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Ad-Hoc Query on 2024.39 Performing a search for devices within the asylum procedure

Requested by EMN NCP Finland on 28 June 2024

Compilation produced on 21 August 2024

Responses from EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Cyprus, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Portugal, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden (22 in Total)

Exported for: Wider Dissemination

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1. BACKGROUND INFORMATION

According to the EU acquis, an examination of the items carried by a person applying for international protection can be conducted in accordance with national law. Article 13 of the Asylum Procedures Directive (2013/32/EU) regulates searching the applicant and the items which he or she is carrying. In addition, some regulations contained in the New Pact on Migration and Asylum that deal with the matter will be implemented before the summer of 2026 in Member States.

Finland has started drafting legislation for performing a search for devices in connection with the asylum procedure. Searching for devices would concern examining electronic devices, especially mobile phones, in the possession of the applicant.

This AHQ updates the 2017 AHQ on Mobile device information requested by EMN Austria and also supplements the 2023 GDISC Request on Reading out mobile data.


We would like to ask the following questions:

- 1. In your Member State, is it possible to perform a search for devices in order to examine mobile devices carried by persons applying for international protection? YES/NO. If you answer YES, under which circumstances can your MS allow to perform the search for personal devices (i.e. smartphones, tables, computers)?**
- 2. If you answered NO to Q1, does your MS have plans to implement aforementioned practices and prepare legislation for performing a search for devices? YES/NO. Please elaborate.**
- 3. If a search for devices is performed in connection with the asylum procedure, for what kind of purpose the search is conducted?**
- 4. Which are the competent authorities to perform a search for devices in your MS?**
- 5. Besides the authorities that conducted the search which other authorities have access to the information gathered through search for devices? Please explain.**

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2. RESPONSES¹

		Wider Dissemination ²	
	EMN NCP Austria	Yes	<p>1. Yes. Pursuant to Article 39a Federal Office for Immigration and Asylum Procedures Act, the bodies of the public security service are authorized to examine data contained on seized data carriers of applicants for international protection and to create a backup copy. Data examination requires that it is not possible to establish the identity on the basis of the available evidence (Art. 39a para. 1 Federal Office for Immigration and Asylum Procedures Act) or that the travel route cannot be established on the basis of the available evidence (Art. 39a para. 2 Federal Office for Immigration and Asylum Procedures Act). If the requirements are met, the Federal Office for Immigration and Asylum (the authority responsible for the asylum procedure in the first instance) can order the examination of seized data carriers of an asylum seeker, provided that an examination has not already taken place (Art. 35a para. 1 Federal Office for Immigration and Asylum Procedures Act). The data carriers must be returned to the asylum seeker immediately as soon as they are no longer required for examination (Art. 39a para. 3 Federal Office for Immigration and Asylum Procedures Act).</p> <p>2. n/a</p> <p>3. The data examination is performed for the purpose of identification (Art. 39a para. 1 Federal Office for Immigration and Asylum Procedures Act) or for the purpose of determining the State responsible for examining the application for international protection (Art. 39a para. 2 Federal Office for Immigration and Asylum Procedures Act).</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."



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			<p>Asylum Procedures Act).</p> <p>4. The data examination is performed by the bodies of the public security service (Art. 39a Federal Office for Immigration and Asylum Procedures Act).</p> <p>5. The Federal Office for Immigration and Asylum instructs the bodies of the public security service with the examination. They then forward the report to the Federal Office for Immigration and Asylum. If the asylum seeker lodges an appeal against a decision of the Federal Office for Immigration and Asylum, the examination report, if available in the proceedings, will also be forwarded to the Federal Administrative Court. Under certain circumstances, personal documents found during the examination are used in proceedings for removal from the country (but not the entire content of the report).</p> <p>Source: Ministry of the Interior</p>
	EMN NCP Belgium	Yes	<p>1. Article 48/6, § 1, 4th paragraph of the Aliens Act states that "If the authorities responsible for examining the application have good reason to believe that the applicant is withholding information, records, documents or other elements essential for a correct assessment of the application, they may invite the applicant to submit these elements without delay, whatever their carrier. The applicant's refusal to produce these elements without a satisfactory explanation may be an indication of his refusal to comply with his duty to cooperate as referred to in the first paragraph."</p> <p>To implement this provision effectively, a Royal Decree is necessary. This Royal Decree should address GDPR related aspects such as data retention, restricted access, security, etc. however, it has not been issued to date. Thus, there is currently no procedure in place in Belgium allowing the examination of mobile devices by the asylum department.</p> <p>2. See question 1</p> <p>3. NA</p>


