



# **EMN FOCUSSED STUDY 2017**

## **The effectiveness of return in the Slovak Republic: challenges and good practices linked to EU rules and standards<sup>1</sup>**

### **Top-line “Factsheet” (National Contribution)**

*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 focussed study of the European Migration Network (EMN) “Effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards” has been prepared within the framework of the EMN work programme 2017 activities.

The aim of the study is to analyse the effectiveness and impact of the European return legislation (including the Return Directive and the judicial decisions of the Court of Justice of the European Union) on the policy and practice in EU Member States (MS) concerning returns, and thus also the effectiveness of the return decisions issued in the EU. Another goal is to identify challenges faced by the MS during the performance of returns as well as the relevant good practice. Some parts of the study follow up or update previous thematic studies prepared by EMN.<sup>2</sup>

The target group for these studies are policy makers on national and EU levels involved in the process of design of return policies as well as state institution employees directly involved in issuance and enforcement of return decisions. The results of the study can help the target group make informed decisions regarding possible changes in the policies and practice related to the return processes covering TCNs staying irregularly in the territory of the given countries. The EC uses the national reports to prepare a synthesis report covering the main findings from the MS.

The methodology used in the study prepared by the Slovak Republic is based on the processing and analysing of available documents addressing the given topic, mainly relevant laws, regulations,

---

<sup>1</sup> Please note that the List of abbreviations is available at the end of the study.

<sup>2</sup> This study is a follow-up to the these EMN focussed studies and other EMN outputs: The Return of Rejected Asylum Seekers: Challenges and Good Practices (2016); Dissemination of Information on Voluntary Return: How to Reach Irregular Migrants not in Contact with the Authorities (2015); The Use of Detention and Alternatives to Detention in the Context of Immigration Policies (2014); Good Practices in the Return and Reintegration of Irregular Migrants: Member States’ Entry Bans Policy and Use of Readmission Agreements between Member States and Third Countries (2014). These outputs are available at [www.emn.sk](http://www.emn.sk).

methods, EMN and other publications discussing the topic, Ad-Hoc Queries, etc. Lots of information and statistical data have been obtained from BBAP PFP through a questionnaire.

The Slovak Republic (SR) continues to remain only a transit country for irregular migrants. In 2016, irregular migration in the territory of the SR fell by 14.4%, from 2,535 to 2,170. However, since the SR entered the Schengen Area, the third highest level was recorded which was mainly connected with migration situation. Despite affecting the SR only marginally, it concerned the cases of intra-Schengen (transit) migration from Hungary (occasionally cases from Austria), following the Western-Balkan Route.<sup>3</sup> In 2016, 1,839 return decisions<sup>4</sup> were issued; the number of migrants who underwent forced return in 2016 was 314, whilst 1,094 migrants returned voluntarily, 116 of them opted for assisted voluntary return (AVR) through IOM.<sup>5</sup>

The first chapter presents a brief overview of the situation and priorities of the SR concerning returns including an overview of the relevant legislation and the attention of media. Effective, sustainable and successful returns are a priority for the SR also in relation to the all-European context. Specifically, there are three priority areas: implementation of the EU tools (Commission Recommendation of March 2017 (hereinafter referred to as EC Recommendation)<sup>6</sup>, revision of the EU Action Plan on Return); improvement of cooperation with third countries as well as information exchange with EU MS and EU institutions; but also improving the effectiveness of cooperation on the national level, etc.

The Return Directive is transposed in the legislation of the SR mainly in Act No. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts (hereinafter Act on Residence of Aliens) which entered into force on 1 January 2012 thus completing the transposition of the Directive in the national legislation. The implementation of the Act including individual actions and procedures is further elaborated in multiple internal binding documents<sup>7</sup> and related laws<sup>8</sup>.

In relation to the migration situation in 2015 – 2016, the SR has not introduced any specific legislative changes regarding returns or policies in reaction to this situation. As regards the EC Recommendation, SR conducted the evaluation of their use in practice and it was found out that most of these recommendations had already been implemented. On the other hand, the topic of migration was covered by the media more than before 2015. Media output also covered the area of returns of TCNs irregularly staying in the MS territory. Media specifically addressed the return policy of the EU and its MS, the agreement between the EU and Turkey, voluntary returns, agreements concluded with African countries, etc. The topic of returns was among the priorities of the Slovak Presidency in the Council of the EU also covered by the media.

The second chapter addresses the practice of MS regarding the issuance of return decisions (in the context of the SR, this means a decision on administrative expulsion) in certain specific cases. The relevant police department is responsible for issuing decisions on administrative expulsion (AE) and it identifies the reasons for AE. Except for extraordinary cases set out in the national legislation (e. g. minors or vulnerable persons), the SR systematically issues return decisions to TCNs irregularly staying in the territory of the SR, i.e. the decision is also issued when the TCN lacks identification or travel documents, or their whereabouts are unknown. Locating irregularly staying TCNs with unknown whereabouts is performed using different police tools including sharing information between individual Police Force departments, obtaining information from other state authorities, performing inspections based on complaints or in order to reveal illegal work and illegal employment of aliens, performing checks of legal residence, etc.

---

<sup>3</sup> EMN study: Challenges and practices for establishing applicants' identity in the migration process.

<sup>4</sup> The return decision is an administrative or judicial decision or act which states that the TCN is staying in the territory of the country irregularly and is therefore obliged to leave. In the SR, the term "expulsion order" represents the concept of administrative or judicial expulsion (penalty of expulsion from the SR). However, this study mainly concerns the administrative expulsion cases (hereinafter AE). The study does not specifically analyse judicial expulsion (hereinafter JE).

<sup>5</sup> Source: BBAP PFP and IOM questionnaires.

<sup>6</sup> Commission Recommendation of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council

<sup>7</sup> E.g. The Command of the Director of Bureau of the Border and Aliens Police of the Police Force Presidium No. 54/2013 to ensure procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic.

<sup>8</sup> E.g. Act No. 162/2015 Coll. on Administrative Procedure (Administrative Procedure Code).

The decision on AE is not issued simultaneously with the decision on the withdrawal of the residence permit. First, the TCN receives the decision on the withdrawal of their residence permit; if the TCN fails to leave the country in the 30-day legal period, they receive the decision on AE. The decision on AE is issued for an indefinite period, and if the period for voluntary departure is included, it explicitly states that the TCN is obliged to leave the territory of the SR by the end of the period starting with the day the decision enters into force. It also states the country of destination. Should any obstacles for expulsion emerge, the police department suspends the execution of the decision. In the case that such obstacle makes it impossible to leave the country, or makes detention ineffective or there are other situations set out in the relevant law, the TCN can be granted tolerated stay.

The third chapter addresses the practice and criteria for evaluating the risk of absconding in case of the TCN to whom the AE decision has been issued. The practice of the SR regarding the evaluation of the risk of absconding is based on European and national legislation, and also the experience of the Slovak and other EU police departments. Pursuant to the Act on Residence of Aliens, the risk of absconding of the TCN represents a situation in which there is a well-founded concern or direct threat that the TCN will abscond or hide, mainly if their identity cannot be immediately identified, they have not been granted residence pursuant to the Act on Residence of Aliens, or there is a possibility that they will be imposed an entry ban for more than three years. Other evidence and indicators which are not explicitly stated in the Act, however, which are based on the practice, may include: that the alien has previously absconded or tried to escape detention; that they claim they do not wish to return to their country of origin, etc. In the SR, evaluation of the risk of absconding depends on the specific circumstances of the given case.

The fourth chapter addresses several aspects of the effective performance of the return decision such as: mutual recognition of return decisions among MS, use of detention and alternatives to detention in the return process, scope of exceptions from the standard period for legal examination and general conditions for detention by MS due to emergency situations, introduction and use of European travel documents in the return process (in compliance with EU Directive 2016/1953). The SR recognizes expulsion decisions issued by competent authorities in other MS. Before acting upon the decision, the police department requests the statement from the country which issued the decision and examines whether it is in compliance with international agreements and Act on Residence of Aliens. After the return is performed, the police department notifies the country which issued the decision about this fact. It is important for the country which issued the return decision to provide it to Slovak authorities as soon as possible. If it is not possible via the SIRENE, the issued decision will not be recognized despite the fact that it can be verified in the SIS database that the given MS has most probably issued the decision. In such case, another decision is issued by the Slovak authorities in order to facilitate fast and effective return.

The SR does not issue EU travel documents according to the EU Directive 2016/1953. The only department in the territory of the SR which can issue Emergency Travel Documents or communicate with diplomatic missions regarding TCN returns is the Police Detention Centre for Aliens in Medveďov. The waiting period is individual; documents may be issued immediately or there may be reasons why the applicant has to wait for a longer period. If the alien requests AVR, their Emergency Travel Documents will be provided by the IOM which performs AVRs. The waiting period for Emergency Travel Documents is also individual, depending upon the location of the consulate (2 to 4 weeks on average).

Besides exceptions provided in the legislation, TCNs may be detained by administrative authorities during the return process, i.e. competent police departments, based on reasons set out in the Act on Residence of Aliens. The TCN may be detained for the necessary period with a maximum of six months. In justified cases, this period may be repeatedly prolonged, however, the extension of the detention period must not exceed 12 months. The detention period cannot be prolonged by another 12 months if a family with minors, a vulnerable person or an asylum seeker is involved. The TCN can submit an administrative action to have the detention decision or prolongation of the detention period cancelled or deemed unlawful if the TCN was released from detention. The TCN can also repeatedly submit an administrative action to be released from detention.

In Slovakia there are two Police Detention Centres for Aliens where TCNs are placed based on where they have been apprehended, the capacity of these facilities and their equipment, but age, health, family relationships, religious or ethnic specificities of the TCNs are also taken into consideration. The overall capacity of these two facilities amounts to 328 beds. Despite the large number of TCNs in 2015

reaching the capacity limit of detention centres, it was not necessary to take measures as set out in Article 18 of the Return Directive.

The Act on Residence of Aliens provides two alternatives to detention which can be employed by the police department instead of the detention of TCNs undergoing the AE procedure in which the period for voluntary departure has not been stated, and their detention procedure began. In the first alternative, the obligation to report their residence or provide financial guarantees can be imposed. Either of these obligations can be imposed by the police department during the course of the detention period as well as during the procedure on the prolongation of detention.

The fifth chapter focuses on process guarantees and legal remedies related to AE decisions. The TCN can submit an appeal against the AE decision in 15 days after receiving it. The appeal is examined by the second-instance administrative authority (BBAP PFP Directorate). At the next level, the valid decision of the second-instance authority can be appealed against in court by the request of a legal examination. In general, the appeal against the AE decision has a suspensive effect, and the return cannot be performed until the appeal authority issues the decision. An exception can be made if the administrative authority decides that the suspensive effect of the AE decision is cancelled. It is not possible to appeal against such a decision and the appeal will not in any way influence the performance of the AE decision.

The sixth chapter examines the MS practice in the area of identifying the best interests of the child, family life and health as well as the practice regarding the return of unaccompanied minors and detention of minors. Unaccompanied minors (UAMs) cannot be administratively expelled into their country of origin or other country, however, this does not apply if their expulsion is in their own interest. Pursuant to the Act on Residence of Aliens, UAMs are entitled to tolerated stay unless there is a reason to reject the application. Despite the fact that forced returns of UAMs are not performed, UAMs can be voluntarily returned to their country of origin or usual residence through the Assisted Voluntary Return and Reintegration Programme of IOM which also entitles them to reintegration assistance.

The return of the TCN can be postponed due to health reasons. Evaluation of health and of the availability of healthcare in the country of destination is in the competence of the medical doctor assigned to the alien in Slovakia. In case of need, the SR provides only the medication which is necessary during the return and immediately after it is carried out. Pregnancy e.g. high-risk pregnancy also constitutes a reason to postpone the return of the TCN.

