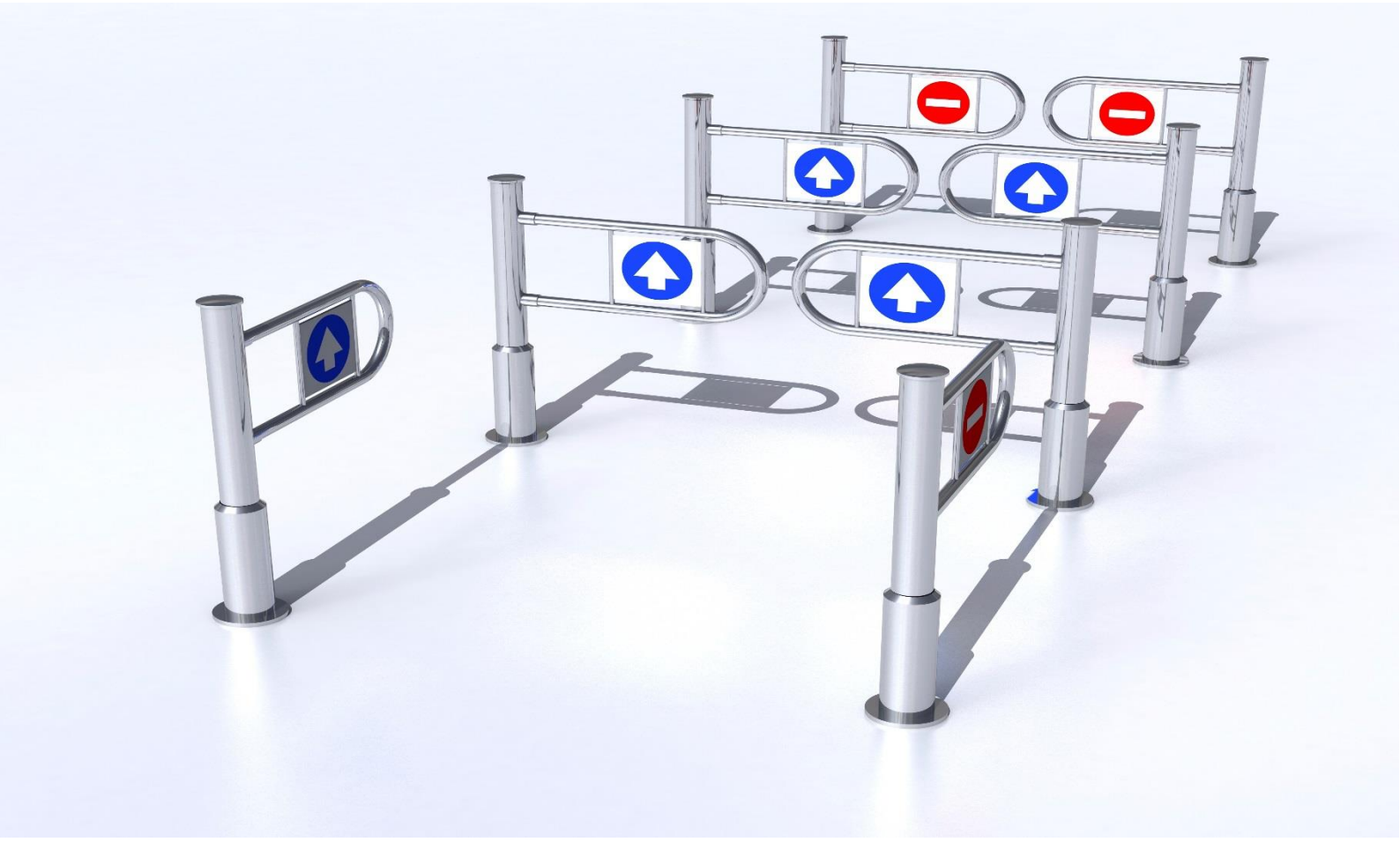
European Commission

EMN Synthesis Report for the EMN Focussed Study 2016

The Return of Rejected Asylum Seekers: Challenges and Good Practices



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EMN European Migration Network

