

# Summary of ad hoc query on searching electronic devices in the context of return

**Number:** 2025.5

**Launch date:** 3 February 2025

**Requested by:** EMN BE

**Responses from** 14 EMN Member Countries provided a public answer to this query

## Background

When Belgian police arrest third-country nationals (TCNs) who are staying irregularly and are suspected of criminal activity, it is not uncommon for them to be uncooperative during the identification process. Some may provide different aliases, use fraudulent identity documents, or give inaccurate information about their nationality. However, relevant identity-related information may be found on electronic devices such as smartphones, laptops, or tablets.

In April 2024, BE adopted legislation authorising certain officials from the Immigration Office to search the electronic devices, such as smartphones, tablets, and laptops, of irregularly staying TCNs who are suspected of being involved in criminal activities. This may only occur with the prior authorisation of a public prosecutor or investigating judge. This legislation aims to support faster and more reliable identification in the context of return procedures.

Ahead of implementation in 2025, BE launched this ad hoc query to assess how other EMN Member Countries (EU Member States, except Denmark) and Norway regulate or implement similar practices.

In June 2024, an ad hoc query (2024.39) was launched regarding searches of electronic devices in the asylum procedure. However, this query specifically focuses on forced return.

## Overview of Responses

### Authorisation and scope of searches of electronic devices in the context of return:

- **YES:** 7 countries (BE, CY, DE, HU, IT, LT, LV) allow authorities to search electronic devices in the context of return. This is generally permitted **under specific conditions, which may differ slightly** depending on the national legal framework. For example, while some countries (such as BE, CY, LT) require that the irregularly staying third-country national is suspected of having committed a criminal offence, others (e.g. DE) do not impose this condition. Typically, such searches are authorised when the identity of the person concerned cannot be (sufficiently) established, when the individual refuses to cooperate, or when false documents or identities are used. In addition, the search may be permitted only as a measure of last resort, or sometimes requires prior authorisation by a court.
- **NO:** 7 countries (BG, CZ, FI, FR, HR, SE, SI) do not allow authorities to search the electronic devices of irregularly staying third-country nationals in the context of return. In these countries, the search of electronic devices may only be carried out **voluntarily, with the explicit consent** of the third-country national concerned. However, some countries in this group are **considering legislative changes** to allow the search of electronic devices in the context of return. FR, for example, is examining possible legal amendments to authorise such checks, while in SE, a government inquiry has proposed legislation enabling searches to support identification and facilitate return, with changes expected to enter into force in 2025. LU also noted that Article 15(1) of the **new Screening Regulation** provides a legal basis for

conducting security checks on third-country nationals and the objects in their possession during the screening procedure.

#### **Effectiveness of searches:**

- The large majority of countries that carry out searches of electronic devices in the context of return report positive results (CY, DE, HU, LT, LV). They agree that such searches **both increase the chances of identifying the individuals concerned and accelerate the identification process.**
- Electronic devices may contain **references to a person's identity or travel itinerary**, either through photos or copies of travel documents, identity cards, driving licences, university cards, or through emails, phone numbers and social media accounts. All these elements assist in identifying the individual and provide valuable information to support the identification process.
- Two countries (BE, IT) have recently introduced provisions allowing the search of electronic devices in the context of return. However, due to the **very recent implementation** of these measures, they are not yet able to assess the results.

#### **Challenges of searches:**

- **Technical challenges** include the use of certain brands of electronic devices, which are reportedly difficult to search.
- **Operational limitations** arise when devices need to be unlocked for evaluation (as this may require the cooperation of the individual concerned). In addition, more and more "blank" mobile phones are being used, which appear to serve only for basic communication and do not contain data.

#### **Data collection and statistics:**

- All countries which provided a public answer to the ad hoc query stated that they do not maintain statistics on searches of electronic devices in the context of return.
- BE and IT noted that, as the legal basis for these searches was only recently introduced or is not yet in force, data collection systems have **not yet** been established.