Almost all vulnerable groups can be detained under specific conditions, only if necessary and only for the necessary period with a maximum of 6 months. UAMs constitute an exception, as they cannot be detained under any circumstances.

The seventh chapter focuses on the practice regarding voluntary departure such as the practice regarding setting a period for voluntary departure, its prolongation, or rejection of requests for voluntary departure. The period for voluntary departure is imposed simultaneously with the AE decision. An exception can be made if there is a possibility that the TCN will abscond or otherwise evade or obstruct the performance of the AE decision, mainly if their identity cannot be identified. In such case, they can be detained under conditions set out in Act on Residence of Aliens. The TCN may also be detained if they pose a security risk for the country, public order, public health or for the rights and freedom of others. According to the Directive, the period for voluntary departure can be a minimum of 7 and a maximum of 30 days from the enforceability of the decision, and various circumstances are taken into consideration, e. g. cooperation with responsible authorities concerning the return, probability of the success of return, the need to settle obligations of the TCN in the territory of the SR, or their current health state. In specific cases (e. g. personal or family reasons, health, length of stay), the period can be prolonged. Whether in fact the TCN has left the territory of the SR during the period for voluntary departure can only be verified if they cross the external border, i.e. to Ukraine or via an airport, and their exit is therefore recorded in the MIGRA national information system.

The final and eighth chapter discusses the conditions for entry bans including the reasons to cancel, withdraw or postpone the ban. The law of the Slovak Republic does not explicitly state reasons to impose an entry ban. Pursuant to the valid legislation of the SR, it depends upon reasons related to AE. According to the valid legislation, imposition of the entry ban is of a facultative nature almost in all AE cases and the police department can impose it in the AE decision. There are three situations in which the police department has to impose an entry ban: the police department does not grant the period for voluntary departure in the AE decision; TCN has been previously administratively expelled but has not received an entry ban, however, they failed to leave the country during the period for voluntary departure stated in the AE decision; if there are multiple reasons for AE. An entry ban

enters into force on the day AE is performed, on the day they leave the country within their AVR, or – in case the previous two alternatives are not used – on the day when the period for voluntary departure stated in the AE decision expires. Breaching the entry ban is considered a criminal offence.

## Section 1: Contextual overview of the national situation concerning the return of third-country nationals

*The introductory section of the Synthesis Report will aim at contextualising the study by providing a brief overview of the overall situation in the Member States as regards the return of third-country nationals. It will succinctly review the national measures implementing the Return Directive (including judicial practices and interpretations) or equivalent standards (for Member States that are not bound by the Directive) and examine the policy debate concerning the return of third-country nationals in the Member States. The section will also include quantitative data extracted from Eurostat to estimate the scale of the main issues concerning return (e.g. number of third country nationals ordered to leave and of third country nationals returned following an order to leave).*

**Q1.** Please provide an overview of the national measures implementing the Return Directive (including judicial practices, interpretations and changes related to case law concerning the Return Directive) or equivalent standards (for Member States which are not covered by the Directive) in your Member State.

The transposition of the Return Directive into the SR legislation has been completed and the EC was notified of this fact during the effectiveness of the previous Act No. 48/2002 Coll. on the Residence of Aliens<sup>9</sup> before the end of the transposition period. However, the application practice later showed the need to further specify certain concepts since some definitions are interpreted in multiple ways and certain procedures are not purposeful in terms of their compatibility with the EU legislation. Due to these reasons, the SR created a completely new Act No. 404/2011 Coll. on Residence of Aliens which entered into force on 1 January 2012 thus completing the transposition of the Directive into the internal state legislation. The new Act has unified the border control procedures focused on the border control of persons and the residence of aliens (including procedures and conditions regarding their entry, departure, exit, AE) into a single legislative act. By transposing the Return Directive in the SR, the legislation and the policy have generally been harmonized with the minimum standards required in the EU norms.

The implementation of the Act on Residence of Aliens includes internal regulations providing the methodology for AE of aliens, TCN detention and voluntary return from the territory of the SR<sup>10</sup> as well as the procedure regarding the placing of aliens into the Police Detention Centres for Aliens<sup>11</sup>. Subordinate units of BBAP PFP got familiarised with the Return Handbook which has been then put into everyday use of police units dealing with returns via the intranet portal. Where Slovak legislation permitted, BBAP PFP directly introduced several of the EC Recommendation in the field of returns into practice<sup>12</sup>.

Further laws important in terms of the implementation of the EU Return Directive include mainly subsidiary provisions of the general administrative procedures pursuant to Act No. 71/1967 Coll. and judicial review pursuant to the Act No. 162/2015 Coll. The Administrative Procedure Code valid since 1 July 2016 hereby substitutes the previous Civil Procedure Code (No. 99/1963 Coll.) and Criminal Code<sup>13</sup> (with regards to imposing the punishment of expulsion or entry ban). In relation to the provision of free legal assistance for TCNs in second-instance proceedings regarding administrative

---

<sup>9</sup> Amendments to this act include Act No. 594/2009 Coll. which entered into force on 1 January 2010 and partially 4 April 2010, and Act No. 223/2011 Coll. which entered into force on 20 July 2011.

<sup>10</sup> The Command of the Director of Bureau of the Border and Aliens Police of the Police Force Presidium No. 54/2013 to ensure procedures concerning the administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic.

<sup>11</sup> Regulation of the Minister of Interior No. 26/2007 on the Procedures Followed in Placing Aliens into Police Detention Centres for Aliens as amended.

<sup>12</sup> Information provided by BBAP PFP.

<sup>13</sup> Act No. 301/2005 Criminal Code Coll.

expulsion, the Act on Provision of Legal Aid for People in Material Need <sup>14</sup> covering provisions on this area needs to be mentioned.<sup>15</sup>

**Q2.** [EC Recommendation (8)] Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?<sup>16</sup> Yes/No *No* The SR has not transposed this Article of the Directive into the national legislation, therefore this derogation is not made use of; the procedure set out in the Return Directive is followed also in case of TCNs who acted as provided in Article 2, Paragraph 2, Letters a) and b).

Please briefly elaborate on important exceptions to the general rule stated above

N.A.

If Yes, please describe:

- a) The categories of third-country nationals to whom this derogation applies (third-country nationals who are subject to a refusal of entry AND/OR third-country nationals who are apprehended or intercepted while irregularly crossing the external border AND/OR third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures);
- b) How the return procedure applied in such cases differs from standard practice (e.g., a period for voluntary departure is not granted, appeals have no suspensive effect, etc.)

N.A.

**Q3.** Please indicate any recent changes in the legal and/or policy framework (i.e., as a result of the migration situation in 2015-2016 or the European Commission Recommendation issued in March 2017).

Between 2015 and 2017 some minor legislative changes took place, however, they were not related to the migration situation in 2015 and 2016 or the EC Recommendation. Based on the EC Recommendation, SR (as other MS) made an assessment on their implementation in national practice which showed that SR is already implementing majority of the EC Recommendation. Some of the recommendations cannot be introduced into practice due to national legislation, situation in the SR regarding migration (SR did not face the crisis so vividly as other countries) or due to existing setting of the migration policy management in the SR (e.g. it is not possible to issue a decision on not granting asylum and decision on return in one administrative act). Where provisions of the Slovak legislation permitted, BBAP PFP has internally directly introduced several of the EC Recommendation (specifically recommendation n. 15, 16, 20 and n. 3 letter c)) in the field of returns into practice BBAP PFP.

**Q4.** Is the return of irregularly staying third-country nationals a priority in your Member State?

Yes/No *Yes*

If Yes, please provide a brief overview of the national debate on return in your Member State. Please indicate key points of discussion and players involved in this debate, and reference the information provided.

<sup>14</sup> Act No. 327/2005 Coll. on Provision of Legal Aid for People in Material Need.

<sup>15</sup> The question was elaborated based on sources: Mešková B. and Številová Z.: Compliance with the Return Directive in Slovakia. National report. Human Rights League, June 2015, Bratislava; Explanatory Memorandum to Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts, as amended. Available at: <http://www.najpravo.sk/dovodove-spravy/rok-2011/404-2011-z-z.html>.

<sup>16</sup> Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b)).

Sources of national debate to include may be national media reports, parliamentary debates, and statements or reports of NGO/civil society organisations or International Organisations (IOs).

Effective, sustainable and successful returns of irregularly staying TCNs are the priority of the SR following the all-European context. The priority areas include: implementation of the EU tools (EC Recommendation, revision of the EU Action Plan on Return), improvement of cooperation with third countries as well as information exchange with EU MS and EU institutions, but also improving the effectiveness of cooperation on the national level, mainly with the Frontex Agency regarding returns – participation in the IRMA platform, support of partnership with third countries, combatting irregular migration and its causes in the third countries, improving the effectiveness of cooperation in the area of returns on the national level.<sup>17</sup> Shortening the total length of return procedures and their execution also remains a priority.<sup>18</sup>

In 2016 and the first half of 2017, media (similarly to 2015) continued to focus on the topic of migration and asylum more than in previous years; returns of TCNs irregularly staying in MS were also covered. Media specifically addressed the return policy of the EU and its MS, the agreement between the EU and Turkey, voluntary returns, agreements concluded with African countries, etc. The topic of returns was also the priority of the Slovak Presidency in the Council of the EU also covered by the media. During the Slovak Presidency in the Council of the EU the topic of returns was discussed also on the political level, e. g. during the informal session of the Justice and Home Affairs Council (JHA)<sup>19</sup> or the EMN conference on sustainable returns and cooperation with countries of origin<sup>20,21</sup> Among other publications and specialized reports, the Human Rights League non-governmental organization published the national report on the compliance with the Return Directive in Slovakia<sup>22</sup>. The report analyses the implementation of the Return Directive in the SR and the compliance of Slovak legal standards and practice with international standards.

## Section 2: Systematic issuance of return decisions

*This section of the Synthesis Report will provide information on Member States' practices with respect to the issuance of a return decision to any third-country national staying irregularly on their territory (as per Article 6 of the Return Directive). The section will consider, among others, whether the issuance of a return decision is subject to the possession of travel or identity documents by the third-country national concerned and examine if Member States issue joint decisions concerning the ending of a legal stay and a return decision in a single administrative or judicial decision (Article 6(6) of the Return Directive). The section will also provide information on the frequency with which Member States choose to grant an autonomous residence permit for compassionate, humanitarian or other reasons (Article 6(4) of the Return Directive) or refrain from issuing a return decision due to the third-country national*

---

<sup>17</sup> Elaborated based on the Strategic and Thematic policy priorities of the SR in the Area of Migration and Asylum in 2017 by the EMN National Steering Board, May 2017.

<sup>18</sup> Brychta J., Frkáňová A.: The Return of Rejected Asylum Seekers. Focussed study of the EMN NCP in the SR, in questionnaire form. Bratislava: IOM, 2016. Bratislava.

<sup>19</sup> Source: <http://www.minv.sk/?tlacove-spravy&sprava=migracia-ochrana-hranic-a-schengenskeho-priestoru-bolitemami-neformalneho-stretnutia-europskych-ministrov-v-ramci-slovenskeho-predsednictva-v-rade-eu> (consulted on 21 August 2017).

<sup>20</sup> The EMN Conference Rethinking Returns from the EU Sustainable Returns and Cooperation with Countries of Origin was held on 6 – 7 July 2016 and organised by the EMN NCP for the Slovak Republic. The conference topic was in accordance with the European Agenda on Migration as well as priorities of the Slovak Presidency in the Council of the EU. The aim was to discuss the current state, good practice, and experience regarding the return and reintegration of migrants outside the EEC that can prove useful to the EU and the MS. Among speakers there were 22 experts from the European Commission, Frontex EU Agency, selected EU countries, inter-governmental and non-governmental organisations active in the countries of return, and think tanks. The European Commissioner for Migration, Dimitris Avramopoulos, Home Affairs and Citizenship, IOM director general, William L. Swing and the Minister of Interior of the SR, Robert Kaliňák were also among the key-note speakers.

