



EMN FOCUSSED STUDY 2016

Returning Rejected Asylum Seekers: challenges and good practices

Estonian national report

Tallinn 2016

Returning Rejected Asylum Seekers: challenges and good practices

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on Returning Rejected Asylum Seekers: challenges and good practices. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.

This document was produced by Barbara Orloff the expert of EE EMN NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.

*Estonian national contact point
Tallinn University
Narva mnt 25
10120 Tallinn
emn@tlu.ee*



Contents

1	STUDY AIMS AND RATIONALE.....	4
1.1	Study aims.....	4
1.2	Rationale	4
2	EU LEGAL AND POLICY CONTEXT.....	5
2.1	Common European Asylum Policy	5
2.2	Return.....	6
3	DEFINITIONS	8
	Top-line “Factsheet”.....	10
	Section 1: Overview of the national situation.....	12
	Section 2: Member States’ policies and measures vis-à-vis rejected asylum seekers at the point of rejection.....	15
	Section 2.1: How asylum decisions trigger the issuance of the return decision.....	15
	Section 2.2: Immediate consequences for rejected asylum seekers required to return.....	18
	Section 2.3 Possibilities for appealing the return decision	25
	Section 2.4 Possibilities for lodging subsequent asylum applications.....	26
	Section 3: Challenges to the return of rejected asylum seekers and Member States’ policies to manage these.....	27
	Section 4: What happens when return is not immediately possible?.....	34
	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.....	40
	Section 5.1 Accelerated procedures.....	40
	Section 5.2 Preparing asylum seekers for return	44
	Section 6: Conclusions	45
	Annex 1	

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, 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)¹. 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.²

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.³ Whilst many applications are indeed lodged by applicants with a real need for international protection, **around half of the applications are 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

¹ EEA (28 EU member states + Norway, Liechtenstein, Iceland) + Switzerland

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

³ Eurostat database on asylum applications (asyl_app)

accordance with the EU Return Directive⁴, 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**⁵.

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 regard⁶.

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 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.

2.1 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 CEAS⁷. The evaluation of the first generation legislative instruments revealed, however, **significant weaknesses** of the instruments resulting 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".

⁴ 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

⁵ COM(2015) 453 final, "EU Action Plan on Return"

⁶ COM (2015) 453 final, p. 5.

⁷ 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).

A second set of legislative instruments was adopted between 2008 and June 2013⁸. 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 Communication⁹ emphasised the **effective transposition** and **coherent implementation** of the second phase legislative instruments as a political priority in the coming years¹⁰.

Subsequently, following the significant increase in asylum applications, the Commission presented the **European Agenda on Migration**¹¹ 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 Greece¹²;
- ★ Emergency relocation mechanism to relocate another 120.000 asylum seekers from Italy and Greece¹³;
- ★ A permanent crisis relocation mechanism under the Dublin system¹⁴.

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.

2.2 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

⁸ 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).

⁹ Ibid, COM(2014) 154 final

¹⁰ 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.

¹¹ 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

¹² 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

¹³ Council Decision (EU) 2015/1601 of 22 September 2015

¹⁴ 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

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' guarantees¹⁵.

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 9th 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.

¹⁵ 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.

3 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0¹⁶ 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.

'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.

'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).

'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".

¹⁶ Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf

'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".

EMN FOCUSED STUDY 2016

Approaches to rejected asylum seekers

Top-line "Factsheet"

National contribution (one page only)

Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.

The aim of the focussed study “Returning Rejected Asylum Seekers: challenges and good practices” is to give an overview on approaches to the return of rejected asylum seekers, examining the existing policies and identifying good practices in Estonia.

Effective return of third country nationals who have no legal basis to stay in the country is an important issue in Estonia, but Estonian return policy has not been tailored specifically to rejected asylum seekers as the number of rejected asylum seekers has been relatively low. Therefore, the general return procedure applies also to rejected asylum seekers.

While 86% of return decisions issued in respect of third country nationals (hereinafter TCNs) were fulfilled in 2015, the ranks of returnees have been complemented: formerly they were mostly originating from the CIS countries, but presently they are increasingly originating from countries, to which Estonia has no historical cooperation relations. This has led to lengthy removal procedures for nationals of certain African and Asian countries.¹⁷

Estonia follows a fair and efficient policy on return with emphasis being on voluntary return and stability of return.¹⁸ For TCNs who are staying illegally in Estonia in general a return decision is issued with a term from 7 to 30 days for voluntary compliance with the obligation to leave.¹⁹ In some cases stipulated by law, voluntary compliance term may not be assigned and the return decision may be carried out immediately.²⁰

Policies and measures vis-à-vis rejected asylum seekers at the point of rejection

In Estonia the amendments to the Act on Granting International Protection to Aliens entered into force on 1 May 2016 and therefore the practices regarding the issuing of removal decisions in respect of rejected applicants for international protection changed. Before the changes in legislation the return decision was in general issued together with the decision to reject the asylum application. Since 1 May 2016, a return decision is generally issued after the final rejection decision has been issued during the procedure of international protection. The return of the rejected asylum seeker is performed pursuant to the Obligation to Leave and Prohibition to Entry Act.

In general, return decisions and asylum decisions are both issued by the Police and Border Guard Board (hereinafter PBGB). The return decision is issued as soon as possible after the final decision and can only be served personally.

¹⁷ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

¹⁸ National programme of the Asylum, Migration and Integration Fund, available at: https://www.siseministeerium.ee/sites/default/files/dokumendid/VVO/AMIF-ISF/programme_2014ee65amnp001_3_0_en.pdf. Page 7

¹⁹ Article 7² (4) of the Obligation to Leave and Prohibition to Entry Act § 11 (1), RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

²⁰ Article 7² (2) of the Obligation to Leave and Prohibition to Entry Act § 11 (1), RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

Following a final negative asylum decision, rejected asylum seekers' access to certain services is limited. By law they are not allowed to stay in the accommodation centre although in practice in some cases it has been possible for a short time. Moreover, they have no access to the labour market and are entitled to only emergency social assistance. They have the right to health care provided in the same amount as in detention centre. However only minors are allowed to continue studying.

The PBGB may apply various surveillance measures to ensure effective return of TCNs staying in Estonia without any legal basis. Additionally the PBGB may detain a TCN with a permission from the administrative court up to 18 months, but only if detention is proportionate.

Challenges to the return of rejected asylum seekers and measures to manage those

As Estonia is a small country we have some difficulties in establishing bilateral agreements in the area of return with third countries. Therefore, Estonian supports the enhancement of the general EU return policy, including the establishment of the European Return Office at the European Border and Coast Guard.

Estonia has experienced challenges in the area of obtaining travel documents for returnees and cooperating with third-country authorities. The establishment of collaboration relations with third countries is challenging because Estonia has a very small network of foreign missions in foreign countries. In addition, many countries have no diplomatic and consular missions in Estonia, and thus the Estonian authorities have to contact embassies in other EU Member States for the identification of and obtaining travel documents for such persons.

In Estonia, several measures are implemented to manage challenges to implementing return of irregular third country nationals (e.g. assisted voluntary return programmes, readmission agreements, bilateral agreements etc.) Most of the measures are not specifically targeted for the return of rejected asylum seekers, but to return broadly.

What happens when return is not immediately possible?

Regarding rejected asylum seekers whose return is not immediately possible, differentiation is made between two situations.

Firstly, if the return is not possible for humanitarian considerations or 'force majeure', the return is suspended by the decision of the court or the PBGB. When the bases that prevented the return have ceased to exist, the PBGB will continue with executing the return decision.

Secondly, when the removal is not possible, it will no longer be applied. The Estonian authorities do not grant a specific status to TCNs who cannot be immediately returned. But pursuant to the amendments to the Aliens Act that became effective as of 1 May 2016, if the removal is clearly too burdensome for a TCN, it is possible to grant as an exception a temporary residence permit on humanitarian grounds to him/her. So far, there have been no cases in Estonia where the removal would have been formally declared as not possible and there are no cases where a person has been granted a residence permit on humanitarian grounds.