Contents

Disclaimer 2
Explanatory Note 2
Executive Summary 1
Key Points To Note 1
Main Findings 2
1 Introduction 6
1.1 Study Rationale 6
1.2 Study Context 6
1.3 Study Aims 7
1.4 Scope Of The Study 7
1.5 Structure Of The Report 7
2 The Scale Of Rejected Asylum Seekers In The Eu And The Scale Of Non-Return 8
3 National Policies And Measures To Encourage Rejected Asylum Seekers To Leave The Eu Territory 10
3.1 National Prioritisation Of The Return Of Rejected Asylum Seekers 10
3.2 Policies And Strategies To Encourage Return And Deter (Irregular) Stay Once A Return Decision Is Issued 11
3.3 Rights/Benefits Granted To Rejected Asylum Seekers 13
3.3.1 Accommodation 13
3.3.2 Other Rights 15
3.4 Measures Taken To Facilitate Return By Preventing Absconding 16
3.5 Policy On The Early Preparation Of Asylum Seekers For Potential Return 16
4 National Legislation Framing The Return Of Rejected Asylum Seekers 17
4.1 Nexus Between Asylum And Return Decisions 17
4.2 Possibilities For Appealing The Return Decision 21
4.3 Possibilities For Lodging Subsequent Asylum Applications 24
4.4 Member State Measures To Ensure That Unfounded Applications Lead To Swift Return (Accelerated Procedures) 25
5 Challenges To The Return Of Rejected Asylum Seekers And Member State Policies To Manage These 26
5.1 General Overview Of Challenges 27
5.2 Challenges Specific To The Return Of Rejected Asylum Seekers 28
5.3 Measures Taken To Address Challenges 29
5.4 Measures To Address Individual Resistance To Return 29
5.5 Measures To Promote The Cooperation Of Third Countries 29
5.6 Measures To Enhance The Re-Documentation Process 29
5.7 Measures To Address Organisational/ Administrative Challenges 30
5.8 Measures To Facilitate The Return In Medical Cases 31
6 When Return Is Not (Immediately) Possible 31
6.1 Provision Of Status 31
6.2 Access To Rights And Benefits 32
6.3 Procedures For Reassessing The Possibility Of Return 33
6.4 The Possibility Of Regularisation 33
7 Conclusions 34
Annex 1 Rejected Asylum Seekers' Access To Rights And Services 36
Annex 2 Statistical Tables 45
Annex 3 Use Of Accelerated Procedures In The Member States 49
Annex 4 List Of Abbreviations 50

DISCLAIMER

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EXPLANATORY NOTE

This Synthesis Report was prepared on the basis of National Contributions from 25 EMN NCPs (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, United Kingdom**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability. EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this study, but have done so for other EMN activities and reports.

National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities and experts. Statistics were sourced from Eurostat, national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN NCPs in the National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned (Member) States up to and including the first half of 2016 and specifically the contributions from their EMN NCPs. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted as well.

EXECUTIVE SUMMARY

Given the recent increase in asylum applications in the EU and considering the general gap between third-country nationals issued a return decision and those that have returned, the EMN conducted this study with the purpose of investigating the specific challenges of the return of rejected asylum seekers and Member State responses to these challenges.

Key points to note

- The number of asylum applications rejected in the EU from 2011 to 2015 increased broadly in line with the increase in applications for asylum. This has put **significant additional pressure on Member States to increase the effectiveness of return** in general and specifically of rejected asylum seekers.

- Member States employ a range of measures to encourage return. Incentives to encourage return are generally provided within the framework of AVR(R) packages and include the maintenance of rights for rejected asylum seekers after the time-limit for voluntary departure, while disincentives often relate to the withdrawal of certain rights and benefits, such as the rights to accommodation and employment. **In several Member States there has been a shift from incentivising return to disincentivising stay**.

- Challenges to return are plentiful. On top of the common challenges of returning third-country nationals, **rejected asylum seekers are more likely to be affected by some return challenges**, such as the volatile security situation in some countries of origin, public resistance to return and political pressure not to implement removals; stronger individual resistance to return; greater difficulties in obtaining travel documents, compounded by the fact that asylum seekers are more frequently undocumented than other third-country nationals; and greater prevalence of medical cases among rejected asylum seekers than among other returnees.

- Additionally, **aspects of the due process of the asylum procedure may delay returns**, such as the possibility for lodging late-stage appeals and judicial reviews, combined with the impossibility for Member States to establish contact with the authorities of the country of origin before the asylum procedure is closed.