<sup>21</sup> Source: EMN Media Monitoring 2015, 2016.

<sup>22</sup> The Publication was created within the "Developing good practices: promoting compliance with the Returns Directive in Latvia, Lithuania and Slovakia" co-financed by the EU. Available at: [http://www.hrl.sk/sites/default/files/files\\_downloads/compliance\\_with\\_the\\_return\\_directive\\_in\\_slovakia\\_engeng\\_0.pdf](http://www.hrl.sk/sites/default/files/files_downloads/compliance_with_the_return_directive_in_slovakia_engeng_0.pdf)

being the subject of a pending procedure for renewing his or her residence permit (Article 6(5) of the Return Directive).

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q5.** Who are the competent authorities to issue a return decision in your Member State?

In the SR the relevant police department is responsible for the identification of reasons for administrative expulsion as well as for issuing decisions on administrative expulsion (hereinafter AE decision). In case of imposing a punishment of expulsion from the territory of the SR it can also be the relevant court.

**Q6a.** [EC Recommendation (5)] Does your Member State refrain from issuing a return decision to irregularly-staying third-country nationals if? :

- a) The whereabouts of the third-country national concerned are unknown; Yes/No **No**
- b) The third-country national concerned lacks an identity or travel document; Yes/No **No**
- c) Other (please describe):

The SR systematically issues return decisions to TCNs irregularly staying in the territory of the SR except for extraordinary cases governed by national legislation. E. g. in case of minors or vulnerable persons, etc.<sup>23</sup>

**Q6b.** In connection with Q6a a) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown? Yes/No **Yes**

If Yes, please elaborate on the type of measures

Localisation of irregularly staying TCNs with unknown whereabouts is identified using tools available to the Police Force. They mainly include sharing information between individual Police Force departments, obtaining information from other state authorities, performing inspections based on complaints from citizens and also familiarity with the location of the police which possess information on persons residing in their territory.

Irregular stay is also identified within the checks, security and direct actions of the Border Control and Alien Police which are performed in cooperation with other authorities outside the Police Force (Labour Offices, Customs Administration, etc.).

Security and direct actions depend on the security situation in the area of irregular migration and up-to date risk analysis related to irregular migration in the territory of the SR, but also based on information obtained by the activity of individual police departments of Border Control and Alien Police.

Pursuant to Article 75 of Act on Residence of Aliens, police departments are authorized to check:

- a) whether a person is staying in the territory regularly and fulfils obligations of an alien pursuant to the Act on Residence of Aliens,
- b) whether natural persons and legal entities fulfil their obligations related to alien residence pursuant to the aforementioned Act.

<sup>23</sup> BBAP PFP questionnaire.

The cited legal provision authorizes the competent police department of the Border Control and Alien Police to enter premises where business, employment, study or accommodation are taking place. The checks also focus on revealing and identifying illegal work and illegal employment of aliens in the territory of the SR.

On the national level police officers assigned to individual directorates of Border Control and Alien Police regularly perform security and direct actions/inspections in cooperation with other authorities. They focus on the legality of residence, compliance with the residence regime, fulfilment of obligations by aliens but also prevent free movement of persons posing a security risk for the country, public order or public health, reveal and investigate administrative offences, collect information on criminal activity related to irregularly staying TCNs and other, identify false and forged travel and other documents, search for transported explosives, weapons and ammunition, missing persons, objects, etc.

**Q6c.** [EC Recommendation (24)(d)] Does your Member State issue a return decision when irregular stay is detected on exit?

Yes/No **Yes**

Please briefly elaborate on important exceptions to the general rule stated above

There are no exceptions to this rule.

**Q7.** [EC Recommendation (5) (c)] In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national? Yes/No **No**

If No, when is the return decision issued? *Please specify.*

If the residence permit of a TCN expires, the police department issues a decision on the withdrawal of residence permit. If the TCN subsequently fails to leave the country within the 30-day legal period, they are issued an AE decision.

In specific situations (e. g. if a security risk is identified), the residence permit is cancelled automatically after the TCN receives the decision on AE.

**Q8.** Does the legislation in your Member State foresee the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on their territory? Yes/No **Yes**

If Yes, please elaborate on the type of permit/ authorisation granted and to which type of third-country national it is granted.

If there is an obstacle to administrative expulsion or the alien cannot leave for some reason and detention would not be purposeful, the TCN may be granted tolerated stay.<sup>24</sup> Tolerated stay can also be granted in order to respect the TCN's private and family life, if they do not pose a security risk for the country or public order, if they are a minor found in the territory of the SR, a victim of human trafficking or exploited for illegal employment, or illegally employed minor.<sup>25</sup>

<sup>24</sup> Article 58 Paragraph 1 of Act on Residence of Aliens.

<sup>25</sup> Article 58 Paragraphs 2 and 3 of Act on Residence of Aliens

**Q9a.** [EC Recommendation (6)] In your Member State, do return decisions have unlimited duration? Yes/No [Yes](#)

**Q9b.** If No, for how long are return decisions valid?

**Q10.** Does your Member State have any mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of *refoulement* before enforcing a removal? Yes/No [Yes](#)

N.A.

If Yes, please describe such mechanism:

According to the national legislation, the police department postpones the execution of the decision on AE if obstacles preventing expulsion emerge i.e. if the security situation in the country of destination change, or there is evidence that the TCN could face torture, capital punishment, etc. In such case, the purpose of detention would cease to exist and the person could be granted tolerated stay in the territory of the SR while the situation persists. The detention centre in which the alien is placed is legally obliged to keep investigating whether the act of expulsion can be performed and whether their detention is purposeful. Before a return is performed, the alien must have access to legal assistance at all times.<sup>26</sup>

**Q11.** [EC Recommendation (7)] Does your Member State systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country? Yes/No [Yes](#)

Please briefly elaborate on important exceptions to the general rule stated above

Yes, each decision on AE with explicitly stated period for voluntary departure includes the information that the TCN is obliged to leave the territory of the SR within the period stated in the decision. If the period for voluntary departure is stated, every decision on AE also states the country of destination into which the TCN will be expelled. In case of the return decision when e.g. it is not possible to clearly identify the TCN, it is possible to issue the decision without explicitly stating the country of return. Forced return, i.e. physical removal of the TCN from the country, also constitutes an exception. In such case the decision states that the person is obliged to leave the territory of the SR and that process will be executed by the police department. This means the relevant police department (Police Detention Centre for Aliens) will decide where the TCN is about to be returned.<sup>27</sup>

### Section 3: Risk of absconding

*This section will examine Member States' practices and criteria to determine the risk of absconding posed by third-country nationals who have been issued a return decision (to the extent that it has not been covered in previous EMN studies/outputs),<sup>28</sup> as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

---

<sup>26</sup> BBAP PFP questionnaire.

<sup>27</sup> BBAP PFP questionnaire.

<sup>28</sup> For example, the EMN Focussed Study 2014 on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'; the Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)" (Requested by Estonian NCP on 15 October 2014); and the "Ad-Hoc Query on the Return Directive (2008/115/EC)article 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

**Q12.** [EC Recommendation (15)] In your Member State, are the following elements/behaviours considered as a rebuttable presumption that a risk of absconding exists?

Table 1 Assessment of the risk of absconding

The risk of absconding is assessed individually depending on the case. Slovak legislation lists specific reasons, for making it possible to predict the risk of absconding, however allows to consider also other reasons not stipulated by the law. SR has implemented all the reasons listed in the EC Recommendation into the practice by an internal command.

Elements/ behaviours	Yes/No	Comments
<b>Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints</b>	Yes	
<b>Violent or fraudulent opposition to the enforcement of return</b>	Yes	
<b>Explicit expression of the intention of non-compliance with a return decision</b>	Yes	
<b>Non-compliance with a period for voluntary departure</b>	Yes	
<b>Conviction for a serious criminal offence in the Member States</b>	Yes	
<b>Evidence of previous absconding</b>	Yes	
<b>Provision of misleading information</b>	Yes	
<b>Non-compliance with a measure aimed at preventing absconding</b>	Yes	
<b>Non-compliance with an existing entry ban</b>	Yes	
<b>Lack of financial resources</b>	Yes	
<b>Unauthorised secondary movements to another Member State</b>	Yes	
<b>Other (please describe):</b>		

TCN's identity cannot be immediately identified <sup>29</sup>	Yes	
The TCN has not been granted residence pursuant to Act on Residence of Aliens <sup>30</sup>	Yes	
The TCN could receive an entry ban for more than three years <sup>31</sup>	Yes	
The TCN expresses their interest to travel to other MS	Yes	
It is presupposed that the TCN will evade return in order to avoid being separated from a close person <sup>32</sup>	Yes	

**Q13.** What measures are in place in your Member State to avoid the risk of absconding for the duration of the period for voluntary departure?

- a) Regular reporting to the authorities; Yes/No **Yes**
- b) Deposit of an adequate financial guarantee; Yes/No **Yes**
- c) Submission of documents; Yes/No **No**
- d) Obligation to stay at a certain place; Yes/No **No**
- e) Other (please describe)

**Q14.** Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

Determining the risk of absconding constitutes a practical challenge. It is necessary to mention that if an administrative authority that had issued a decision on return states that a risk of absconding exists, return has to be physically carried out, i.e. the person will be returned forcibly. One of the challenges is also that the existence of a risk of absconding has to be properly justified, as in the case of an appeal the decision is reviewable by the court. This is why the moment of taking the decision on the existence of a risk of absconding is considered challenging by the SR. Assessment (or re-assessment) of the existence of a risk of absconding in case the person opted for the AVR also constitutes a challenge. However, SR does not make any analyses in this regard – the situation is addressed on ad hoc basis by operative meetings of the relevant police units.<sup>33</sup>

**Q15.** Please describe any examples of good practice in your Member State's determination of the existence of a risk of absconding, identifying as far as possible by whom the practice in question is considered

---

<sup>29</sup> Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014. p. 79.  
<sup>30</sup> Ibidem.  
<sup>31</sup> Ibidem.  
<sup>32</sup> BBAP PFP questionnaire.  
<sup>33</sup> Information provided by the BBAP PFP.

successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

BBAP PFP considers the following examples of indicators good practice in identifying the risk of absconding in the SR:

- the person's identity cannot be identified and the person refuses to cooperate during identification process
- the person has been repeatedly expelled before and there is evidence they entered the Schengen Area despite an entry ban
- a rejected asylum seeker who repeatedly left the asylum facility without notifying the authorities and was returned by a Dublin transfer

The practice in the SR draws from European and national legislation and experience of the competent police departments in the SR, but it is also inspired by experience of other MS regarding migrants to be returned. However, it needs to be pointed out that evaluation of a risk of absconding is perceived as a highly individual act which depends on the specific circumstances of each case. There is no universal approach that can be applied to all cases at all times.