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			4. NA 5. NA
	EMN NCP Bulgaria	Yes	1. No. There are no legal provisions authorising a search for mobile devices within the procedure for international protection. 2. There is not such a discussion at the moment. 3. N/A 4. N/A 5. N/A
	EMN NCP Croatia	Yes	1. Yes. According to article 52, paragraph 6 of the Law on International and Temporary Protection (Official Gazette NN 70/15, 127/17, 33/23), If it is not possible to determine the identity and country of origin in accordance with paragraph 3, point 3 of this article (in standard way including by using language and dialect analysis through software technologies) the applicant is obliged to undergo an examination, which may include a search of items and data carriers such as computers and other electronic and mobile devices that the applicant has with him for the purpose of determining identity and country of origin. 2. N/A 3. Same as the answer to question 1. 4. N/A. Search for device was introduced by amendments to the Law on International and Temporary Protection (Official Gazette NN 33/23) but has not been performed yet so no procedure is established



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			<p>yet.</p> <p>5. Access to the information gathered should have officials of the determining authority.</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. In Cyprus, it is possible to perform a search for devices in order to examine mobile devices carried by persons applying for international protection under two circumstances: a) With a written consent which must be voluntarily given by the asylum seeker and b) With a judicial search warrant when such measure is needed for penal procedure purposes against the asylum seeker when he or she is considered as a trafficker in human smuggling. The lawful basis for the processing of data in Cyprus relies on the Article 6(1)(a) GDPR.</p> <p>2. N/A</p> <p>3. Usually, Police Authorities in Cyprus are concentrated on National Security issues like terrorism, human trafficking, drug trafficking, smuggling of weapons etc. But, an examination on these devices is also needed to extract data that deal with documentation i.e. photos of travel documents, birth certificates. These personal data are essential for registration purposes when the asylum seekers do not possess any kind of documents.</p> <p>4. Mainly, Police Authorities at First Reception Center (FRC) Pournara in Kokkinotrimiithia are in charge to perform a search for these devices. Besides Police, such performance can also be conducted by the Asylum Service upon a free will consent by the asylum applicants. The Asylum Service is hosting the above First Reception Center (FRC).</p> <p>5. Cyprus Police and Asylum Service</p>


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	EMN NCP Czech Republic	Yes	<ol style="list-style-type: none"> 1. In practice, it is not possible to carry out searches. Searches can only be carried out by the police of the Czech Republic on the basis of a court order. Sometimes it happens that the applicants themselves want to show something from the electronic device and even in this case they send screenshots with supporting documents, and the asylum procedure officers do not have direct access to the device. 2. This topic will be discussed, but there are no concrete proposals yet. 3. N/A 4. N/A 5. N/A
	EMN NCP Estonia	Yes	<ol style="list-style-type: none"> 1. Yes, according to Act on Granting International Protection to Alien (Article 11) an applicant for international protection is required to co-operate in every way in the clarification of the circumstances of the application for international protection, among others: 4) to enable the examination of his or her personal effects and his or her person, the performance of radiograph, the performance of a test for establishing his or her age and the admission for deposit of documents and personal effects. However, in order to search for personal devices, there needs to be a consent from the person. 2. The plan is to change the legislation in the future so that it would be possible to search for devices without the consent from the person. 3. To acquire relevant information, e.g. to know more about the travel route, situation in country of origin, aspects relevant to national security and public order. 4. The Police and Border Guard Board and Estonian Internal Security Service. 5. N/A


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+	EMN NCP Finland	Yes	<p>1. NO. Finland does not have legislation on performing a search for devices within the asylum procedure</p> <p>2. Yes, Finland has started drafting legislation for performing a search for devices in connection with the asylum procedure without direct suspicion of the applicant being guilty of a crime.</p> <p>3. Finland does not have legislation on performing a search for devices. However, it is planned that in the future information could be searched to find out the applicant's identity, citizenship or travel route, as well as possible security threats.</p> <p>4. Currently, in Finland, the police and the Border Guard may perform a search for devices if there is a suspicion that the person in question is guilty of a crime. The police and the Border Guard are responsible for identifying applicants for international protection and finding out their travel route. This information should be conveyed to the Immigration Service. The Immigration Service is responsible for processing applications for international protection.</p> <p>5. Currently, the information gathered by the police or the Border Guard on a case where criminal activity is suspected usually isn't accessible to the Finnish Immigration Service. Only if the discovered information is directly related to the asylum process (e.g. proof of identity), the information can, in some cases, be shared.</p>
	EMN NCP France	Yes	<p>1. No. France does not have a legal framework allowing for systematic or indiscriminate searches of electronic devices in the possession of asylum seekers. Asylum seekers are subject to a security check at the border or when they present themselves to the relevant authorities to register and examine their application. This check is carried out by internal security forces or private security companies. However, these forces or security agents cannot seize and examine the electronic devices of asylum seekers indiscriminately and without a judicial decision authorising it. When a potential threat to public order is identified or criminal activity is revealed, a specific procedure is put in place to ensure that all competent services are involved and that appropriate follow-up is implemented.</p>