Linking the asylum procedure and the return policy

With legislative changes to the Act of granting international protection to aliens some new measures were issued which should in principle accelerate the asylum procedures (e. g it is now possible for the PBGB to make a list of safe countries of origin, the courts should give priority to the examination of the asylum cases and there is a clearer regulation for accelerated procedure for examining clearly unfounded applications).

In Estonia preparing asylum seekers for return is considered a standard practice of the authorities. Counselling services are provided in detention and accommodation facilities, *inter alia* for providing to the applicants' information on his/her rights and obligations in the procedure: including on the rights and obligations that arise if an application for international protection is rejected or if a person is granted international protection. Persons are also informed about the possibility of assisted voluntary return to the country of origin through the IOM's

Voluntary Assisted Return and Reintegration Programme from Estonia (VARRE programme).²¹ Persons subject to forced return are not entitled to participate in IOM VARRE programme.

Section 1: Overview of the national situation

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*)

The number of asylum seekers has been relatively low in Estonia and therefore the return of rejected applicants for international protection has not been a priority of national migration policy. In 2015 only 8% of the persons who were issued a return decision, were rejected asylum seekers and accordingly 5 % in 2014.²² Consequently, the process of return of the rejected asylum seekers from Estonia is similar to the removal of other third-country nationals, and the Government has not established any specific policies or measures concerning the return of rejected applicants for international protection.

However, there are some policy documents concerning the return of TNCs. Pursuant to the Internal Security Development Plan 2015-2020, one of the objectives of Estonia is to detect and return the persons staying illegally in Estonia.²³ Also, the national programme of the Asylum, Migration and Integration Fund (AMIF) has set an objective, based on the key priorities of the national security policies, to promote the voluntary return processes and contribute to the implementation of forced return operations.²⁴

Additionally a fair and efficient policy on return is being followed, that helps to fight illegal immigration with emphasis being on voluntary return and stability of return.²⁵ For TCNs illegally staying in Estonia in general a return decision is issued with a term from 7 to 30 days for voluntary compliance with the obligation to leave.²⁶ Most common term for voluntary compliance in 2014 was about 16 days (maximum 30 days was the case in one third of the precepts issued).²⁷ In some cases stipulated by law, voluntary compliance term may not be assigned and the return decision may be carried out immediately.²⁸

²¹ IOM VARRE, available at: <http://www.iom.ee/varre/>

²² Statistics from the Police and Border Guard Board

²³ Internal Security Development Plan 2015-2020, available at: https://www.siseministeerium.ee/sites/default/files/dokumendid/Arengukavad/siseturvalisuse_arengukava_2015-2020_kodulehele.pdf.

²⁴ National programme of the Asylum, Migration and Integration Fund, available at: https://www.siseministeerium.ee/sites/default/files/dokumendid/VVO/AMIF-ISF/programme_2014ee65amnp001_3_0_en.pdf.

²⁵ National programme of the Asylum, Migration and Integration Fund, available at: https://www.siseministeerium.ee/sites/default/files/dokumendid/VVO/AMIF-ISF/programme_2014ee65amnp001_3_0_en.pdf. Page 7

²⁶ Article 7² (4) of the Obligation to Leave and Prohibition to Entry Act § 11 (1), RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

²⁷ EMN Focussed Study 2015 on Dissemination of information on voluntary return: how to reach irregular migrants not in contact with the authorities, Estonian national report. Available at: http://emn.ee/wp-content/uploads/2015/11/emn-studies-08a_estonia_information_on_voluntary_return_english.pdf

While 86% of return decisions issued in respect of TCNs were fulfilled in 2015, the ranks of returnees have been complemented: formerly they were mostly originating from the CIS countries, but presently they are increasingly originating from countries to which Estonia has no historical cooperation relations. This has led to lengthy removal procedures for nationals of certain African and Asian countries.²⁹

Since 2010 when the maximum detention period was fixated for 18 months with the transposing of the return directive to Estonian legislation, there have been 13 persons who have been released from detention centre because of the deadline³⁰ and 10 of them have been rejected asylum seekers. There are a various reasons why their return has taken longer than expected as they did not have travel documents or/and they have not cooperated with the authorities or/and their identification has proven difficult³¹. Such releasing of persons illegally staying in Estonia from the detention facility has led to some media coverage³²³³ and political interpellation³⁴.

²⁸ Article 7² (2) of the Obligation to Leave and Prohibition to Entry Act § 11 (1), RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

²⁹ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

³⁰ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

³¹ Postimees, Politsei otsib jätkuvalt võimalusi tänavatel hulkuvate illegaalide riigist väljasaatmiseks, 24.4.2015, available at: <http://www.postimees>

³² ERR, Eestisse jõudnud tuvastamata illegaalsed migrandid satuvad pealinna tänavatele, 21.4.2016, available at: <http://uudised.err.ee/v/eesti/ed33c363-3533-4c21-8571-20d9744abb1d/eestisse-joudnud-tuvastamata-illegaalsed-migrandid-satuvad-pealinna-tanavatele>.

³³ ERR, Expert of the Estonian Human Rights Centre: kolme guinealase väljavaated Eestis uut elu alustada on olematud, 25.4.2016, available at: <http://uudised.err.ee/v/eesti/c2698d73-fa5a-46f8-b6e4-02d6028e4b42/eesti-inimoiguste-keskuse-ekspert-kolme-guinealase-valjavaated-eestis-uut-elu-alustada-on-olematud>

³⁴ Verbatim records of XIII Riigikogu, Interpellation on illegal immigrants freely moving around in Estonia (No. 214), 6.6.2016, available at: <http://stenogrammid.riigikogu.ee/et/201606061500#PKP-19094>.

Returning Rejected Asylum Seekers: challenges and good practices

Q2. Please complete the Excel document in Annex 1 (providing information also on the metadata) if you have national statistics available on:

- The total number of rejected asylum seekers who were issued an enforceable return decision in 2011-2015 disaggregated by sex;³⁵
- 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 table requests 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.

Please note that in some Member States (e.g. UK) data is available on asylum seekers returned, but this does not distinguish between rejected asylum seekers and others. If this is the case in your Member State, please provide the data for asylum seekers returned, but please make the scope and nature of the data clear.

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 completing the table below and 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. For every estimate, please indicate in the final column the source of the estimate and – where possible – the method used.

Year	% rejected asylum seekers out of total no. TCNs issued a return decision			% rejected asylum seekers out of total no. TCNs effectively returned			Source / method of the estimate
	Male	Female	Total	Male	Female	Total	
2011	6%	1%	4%	4%	0	3%	PBGB/based on real numbers
2012	6%	1%	5%	4%	1%	3%	PBGB/based on real numbers
2013	4%	1%	3%	3%	2%	2%	PBGB/based on real numbers
2014	7%	2%	5%	4%	2%	3%	PBGB/based on real numbers

³⁵ 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.

Returning Rejected Asylum Seekers: challenges and good practices

2015	9%	5%	8%	4%	2%	3%	PBGB/based on real numbers
-------------	----	----	----	----	----	----	----------------------------

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)?

Year	# rejected asylum seekers imposed an enforceable return decision who continue to reside in the Member State			Source / method of the estimate
	Male	Female	Total	
2011			0	
2012			0	
2013			0	
2014	9		9	Police and Border Guard Board
2015			0	

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.*

Main challenges include the following: third-country nationals to be returned have presented false information; they had no travel documents, and they did not cooperate with the authorities in Estonia, which has made it difficult to obtain them the travel documents. Furthermore, one of the problems has been the absconding of such persons from Estonia prior to the completion of removal procedure. Potential cooperation with the authorities of third countries has also been problematic, and the limited network of Estonia's foreign missions in other countries has amplified these problems. Also, many countries have no diplomatic and consular missions in Estonia, and thus the Estonian authorities have to contact embassies in other EU Member States for the identification of and obtaining travel documents for such persons.