## Section 4: Effective enforcement of return decisions

*This section of the Synthesis Report will present Member States' practices in relation to the effective implementation of return decisions. In particular, it will examine the following issues (to the extent that they are not already covered by previous EMN studies and recent EMN Ad-Hoc Queries): the application of the principle of mutual recognition of return decisions by the Member States (as provided for by Council Directive 2001/40/EC<sup>34</sup> and Council Decision 2004/191/EC;<sup>35</sup> the use of detention and alternatives to detention in return procedures (as per Article 15 of the Return Directive); the extent to which emergency situations have led national authorities to apply derogations from the standard periods of judicial review and general detention conditions (Article 18 of the Return Directive); and the use of European travel documents for return in accordance with Regulation 2016/1953.<sup>36</sup>*

*Please note that similar information was requested in the EMN 2014 Study on 'The use of detention and alternatives to detention in the context of immigration policies' and the EMN Ad-Hoc Query on the Use of Detention in Return Procedures (update) requested by the European Commission on 9<sup>th</sup> August 2016. Please review your Member State contribution to the aforementioned Study and Ad-Hoc Query (if completed) and provide only updated information here.*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q16.** [EC Recommendation (11)] Does national legislation in your Member State foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes? Yes/No [Yes](#)

If Yes, please specify to whom such sanctions apply and their content

If a TCN breaches the decision on AE and continues to reside in the territory of the SR irregularly, or if they repeatedly enters the territory of the SR despite an entry ban, the judicial authority can punish them with imprisonment for as much as two years for the crime of obstructing the execution of an

<sup>34</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001

<sup>35</sup> Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 60, 27.2.2004.

<sup>36</sup> Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994, OJ L 311, 17.11.2016

administrative decision (Article 348 Paragraph 1 of the Criminal Code). An entry ban can be imposed as an administrative sanction (if it has not been imposed before) along with a fine for the misdemeanour of illegal residence amounting to as much as EUR 1,600.

#### SECTION 4.1. MUTUAL RECOGNITION

**Q17.** [EC Recommendation (9) (d)] Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory? Yes/No **Yes**

Please briefly elaborate on your practice and any exception to the general rule stated above.

The SR recognizes expulsion decisions issued by competent authorities in other MS. This is derived directly from the national legislation. The police department provides the execution of the decision if the TCN was convicted and imprisoned for at least one year, there is a justifiable threat that the TCN committed or attempted to commit a crime, or breached laws of the country regarding the entry and exit of aliens<sup>37</sup>. Before executing the decision, the police department requests the statement from the country that issued the decision (hereinafter "issuing country") and the MS which granted residence to the TCN. If there are reasons to execute the decision of the issuing state and it is necessary to do so, the TCN will be detained pursuant to the Act on Residence of Aliens. Before executing the decision, the police department also examines whether the execution of the decision is in compliance with international agreements and Act on Residence of Aliens. The police department notifies the issuing country that return has been carried out and requests compensation for the costs incurred.<sup>38</sup>

The return decision issued by another state must be available to the Slovak authorities as soon as possible. If it is not possible to provide this via the SIRENE, decision of another MS cannot be recognized despite it is known (based on the SIS search) that the decision was presumably issued by a particular MS. In such case, the return decision is issued repeatedly by the SR in order to facilitate quick and effective return.<sup>39</sup>

At the same time it is necessary to find out whether the decision issued by another MS has already been executed. If so, a new return decision has to be issued, as one decision cannot be carried out twice.<sup>40</sup>

It is not possible to find out that another MS has issued a decision to a TCN which has not been executed while the TCN has been apprehended in the territory of the Slovak Republic without any identification documents and an entry ban, based on which an alert was created in SIS by other MS, has already expired and no such alert in SIS exists anymore.

If Yes, does your Member State:

- a) Initiate proceedings to return the third-country national concerned to a third country; Yes/No **Yes**
- b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision; Yes/No **No**
- c) Others (please specify)

N.A.

If No, please specify the reasons why your Member State does not recognise return decisions issued by another Member State

N.A.

<sup>37</sup> Article 85 Paragraph 1 of Act on Residence of Aliens.

<sup>38</sup> The methodology of procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic. BBAP PFP, 2013.

<sup>39</sup> BBAP PFP questionnaire.

<sup>40</sup> Information provided by BBAP PFP.

## SECTION 4.2 TRAVEL DOCUMENTS

**Q18.** [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953? Yes/No **No**

If Yes, in which cases do you issue these documents?

N.A.

If Yes, are these documents generally accepted by third countries? Yes/No

Please briefly elaborate on important exceptions to the general rule stated above

N.A.

**Q19.** In your Member State, what is the procedure followed to request the third country of return to deliver a valid travel document/ to accept a European travel document? Please briefly describe the authorities responsible for carrying out such requests (where relevant, for each type of document, e.g. laissez-passer, EU travel documents...) and the timeframe within which these are lodged before third countries.

If the detained TCN has no valid travel or other identification document and refuses to cooperate with the detention centre employees, it is necessary to determine/establish their identity to address the competent diplomatic mission of their country of origin and request Emergency Travel Documents. Only the Medved'ov Police Detention Centre for Aliens can submit this request; it assists aliens who are to be returned from the territory of the SR in obtaining their Emergency Travel Documents, communicates with relevant embassies, consular officers and thus establishes the identity of the person. The time in which the documents can be requested is highly individual. In some cases, documents can be requested immediately after the person is detained, but sometimes it takes longer to obtain additional information on the TCN's identity, verify the fingerprints or request cooperation from other authorities.

If an alien requests AVR, their Emergency Travel Documents will be provided by the IOM which performs returns of TCNs from the territory of the SR. IOM requests the relevant consulate to issue Emergency Travel Documents for the alien. The alien fills in the request for Emergency Travel Documents and IOM makes their photograph in the requested format and sends their complete documentation including additional documents proving their identity to the consulate. If consulate requests an interview with the applicant, the IOM organizes the meeting at the consulate or the place where the alien is located. In some cases, a telephone interview is sufficient. The waiting period for Emergency Travel Documents is also individual, depending upon the location of the consulate – 2 weeks for Vienna, 4 weeks for the Czech Republic, Germany, etc. on average. Emergency Travel Documents cannot be provided if the alien refuses to disclose their true identity. In case of AVR, such cases are very rare (approx. once in 5 years).

## SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law.

**Q20a.** [EC Recommendation (10) (a)] In your Member State, is it possible to detain a third-country national within the context of the return procedure? Yes/No **Yes**

Please briefly elaborate on any exceptions to the general rule stated above

Exception: unaccompanied minors<sup>41</sup> without a legal representative. Such person cannot be detained under any circumstances.<sup>42</sup> Other vulnerable persons can be detained only in inevitable cases and

<sup>41</sup> Every person under 18 years of age is considered a minor.

<sup>42</sup> Source: Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014.

for the shortest time possible. TCN is not detained in the case it is possible to impose an alternative to the detention, i.e. if they fulfil the conditions required for this.

**Q20b.** If Yes, please specify the grounds on which a third-country national may be detained (select all that apply)

- a) If there is a risk of absconding; Yes/No **Yes**
- b) If the third-country national avoids or hampers the preparation of a return or removal process; Yes/No **Yes**
- c) Other (*please specify*):

The execution of AE or penalty of expulsion.

To prepare or perform the transport of the TCN pursuant to relevant law<sup>43</sup> if there is a high risk of absconding.

In order to return the TCN in compliance with the international readmission agreement if they irregularly crossed the external border or irregularly stays in the territory of the SR<sup>44</sup>.

**Q21.** How often does your Member State make use of detention for the purpose of removal? Please complete the table below for each reference year (covering a 12-month period, from 1st January to 31st December).<sup>45</sup>

Table 2 Third-country nationals placed in detention 2012-2016

	2012	2013	2014	2015	2016	Comments
<b>Total number of third-country nationals placed in detention</b>	70	75	130	497	146	Provided data are an estimation (not official statistical data) calculated based on information from IS MIGRA (several variable lists with gradual filtering of items and maintaining the ratio of issued AE/JE and subsequent detention in PDCA(s)) <sup>46</sup> .
<b>Number of third-country nationals placed in detention (men)</b>	-	-	-	-	-	

<sup>43</sup> I. e. Dublin returns performed based on Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 which set out the criteria and mechanisms for the identification of the MS responsible for examination of the application for international protection submitted by the TCN or a person without state affiliation to any of the MS (Official Journal of the European Union, L 180, 29 June 2013).

<sup>44</sup> Source: Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014. s.18, 79 and Act on Residence of Aliens

<sup>45</sup> The following (Member) States provided quantitative information on the use of detention for the period 1<sup>st</sup> January 2012 -31<sup>st</sup> July 2016 through the EMN Ad-Hoc Queries on the 'Use of Detention in Return Procedures - Requested by COM on 30th November 2015' and 'Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1<sup>st</sup> January-31<sup>st</sup> December 2016.

<sup>46</sup> BBAP PFP questionnaire.

<b>Number of third-country nationals placed in detention (women)</b>	-	-	-	-	-	
<b>Number of families in detention</b>	-	-	-	-	-	
<b>Number of UAMs in detention</b>	N/A	N/A	N/A	N/A	N/A	UAM cannot be detained.

-: Data unavailable.

**Q22a.** [EC Recommendation (10) (b)] In your Member State, what is the overall maximum authorised length of detention (as provided for in national law or defined in national case law)?<sup>47</sup>

TCN can be detained for the necessary time with the maximum of 6 months, this period can be prolonged for additional 12 months at the maximum, i.e. TCN can be detained all in all for a period of 18 months (see Q22b). The police department may use the six-month period of detention of any third-country national as a whole, or it may split this period of time into several shorter periods of detention, whereas the sum of such shorter periods of detention may not exceed six months<sup>48</sup>.

Note for the EC: There has been no change in this regard, however the answer is elaborated in more details than what was provided in an Ad-Hoc Query.

**Q22b.** Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded? Yes/No **Yes**

Please elaborate under which circumstances:

If there is a presupposition that despite actions taken to execute AE, or penalty of expulsion of the TCN, the duration of the process of execution of this AE will be prolonged due to the fact that the TCN cooperates insufficiently, or the diplomatic mission failed to provide the Emergency Travel Documents within 6 months, the police department can repeatedly decide to prolong the detention period. The total length of prolongation of the detention period cannot exceed 12 months. The 12-month detention period can be continuous or the police department can divide it into several shorter detention periods, however, the total duration of these shorter periods of detention must not exceed 12 months. Whether the police department divides the detention period into several shorter periods depends on the individual case, mainly the justification of the purpose of the length of the detention period. The detention period cannot be prolonged for another 12 months in case of a family with children, a vulnerable person or an asylum seeker<sup>49</sup>.

**Q23a.** In your Member State, is detention ordered by administrative or judicial authorities?

<sup>47</sup> Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016' and provide only updated information in response to this question.

<sup>48</sup> Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014. p. 18.

<sup>49</sup> Article 88 Paragraph 4 of Act on Residence of Aliens; Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014. p. 18.

a) Judicial authorities; *please specify*

N.A.

b) Administrative authorities; *please specify*

The decision on detention of an alien is taken by the administrative authority which processed the case, i.e. the relevant police department which detained the alien.

c) Both judicial and administrative authorities; *please specify*

*For example: detention is in general reviewed by administrative authorities but will be reviewed by a judge in cases of prolonged detention (over one month)*

N.A.

**Q23b.** If detention is ordered by administrative authorities, please provide more detailed information on the procedure for reviewing the lawfulness of the detention and the timeframe applicable to such a review:

a) The lawfulness of detention is reviewed by a judge ex officio: Yes/No **No**

If Yes, how long after the start of detention?

N.A.

b) The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention; Yes/No **Yes**

If Yes, how long after the initiation of such proceedings by the third-country national?

The TCN can submit an administrative action to have the detention decision, decision on prolongation of the detention or decision on the prolongation of the detention period cancelled or deemed unlawful if the TCN was released from detention. The administrative action must be submitted to the police department which issued the decision within seven days after receiving the detention decision, decision on prolongation of the detention or decision on prolongation of the detention period. The police department is obliged to forward the action to the administrative court within five days. The administrative court will decide on the administrative action in a trial within seven days after it was submitted by the police department<sup>50</sup>.