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			<p>2. No. A change in legislation that would allow for the inspection of the content of an electronic device without a prior judicial decision is not being considered.</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	EMN NCP Germany	Yes	<p>1. Yes. Please refer to Q.3 and Q.4 for more information on the conditions for a search.</p> <p>2. n/a</p> <p>3. Searching for a device in connection with the asylum procedure is only permitted if the foreigner refuses to hand over his mobile device, as it is their obligation, if they do not possess a legal identification document, according to Sec. 15 para. 2 Nr. 6 and Sec. 15a, para. 1 sentence 1 Asylum Act.</p> <p>4. Any authority entrusted with the implementation of the Residence Act is authorized to search the foreigner, the objects in their possession and his home for documents or data carriers, including mobile devices and cloud services, if the authority has factual indications of their existence but the foreigner does not hand them over when requested to do so and they may be relevant for establishing their identity and nationality and for determining and asserting the possibility of removal of the foreigner from the country. A search of the home may only be ordered by a judge or, in the event of imminent danger, by the competent authority. The foreigner must endure the measure (Sec. 48 para. 3 and Sec. 71 Residence Act).</p> <p>5. None. Data read from data carriers, including mobile devices and cloud services, must be deleted immediately if they are no longer required to establish the identity and nationality of the foreigner and to</p>


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			determine and assert the possibility of removal of the foreigner from the country (Sec. 48 para. 3c Residence Act).
	EMN NCP Greece	Yes	<p>1. Law 4939/2022 (Government Gazette A 111) [‘Code of Legislation on reception, international protection of third-country nationals and stateless persons and temporary protection in the case of a mass influx of displaced persons’] has encoded the Greek legislation, by virtue of which the EU directives on granting international protection and temporary protection had been transposed. Concerning the issue of performing a search for devices carried by applicants for international protection, we would like to inform you that, according to article 83 par. 8 of the aforementioned Law, applicants for international protection shall accept body search and search of the objects in their possession, shall be photographed and, if they are above the age of 14, shall be fingerprinted, in accordance with the provisions in force. A body search of the applicant’s person shall be carried out by a person of the same sex in full respect of the principles of human dignity and physical and psychological integrity. Therefore, according to the legislation, performing a search for devices is allowed, but there are no provisions for examining devices’ data.</p> <p>2. -</p> <p>3. The body search and search of the objects in applicants’ possession which shall be performed in accordance with article 83 par. 8 of Law 4939/22 [article 13 par. 2 (d) of Directive 2013/32] is a procedure which is provided for in order to facilitate and expedite the procedure of the examination of applications for international protection, it is linked to the purposes of this procedure, and it is required to be carried out in full respect of the principles of human dignity and physical and psychological integrity, in accordance with the guarantees provided for the applicants.</p> <p>4. The competent authorities to perform the aforementioned search are the authorities which are competent for the receipt and the examining of the applications for international protection (competent employees of the Reception and Identification Service and of the Asylum</p>



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			Service). 5. Besides the authorities that conducted the search in the context of the examining of applications for international protection, in the case that there are suspicions that a crime, in which a particular applicant is involved, has been committed, the data contained in mobile devices may be examined. In this case, the relevant legislation of Criminal Procedure is applicable and the competence and responsibility for this inspection lies on the Public Prosecutor Authorities and the Judicial Authorities.
	EMN NCP Hungary	Yes	<p>1. Based on the Act on Asylum, during the asylum procedure, the applicant must tolerate, among other things, the inspection of his/her luggage, clothing, and vehicle in case it is justified. In the asylum procedure, the legal possibility of seizure exists, too if the facts cannot be clarified in any other way, or if it would result in significant delay, or if the failure to seize the device would endanger the success of clarifying the facts. In the above-mentioned cases the asylum authority is entitled to withdraw possession of an object from the owner's disposal.</p> <p>2. See the answer above. However, the search is not limited to electronic devices.</p> <p>3. Due to their situation, asylum seekers are not always expected to have valid identity documents. At the same time, based on the practical experience of recent years, it can be concluded that the use of electronic devices has become common among asylum seekers. The rule gives the authority the opportunity to seize objects in the asylum seeker's possession, including the electronic device, and to use the assistance of an expert to access the data stored in it. These devices contain a lot of data that can help the asylum authority and the person seeking recognition to identify their identity and citizenship. In addition to the need for state information, the seizure also serves the interests of the applicant, as the evaluation of the data on the technical devices can prove the escape history of the applicant for recognition and thus his asylum claim. The evidence obtained in this way can be used and stored for the time and to the extent necessary to establish identity in the asylum procedure. If the stored data contains personal data, the asylum authority may use and store it for the time and to the extent necessary to establish identity in the asylum procedure.</p>