Section 2: 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*).

The legislation and therefore the practices regarding the issuing of removal decisions in respect of rejected applicants for international protection changed since 1 May 2016 when the amendments to the Act on Granting International Protection to Aliens entered into force. With these amendments the directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection and directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection were transposed.

Until 30 April 2016, the Act on Granting International Protection to Aliens (hereinafter: AGIPA) provided that a return decision (“precept to leave”) shall be issued to third country national (TCN) together with the decision to reject the application for asylum, except if the TCN has a legal basis for staying in Estonia.³⁶ Thereafter, the person had 10 days to submit an objection in respect of the rejection decision and the return decision. The enforcement of the return decision was suspended during the objection procedure of the rejection decision, until the entry into force of the respective judgment. Thus, it can be noted regarding previous practices that a return decision was issued immediately after the Police and Border Guard Board (hereinafter: PBGB) issued the decision on the procedure of international protection (option A).

On 1 May 2016, the amendments to the Act on Granting International Protection to Aliens entered into force with the result that applicants for international protection can no longer receive a return decision together with the decision rejecting the application. If the third country national does not have a legal ground for staying according to AGIPA or the Aliens Act, the provisions of Obligation to Leave and Prohibition on Entry Act are applied. Return decisions in respect of TCNs staying in Estonia without a legal basis for stay are issued under Article 7 (1) of that Act.

Since 1 May 2016, a return decision is generally issued after the final rejection decision has been issued during the procedure of international protection.³⁷ Final decision on international protection shall be one of the following: 1) PBGB’s decision on the rejection of the application or on the repeal of international protection, which has not been contested in an administrative court during a period for contesting the decision (10 days); 2) PBGB’s decision on the rejection of the application or on the repeal of international protection, if a contest lodged against the decision has been rejected by an administrative court.³⁸ Pursuant to the AGIPA, if a decision on the application for international protection is contested, the applicant shall be entitled to all rights and obligations of the applicant for international protection during the contesting period and judicial proceeding, including the right to stay in the territory of Estonia until the issuing of a final decision.³⁹ Thus, according to the provisions effective since 1 May 2016, a return decision in respect of a rejected applicant for international protection may be issued either after the issuing of the PBGB’s decision, if the person does not contest it (option A), or after contesting the decision after some appeals on the asylum decision have need lodged, but before all possibilities for appeal on the asylum decision have been exhausted (option C).

³⁶ Pursuant to Article 25 (2) of the AGIPA affective until 30 April 2016, a precept to leave Estonia (hereinafter precept to leave) shall be issued to an alien by the decision to reject the application for asylum, except if the alien has a legal basis for staying in Estonia.

³⁷ EMN interview of 17.5.2016 with the PBGB’s expert.

³⁸ AGIPA § 3¹, RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

³⁹ AGIPA § 25¹, RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

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)?

Previous practice was that the execution of return decision was usually suspended for the time of the appeal.⁴⁰ The AGIPA provided, on the one hand, that contesting a rejection decision shall not postpone the removal, unless the court has suspended the execution of the return decision, and on the other hand, that in case of contesting a decision to refuse a residence permit and the accompanying return decision in an administrative court, the return decision shall not be subject to compulsory execution prior to the issuing of a decision by the administrative court of first instance.⁴¹ Depending on the provision the courts relied upon, the interim relief was applied when a respective appeal was lodged either to the administrative court or to the district court. In both cases the applicant was usually allowed to stay in the country until the completion of the judicial proceeding.

The applicable Act provides the following: in case of contesting a decision on the application for international protection, the applicant shall have all rights and obligations mentioned in that Act during the contesting period and the judicial proceeding, including the right to stay in the territory of Estonia until a final decision is issued, subject to certain exemptions.⁴² These exemptions are applied, if 1) the applicant contests a decision that has been issued in respect of a clearly unfounded application (except in cases where the applicant has illegally entered to or stayed in the territory of Estonia or has not lodged the application for international protection as soon as possible); 2) another country can be considered as the first country of asylum from the applicant's point of view, the applicant makes a subsequent application that does not reveal new facts, or another Member State has already granted international protection to the applicant; 3) if the applicant has withdrawn the application indirectly or has waived it and if the applicant has lodged a new application after more than nine months of the issuing of the respective decision on the first application; 4) if the decision was based on the Regulation (EU) No 604/2013 of the European Parliament and of the Council. In case of any exemptions mentioned above, the trial court shall determine the right of the applicant to stay in Estonia during the judicial proceeding. The applicant shall be entitled to stay in the territory of Estonia, until the trial court makes the relevant decision.⁴³ Currently it is not possible to make any assessments on future practices that will be developed under the applicable Act.

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.*

According to the legislation the return decisions can be issued by the Police and Border Guard Board (as done in general) or by the Estonian Internal Security Police.⁴⁴ The decisions on the asylum application are issued by the Police and Border Guard Board. The PBGB's Aliens Division of the Migration Bureau of the Intelligence Management and Investigation Department issues decisions on applications for international protection. The operative part of a decision (or the whole decision, if necessary) is forwarded to Border and Migration Divisions of different prefectures.

Q 7b. 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:

⁴⁰ EMN interview with the PBGB's expert.

⁴¹ AGIPA § 26 (4) and § 42 (2), RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

⁴² AGIPA § 25¹ (2), RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

⁴³ AGIPA § 25¹ (3), RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

⁴⁴ Obligation to Leave and Prohibition to Entry Act § 11 (1), RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteataja.ee

Returning Rejected Asylum Seekers: challenges and good practices

- 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

According to the practices effective until 30 April 2016, the applicant for international protection generally received the return decision together with the rejection decision (option A).

Due to the amendments that came into force on 1 May 2016, it is possible to issue a return decision after the final decision on the application for international protection is issued. The laws do not regulate a special time period within which a return decision must be issued. The PBGB issues a return decision as soon as possible. In general, a return decision is issued within 24 hours of the rejection decision entering into force/becoming executable (option B), however, if the person is no longer staying in the same place, which was established during the international protection proceeding, the time between the issuing of a return decision and the issuing of a final rejection decision may be extended, because it is not allowed to issue the return decision by default as it must be served personally.⁴⁵

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)*

Yes, the information obtained during the international protection procedure can be used for the purposes of facilitating return, and this possibility has been frequently used, but only after the asylum procedure is finished. Information exchange between different divisions of the same authority (the PBGB) helps to expedite the return procedure. Estonia is making great efforts in order to ensure that as much information as possible would be cross-linked during migration-related procedures. As an important aspect of the return procedure is the assessment of the principle of *non-refoulement*, it is essential to ensure that the facts established during the asylum procedure would also be known in the return procedure.⁴⁶

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. Please note that similar information was requested in the Ad-Hoc Query on 'the right of residence provided for TCNs to whom international protection application has been rejected' requested 30th December 2015. Please review your Member State to this AHQ (if completed) and provide only updated information here.*

⁴⁵ EMN interview of 17.5.2016 with the PBGB's expert.

⁴⁶ EMN interview of 17.5.2016 with the PBGB's expert.