- **To counter these challenges, Member States have put in place different measures**, including cooperation arrangements with third-country authorities to promote collaboration in the identification and re-documentation process; use of database checks, early screening interviews to support re-documentation; the provision of medical support before, during and after travel for the purpose of return; and detention (or alternatives thereof) to tackle individual resistance to return. Several Member States also sometimes enforce removals through surprise raids.

- The focus and the rationale behind the different policies and measures vary quite significantly and without evaluative evidence it is difficult to draw conclusions as to which practices are more effective. However, **the practice of drastically removing rights** following a rejection and/or return decision, **may increase the likelihood of absconding, or at least of rejected asylum seekers falling out of contact with the authorities** thus affecting the feasibility and effectiveness of return operations. **It may also likely to increase the likelihood of destitution**.

- The study also found that **variations existing between Member States,** in terms of when they issue / enforce a return decision, **may lead to uneven treatment of asylum seekers across the EU**, as at present **return decisions are issued and enforced at different moments in the asylum procedure**. In some Member States all appeals have a suspensive effect, and therefore return decisions can only be enforced once all appeals are exhausted; by contrast, in others a return decision can be enforced pending an appeal, although as these cases are exception, it is more likely for return decisions to be issued at later stage in process. Nonetheless, the differences may undermine the coherence and level of harmonisation of Member States' asylum and return procedures, and could lead to breaches of the obligation defined under Article 46(5) of the Asylum Procedure Directive to allow applicants for international protection to remain on the territory until the time limit within which they should exercise their right to an effective remedy against a negative decision, and pending the outcome of this remedy.[1]

[1] This may only be the case for those Member States that are bound by the Directive.

- When return is not immediately possible, there are also significant differences in national practice. The majority of Member States officially acknowledge when return cannot be immediately implemented, though less than half of them then grant a status to the third-country national. In Member States which do not provide such acknowledgement, and also in those which provide one but without granting a status, **third-country nationals for whom return is impossible risk staying in a limbo**, as their situation is highly uncertain and may change every day.

- When return is not immediately possible, certain basic rights are always provided independently of the stage in the return procedure or the individuals' status, though these are very minimal, defined by international law (emergency healthcare and access to education for children). However, the study finds that most Member States reinstate access to rights and services, including employment and education once it has become clear that the third-country national cannot yet return. Member States providing such access consider this as a **good practice**, not only **in terms of preventing the persons concerned from falling in situations of extreme social and economic vulnerability,** but also in **facilitating the eventual enforcement of returns** by ensuring that they can be traced by the authorities.

Main findings

What is the scale of rejected asylum seekers in the EU and the scale of non-return?

From 2010 to 2013 more than 60% of all first instance decisions on asylum were rejections.[2] In 2014 and 2015 a smaller proportion (53% and 47% respectively) of first instance asylum decisions were negative, likely because of the increase in applicants with clear protection needs from (predominantly) Syria. However, as the number of asylum applications lodged in the EU significantly increased in 2014 and 2015 (doubling from 2014 (626,960) to 2015 (1.32 million applications) the absolute number of rejections showed an increase from 2011 (191,000) through 2014 (209,000) to 2015 (296,000).

Within specific Member States (for which data are available), rejected asylum seekers make up either: a high proportion (over 60%) of all third-country nationals issued a return decision (IE, LU); less than 30% (LT); between 10 and 35% (FI, FR, HU, IT, PL) or less than 10% of all return decisions issued (BG, EE, LV).

Data is not currently available, except for a few Member States, as to the proportion of rejected asylum seekers who actually return after having been issued a return decision. It is thus not possible to draw any conclusions on whether rejected asylum seekers who cannot return / be returned represent a large or particularly problematic sub-group of the global group of persons whose return is not immediately possible in the EU. However, the fact that both the number of asylum applications lodged and the asylum applications rejected has risen in the last three years in the EU has spurred some Member States (e.g. AT, BG, DE, FI, HU, SE) to place increasing policy importance on the return of this particular group.

What types of national policies have Member States introduced to encourage rejected asylum seekers to leave the EU territory?

In line with the EU Return Action Plan,[3] Member States tend to provide incentives at the beginning of the return procedure to encourage voluntary return and disincentives to stay once the rejected asylum seeker refuses to cooperate.