**Q24a.** In your Member State, is the duration of the stay of a third-country national in detention reviewed upon application by the third-country national concerned or ex officio? *Please note that whereas Q23b above refers to the review of the lawfulness of the decision to detain, t Q24a and Q24b and 24c below refer to the review of the duration of the stay of the third-country national in detention.*

It is not possible to appeal against the length of the prolongation period itself in the SR, however, it is possible to submit an administrative action and request release from the detention repeatedly, every 30 days (at the earliest) after the previous decision on rejection of the administrative action enters into force, unless there is new evidence.<sup>51</sup>

**Q24b.** In your Member State, how often is the stay of a third-country national in detention reviewed (e.g. every two weeks, every month, etc.)?

<sup>50</sup> Articles: 221(1), 225 (1), 227 (1), 228 of Act No. 162/2015 Coll. Administrative Procedure Code.

<sup>51</sup> Article 225 of Act No. 162/2015 Coll. Administrative Procedure Code.

See 24 a).

**Q24c.** In your Member State, is the stay of a third-country national in detention reviewed by judicial or administrative authorities?

a) Judicial authorities; *please specify*

Regional courts decide about administrative actions.

b) Administrative authorities; *please specify*

N.A.

c) Both judicial and administrative authorities; *please specify*

For example: detention is in general reviewed by administrative authorities but will be reviewed by a judge in cases of prolonged detention (over one month) N.A.

**Q25.** [EC Recommendation (10) (c)] How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31<sup>st</sup> December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors.<sup>52</sup> If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

Table 3 Detention capacity as of 31<sup>st</sup> December 2016

		le 3 Detention capacity as of 31 <sup>st</sup> December 2016	Comments
<b>Number of detention centres</b>		2	
<b>Number of places available in detention centres per category of third-country nationals</b>	<b>Men</b>	216	
	<b>Women</b>	76	
	<b>Families</b>	36	
	<b>Unaccompanied minors</b>	N.A.	
	<b>Total</b>	328	

**Q26.** How does your Member State measure the number of detention places? (e.g. in terms of the number of beds, the square meters available per detainee, etc.)

The maximum PDCA(s) capacity is obligatory, i.e. the maximum number of beds in individual accommodation facilities in compliance with hygienic standards.<sup>53</sup>

<sup>52</sup> Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016' and provide only updated information in response to this question.

<sup>53</sup> BBAP PFP questionnaire.

**Q27** [EC Recommendation (21) (c)]. In your Member State, are third-country nationals subject to return procedures detained in specialised detention facilities (i.e. a facility to keep in detention third-country nationals who are the subject of a return procedure)? Yes/No *No*

Please briefly elaborate on important exceptions to the general rule stated above

N.A.

If No, please specify the kind of facilities which are used to detain third-country nationals.

In the SR TCNs are not placed into individual PDCA(s) based on their situation (e. g. TCNs to be return, applicants for international protection, persons who pose a security threat, etc.), but based on where they have been apprehended, accommodation capacity and equipment of PDCA(s), age, health, family relationships, religious, ethnic and national specificities of the TCNs. If asylum seekers are placed in PDCA(s), they are accommodated in separated blocks/corridors if possible.<sup>54</sup>

**Q28a.** Has your Member State faced an emergency situation where an exceptionally large number of third-country nationals to be returned placed an unforeseen heavy burden on the capacity of the detention facilities or on the administrative or judicial staff? Yes/No *No*

Please elaborate on the circumstances in which this happened:

No. Despite the large number of TCNs in 2015 reaching the capacity limit of detention centres, it was not necessary to take measures set out in Article 18 of the Return Directive.

**Q28b.** Has your Member State's capacity to guarantee the standards for detention conditions, as defined in Article 16 of the Return Directive, been affected due to an exceptionally large number of other categories of third-country nationals (e.g. Dublin cases) being placed in detention facilities? Yes/No

No

**Q28c.** If Yes to Q28a, please describe the situation(s) in additional detail and provide information on any derogations that your Member State may have decided to apply with respect to general detention conditions and standard periods of judicial review (e.g. *during the emergency situation, third-country nationals had to be detained in prison accommodation in order to increase the detention capacity, the detention was reviewed once a month instead of once a week, etc.*)

N.A.

#### SECTION 4.4. USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

**Q29.** Please indicate whether any alternatives to detention for third-country nationals are available in your Member State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 4 Alternatives to detention

---

<sup>54</sup> Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014. p. 33.

Alternatives to detention	Yes/ No (If yes, please provide a short description)
<p><b>Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)</b></p>	<p>Yes. The police department may impose the duty to report the place of stay only if the TCN under the detention procedure provides proof of accommodation for the duration of this duty and financial coverage of the stay in the officially set amount covering the cost of stay of aliens in Slovakia. The TCN who has been imposed this duty is obliged to reside at the address specified and report his/her stay regularly in person at the police department within the defined period, as well as any changes to his/her stay. Neither the Act on Residence of Aliens nor the related guidelines specify the interval of these reportings; this decision is to be made individually by the police department which decides on the detention, though it is recommended to report the place of stay twice a week. The police department makes an official record of every reporting of stay and adds it to the file.</p> <p>During the period the alternative to detention is used, the TCN does not have his/her travel document. The travel document is withheld during the AE procedure. A decision is drawn on the use of the alternative to detention and on the conditions thereof. It is not possible to appeal against the decision on imposing a duty.</p> <p>If the TCN wishes to change the address of his/her stay, s/he must do so in advance. In such case, a new decision on providing an alternative to detention is issued, specifying the new address of stay.<sup>55</sup></p> <p>Police department acting in the matter of detention can decide upon imposing the duty to report the place of stay during the detention as well as during the procedure to prolong the detention.</p>
<p><b>Obligation to surrender a passport or a travel document</b></p>	<p>No.</p> <p>It is not a specific alternative to detention in the Slovak context. Under the AE procedure, however, the police officer is entitled to withhold the alien's travel document. This suggests that when an alternative to detention is provided under the Slovak legislation, the alien would no more hold his/her travel document.</p>
<p><b>Residence requirements (e.g. residing at a particular address)</b></p>	<p>No.</p> <p>It is not a specific requirement, but the requirement to stay at the address specified by the alien, as mentioned above, is part of the conditions for providing one of the alternatives to detention that the Slovak legislation allows using.</p>
<p><b>Release on bail (with or without sureties)</b></p> <p><i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>Yes</p> <p>The TCN who was imposed a duty according to paragraph 1 b) shall be obliged to pay a financial guarantee, in the amount and within the period specified by the police department, to the account of the Police Force. The amount of the cash warrant deposit is determined on an individual basis depending on the personality of the TCN and his/her situation. The financial guarantee on behalf of the TCN may be paid</p>

<sup>55</sup> Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study. Bratislava: IOM, 2014, p.45.

	by a person close to the TCN. <sup>56</sup> The person paying the financial guarantee is required to notify the police department of the bank account number which the financial guarantee should be returned to, or the address where s/he will be residing at for the purposes of returning the financial guarantee. <sup>57</sup> The TCN is also obliged to reside at the address specified, report any change of the place of stay, and prove financial coverage of his/her stay. If the TCN possesses a travel document, it is withheld during the AE procedure. The Police Force shall return the financial guarantee to the person who paid it immediately after the execution of the AE of the TCN, after his/her departure within AVR, or if s/he was granted a residence permit, asylum or provided subsidiary protection. The costs of returning the financial guarantee shall be borne by the person who paid it. The police department may decide to impose the obligation to give a financial guarantee also during the detention of the TCN, i.e. also under the procedure of prolonging the detention or throughout the entire period of detention.
<b>Electronic monitoring (e.g. tagging)</b>	No.
<b>Guarantor requirements</b> <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	No.
<b>Release to care worker or under a care plan</b>	No.
<b>Community management programme</b>	No.
<b>Other alternative measure available in your (Member) State. Please specify.</b>	-

**Q30.** Please indicate any challenges associated with the implementation of detention and/ or alternatives to detention in your Member State

In replying to this question please note for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

As for detention, the biggest challenge for the SR is the difficulty of identifying the TCNs who need to be detained in order to provide them with Emergency Travel Documents and organize effective return to their country of origin. Another challenge is the large number of court decisions based on which TCNs are being immediately released in proportion to the number of detention decisions despite the fact that their identity was e.g. not established.<sup>58</sup>

Based on the BBAP PFP statement, despite a relatively small number of provided alternatives, no caveats or challenges have been identified so far in this area.<sup>59</sup>

**Q31.** Please describe any examples of good practice in your Member State's implementation of detention and alternatives to detention, identifying as far as possible by whom the practice in question is considered successful, its relevance, since when the practice has been in place and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of

<sup>56</sup> A close person is defined in the Civil Code, Art. 116-117

<sup>57</sup> Article 89 para 5 of the Act on Residence of Aliens

<sup>58</sup> BBAP PFP questionnaire.

<sup>59</sup> Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014.

information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

According to BBAP PFP, good practice in detention and alternatives to detention includes experience exchange between competent department of Border Control and Alien Police, unified methodology of BBAP PFP concerning subordinate departments, evaluation of individual cases encountered in practice during sessions (meetings, training, etc. organized by BBAP PFP)<sup>60</sup>.

## Section 5: Procedural safeguards and remedies

This section will study Member States practices on the interpretation and implementation of EU rules relating to appeal deadlines and suspensive effect of appeals (as per Articles 13 of the Return Directive).

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q32.** [EC Recommendation (12) (d)] Is the application of the principle of *non-refoulement* and/or of Article 3 European Convention on Human Rights systematically assessed as part of the procedure to take a return decision? Yes/No **Yes**

Please briefly elaborate on important exceptions to the general rule stated above

There are no exceptions to the general rule.

If No, under which circumstances is it assessed?

- a) It is never assessed as part of the return procedure; *Yes/No*
- b) It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure; *Yes/No*
- c) Others (please specify)

N.A.

**Q33.** In your Member State, before which authority can a return decision be challenged?

- a) Judicial authority; *Yes/No* **Yes** (see letter b))
- b) Administrative authority; *Yes/No* **Yes**, the decision on AE is first examined by the second-instance administrative authority (BBAP PFP Directorate). A valid decision the second-instance administrative authority can be challenged by filing an action at the relevant court in order to have the decision then legally examined by the court.
- c) Competent body composed of members who are impartial and who enjoy safeguards of independence. *Yes/No* **No**

If Yes to c), please specify

**Q34.** [EC Recommendation (12) (b)] Is there a deadline for the third-country national concerned to appeal the return decision? *Yes/No* **Yes**

If Yes, please specify whether the deadline is:

- a) Less than a week;
- b) Two weeks;

---

<sup>60</sup> BBAP PFP questionnaire.

- c) One month;
- d) As long as the return decision has not been enforced.
- e) Other (please specify)

TCN who received the AE decision can file an appeal against the decision at the competent administrative authority within 15 days from the delivery of the decision.

**Q35.** [EC Recommendation (12) (c)] In your Member State, does the appeal against a return decision have a suspensive effect? Yes/No **Yes**

If Yes, under which conditions? Are there cases where the appeal is not suspensive (please describe)?

In general, the appeal against an AE decision has suspensive effect<sup>61</sup>, and the return cannot be executed until the appeal authority issues its decision. Exception can be made if the administrative authority decides on exclusion of the suspensive effect of the AE decision. It is not possible to appeal against such decision<sup>62</sup> and the appeal will not in any way influence the execution of the AE decision. Pursuant to an Administrative Procedure Code, the suspensive effect may be excluded if there is an urgent public interest or there is a risk that such suspension may incur irreparable damage to a party to the proceedings, whereas the urgency must be justified<sup>63</sup>. Urgent public interest in the context of AE is understood mainly as a security risk to the state, public order, health or personal property; the police department evaluates the severity of actions of each TCN individually.<sup>64</sup>

**Q36.** Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? Yes/No **Yes**

Please briefly elaborate on important exceptions to the general rule stated above

There are no exceptions to the general rule.