*Returning Rejected Asylum Seekers: challenges and good practices***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
Accommodation			
<i>Can the applicant stay in reception centres once rejected? Yes/no</i>	No, asylum seekers are entitled to stay in the accommodation centre until they receive a final decision. If they receive the final decision and the return decision enters into force, they are no longer entitled to stay in the accommodation centre.	Yes	-
<i>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')</i>	N/A	In practice there have been some cases where the rejected asylum seeker has stayed for a short time in the reception centre. It is the discretion decision of the PBGB. There is no fixed period for how long after the final decision the person can stay in the reception centre.	-
<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>	Yes, 1) If a third country national who is staying in Estonia without a basis for the stay has no sufficient finances, the Police and Border Guard Board or the Estonian Internal Security Service may organise accommodation of the foreigner if this is necessary for humanitarian considerations or for the protection of a vulnerable person and if the	1) No practice yet.	-

Returning Rejected Asylum Seekers: challenges and good practices

	<p>third country national cannot use accommodation elsewhere.⁴⁷ The Police and Border Guard Board can accommodate them in different accommodation facilities.</p> <p>2) According to law⁴⁸ rejected asylum seekers may also be accommodated in Harku detention center as they do not have the rights of the asylum seekers after the return decision enters into force and they become illegally staying third country nationals. They may be detained in detention centre in case there is a risk of absconding or the person does not comply with the obligation to co-operate or if the person does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.</p> <p>3) According to the law⁴⁹ if detention of the person to be expelled in the detention centre is not possible for security or health protection considerations or any other reason or is substantially jeopardised, the person to be returned may be accommodated in the police detention house or under</p>	<p>2) In practice if there is a risk of absconding, they are accommodated at the detention centre.</p> <p>3) N/A about practice</p> <p>4) In case the risk of absconding is low, the rejected asylum seekers may stay at their place of living until leaving the country. It is the discretion decision of the PBGB. This is generally possible in case of voluntary return.</p>	
--	--	--	--

⁴⁷ Obligation to Leave and Prohibition on Entry Act § 13². - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁴⁸ Obligation to Leave and Prohibition on Entry Act § 23. - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁴⁹ Obligation to Leave and Prohibition on Entry Act § 23 (4). - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

Returning Rejected Asylum Seekers: challenges and good practices

	surveillance outside the detention centre by the decision of the head of the detention centre or an official appointed by him or her.		
Employment			
<i>Are rejected applicants entitled to access / continue accessing the labour market? Yes/No</i>	No, according to AGIPA ⁵⁰ an applicant for international protection may take employment in Estonia if the decision on his or her application for international protection has not entered into force within six months as of the submission of the application for international protection due to reasons beyond the applicant's control. The applicant may take employment in Estonia until the termination of the proceedings of his or her application for international protection. When the rejected applicant receives the final decision, he/she does not have a legal ground for staying in Estonia and therefore he/she is not entitled to work in Estonia.	No unless the rejected applicant has other legal ground for staying and working.	-
<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>	Until the negative decision becomes final.		-

⁵⁰ AGIPA § 10¹, - RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

Returning Rejected Asylum Seekers: challenges and good practices

<i>If yes, please describe any specific conditions attached to their employment</i>			-
Welfare			
<i>Are rejected applicants entitled to receive any social benefits?</i>	Yes	Yes	-
<i>If yes, please briefly describe what these benefits are</i>	Emergency social assistance. According to the Social Welfare Act ⁵¹ emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence which guarantees the persons at least food, clothing and temporary accommodation.	N/A about practice.	-
<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>	Until the return decision is enforced or there is no need for the social assistance.	Until the return decision is enforced or there is no need for the social assistance.	-
Healthcare			
<i>Are rejected applicants still entitled to healthcare? Yes /no</i>	Yes	Yes	-
<i>Does it include all healthcare or only</i>	It includes all necessary health care ⁵¹ provided in the detention centre. For	It includes all necessary health care ⁵² provided in the detention centre.	-

⁵¹ Obligation to Leave and Prohibition on Entry Act § 26^o. - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁵² Obligation to Leave and Prohibition on Entry Act § 26^o. - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

Returning Rejected Asylum Seekers: challenges and good practices

<i>emergency healthcare?</i>	the supervision of the state of health of persons to be expelled the detention centre have established the permanent treatment facilities. Starting from February 2016 the healthcare services provided in detention centre will also be provided to rejected asylum seekers staying outside the detention centre.	Starting from February 2016 the healthcare services provided in detention centre will also be provided to rejected asylum seekers staying outside the detention centre, although there is no practice yet about providing the same healthcare services to illegals staying outside the detention centre.	
Education			
<i>Are rejected applicants still entitled to participate in educational programmes and/or training? Yes / no</i>	Yes, a person to be expelled who is subject to the obligation to attend school shall be ensured access to education in accordance with the Basic Schools and Upper Secondary Schools Act. ⁵³ A person who has reached the age of seven years before October 1 in the current year is subject to the duty to attend school (including a person having foreign citizenship or undetermined citizenship). A person is required to attend school until they acquire basic education or attain the age of 17 years. ⁵⁴	N/A about practice.	-
<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</i>	Until the return decision is enforced and the individual returns. It is also possible to prolong the deadline of		-

⁵³ Obligation to Leave and Prohibition on Entry Act § 26⁵ lg 8. - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁵⁴ Basic Schools and Upper Secondary Schools Act § 9 lg 2. - RT I 2010, 41, 240... RT I, 31.12.2015, 15, available at: www.riigiteaja.ee

Returning Rejected Asylum Seekers: challenges and good practices

<i>and the individual returns')</i>	the return decision in order to enable the person to finish school. ⁵⁵ This is decided by the PBGB.		
Legal aid			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	Yes, According to law ⁵⁶ a foreigner shall have the right to receive legal aid from the state for contestation of the return decision, the decision on the expulsion or prohibition on entry applied in the return decision in the case the foreigner has no sufficient fund to cover legal expenses.	Yes	-

⁵⁵ Obligation to Leave and Prohibition on Entry Act § 7² lg 5. - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁵⁶ Obligation to Leave and Prohibition on Entry Act § 6⁶ (1). - RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

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)?

The Police and Border Guard Board may apply various surveillance measures in respect of TCNs staying in the country without any legal basis, and whose detention has no legal basis or whose detention the court has not given an approval. These surveillance measures⁵⁷ include the following:

- 1) residing in a determined place of residence;
- 2) appearing for registration at the Police and Border Guard Board at prescribed intervals;
- 3) appearing at the Police and Border Guard Board for the establishment of circumstances that ensure the execution of the return decision;
- 4) notifying the Police and Border Guard Board of the change of residence or the absence from the place of residence for a longer period;
- 5) notifying the Police and Border Guard Board of any changes in marital status;
- 6) depositing the travel document or the identification document issued by a foreign state at the Police and Border Guard Board or at the Estonian Internal Security Service.

Furthermore, the Police and Border Guard Board may introduce a penalty payment in respect of TCN staying in the country without any legal basis, in order to ensure the execution of the return decision.

The Police and Border Guard Board may apply from the administrative court for the permission to detain the TCN and place him or her into the detention centre if the efficient application of the surveillance measures mentioned above is impossible, and especially if the TCN may abscond, the TCN does not fulfil the duty to cooperate, or the TCN does not have the documents necessary for the return or there is a delay in obtaining these documents from the host or transit country.⁵⁸ Detention must be in accordance with the principle of proportionality, and in each case of detention the relevant facts relating to a TCN must be taken into consideration. A TCN may be detained for up to 18 months and s/he would be released immediately if the basis for the detention no longer exists or if the removal is hopeless.

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?

Yes, the applicant for international protection who has received a return decision may contest the return decision before s/he is returned from the country and also after the return. A rejected applicant may lodge an appeal to an administrative court, according to the procedure provided for in the Code of Administrative Procedure, against the return decision, the decision issued for the execution of the return decision, or the prohibition on entry applied by the precept or the decision on changing its validity period, within ten days as of the date of notification of the precept or the decision.⁵⁹ Subsequently after a negative decision from the administrative court, there is a possibility to appeal to the second instance court (circuit court) and after negative decision from the second instance court a person can appeal in cassation to the Supreme Court.