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			<p>4. The National Directorate-General for Aliens Policing is the competent authority to seize a device in Hungary in the asylum procedure.</p> <p>5. In order to access the data stored in the seized device and to save the data on a data carrier, the asylum authority - if the acquisition of the data necessary for the procedure cannot be obtained within its own organization – contacts the National Security Service in order to provide expert support. If the authority initiates a procedure falling within the competence of another body, it will hand over the sealed documents and physical evidence necessary for the conduct of the procedure to the requested body.</p>
	EMN NCP Latvia	Yes	<p>1. In asylum procedure - No. The State Border Guard, within the framework of the Criminal Procedure Law, may remove smartphones and other digital equipment belonging to a third-country national. The information contained in such equipment is used for identification of the third-country national and implementing return.</p> <p>2. There is no such discussions at the moment.</p> <p>3. As it was mentioned before, in asylum procedure mobile device cannot be searched. In criminal case and detention in return procedure - the information contained in such equipment is used for identification of the third-country national. The information obtained is also used for the implementation of readmissions and for the application of the Dublin procedure.</p> <p>4. State Border Guard Criminal Investigation board.</p> <p>5. State security service.</p>
	EMN NCP Lithuani	Yes	<p>1. No</p> <p>2. No</p>


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	a		<p>3. N/A</p> <p>4. Only pre-trial investigation officers can check information on computers and phones if a pre-trial investigation has been opened.</p> <p>5. N/A</p>
	EMN NCP Luxemb ourg	Yes	<p>1. Yes. In Luxembourg, the search of mobile phones/tablets of applicants for international protection is permitted under Article 12 (5) of the amended Law of 18 December 2015 on International Protection and Temporary Protection (Asylum Law). This article states that, if necessary, the agents of the Judicial Police, who according to the Asylum Law are in charge of carrying out any checks necessary to establish the applicant's identity and travel itinerary and who take the applicant's fingerprints, and draw up a report, may carry out a body search of the applicant and a search of the objects s/he is carrying. Without prejudice to any search carried out for security reasons, the search of the applicant's person is carried out by a person of the same sex, in full respect of the principles of human dignity and physical and psychological integrity. Any object useful to the examination of the application may be withheld against receipt.</p> <p>Furthermore, the Administrative Tribunal ruled in a judgment of 28 July 2021 that although this article only refers to "objects" and does not explicitly state that a mobile phone can be qualified as an "object", the article must be understood to include mobile phones and the Judicial Police can therefore, if necessary, search a mobile phone carried by an applicant for international protection in accordance with Article 12(5) of the Asylum Law.</p> <p>2. It should be noted that although we have the aforementioned article in our legislation, discussions are currently taking place and possible amendments/additions to broaden its scope are being considered in the context of the New Pact on Migration and Asylum. At this stage, however, we are not yet able to go into this in more detail as the discussions are still at a very early stage.</p>


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			<p>3. These searches are not systematic and are only carried out in cases where there are serious and well-founded doubts about the identity and truthfulness of the applicant's account, particularly when the applicant has no identity documents. This is not a forensic search of an electronic device, but a simple viewing of its contents. The consultation of smartphones often reveals the background of the applicant, their previous stays, the travel route they took to come to Luxembourg, etc. This can be particularly useful in the context of the "Dublin" procedure, which obliges persons who wish to apply for international protection to lodge their application for international protection in the EU country in which they first arrived. If the smartphone is locked, applicants must give their consent to unlock it so that police can view its contents. However, if the applicant refuses to unlock the smartphone/tablet, the locked device will not be seen by the police.</p> <p>4. The Judicial Police is the authority that is allowed to conduct the search respecting the limitations imposed by article 12 (5) of the Law on international protection.</p> <p>5. The information obtained from the search form part of the police report, which in turn forms an integral part of the case file. As such the agents of the General Department of the immigration of the Ministry of Home Affairs will have access to this information and may use this information in their decisions.</p>
	EMN NCP Netherlands	Yes	<p>1. Yes. The Netherlands can under the following circumstances allow to perform the search for personal devices. According to section 2 of Article 55 of the Aliens Act (Vw) 2000 officials in charge of border control and the officials in charge of the supervision of foreign nationals are authorized to stop and examine a foreign national on his clothing or body, as well as to search his luggage with a view to the possible presence of travel or identity papers, documents or records, which are necessary for the assessment of his application. According to the explanation - which refers to a ruling by the Administrative Jurisdiction Division of the Council of State - this includes reading, for example, a SIM card or other digital data carriers.[1]</p> <p>[1] <i>Government Gazette (Staatscourant)</i>, 2021, no.33182.</p>