**Q37.** [EC Recommendation (12) (a)] In your Member States, is there a possibility to hold the return hearing together with hearings for different purposes? Yes/No **No**

If Yes, which ones (e.g. hearings for the granting of a residence permit or detention)?

N.A.

**Q38.** Is there an obligation for the third-country national concerned to attend the hearing in person? Yes/No **Yes**

If No, please describe what alternatives can be used (e.g. phone, videoconference...)

N.A.

## Section 6: Family life, children and state of health

*This section will study Member States' practices on the interpretation and implementation of EU rules relating to: the assessment of the best interest of the child; the assessment of family life; the assessment of the state of health of the third-country national concerned; irregularly staying*

<sup>61</sup> Article 55 of Act No. 71/1967 Coll. on Administrative Procedure Code

<sup>62</sup> Article 55 Paragraph 3 of Act No. 71/1967 Coll. on Administrative Procedure Code

<sup>63</sup> Article 55 Paragraph 2 of Act No. 71/1967 Coll. on Administrative Procedure Code

<sup>64</sup> Brychta J., Frkáňová A.: The Return of Rejected Asylum Seekers. Focussed study of the EMN NCP in the SR, in questionnaire form. Bratislava: IOM, 2016. Bratislava.

unaccompanied minors; and the use of detention in the case of minors, as per Articles 3, 10 and 17 of the Return Directive. Questions referring to children below refer both to accompanied and unaccompanied minors, unless specified

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q39.** In your Member State, which categories of persons are considered vulnerable in relation to return/detention (e.g. minors, families with children, pregnant women or persons with special needs)?

Please differentiate between return and detention if applicable

Under the Act on Residence of Aliens, a vulnerable person<sup>65</sup> is especially a minor, a disabled person, a victim of trafficking in human beings, a person older than 65 years, a pregnant woman, a single parent with an underage child, and a person subjected to torture, rape or other serious forms of psychic, physical or sexual violence; in justified cases even a person younger than 65 years may be considered an "older person". Based on individual circumstances, other persons can also be considered vulnerable. The above-mentioned definition is applicable also in the return procedure as well as in the detention procedure.

The definition has been cited from the relevant provision of the Directive.

**Q40.** [EC Recommendation (13)] In order to ensure that the best interest of the child is taken into account, how and by whom is it assessed before issuing a return decision?

In case the minor is accompanied by his/her legal representative, the best interest of the child is monitored by the administrative authority that issues the return decision, which consults mainly the national legislation and the Convention on the Rights of the Child.

**Q41.** In your Member State, what elements are taken into account to determine the best interest of the child when determining whether a return decision should be issued against an irregularly staying minor (aside from the assessment of the *non-refoulement* principle)?

Table 5 Elements considered in determining the best interest of the child

Elements considered	Yes/No	Comments
Child's identity	Yes	
Parents' (or current caregiver's) views	Yes	
Child's views	Yes	
Preservation of the family environment, and maintaining or restoring relationships	Yes	

<sup>65</sup> Article 2 Paragraph 7 of Act on Residence of Aliens.

<b>Care, protection and safety of the child</b>	Yes	
<b>Situation of vulnerability</b>	Yes	
<b>Child's right to health</b>	Yes	
<b>Access to education</b>	Yes	
<b>Other (please describe)</b>		

**Q42.** In the event a return decision against an unaccompanied minor cannot be carried out, does your Member State grant the minor a right to stay? Yes/No **Yes**

If Yes, please describe any relevant practice/case law.

Unaccompanied minors (UAMs) cannot be administratively expelled into their country of origin or other country, however, this does not apply if their expulsion is in their interest. Pursuant to the Act on Residence of Aliens, UAMs are entitled to tolerated stay unless there is a reason to reject the application. If the UAM's legal representative or guardian applies for asylum on the UAM's behalf, their tolerated stay expires. If they are granted asylum, they also acquire the right to permanent residence. If the UAM is granted subsidiary protection, they receive temporary residence<sup>66</sup>.

If the UAM was granted tolerated stay before the age of majority and studied for at least 3 years in the SR during that period, the Ministry of Interior of the SR can grant them unlimited permanent residence even if they do not meet other conditions for permanent residence provided in Act on Residence of Aliens<sup>67</sup>. The cited measure has been cited from the relevant provision of the Directive.

**Q43.** [EC Recommendation (13) (c)] Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors? Yes/No **Partially yes**

If Yes, please describe such policies

Despite the fact that UAMs do not undergo forced returns, UAMs can be voluntarily returned to their country of origin or usual residence through the IOM's Assisted Voluntary Returns and Reintegration (AVRR) programme. This programme and its reintegration component focus on all age categories of irregular migrants including UAMs. Return of UAMs into their country of origin follows specific IOM internal directives and rules and it is organized in compliance with international documents on children's rights with the aim to apply the minor's best interest and safety principles.

In principle, AVRR perceives UAMs as vulnerable migrants which makes them eligible for priority reintegration assistance. In case of AVRR clients, IOM Bratislava evaluates their vulnerability. It is performed within return and reintegration consulting by operational or reintegration workers. In case of need, vulnerable migrants including UAMs receive assistance from experts who evaluate their specific needs. Reintegration is subsequently tailored for their individual needs.

The grant is provided for 3 years in form of a one-off contribution for education, accommodation, healthcare and other needs of the UAM. The grant amounts to EUR 1,300 - 2,000. Vulnerable migrants are entitled to increased reintegration grants. The IOM Bratislava selection board approves and

<sup>66</sup> Source: Mittelmanová, M.: Politics, Practices and Statistics on Unaccompanied Minors in the Slovak Republic. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014.

<sup>67</sup> Ibidem.

determines the amount of reintegration grants. The selection board takes into account information provided to migrants, information from IOM mission in their country of origin and the sending country as well as information provided by experts. In general, recipients of the reintegration assistance under AVRR are monitored after 3 months since the last payment made within their reintegration period.<sup>68</sup>

**Q44.** In your Member State, can the enforcement of the return decision be postponed on the grounds of health issues? Yes/No **Yes**

If Yes, please describe any relevant practice/case law.

Yes, depending on the diagnosis, physical and psychical condition, return can be postponed. If the physical or mental condition of the TCN is so poor that it significantly influences their life functions and the return is either impossible, difficult or costly, it can be postponed for the necessary period of time. The competent medical doctor is responsible for the evaluation of their health. If the TCN cannot be expelled from the country due to health reasons, they are granted tolerated stay for the duration of the health issues.

**Q45.** In your Member State, how is the assessment of the state of health of the third-country national concerned conducted?

- a) The third-country national brings his/her own medical certificate; Yes/No **No**
- b) The third-country national must consult with a doctor appointed by the competent national authority; Yes/No **Yes**

If the TCN is apprehended and placed in the centre, they are obliged to undergo medical examination (Article 95 of Act on Residence of Aliens)

c) Other (please describe):

N.A.

**Q46.** When returnees suffer from health problems does your Member State take into account the accessibility of medical treatment in the country of return? Yes/No **No**

If Yes, which authority is responsible for this assessment of the accessibility?

N.A.

**Q47.** When returnees suffer from health problems, does your Member States make provision for the supply of the necessary medication in the country of return? Yes/ No **No**

If Yes, for how long is the medication provided?

No, the SR provides only the medication which is necessary during the return and immediately after it is completed.

<sup>68</sup> Source: Mittelmánová, M.: Politics, Practices and Statistics on Unaccompanied Minors in the Slovak Republic. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014 and information provided by IOM Bratislava.

**Q.48.** Does your Member State postpone return if the third-country national concerned is pregnant? Please specify (e.g. pregnancy as such is not a cause for postponement, but can be if pregnancy is already advanced, e.g. after eight months)

Yes, in case of pregnancy, the return can be postponed for the necessary period, however, it depends on the particular circumstances. e. g. late stage of pregnancy, risk pregnancy, etc. constitute reasons for postponing of the return. The return can be postponed due to late stage pregnancy or poor physical or mental health for the period objectively necessary for the TCN to recuperate, however, until their detention period expires at latest (if the TCN is detained).<sup>69</sup>

**Q49a.** [EC Recommendation (14)] In your Member State, is it possible to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Almost all vulnerable groups can be detained only under specific conditions except for UAMs located in the territory of the SR.<sup>70</sup> Such persons cannot be detained under any circumstances.

**Q49b.** If applicable, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

Detention can only be performed if absolutely necessary (e. g. the TCN poses a security risk for the SR<sup>71</sup>) and only for necessary time with a maximum of 6 months; the detention period cannot be prolonged in case of vulnerable persons.

Where detained families with children are placed in a facility together and the facility decides to separate the family, it must always consider the consequences of such separation to be proportionate reasons. Families with children may also be detained for a reasonable time only, whereas the period of detention may not be extended.

In case a detained person is identified as a victim of trafficking in human beings, the decision on detention would become invalid upon the inclusion of such victim in the Ministry of Interior's programme of support and protection of victims of trafficking in human beings.

**Q50.** Please indicate any challenges associated with the implementation of the return of vulnerable persons in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

No challenges have been identified in this area.

**Q51.** Please describe any examples of good practice in your Member State concerning the return of vulnerable persons, identifying as far as possible by whom the practice in question is considered successful, since when has the practice been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information

<sup>69</sup> BBAP PFP questionnaire.

<sup>70</sup> Every person under 18 years of age is considered a minor.

<sup>71</sup> The methodology of procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic, BBAP PFP, 2013.

supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

BBAP PFP considers the procedure completed in compliance with the national legislation, specifically the Act on Residence of Aliens (Article 83 Paragraph 4), according to which the police department can also shorten the entry ban or not administratively expel the vulnerable person if the consequences of such action would be disproportionate in relation to the family and private life of the TCN, the length of their residence, health state, age or connection with their country of origin.<sup>72</sup>

## Section 7: Voluntary departure

*This section of the Synthesis Report will review Member States' practices in implementing EU rules relating to voluntary departure (to the extent that the issue was not covered in other EMN studies/outputs), in particular concerning: the length of the period for voluntary return granted (Article 7(1) of the Returns Directive); the use of the possibility to subject the granting of a period for voluntary departure to an application by the third-country national concerned (Article 7(1) of the Returns Directive); the granting of an extension to the period for voluntary return taking into account the specific circumstances of the individual case (Article 7(3) of the Returns Directive); and the cases where the period for voluntary return is denied (Article 7(4) of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q52a.** [EC Recommendation (17)] In your Member State, is a period of voluntary departure granted:

a) Automatically with the return decision? Yes/No **Yes**

OR

b) Only following an application by the third-country national concerned for a period for voluntary departure? Yes/No **No**

Please briefly elaborate on important exceptions to the general rule stated above

The police department does not state the AE period for voluntary departure if there is a possibility that the TCN will abscond or otherwise evade or obstruct the performance of the AE decision, mainly if their identity cannot be identified. In such case, they can be detained under conditions set out in the Act on Residence of Aliens. The TCN may also be detained if they pose a risk to security for the country, public order, public health or to the rights and freedom of others.

The measure has been cited from the relevant provision of the Directive.

**Q52b.** If Yes to b), how does your Member State inform the third-country nationals concerned of the possibility of submitting such an application? Please specify:

a) The legal/ policy provisions regulating the facilitation of such information;

b) The actors involved / responsible;

c) The content of the information provided (e.g. the application procedure, the deadlines for applying, the length of the period for voluntary departure, etc.);

d) The timing of the information provision (e.g. on being issued a decision ending legal stay/return decision);

e) The tools of dissemination (in person (written), in person (oral), via post, via email, in a telephone call, in public spaces, etc.),

f) The language(s) in which the information must be given and any accessibility / quality criteria (visual presentation, style of language to be used, etc.),

---

<sup>72</sup> BBAP PFP questionnaire.