⁵⁷ Obligation to Leave and Prohibition on Entry Act § 10 (2), RT I 1998, 98, 1575... RT I, 6.4.2016, 22, available at: www.riigiteaja.ee.

⁵⁸ Obligation to Leave and Prohibition on Entry Act § 15 (2), RT I 1998, 98, 1575... RT I, 6.4.2016, 22, available at: www.riigiteaja.ee.

⁵⁹ Obligation to Leave and Prohibition on Entry Act § 13 (3), RT I 1998, 98, 1575... RT I, 6.4.2016, 22, available at: www.riigiteaja.ee.

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)*

According to the practices effective until 30 May 2016, in most cases the Police and Border Guard Board issued the return decision together with the rejection decision. That allowed the rejected applicant to contest both of these decisions together, and the court made the decision in most cases at the same time on the international protection and the return decision. Thus, according to the previous practice, in most cases the respective person was not returned during contesting these decisions.

However, there were certain cases when the return decision was issued separately from the decision on international protection. If a person contested the return decision after the issuing of the negative decision in the international protection proceeding, the contesting of the return decision rarely ensured the suspension of return, unless the court applied it as an interim relief.

Amendments that became effective as of 1 May 2016 also changed the practice of contesting the return decision by the rejected applicant for international protection. As a return decision cannot be issued any longer before the final decision has entered into force, i.e. before the expiry of the contesting period of 10 days or the adoption of judgment of first instance, a return decision can be contested separately from the decision to reject the application for international protection.⁶⁰ However, it is yet not possible to make any assessments on this new practice.

Rejected asylum seekers and other third country nationals have the same rights while appealing the return decision, but there is no statistics available whether rejected asylum seekers have a better chance of a positive decision than other TCNs.

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 lodged⁶¹

Yes, rejected applicants for international protection who have received the return order are entitled by law to lodge a subsequent application.

The Police and Border Guard Board shall examine all additional explanations and documents related to the subsequent application during the revision of the previous application for international protection, by renewing the previous international protection proceeding. An application shall be examined if any new circumstances are established or if the applicant has submitted new documents or evidence, which s/he could not submit or prove during the previous proceeding for reasons beyond his/her control and which significantly increase the likelihood that the applicant qualifies as a person eligible for international protection. An application shall not be examined if the PBGB establishes that there are no new circumstances and if the applicant has not submitted any new documents or evidence, which are important for classifying the applicant as a recipient of international protection. If an application was previously not examined, the following new application shall not be deemed to be a subsequent application. A person is only entitled

⁶⁰ EMN interview of 17.5.2016 with the PBGB's expert.

⁶¹ Note that the AHQ 2015.1007 launched by Ireland on 25 November asked questions related to this topic. It might be therefore useful to refer to your national responses to this AHQ in providing a response here.

to stay in Estonia during the processing of his/her subsequent application, if the respective subsequent application was the first subsequent application lodged by the applicant and if the application was previously examined.⁶²

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, the fact alone that a person lodged a subsequent application after the issuing of the return decision is not considered to be an adequate basis for doubting the credibility of the applicant, and such a fact does not increase the probability of issuing a negative decision in respect of the subsequent application. The PBGB examines each and every application for international protection on an individual and objective basis, and verifies the accuracy of the data and the evidence, the credibility of the applicant's statements and other circumstances. In case of a subsequent application it is assessed whether there are any new circumstances or evidence submitted and, if not, the subsequent application is not examined. If a subsequent application includes new evidence or circumstances, the PBGB may apply the accelerated processing of application. The lodging of subsequent applications and the decisions issued in respect of such applications have not been covered by any studies or other documents.

Section 3: Challenges to the return of rejected asylum seekers and Member States' policies to manage these

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.

⁶² AGIPA § 20, RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

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.

Returning Rejected Asylum Seekers: challenges and good practices

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

No, nothing to add.

If yes, please describe them by completing the table below.

When describing, please state explicitly whether these challenges are general to the return of all third-country nationals, or whether it is a challenge that exclusively or more commonly affects the return of rejected asylum seekers. Also, if you would like to elaborate more on any of the challenges mentioned above, placing these in your national context, please include relevant information here.

Challenge	Description of how this impedes return in your Member State	State whether the challenge is: general to return / more common to the return of rejected asylum seekers / exclusive to the return of asylum seekers
-	-	-

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	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	Yes/No (information about voluntary return is disseminated among asylum seekers, but the IOM VARRE programme is meant also for other third country nationals who have not been asylum seekers.)
	Detaining rejected asylum seekers to prevent absconding	Yes	No
	Physical force	No	No
	Surprise raids to enforce removal	Yes	No

Returning Rejected Asylum Seekers: challenges and good practices

	Delay or cancellation of the return procedure	<i>Yes</i>	<i>No</i>
	Other?	<i>No other</i>	<i>No other</i>
Refusal of authorities in countries of return to readmit citizens	Readmission Agreements (EU and/or national)	<i>Yes (mostly EU readmission agreements)</i>	<i>No</i>
Refusal by the authorities in countries of return to issue travel documents	Bilateral cooperation with third countries/ establishment of diplomatic relations	<i>Yes</i>	<i>No</i>
Refusal by the authorities in countries of return to issue identity documents	Establishment of representations in third countries	<i>No</i>	<i>No</i>
	Offering positive incentives, e.g. aid packages, to third countries' authorities	<i>No</i>	<i>No</i>
	Applying political pressure on third countries' authorities	<i>No</i>	<i>No</i>
	Delay or cancellation of the return procedure	<i>Yes</i>	<i>No</i>
	Other?	<i>No other</i>	<i>No other</i>
	Problems in the acquisition of travel docs	Repeating fingerprint capture attempts/using special software to capture damaged fingerprints	<i>Yes (possible in theory)</i>
Using interpreters to detect cases of assumed nationalities		<i>Yes</i>	<i>No</i>
Detention		<i>Yes</i>	<i>No</i>
Offering positive incentives, e.g. aid packages to third countries' authorities		<i>No</i>	<i>No</i>

Returning Rejected Asylum Seekers: challenges and good practices

	Applying political pressure on third countries' authorities	<i>No</i>	<i>No</i>
	Delay or cancellation of the return procedure	<i>Yes</i>	<i>No</i>
	Other?	<i>No other</i>	<i>No other</i>
Administrative/organisational challenges	Budget flexibility	<i>Yes</i>	<i>No</i>
	Coordination arrangements between authorities	<i>Yes</i>	<i>No</i>
	Designation of a Service Provider in third countries	<i>Yes (Estonia does not have many liaison officers, but we have received help and guidance from other countries liaison officers.)</i>	<i>Yes</i>
	Establishment of a diplomatic representation in third countries	<i>No</i>	<i>No</i>
	Delay or cancellation of the return procedure	<i>Yes</i>	<i>No</i>
	Other?		
Medical reasons	organising medical transfer	<i>Yes</i>	<i>No</i>
	facilitating medical support in the country of destination	<i>Yes</i>	<i>No</i>
	medical supervision during travel	<i>Yes</i>	<i>No</i>
	Delay or cancellation of the return procedure	<i>Yes</i>	<i>No</i>
	Other?		
Other challenges? <i>Please describe and add rows if necessary</i>	<i>No other challenges</i>	<i>No other challenges</i>	<i>No other challenges</i>

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".*

No difference in our experience.

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)?

Estonia has not applied any new measures or implemented other changes regarding the return of third-country nationals as there have not been exceptional flows of asylum seekers arriving to Estonia. Amendments in the practices of the issuing of return decisions were related to the transposition of EU Directives. Estonia as a small country, has difficulties in establishing bilateral collaboration relations in the area of return with third countries, as it would generally entail the offering of certain advantages. Therefore, Estonian supports the enhancement of the general EU return policy, including the establishment of the European Return Office at the European Border and Coast Guard. Furthermore, we consider it to be of utmost importance to integrate the return decision data into Schengen information system and to enhance the cooperation with third countries in the area of return.⁶³

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?

