach, as well as other types of considerations.</p> <ul style="list-style-type: none"> <li>In 6 of the cases by which legislation allows the expulsion of a foreigner, the expulsion procedures are processed through the so-called "preferential procedure". One of the characteristics of the breaches which are processed in this type of proceeding is that a time period for voluntary exit is not granted, therefore the expulsion order is <b>executed immediately</b> and the illegal foreigner is</li> </ul>

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			<p>obligated to abandon Spanish territory immediately.</p> <ul style="list-style-type: none"> <li>In the remaining cases (not contemplated above) by which legislation allows the expulsion of a foreigner, the expulsion procedures are processed through the so-called “ordinary procedure”. The decision for expulsion processed through this procedure must include a voluntary time period during which the interested party may abandon Spanish territory. The length of this period varies between <b>seven and thirty days</b>, counted as of the moment at which the foreigner is notified of the mentioned decision.</li> </ul> <p>The period for voluntary compliance with the expulsion order may be subject to an extension for a prudent length of time, attending to concurrent circumstances of each specific case, as may be the length of the stay, responsibility for children attending school, or the existence of other family and social ties.</p> <p>According to the above, it is observed that Spanish legislation does not set forth a specific number of days for voluntary exit from Spanish territory, whereby it must occur within the time period <b>established for each specific case in the decision issued by the competent body within the interval set forth by Law (see the previous paragraph).</b></p> <p>In any case, <b>once the period granted for voluntary exit from Spanish territory has elapsed, the order for expulsion is immediately executed.</b></p>
	<b>United Kingdom</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.

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