- g) Any particular provisions for vulnerable groups (e.g. victims of trafficking, unaccompanied minors, elderly people) and other specific groups (e.g. specific nationalities).

N.A.

**Q53.** In your Member State is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?<sup>73</sup>

- a) Yes, to refrain from granting a period of voluntary departure; **Yes**
- b) Yes, to grant a period for voluntary departure shorter than seven days;
- c) No

If Yes, when does your Member State refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days? Please select all that apply:

- a) When there is a risk of absconding; Yes/No **Yes**
- b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent; Yes/No **No**
- c) When the person concerned poses a risk to public policy, public security or national security; Yes/No **Yes**
- d) Others (please specify)

- if they evade or obstruct the execution of the AE decision, mainly if their identity cannot be identified
- they cannot be detained based on conditions stated in the Act on Residence of Aliens<sup>74</sup>
- they pose a risk to public health, or the rights or freedom of others

**Q54.** [EC Recommendation (18)] In your Member State, how long is the period granted for voluntary departure?

The police department determines the period for voluntary departure between 7 to 30 days after the decision enters into force.

The measure has been cited from the relevant provision of the Directive.

**Q55.** [EC Recommendation (19)] In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case? Yes/No **Yes**

If Yes, which circumstances are taken into consideration in the decision to determine the duration of the period for voluntary departure? Please indicate all that apply:

- a) The prospects of return; Yes/No **Yes**
- b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; Yes/No **Yes**
- c) Others (please specify)

The police department determines the period for voluntary departure so that e.g. a TCN who has lived in the territory of the SR for several years receives enough time to settle their commitments (related to family, property) or in case of health problems which prevent a TCN from travelling, the TCN receives time to recuperate.<sup>75</sup>

<sup>73</sup> Article 7(4) of the Return Directive reads: 'If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days'.

<sup>74</sup> Article 88.

<sup>75</sup> The methodology of procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic. BBAP PFP, 2013.

**Q56.** Is it part of your Member State’s policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? Yes/No **Yes**

If Yes, which circumstances are taken into consideration in the decision to extend the period for voluntary departure? Please indicate all that apply:

- a) The length of stay; Yes/No **Yes**
- b) The existence of children attending school; Yes/No **Yes**
- c) The existence of other family and social links; Yes/No **Yes**
- d) Others (please specify)

- private and family situation
- TCN’s health

The cited provision has been cited from the relevant provision of the Directive.

The period for voluntary departure can be prolonged only once by the police department. The only exception to this is when the TCN voluntarily visits the police department to request a return to his/her home country within AVR.<sup>76</sup> In this case, the police department can repeatedly prolong the period for voluntary departure based on a request submitted by IOM.

**Q57.** [EC Recommendation (24)(b)] In your Member State, is there a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure? Yes/No **Partially yes**

If Yes, please describe:

If the TCN crosses the external border, i.e. travels to Ukraine, through an airport where border control is performed and their exit is recorded in the MIGRA national information system with a note that the alien has left the territory of the SR. Other cases when a TCN leaves the territory of the SR in order to return cannot be verified.<sup>77</sup>

**Q58.** Please indicate whether your Member State has encountered any of the following challenges associated to the provision of a period for voluntary departure and briefly explain how they affect the ability of the period for voluntary departure to contribute to effective returns.

Table 6: Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
<b>Insufficient length of the period for voluntary departure</b>	yes	<p>There are cases when the period for voluntary departure needs to be prolonged based on the decision of the administrative authority which issues the return decision<sup>78</sup>. This is an additional administrative burden for the administrative authority.</p> <p>It is considered problematic when the TCN does not depart within the given period and an alert in SIS is created if an entry ban was imposed, based on the expiration of this period. If the return is carried</p>

<sup>76</sup> Article 82 Paragraph 8 of Act on Residence of Aliens

<sup>77</sup> BBAP PFP questionnaire.

<sup>78</sup> BBAP PFP questionnaire.

		<p>out subsequently in the form of a forced return, the ban has to start running anew after the execution of the return. This complicates the whole process.</p> <p>Special cases occur, when it is known in advance that the 30-day period will likely not be sufficient, e.g. when the alien is hospitalised after the decision on return was issued.<sup>79</sup></p>
<b>Absconding during the period for voluntary departure</b>	yes	<p>Despite difficulties in providing evidence, we assume that aliens who have been informed of their period for voluntary departure often travel to another MS where they stay after their period for voluntary departure expires or otherwise fail to comply with the set period. The police department can only find out that the alien has not fulfilled their obligation if they are apprehended again.<sup>80</sup></p>
<b>Verification of the departure within the period of voluntary departure</b>	yes	<p>Related to the creation of the alert about an entry ban in SIS.</p>
<b>Other challenges (please specify and add rows as necessary)</b>		

**Q59.** Please describe any examples of good practice in your Member State in connection with the period of voluntary departure, identifying as far as possible by whom the practice in question is considered successful, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

N/A

## Section 8: Entry bans

*This section of the Synthesis Report will study Member States' practices on the interpretation and implementation of EU rules relating to the conditions to impose an entry ban (as per Article 11 of the Return Directive), including as regards the reasons to refrain from issuing, withdraw or suspend an entry ban (Article 11(3) Return Directive).*

*Please note that similar information was requested in the EMN 2014 Study on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'. Please review your Member State contribution to this Study (if completed) and provide only updated information here.*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law**

**Q60.** In your Member State, which scenario applies to the imposition of entry bans?

<sup>79</sup> Information provided by BBAP PFP.

<sup>80</sup> BBAP PFP questionnaire.

- a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted; Yes/No **Yes**
- b) Entry-bans are automatically imposed on all return decisions other than under a); Yes/No **No**
- c) Entry bans are issued on a case by case basis on all return decisions other than a); Yes/ No **Yes**

**Q61.** What are according to national legislation in your Member State the grounds for imposing entry bans? Please answer this question by indicating whether the grounds defined in national law include the following listed in the table below.

Table 7: Grounds for imposing an entry ban

General comment on Table 7: The law of the Slovak Republic does not explicitly state reasons to impose an entry ban. Pursuant to the valid legislation of the SR, they depend upon reasons related to AE.<sup>81</sup> According to the valid legislation, imposition of the entry ban is of facultative nature almost in all AE cases and the police department **can** impose it in the AE decision. There are exceptions in which the police department **must** impose the entry ban as follows: the police department does not state the period for voluntary departure in the AE decision<sup>82</sup>; TCN has been previously administratively expelled but has not received an entry ban, however, they failed to leave the country during the period for voluntary departure stated in the AE decision<sup>83</sup>; if there are multiple reasons for AE<sup>84</sup>.

Grounds for imposing entry bans	Yes/No	Comments
<b>Risk of absconding<sup>85</sup></b>	yes	In case a risk of absconding of the returnee exists, an entry ban is imposed in all the cases. Risk of absconding is a legal ground for execution of the AE decision, i.e. person is returned forcibly. If a person is returned forcibly, an entry ban has to be imposed according to the national legislation.  The period for imposing an entry ban in relation with the existence of a risk of absconding is assessed individually following the grounds for issuing the AE decision (between 1-10 years). In case a risk of absconding exists and the person is to be given a punishment of expulsion, court can impose the entry ban for even 15 years.
<b>The third-country national concerned poses a risk to public policy, public security or national security<sup>86</sup>.</b>	yes	In the decision on administrative expulsion the police department can impose an entry ban for <b>5 years</b> .  If the TCN constitutes a serious threat to the state security and public order, s/he can be

<sup>81</sup> Article 82 Paragraphs 1 and 2 of Act on Residence of Aliens.

<sup>82</sup> Article 11 Paragraph 1 Letter a) of Directive 2009/52/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in MS regarding returns of irregularly staying TCNs.

<sup>83</sup> Article 11 Paragraph 1 Letter b) of Directive 2009/52/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in MS regarding returns of irregularly staying TCNs.

<sup>84</sup> Article 82 Paragraph 7 of Act on Residence of Aliens.

<sup>85</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

<sup>86</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

		imposed an entry ban for the period of <b>10 years</b> .
<b>The application for legal stay was dismissed as manifestly unfounded or fraudulent<sup>87</sup></b>	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
<b>The obligation to return has not been complied with<sup>88</sup></b>	yes	In the AE decision the police department can impose an entry ban for <b>one year</b> .
<b>The irregular stay of a TCN in the territory</b>	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
<b>Other (e.g. please indicate and add rows as appropriate):</b>		
irregular crossing of the external border, intentional evasion or refusal to undergo border control	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
posing a security risk for the country, public order or public health	yes	An entry ban must be always imposed as in this case, the police department does not provide a period for voluntary departure in the AE decision.  In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
final conviction of the TCN of an intentional criminal offence without the penalty of expulsion	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
breaching the law on narcotic and psychotropic substances	yes	In the AE decision the police department can impose an entry ban for one to five years.
submitting false or forged documents or documents owned by a different person during an inspection	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
entering a fraudulent marriage	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
obstructing the execution of a decision issued by a state authority	yes	An entry ban must be always imposed as in this case, the police department does not provide a period for voluntary departure in the AE decision.  In the AE decision the police department can impose entry ban for <b>one to five years</b> .
cancellation or withdrawal of a visa by the police department	yes	In the AE decision the police department can impose an entry ban for <b>one to five years</b> .
performing an activity other than the one for which the TCN was granted temporary residence or visa	yes	In the AE decision the police department can impose an entry ban for <b>one to three years</b> .

<sup>87</sup> As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

<sup>88</sup> As stipulated in the Return Directive Article 11(1)(b).

if a TCN stays in the territory of the SR based on an international agreement or decision of the Government of the SR and then acts contrary to it.	yes	In the AE decision the police department can impose an entry ban for <b>one to three years</b> .
if a TCN refuses to provide a credible identity document	yes	In the AE decision the police department can impose an entry ban for <b>one year</b> .
failure to notify the police department that the purpose of the TCN's temporary residence has expired	yes	In the AE decision the police department can impose an entry ban for <b>one year</b> .
other severe or repeated breaches of generally binding legal regulations	yes	In the AE decision the police department can impose an entry ban for <b>one to three years</b> .
if a TCN granted long-term residence poses a serious security threat to the country or public order	yes	In the AE decision the police department can impose an entry ban for <b>five years</b> .
submitting false or forged documents or documents owned by a different person during border checks	yes	In the AE decision the police department can impose an entry ban for <b>three to five years</b> .

**Q62a.** In your Member State, which is the maximum period of validity of an entry ban?

The maximum period of validity of an entry ban is 10 years pursuant to the Act on Residence of Aliens. According to the Criminal Code the alien can be expelled by the court decision for up to 15 years if the security of persons or private property or other public interest requires so.

**Q62b.** Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? Yes/ No **Yes**

If Yes, what is the most common period of validity?

In the course of the last 3 years, the most frequently imposed entry ban validity period was 1 year.<sup>89</sup>

**Q62c** Does national legislation and case law in your Member State establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry? Yes/No **Yes**

If Yes, please specify (for example, if the third-country national concerned poses a threat to public order or national security a five-year entry ban is imposed; if the third-country national concerned has not complied with the obligation to return a three-year entry ban is imposed, etc. ):

See Table 7 in Q61. As for the aforementioned validity periods in cases where there are multiple reasons for AE, the police department determines the entry ban period in the decision based on the strictest legal provision<sup>90</sup>.