If so please describe these measures in more detail by completing the table below and referring to any evidence (studies/evaluations/statistics on return trends) which demonstrate that these are effective practices in returning rejected asylum seekers.

Measure	Evidence of effectiveness / why the measure can be considered a 'good practice'	State whether the measure is effective in supporting the return of <u>rejected asylum seekers</u>
Development AVRR programmes	With the AVRR programme the returnee has the possibility to travel as an ordinary traveller, receive aid when leaving the country and arriving to destination country and receive reintegration substitutes if necessary. These measures can be good motivation while deciding whether to return.	Yes, the measure is effective in supporting the return of rejected asylum seekers.
EURLO liaison officers	In many cases Estonia has received aid and guidance from the EURLO liaison officers. It is possible to use the liaison officers already during the asylum procedure to check certain circumstances without making contact with the authorities of the country of origin.	

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*

⁶³ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

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, Estonia has experienced challenges in the area of obtaining travel documents for returnees and cooperating with third-country authorities. Return procedure can be time-consuming if a TCN has no identification documents and if s/he does not want to cooperate or submits false information regarding his/her identity. Often, there is no motivation for host countries to contribute to the identification and documentation of such persons. The establishment of collaboration relations with third countries is challenging because Estonia has a very small network of foreign missions in foreign countries. In addition, many countries have no diplomatic and consular missions in Estonia, and thus the Estonian authorities have to contact embassies in other EU Member States for the identification of and obtaining travel documents for such persons.⁶⁴

Additionally, lately there has been some cases, when the behaviour of the person being returned has caused some problems. There have been cases of resistance of the returnee to return and therefore the return had to be aborted either for safety reasons or because of flight crew orders. Hence, there have been problems in receiving replies from countries of origin for permission to land for the charter flights associated with return.⁶⁵

⁶⁴ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

⁶⁵ Response of the PBGB to the EMN's inquiry of 03.06.2016

Section 4: What happens when return is not immediately possible?

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, but it is differentiated whether the return is temporarily impossible (e.g. for humanitarian reasons) or whether it is not possible to return a person. Pursuant to the Obligation to Leave and Prohibition on Entry Act, in a situation where the return of a person is currently not possible, the return shall be suspended by the decision of the court or the Police and Border Guard Board, if the temporary stay in Estonia of a TCN is justified due to humanitarian considerations or 'force majeure'.⁶⁶ Thus, the court and the PBGB have the possibility to suspend the potential return until the bases for preventing the return have ceased to exist. When the basis that prevented the return have ceased to exist, the PBGB will continue with executing the return decision.

The Obligation to Leave and Prohibition on Entry Act also regulates the situation where the removal is not possible, by stipulating that the removal shall not be applied if removal is no longer possible.⁶⁷ So far, there have been no cases in Estonia where the removal would have been formally declared as not possible.⁶⁸

According to current practice, if there are other obstacles to the removal than humanitarian considerations or force majeure, but the removal is not declared impossible, the PBGB continues all necessary operations for organising the removal. A TCN who has received the return decision is deemed to be an illegally staying TCN in the country: s/he is not granted an official status. During the period when the PBGB continues all necessary operations for organising the removal, the TCN may be subjected to surveillance measures. However, if it turns out that removal is not possible, the removal shall not be executed. If removal is clearly too burdensome for a TCN, then pursuant to the amendments to the Aliens Act that became effective as of 1 May 2016, it is possible to grant a temporary residence permit on humanitarian grounds to a TCN.⁶⁹

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?

Decisions related to removal are issued by the Police and Border Guard Board or Estonian Internal Security Service. A decision is based on information obtained during the procedure, and it is analysed whether there are any objective reasons or individual circumstances that would hinder the removal of the respective person.

⁶⁶ Obligation to Leave and Prohibition on Entry Act § 14 (5.4), RT I 1998, 98, 1575... RT I, 6.4.2016, 22, available at: www.riigiteaja.ee.

⁶⁷ Obligation to Leave and Prohibition on Entry Act § 14 (4.2), RT I 1998, 98, 1575... RT I, 6.4.2016, 22, available at: www.riigiteaja.ee.

⁶⁸ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

⁶⁹ The Aliens Act § 210³ (1): By way of derogation from the purpose provided for in § 210¹ of this Act in exceptional circumstances an alien may be granted a temporary residence permit issued for settling permanently in Estonia if the alien is staying in Estonia and in the course of the proceedings relating to the entry of an alien into Estonia, his or her temporary stay, residence and employment in Estonia or the obligation to leave Estonia of an alien it has become evident that requiring an alien to leave Estonia would be unduly burdensome to him or her, the alien lacks the possibility of getting the residence permit in Estonia on another basis and the alien does not constitute a threat to public order and national security.

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?

No such status granted. The PBGB has so far not issued a decision that the removal of a third country national is impossible. If it turned out that the removal was not possible, the removal was no longer executed. Pursuant to the amendments to the Aliens Act that became effective as of 1 May 2016, it is possible to issue a temporary residence permit on humanitarian grounds to a TCN.⁷⁰ In addition, a person has a possibility to apply for other basis of stay (e.g. residence permit for studying or working etc.), provided that the criteria to apply for residence permit are met.

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)*

So far, there are no such cases in Estonia where a person has been granted the respective status.

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.*

⁷⁰ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

*Returning Rejected Asylum Seekers: challenges and good practices***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
Accommodation			
<i>Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/no</i>	Yes.	Yes.	-
<i>If you stated yes above, please describe the circumstances under which the accommodation can be provided</i>	According to the Social Welfare Act ⁷¹ the provision of emergency social assistance to a person staying outside his or her residence entered in the population register is organised by the local authority in whose administrative territory the person is staying at the time he or she is in need of assistance. They are usually accommodated at the homeless shelter.	According to the current practice the accommodation has been provided by the city of Tallinn. They have been accommodated at the homeless shelter.	-
Employment			
<i>Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No</i>	No.	No.	-
<i>If you stated yes above, please describe the circumstances under which they can access the labour market</i>			-

⁷¹ Social Welfare Act § 5 lg 2. - RT I, 30.12.2015, 5, available at: www.riigiteataja.ee

Returning Rejected Asylum Seekers: challenges and good practices

Welfare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes / no</i>	Yes. All people in Estonia have a right to emergency care.	Yes. All people in Estonia have a right to emergency care.	-
<i>If you stated yes above, please briefly describe what these benefits are</i>	According to the Social Welfare Act ⁷² emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence which guarantees the persons at least food, clothing and temporary accommodation.	In practice they are provided with emergency social assistance. They are not entitled to any financial support or benefits.	-
<i>If you stated yes above, please briefly describe under what conditions these benefits can be provided</i>	According to the Social Welfare Act ⁷³ emergency social assistance shall be provided to a person until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.	Until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.	-
Healthcare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to healthcare? Yes /no</i>	Yes.	Yes.	
<i>Does it include all healthcare or only emergency healthcare?</i>	It includes all necessary health care. ⁷⁴ Starting from February 2016 the healthcare services provided in	No practice yet.	

⁷² Social Welfare Act § 8 lg 1. - RT I, 30.12.2015, 5, available at: www.riigiteataja.ee

⁷³ Social Welfare Act § 8 lg 2. - RT I, 30.12.2015, 5, available at: www.riigiteataja.ee

⁷⁴ Obligation to Leave and Prohibition on Entry Act § 26⁹. – RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

Returning Rejected Asylum Seekers: challenges and good practices

	detention centre will also be provided to rejected asylum seekers staying outside the detention centre.		
Education			
<i>Are rejected asylum seekers who cannot be immediately returned still entitled to participate in educational programmes and/or training? Yes / no</i>	Yes, but only minors.	No practice yet.	
<i>If you stated yes above, please briefly describe under what conditions they can participate in educational programmes and training</i>	Yes, a person to be expelled who is subject to the obligation to attend school shall be ensured access to education in accordance with the Basic Schools and Upper Secondary Schools Act. ⁷⁵ A person who has reached the age of seven years before October 1 in the current year is subject to the duty to attend school (including a person having foreign citizenship or unspecified citizenship). A person is required to attend school until they acquire basic education or attain the age of 17 years. ⁷⁶		
Other?			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	No other measures.	No other measures.	