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			<p>2. N/A.</p> <p>3. The search for devices connected to the asylum procedure is conducted for the purpose of supporting the investigation (through searching luggage with a view to the possible presence of travel or identity papers, documents or records) whether an application for the granting of the residence permit as referred to in Article 28 of the Aliens Act (Vw) 2000 can be granted.[1]</p> <p>[1] Article 55 of the Aliens Act (Vw) 2000.</p> <p>4. The competent authorities to perform the search for devices are the Royal Netherlands Marechaussee (<i>Koninklijke Marechaussee</i>, Kmar), the officials assigned to the regional unit in the area in which the port of Rotterdam is located (the seaport police), the director of a border logies as referred to in Article 3 of the Border Logies Regulations (the director of the detention centres) and the police officers referred to in Article 2(a), (c) and (d) of the Police Act 2012, appointed to carry out police duties.[1]</p> <p>[1] Article 46 and 47 of the Aliens Act (Vw) 2000.</p> <p>5. -</p>
	EMN NCP Poland	Yes	<p>1. NO</p> <p>2. NO</p> <p>3. N/A</p> <p>4. There are no provisions in the refugee procedure. See answer 1</p> <p>5. Neither the Border Guard nor other authorities search the devices and electronic equipment in the</p>



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			form of an applicant's phone in the refugee procedure. Unless the person has committed a crime and is detained for criminal proceedings. But these are completely different conditions and regulations.
	EMN NCP Portugal	Yes	<p>1. YES. According to the Portuguese law police forces may perform a search for devices in order to examine mobile devices, if there are suspicions of a possible threat to national security, organized crime or terrorism.</p> <p>2. -</p> <p>3. See answer to question number 1.</p> <p>4. Police forces. Usually Judiciary Police (PJ), but also Public Security Police (PSP), responsible for the airport border control, and Republican National Guard (GNR), which performs the sea and land border control.</p> <p>5. Besides the authorities that conducted the search in order to obtain evidence of a possible ongoing crime, only judiciary authorities (judge/prosecutor) have access to the said information.</p>
	EMN NCP Slovakia	Yes	<p>1. Only in cases when there is suspicion of criminal activity in general (does not concern asylum seekers only).</p> <p>2. No current plans for change of practices.</p> <p>3. NA</p> <p>4. Police Authorities</p> <p>5. NA</p>


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	EMN NCP Slovenia	Yes	<ol style="list-style-type: none"> 1. No. 2. There are no plans in place to implement such a measure. 3. N/A 4. N/A 5. N/A
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. NO. It's not possible to search personal devices unless there's an ongoing criminal investigation and it is previously authorized by a judge. Exceptionally, when there's a suspected terrorist threat, it can be authorized by the Ministry of the Interior and confirmed by the judge. 2. NO. In our country it is not possible to carry out searches to find devices (mobile phones, tablets, computers...) in order to examine them, as the right to privacy or to one's own image is inviolable. In our country, the right to secrecy of communications and the right to personal privacy are rights that are enshrined in the Spanish constitution itself (art 18.3 and art 18.1 of the EC). Article 197.1 et seq. of the Spanish Penal Code lists the offences that can be committed in the case of accessing information from these devices outside the cases set out in the law. In short, such practices cannot be included in our legislation, as the Constitution itself would have to be changed. 3. Access to device information requires a criminal case and a judicial authorization. 4. In such cases, the competent authority would be the National Police or the Civil Guard. 5. The competent authorities to have access to that information would be the Police or the Civil Guard unit dealing with the case and the court that had given judicial authorization to hear the case.

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	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. No.</p> <p>2. Yes, there is an ongoing commission of inquiry on return, where there will be a suggestion to make it possible to examine mobile devices in order to establish identity and, in the end, to facilitate the return process. The commission is supposed to end 29 November 2024, however it is not yet clear when/if the suggestion to amend the legislation will enter into force.</p> <p>3. See Q2.</p> <p>4. N/A</p> <p>5. N/A</p>
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