To encourage voluntary return, several Member States (e.g. BE, CZ, FI, LU, NL, PL, SE, SI, SK, UK) provide accommodation conditional on the third-country national cooperating with the authorities and/or opting for assisted voluntary return once voluntary departure ends. Within the more general framework of Assisted Voluntary Return (and Reintegration) AVR(R) some Member States (e.g. AT, BE, CZ, FI, FR, IT, SE) place emphasis on the provision of counselling early on in the asylum procedure in order to 'prepare' potential rejected asylum seekers to return .[4]

Overall, however, in most Member States, rights granted to rejected asylum seekers are generally kept to a minimum. Support provided consists mostly of material aid (i.e. accommodation and food) and emergency healthcare. The rationale for keeping rights to a minimum flows directly from the desire to make further stay unattractive and to not undermine the credibility and sustainability of the EU migration and asylum systems.[5]

[2] Asylum aplications are rejected when they are considered inadmissible or unfounded.
[3] See the EU Action Plan on Return, p. 3.
[4] For further details about Member States' return counselling and information policies, see EMN Synthesis Report for the EMN Focussed Study 2015, 'Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities', available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emnstudies/info_on_return_synthesis_report_20102015_final.pdf, last accessed on 9th August 2016.
[5] As argued by the Netherlands in their National Report (p14).

All Member States also use detention to prevent absconding, thus facilitating return. However, in line with the Return Directive, Member States initially give preference to a range of alternatives to detention to prevent absconding, including:

- Regular reporting (AT, BE, DE, EE, EL, ES, FI, FR, HR, IE, IT, LV, LU, MT, NL, PL, SE, SI, SK, UK),
- Requiring a security deposit (AT, BE,[6] EL, FI, HR, LU, NL, PL, SI, SK),
- Handing over of ID or travel documents (BE,[7] DE, EE, EL, ES, FI, HR, HU, IT, LU, LV, MT, NL, PL, SI),
- An order to take residence at a certain place (AT, DE, EE, EL, ES, FI,[8] FR, HR, HU, IT, LU, PL, SI, UK),
- The inspection of residences (LU, PL),
- Electronic monitoring (UK) and
- The obligation to inform the authorities should a change of residence be considered (DE, EE, MT).

At what stage after a negative asylum decision can a return decision be issued and enforced?

According to Article 9 of the recast Asylum Procedures Directive (2013/32/EU),[9] asylum applicants have the right to remain on the territory for the purpose of the procedure, until a decision on their application is made. Article 46(5) further provides that Member States must allow all applicants to remain on the territory until the time limit within which they can exercise their right to an effective remedy has expired unless the appeal is against a decision on a manifestly unfounded or inadmissible application, or following an accelerated procedure.[10]

However, these provisions are sufficiently broad to allow Member States to issue and enforce a return decision following a negative decision on the asylum application at different points in the asylum procedure. Within Member States, the situation that applies often depends also on the context (for more details see section 4.2 of the Synthesis Report and National Reports).

Indeed, in Member States, the return decision either becomes enforceable:

- Before the deadline for the asylum applicant to appeal the negative asylum decision has expired, (BE, DE, FI,[11] FR, MT, NL, SE, SK, UK) (This is only in exceptional cases – e.g. – depending on the Member State - where the application is manifestly unfounded or inadmissible and accelerated procedures apply; when the return decision does not lead to a risk of direct or indirect refoulement and it is a first subsequent asylum application lodged within 48 hours before the removal in order to delay or prevent it or a second or more subsequent asylum application);
- Pending the outcome of the first level appeal because it does not have suspensive effect on the return decision (AT, CZ, LT, NL, SK);
- After the first level appeal on the asylum decision i.e. once the court has ruled on the matter (AT, BE, CY, CZ, DE, EE,[12] ES, FI, LU, HU, NL, PL, SK); or
- After all possibilities for appeal of the asylum decision are exhausted (AT, BG, CZ, EL, FI, FR, HR, IE, IT, LT, LU, LV, PL, SE, SI, SK, UK).

Can the return decision be appealed against?

According to Article 13 of the Return Directive, third-country nationals subject to a return decision must be granted an effective remedy against it, either in the form of an appeal or a review.[13] The authority in charge of the remedy has the power to suspend the enforcement of the decision, unless a temporary suspension is applicable under national law.