⁷⁵ Obligation to Leave and Prohibition on Entry Act § 26⁵ lg 8. –RT I 1998, 98, 1575... RT I, 06.04.2016, 22, available at: www.riigiteaja.ee

⁷⁶ Basic Schools and Upper Secondary Schools Act § 9 lg 2. - RT I 2010, 41, 240... RT I, 31.12.2015, 15, available at: www.riigiteaja.ee

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.

No, legally there is no difference whether the person has caused the situation where the removal is not possible or not.

Q25. Can persons who are not immediately returnable also be eligible for regularisations? *Yes / No* If so, under what circumstances?

Estonia has not established any regularisation programmes for TCNs who are not immediately returnable; however, pursuant to the amendments to the Aliens Act that became effective as of 1 May 2016, it is possible to issue as an exception a temporary residence permit on humanitarian grounds to a TCN. This provision created the possibility to grant an Estonian residence permit to persons who do not qualify for the residence permit under the applicable Aliens Act or the AGIPA, in situations where there are humanitarian grounds for granting a residence permit and the refusal of residence permit and requiring the person to leave the country is unreasonably burdensome or impossible. This provision states that in exceptional circumstances a TCN may be granted a temporary residence permit issued for settling permanently in Estonia if in the course of the proceedings relating to the entry of a TCN into Estonia, his or her temporary stay, residence and employment in Estonia or the obligation to leave Estonia of a TCN it has become evident that the refusal of entry or requiring a TCN to leave Estonia would be unduly burdensome to him or her, the TCN lacks the possibility of getting the residence permit in Estonia on another basis, TCN's permanent residence in Estonia is in accordance with public interests and the TCN does not constitute a threat to public order and national security. Granting of a residence permit on these grounds is exceptional, and a person cannot apply himself or herself for such a residence permit, but a TCN can emphasise the circumstances why s/he needs the Estonian residence permit during another procedure performed by the Police and Border Guard Board.⁷⁷ In addition, a person has a possibility to apply for other legal basis of stay, provided that the respective legislative criteria are met.

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?

Yes, the Police and Border Guard Board regularly assesses the possibility of return of persons who cannot be immediately returned.⁷⁸

⁷⁷ Explanatory memorandum No. 81 SE II for the second reading of the Draft Amendment Act of the Act on Granting International Protection to Aliens and Associated Acts, p 21.

⁷⁸ EMN interview of 17.5.2016 with the PBGB's expert.

Returning Rejected Asylum Seekers: challenges and good practices

- a) Each PBGB's employee follows his/her own cases and any decisions are made at discretion. The PBGB continues to sign agreements with national authorities of other countries, and continues to cooperate and make efforts in order to ensure the execution of return decisions.
- b) Assessments are done regularly, based on individual circumstances. If a return decision is suspended, the circumstances for removal shall be reviewed at least at the end of the suspension period.
- c) This applies both to persons whose return decision has been suspended and also to those whose return decision is still valid but who could not be immediately returned. In theory this does not apply to persons who have received a residence permit pursuant to the Aliens Act in which case the return decision will become void.
- d) Yes, in a situation where it has turned out that the removal is not possible. There are no fixed criteria and all the cases are decided on individual merits.

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.*

No evidence.

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

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 accelerate the examination procedure when the application presents these characteristics?	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,</i>	What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal?

Returning Rejected Asylum Seekers: challenges and good practices

	<i>Yes/No</i>		<i>rarely, never</i>	
Applicant only raised issues not relevant to the examination	Yes.	Yes.	<i>In some cases.</i>	
Applicant is from a safe country of origin	Yes.	Yes.	N/A	
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. ⁷⁹	Yes.	In some cases.	
Applicant misled the authorities by presenting false documents/information, withholding of info/docs	Yes.	No.		
Applicant destroyed documents intentionally to make assessment difficult	Yes.	No.		
Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI)	Yes.	No.		
Applicant lodged an inadmissible subsequent application	Yes.	Yes.	<i>In some cases.</i>	
Applicant lodged an application to delay or frustrate enforcement of removal	Yes.	Yes.	In some cases.	
Applicant irregularly entered the territory and did not present him/herself to the	Yes.	No.		

⁷⁹Pursuant to the applicable legislation, this is the basis for refusal to examine the application, not a manifestly unfounded application. According to the version of the AGIPA that was effective until 30 April 2016, this was one of the basis for the application of the border procedure.

Returning Rejected Asylum Seekers: challenges and good practices

authorities				
Applicant refuses to comply with the obligation to have his/her fingerprints taken	Yes.	No.		
Applicant poses danger to national security or public order	Yes.	No.		
Another country can be considered the principal asylum country from the point of view of the applicant, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;	Yes. ⁸⁰	No.		<i>The measure is no longer applied. It was not in compliance with the recast Asylum Procedures Directive.</i>
The applicant holds a residence permit in Estonia;	Yes. ⁸¹	No.		<i>The measure is no longer applied. It was not in compliance with the recast Asylum Procedures Directive.</i>
The applicant's actual objective is to settle in Estonia for other reasons, including to find employment or improve his or her living conditions;	Yes. ⁸²	No.		<i>The measure is no longer applied. It was not in compliance with the recast Asylum Procedures Directive.</i>
the applicant has submitted a new application for asylum with new personal data;	Yes. ⁸³	No.		<i>The measure is no longer applied. It was not in compliance with the recast Asylum Procedures Directive.</i>
the application for	Yes. ⁸⁴	No.		<i>The measure is no longer</i>

⁸⁰ Applied until 30.4.2016.⁸¹ Applied until 30.4.2016.⁸² Applied until 30.4.2016.⁸³ Applied until 30.4.2016.⁸⁴ Applied until 30.4.2016.

Returning Rejected Asylum Seekers: challenges and good practices

asylum of the parent of an applicant who is a minor has been rejected;				<i>applied. It was not in compliance with the recast Asylum Procedures Directive.</i>
an applicant who is a minor independently submits an application for asylum that his or her legal representative has already submitted for him or her.	Yes. ⁸⁵	No.		<i>The measure is no longer applied. It was not in compliance with the recast Asylum Procedures Directive.</i>

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? *Please note that this question was posed as part of Ad-Hoc Query 2016.1024 requested on 3rd February 2016. Please refer to your Member State response to this AHQ and provide only updated information.*

No, but the possibility of drafting such a list is provided by law since 1 May 2016.⁸⁶ The list will be compiled by the Police and Border Guard Board and it is reconciled with the Estonian Internal Security Service and the Ministry of Foreign Affairs. The list should be completed by the end of 2016.⁸⁷

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*

According to the Police and Border Guard Board expert opinion it used to be a good practice to issue the negative asylum decision at the same time as the return decision.⁸⁸

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)?

Please note that this question was posed as part of Ad-Hoc Query 2016.1024 requested on 3rd February 2016. Please refer to your Member State response to this AHQ and provide only updated information.

Yes, the amendments to the AGIPA that became effective as of 1 May 2016 regulated the bases for the application of an accelerated procedure and specified the conditions and terms for an accelerated examination procedure of applications. Although, the accelerated examination procedure of applications was also possible pursuant to the

⁸⁵ Applied until 30.4.2016.

⁸⁶ AGIPA § 9 (6¹) RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

⁸⁷ EMN interview of 05.05.2016 with the PBGB's expert.