**Q63.** [EC Recommendation (24)(a)] In your Member State, when does an entry ban start applying?

a) On the day the return decision is issued; Yes/No **No**

<sup>89</sup> BBAP PFP questionnaire.

<sup>90</sup> Article 82 Paragraph 8 of Act on Residence of Aliens.

- b) On the day in which the third-country national leave the EU; Yes/No **Yes on the day when AE is carried out.**

Others (please specify)

- c) **the day when the TCN leaves the country within the AVR, or**  
d) **when the period for voluntary departure stated in the AE decision expires (unless it is one of the cases covered in Letters b) and c)).**

**Q64.** [EC Recommendation (24)(c)] Does your Member State enter an alert into the Schengen Information System (SIS) when an entry ban has been imposed on a third-country national? (e.g. see Article 24 (3) of Regulation No 1987/2006 – SIS)? Yes/No

Please specify whether;

- a) Alerts are entered into the SIS systematically; Yes/No **Yes**  
b) Alerts are entered into the SIS on a regular basis; Yes/No **No**  
c) Alerts are entered into the SIS on a case-by-case basis; Yes/No **No**  
d) Others (please specify)

**N.A.**

**Q65.** [EC Recommendation (24)(d)] If a return decision is issued when irregular stay is detected on exit (see Q4€ Q6c above), does your Member State also issue an entry ban? Yes/No **Yes**

Please briefly elaborate on important exceptions to the general rule stated above

**This depends on the individual case. Sometimes the entry ban must be imposed, in other cases it can be imposed. SR does not differentiate whether the reasons for issuing the entry ban are detected at the border or inland, the procedure is the same.**

**Q66.** If a TCN ignores an entry ban, does your Member State qualify that fact as a *misdemeanor* or a *criminal offence*?

- a) Yes, a misdemeanour  
b) Yes, a criminal offence **Yes, it is a criminal offence.**  
c) No

**Such a person can be prosecuted for evading or obstructing the execution of the court or other public authority decision and imprisoned for up to two years.**

**Q67.** Has your Member State conducted any evaluations of the effectiveness of entry bans? Yes/No **No**

If Yes, please provide any results pertaining to the issues listed in Table 7 below. The full bibliographical references of the evaluations can be included in an Annex to the national report.

Table 8 The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry	N.A.	
Contribute to ensuring compliance with voluntary return <sup>91</sup>	N.A.	
Cost-effectiveness of entry bans	N.A.	
Other aspects of effectiveness (please specify)	N.A.	

**Q68.** Please indicate whether your Member State has encountered any of the following challenges in the implementation of entry bans and briefly explain how they affect the ability of entry bans to contribute to effective returns.

Table 9 Practical challenges for the implementation of entry bans

**Practical difficulties and challenges associated with the implementation of entry bans**

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	yes	There are some difficulties in ensuring compliance with entry bans on the part of the third-country national concerned. There have been cases where third-country nationals attempted by various illegal ways or managed to enter the territory of the SR in spite of being imposed an entry ban (for example, the third-country national arrives with a travel document of another person or with a counterfeited document). There have been concrete cases of Ukrainian nationals who dispose of travel documents issued for a name different than the name on which the entry ban was issued in the SR. The

<sup>91</sup> i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

		SR can ensure compliance with entry bans on the part of third-country nationals only by targeted measures on the external borders, since the conduct of such person cannot be influenced by the SR. <sup>92</sup>
<b>Monitoring of the compliance with entry bans</b>	no	Given the use of national and international information systems, it is not difficult to monitor compliance with entry bans. <sup>93</sup>
<b>Cooperation with other Member States in the implementation of entry bans<sup>94</sup></b>	no	Cooperation with other Member States in the implementation of entry bans works well. <sup>95</sup>
<b>Cooperation with the country of origin in the implementation of entry bans</b>	yes	In some cases it is difficult to secure the cooperation of the country of origin in the implementation of entry bans. In case the SR informs the country of origin about the entry ban for their national, sometimes it is rather complicated to obtain emergency documents for the given TCN because an entry ban is always associated with forced return. <sup>96</sup>
<b>Other challenges (please specify and add rows as necessary)</b>		
Inserting the SIS entries on persons with entry bans in the SIS even when their departure has not been confirmed.	yes	This often causes problems when such person is apprehended in the territory of another MS. In most cases, the person receives another entry ban. <sup>97</sup>

**Q69.** Please describe any examples of good practice in your Member State in relation to the implementation of entry bans, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

For example, the national MIGRA IS can be considered a good practice. It is interconnected with the INBO system (Records on unwanted or blocked persons, vehicles and objects at border crossing points) into which the information on entry bans and their duration are recorded. The system allows identification of persons with entry bans thus preventing them from entering the territory of the SR or other Schengen countries because all entries are copied also into the Schengen Information System.<sup>98</sup>

<sup>92</sup> Source: Brychta, J., Frkáňová, A., Kubovičová, K.: Good Practices in the Return and Reintegration of Irregular Migrants: Entry Bans Policy and Use of Readmission Agreements by the Slovak Republic. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014.

<sup>93</sup> Ibidem.

<sup>94</sup> This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

<sup>95</sup> Ibidem.

<sup>96</sup> Ibidem and BBAP PFP questionnaire.

<sup>97</sup> BBAP PFP questionnaire.

<sup>98</sup> Source: Brychta, J., Frkáňová, A., Kubovičová, K.: Good Practices in the Return and Reintegration of Irregular Migrants: Entry Bans Policy and Use of Readmission Agreements by the Slovak Republic. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014 and BBAP PFP questionnaire.



## Section 9 Conclusions

*This section of the Synthesis Report will draw conclusions as to the impact of EU rules on return – including the Return Directive and related case law from the Court of Justice of the European Union (CJEU) – on Member States’ return policies and practices and on the effectiveness of return decisions issued across the EU.*

**Q70.** With regard to the aims of this study, what conclusions would you draw from your findings?

The SR considers the Return Directive as the key pillar of the return policy. Since the situation related to irregular migration in 2015 – 2016 required quick and acceptable solutions without changing the above-mentioned Directive, new EU initiatives and rules were created (for example, revision of the EU Action Plan on Return, Return Handbook, EC Recommendation, compacts with third countries etc.) which, however, do not have sufficient legal force for substantial change of the situation in the Member States, but were able to put certain pressure on countries leading to changes in execution of returns with aim to increase their effectiveness as well as to adopt measures to eliminate obstacles. The SR considers these tools as beneficial, however, it is needed to state that each Member State has individual needs and therefore has to search for individual solutions related to existing national legislation, form of execution of returns or need of enhancing cooperation with destination countries of return. For example, the SR secures protection of external Schengen border with Ukraine. Ukraine is a priority country for the SR both in the field of irregular migration (the highest number of returns and readmissions) as well as in the field of regular migration, and due to this our initiative in the field of cooperation with third countries is focused on this.

The SR implements most of EC Recommendation, aiming at increasing the effectiveness of returns, to varying extent. Introducing of some recommendations into practice requires legislative changes at national level and due to this they currently cannot be implemented. For example, adopting a stricter definition for the risk of absconding related to detention of third-country nationals, or determining period for voluntary departure in the decision of more than 7 days only in case that the person cooperates in the return proceeding. As for detention of minors, the SR currently detains and expels minors only if accompanied by their legal representatives; UAMs are neither detained nor expelled unless it is in their best interest. Based on the EC Recommendation in this area, the SR will endeavour and take steps to launch discussions at national level about possibilities to detain also UAMs which, however, requires amendment of national legislation.<sup>99</sup>

**Q71.** What overall importance do EU rules have for the effectiveness of return in the national context?

Setting EU rules in the field of return is important from the perspective of steering Member States’ national policies, however, from our point of view they diverge in Member States’ individual practice. We consider harmonisation of return policy in the EU important. EU legislation in the field of return also sets for the SR certain framework which needs to be followed at national level. We see EU rules in the field of return and their impact on return effectiveness as beneficial, especially in relation to newly created tools (IRMA, new Frontex mandate in the field of return, greater pressure in returns on Member States through EC Recommendation). It can be stated that the SR sees particular impact on return effectiveness, regarding mainly more intensified cooperation with Frontex agency in the field of return.<sup>100</sup>

---

<sup>99</sup> Information provided by BBAP PFP.  
<sup>100</sup> Information provided by BBAP PFP.

## ANNEX 1 – SENSITIVE INFORMATION

Please include here any information which is considered sensitive in nature and not intended for public dissemination

### LIST OF ABBREVIATIONS

**AE** – administrative expulsion

**AVR(s)** – assisted voluntary return(s)

**AVRR** – Assisted Voluntary Return and Reintegration Programme

**BBAP PFP** – Bureau of the Border and Aliens Police of the Police Force Presidium

**Coll.** – Collection of Laws of the Slovak Republic

**EC** – European Commission

**EMN** – European Migration Network

**EU** – European Union

**Frontex** – European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

**IOM** – International Organization for Migration

**JE** – judicial expulsion

**JHA** – Justice and Home Affairs

**Migration Policy** – Migration Policy of the Slovak Republic: Perspective until 2020

**MS** – Member State(s)

**NCP** – National Contact Point

**PDCA(s)** – Police Detention Centre(s) for Aliens

**SIRENE** – Supplementary Information Request at the National Entries

**SIS** – Schengen Information System

**SR** – Slovak Republic

**TCN(s)** – third-country national(s)

**UAM(s)** – unaccompanied minor(s)

**VIS** – Visa Information System

### LIST OF REFERENCES

Act No. 71/1967 Coll. on Civil Procedure (Civil Procedure Code) as amended.

Act No. 162/2015 Coll. on Administrative Procedure (Administrative Procedure Code).

Act No. 301/2005 Criminal Code Coll.

Act No. 327/2005 Coll. on Provision of Legal Aid for People in Material Need and on changes and amendments to some acts.

Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts, as amended.

Brychta J., Frkáňová A.: The Return of Rejected Asylum Seekers. Focussed study of the EMN NCP in the SR, in questionnaire form. Bratislava: IOM, 2016. Bratislava.

Brychta, J., Frkáňová, A., Kubovičová, K.: Good Practices in the Return and Reintegration of Irregular Migrants: Entry Bans Policy and Use of Readmission Agreements by the Slovak Republic. A small thematic study of EMN NCP in the SR. Bratislava: IOM, 2014.

Command of the Director of Bureau of the Border and Aliens Police of the Police Force Presidium No. 54/2013 to ensure procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic.

Commission Recommendation of 7.3.2017 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council.

EMN Media Monitoring 2015.

EMN Media Monitoring 2016.

EMN study: Challenges and practices for establishing applicants' identity in the migration process. National contribution for the Slovak Republic. 2017.

Explanatory Memorandum to Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts, as amended. Available at: <http://www.najpravo.sk/dovodove-spravy/rok-2011/404-2011-z-z.html>.

Frkáňová, A., Kubovičová, K.: The use of detention and alternatives to detention in the context of immigration policies in the SR. Focussed study of EMN NCP in the SR. Bratislava: IOM, 2014.

Questionnaire filled by the Bureau of Border and Alien Police of the Police Force Presidium

Meššová B. and Številová Z.: Compliance with the Return Directive in Slovakia. National report. Human Rights League, June 2015, Bratislava.

Mittelmannová, M.: Politics, Practices and Statistics on Unaccompanied Minors in the Slovak Republic. Small thematic study of EMN NCP in the SR. Bratislava: IOM, 2014.

Regulation of the Minister of Interior No. 26/2007 on the Procedures Followed in Placing Aliens into Police Detention Centres for Aliens as amended.

The methodology of procedures concerning administrative expulsion of aliens, detention of third country nationals, and voluntary returns of third country nationals from the territory of the Slovak Republic. BBAP PFP, 2013.

[www.minv.sk](http://www.minv.sk)