Subsequently, the majority of Member States participating in this study (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, LT, LU, MT, NL, PL, SE, SI, SK)[14] offer the possibility for asylum seekers whose applications were rejected to challenge a return decision. In **Finland** and the **Netherlands**, the return decision is an integral part of the asylum decision, therefore the appeal against a return decision is part of the appeal against the rejection of the asylum application.

[6] Defined by law but not applied in practice.
[7] A copy only.
[8] At the time of writing this report, the Ministry of the Interior had submitted a government bill that would add this interim measure as an alternative to detention.
[9] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013 (from hereon 'recast Asylum Procedures Directive'), pp. 60–95.
[10] Understood as expedited procedures for the examination of an application which is already deemed manifestly unfounded, which involves serious national security or public order concerns, or which a subsequent application is. See EMN Glossary, online version.

[11] In **Belgium**, **Estonia**, **Germany**, **Greece** and the **Netherlands**, an appeal for annulment against a return decision is not automatically suspensive, but it can be lodged together with a request for suspension. In **Finland**, this is the case for appeals before the Supreme Administrative Court.
[12] If the rejected asylum seeker makes an appeal to the second instance court, the suspensive effect is at the court's discretion.
[13] Appeals are brought to challenge the outcome of a decision by the authority concerned while reviews analyse whether this decision was lawful or not.
[14] The **United Kingdom** does not offer this possibility, but it is not bound by the Return Directive so it not breaching EU legislation.

The **United Kingdom** is not bound by the Return Directive; return decisions there are usually issued once asylum appeals have been exhausted and the return decision cannot therefore be appealed.

Several Member States (BG, DE, FR, HR, LV, LT, PL, SE, SI) reported that in practice, appeals against a return decision rarely had an impact on its enforcement although Belgium, Croatia and Ireland reported that this can happen in some cases.

What challenges are faced in Member States in The Return of Rejected Asylum Seekers?

EMN informs and Ad-Hoc Queries identify a number of general challenges that Member States face when trying to effect the return of irregular migrants, including resistance of the third-country national to return in the form of physical resistance, self-injury (including hunger striking); absconding and the presentation of multiple asylum applications to prevent removal; a lack of cooperation from the authorities of the countries of return; difficulties in the acquisition of travel and identity documents; administrative and organisational challenges; and medical obstacles rendering travel difficult or impossible.

As part of this study Member States identified additional barriers, including special considerations required when returning vulnerable persons (AT, BE, FI, FR, SE, UK); obstacles connected to the use of detention in return procedures concerning in particular legal limits to the use of detention (AT, BE, DE, FR, UK) and insufficient detention capacity (BE, LU, UK); the inability to cover expenses for the implementation of the return (EL); public resistance and political pressure (BE, DE, FR, NL) (for more information see below); and the risk of detention in the country of return (AT).

Some Member States identified the following challenges as specific or more pertinent to the return of rejected asylum seekers:

- Opposition by the Member State population and representatives of religious organisations (DE);
- Non-refoulement challenges when asylum seekers are excluded from refugee status or subsidiary protection status on the basis of article 1F of the 1951 Refugee Convention (BE, FI, FR);
- Re-documentation challenges due to a lack of identification documents (DE, FI);
- Stronger individual resistance to return (HU, MT);
- Impossibility for the Member State to establish contact with the authorities of the country of origin before the procedure is closed in order to establish return (LU, MT);
- The fragile security situation in countries of origin (DE, NL);
- Greater prevalence of medical cases (NL);
- Legislation limiting the use of accelerated international protection procedures and the detention of asylum seekers (PL); and
- Aspects of the due process of the asylum procedure, such as the possibility for lodging late-stage appeals and judicial reviews or the lengthiness of the asylum procedure delaying return (BE, FR, PL, SE, UK).

What measures are taken to address these challenges?

To address a lack of cooperation on the part of the rejected asylum seeker, Member States mainly try to disincentivise stay by reducing rights (as discussed above), detaining the third-country national and - in some Member States (AT, BG, DE, EE, HU, IE, PL, SE, SK, UK) - carrying out surprise raids to enforce removals. To persuade third-country authorities to cooperate in return procedures, Member States apply a combination of incentives e.g. aid packages (BE, CY, ES, FR, NL) and disincentives e.g. political pressure (BE, DE, FR, LT, NL, PL, SE).