⁸⁸ EMN interview of 17.05.2016 with the PBGB's expert.

previous version, this procedure was vaguely regulated and seldom used in practice. According to the applicable regulation, the Police and Border Guard Board can apply an accelerated procedure for examining a clearly unfounded application for international protections, including in a border situation. In such a case an application is examined in 30 days and this deadline can be extended, if necessary.⁸⁹

Furthermore, pursuant to the applicable legislation the PBGB has a possibility to compile a list of safe countries of origin. This allows performing an expedited procedure for the purposes of the Directive on common procedures for granting and withdrawing international protection. This list should expedite and facilitate the return of persons who do not need international protection (also helps to prevent the abuse of the asylum system) and ensured the channelling of recourses to persons whose need for protection is justified.

Given the fact that judicial proceedings in respect of international protection cases may go on for years, a new regulation was introduced, providing that the court shall give priority to the examination of cases related to international protection.⁹⁰ This is in the interests of both the Republic of Estonia and the applicant for international protection. From one hand, it contributes to public order, public security and state security, and from the other hand, it ensures that the applicant for international protection obtains as quickly as possible a decision on his/her future.⁹¹

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).

In Estonia preparing asylum seekers for return is neither regulated by law nor official communications, but it is considered a standard practice of the authorities.

In the Estonian legislation it is stated that an applicant has the right to receive within fifteen days as of the submission of the application for asylum or for residence permit oral and written information in a language which he or she understands concerning his or her rights and obligations including information concerning legal assistance, assistance relating to reception conditions, organisations providing information, time-frame for proceedings for international protection and the consequences of failure to comply with obligations.⁹² Therefore the return counselling of (ex) asylum seekers is not mandatory in *expressis verbis* but is mandatory in principle. Asylum seekers are provided information about their rights and obligations including information about the possibility of return throughout the process. Pursuant to the Administrative Procedure Act, an administrative authority shall, before taking any measures

⁸⁹ AGIPA § 20², RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

⁹⁰ Code of Administrative Court Procedure § 126 (3). - RT I, 23.02.2011, 3...RT I, 13.04.2016, 4, available at: www.riigiteataja.ee

⁹¹ Explanatory memorandum No. 81 SE II for the second reading of the Draft Amendment Act of the Act on Granting International Protection to Aliens and Associated Acts.

⁹² AGIPA § 10 (1), RT I 2006, 2, 3.... RT I, 6.4.2016, 2, available at: www.riigiteataja.ee.

that may damage the rights of a participant in a proceeding, grant a participant in a proceeding a possibility to provide his or her opinion and objections.⁹³ If the international protection proceeding has come to a stage where the PBGB considers that the application of the respective person must be rejected, the applicant is granted a possibility to provide his/her objections. If objections are provided orally, the Police and Border Guard Board also informs the applicant of the possibility of voluntary return to the country of origin through the IOM's Voluntary Assisted Return and Reintegration Programme from Estonia (VARRE programme).⁹⁴ IOM VARRE programme is financed by the Asylum, Migration and Integration Fund (AMIF) and by the Estonian Ministry of the Interior. After the person has received a negative decision the possibility of voluntary return is explained and the person receives all relevant information to return. Possibility to return under VARRE programme is only provided to persons who are eligible for voluntary return. Persons subject to forced return are not entitled to participate in IOM VARRE programme.

Counselling services are provided in detention and accommodation facilities, *inter alia* for providing to the applicants information on his/her rights and obligations in the procedure: including on the rights and obligations that arise if an application for international protection is rejected or if a person is granted international protection; legal consequences, various procedural steps and causes for these steps. Also, the applicants are provided assistance in preparing state aid applications, if necessary, in organising meetings and communicating with a state aid representative, in preparation for interviews and in obtaining documents, if necessary. The applicants are also informed of the criteria for joining the IOM's VARRE programme, etc.⁹⁵

Q33a. 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

Please note that this question was posed as part of Ad-Hoc Query 2016.1024 requested on 3rd February 2016. Please refer to your Member State response to this AHQ and provide only updated information.

No recent changes.

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*).

No specific approaches/measures are currently planned to be implemented to prepare asylum seekers for return whilst they are still in the asylum procedure.

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

⁹³ Administrative Procedure Act § 40 (2), RT I 2001, 58, 354... RT I, 23.2.2011, 8. Available at: www.riigiteataja.ee.

⁹⁴ IOM VARRE, available at: <http://www.iom.ee/varre/>

⁹⁵ Response of the Ministry of the Interior to the EMN's inquiry of 30.5.2016.

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?

The return policy in Estonia is based on the general EU migration policy. Estonia supports the revision of the EU asylum policy in order to contribute to the performance of duties provided by the Return Directive.⁹⁶ Effective return of illegally staying TCNs is an important objective in Estonia, but Estonia has not established a return policy that would directly target the rejected applicants for international protection. There are no big differences in challenges that have occurred in return procedure of rejected asylum seekers and return procedure of other illegally staying third country nationals and the measures to overcome the challenges have been similar. Hence, currently the return policy in Estonia has rather been tailored for illegally staying third country nationals in general as the number of rejected asylum seekers has been relatively low compared to other third country nationals who have been issued a return decision.

At the same time the number of applicants for international protection has shown growing trend from year to year and additionally some new countries of origin have accrued with whom Estonia has had no previous cooperation contacts resulting in longer return procedures and problems arising thereof.

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?

As the number of rejected asylum seekers is relatively low, it is difficult to make any generalisations as the effectiveness of practices or policies is often dependant of the circumstances of each case.

In 2016 many important legislative changes were introduced in the Act of granting international protection to aliens and that has entailed also changes in practice. Although it is early to give any assessments on how the changes affect the return of rejected asylum seekers, some new measures should accelerate the asylum procedure (e. g it is now possible for the PBGB to make a list of safe countries of origin, the courts should give priority to the examination of the asylum cases and there is a clearer regulation for accelerated procedure for examining clearly unfounded applications).

It can be considered a good practice that the asylum seekers are offered counselling services in detention and accommodation facilities for providing information about the rights and obligations and what happens when the application for international protection is rejected. It can also be considered a good practice that voluntary return through IOM VARRE programme is possible in principle.

I could also be considered a good practice that the PBGB makes the decisions on international protection as well as on the return decision which facilitates the communication.

The PBGB expert opinion is that the good practice used to be that the decision on international protection and the return decision were generally issued at the same time.⁹⁷

⁹⁶ Response of the Ministry of the Interior to the EMN's inquiry of 26.5.2016.

⁹⁷ EMN interview of 17.05.2016 with the PBGB's expert.

Annex 1

Q37. *With reference to Question 2, please complete the following table with national statistics on the (estimated) number of rejected asylum seekers, if available.*

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy etc. It should be noted, given the differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

As the number of asylum seekers in Estonia is relatively low, it is difficult to point out only the top 5 nationalities of the rejected asylum seekers and therefore we have provided more than the top 5. We cannot distinguish between men and women for the total number of asylum seekers rejected (after all appeals). Also, there are some cases where a return decision was issued before the person entered into asylum procedures meaning that the return decision is registered in one year and the negative asylum decision in the next year. As seen from the statistics, the number of rejected asylum seekers returned voluntarily has increased from year to year. The number of rejected asylum seekers returned voluntarily includes those returned through assisted voluntary return.

The data provided in present study is received from the Police and Border Guard Board.

Please provide your answer by completing the Excel document inserted as an object below and sent separately with this Common Template. The top ten nationalities for each year should be indicated by replacing the word "citizenship 1, 2, 3, etc." in the first column of the table with the name of the nationality. For example, if Serbia was the third-country producing the largest number of rejected asylum seekers in 2015, then this would be listed in place of "citizenship 1" in the table for 2015.

Please do not here include Eurostat information on third-country nationals returned, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.



Annex 1_Common
Template_Rejected #