Re-documentation challenges have been mainly addressed through the repetition of fingerprint capture attempts (BG, CY, DE, ES, FI, FR, LU, NL, PL, SE, SI, UK) and the use of language experts to detect nationality (AT, BE, BG, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, NL, PL, SE, SI, SK). Three Member States (NL, SE, UK) drawn attention in their National Reports to the effectiveness of involving third country officials in identification interviews in order to speed up particularly difficult returns.

Cooperation arrangements between relevant authorities in Member States (BE, BG, CY, DE, EE, ES, FI, FR, IE, LT, LU, NL, PL, SE, SI, SK, UK), the appointment or use of return services providers in the Member State and in third countries (AT, BE, EE, FI, FR, LU, UK) and budget flexibility to enable the injection of funds into return practices (AT, BE, BG, EE, ES, FI, FR, HU, IE, LU, NL, PL, SE, SK, UK) have proven useful at overcoming administrative challenges in many Member States.

Finally, to address challenges posed by the return of rejected asylum seekers with medical issues, Member States have tended to organise medical support for before, during (AT, BE, ES, FI) and after (BE, ES, FI) the return journey.

What happens if return is not immediately possible?

Whereas a majority of Member States may in some circumstances officially acknowledge when a third-country national cannot (immediately) be returned (AT, BG, CY, CZ, DE, EE, EL, FI, HR, HU, LV, LT, LU, MT, NL, SE, SI, SK, UK), in others no such official acknowledgement is given (BE, FR, IE, IT, PL) or is only given in exceptional circumstances (NL).

The impossibility of immediate return can be acknowledged through:

- The granting of a 'tolerated stay' or other temporary status (AT, CZ, DE, FI, HU, LT, MT, NL, PL, SI, SK, UK)
- The issuance of an order to suspend removal (BG, DE, EE, LT, LU)
- A revocation of the return decision (CY)
- The issuance of a document by the Police Administration (EL, HR, SI)
- Extension of the time limit for departure (NL, SK).

Regularisation of a general character is possible in only two Member States (AT, HU) and is possible on a case-by-case basis under specific circumstances in a further ten (BE, DE, EE, ES, FR, MT, NL, SE, SI, UK).

1 Introduction

1.1 STUDY RATIONALE

The return of irregular migrants, including rejected applicants for international protection (from here on referred to as rejected asylum seekers[15]) whose application has been rejected and who no longer have the right to stay in the EU is the backbone of the EU's policy on migration and asylum. An effective return policy is of crucial importance for the maintenance of trust in the EU's asylum system as a system providing protection to those who need it, while ensuring the return of those who do not. In view of this, the EU Action Plan on Return[16] emphasises the need to link EU return policy to the asylum procedure as a priority.

Following the recent increase in asylum applications in the EU and subsequent increase in negative asylum decisions in the EU (see section 2), the return of this group specifically has become a major priority within the EU. The added-value of this study lies in its analysis of (a) the reasons for which rejected asylum seekers might be unable to return / be returned and (b) the measures currently being taken by Member States to facilitate and encourage return. The study also adds value by describing national policies towards the return of rejected asylum seekers, by clearly setting out how the nexus between asylum and return varies between Member States and by identifying potentially good practices.

1.2 STUDY CONTEXT

The Return Directive (2008/115/EC)[17] provides EU countries with common standards and procedures for return.

In accordance with Article 6(1) of the Directive, Member States have an obligation to issue a return decision to third-country nationals staying irregularly on the territory. This includes asylum applicants, who may find themselves in an irregular situation – and therefore subject to a return decision - when a negative decision on their application is made.

Article 8 of the Return Directive allows Member States to remove third-country nationals, including through the use of coercive measures, if they have not left voluntarily within the granted period for voluntary departure (between 7-30 days) as allowed by Article 7.

The asylum acquis requires Member States to respect the principle of non-refoulement in accordance with their international obligations,[18] as does Recital 8 of the Return Directive, meaning that Member States should ensure that a person is not returned contrary to the principle.

In practice, whilst the above-mentioned provisions are harmonised across those Member States who are bound by the Return Directive,[19] very different procedures are in place in Member States as to when return decisions are issued and enforced after a negative decision on an asylum application (see section 4). Similarly, Member States apply different measures to facilitate return either before or once a return decision is issued (see section 3) and in response to barriers to return (see section 5). Member States also differ as the extent to which they offer alternatives to return when return is not immediately possible (see section 6).

[15] While this study concerns the return of rejected applicants of all forms of international protection, for stylistic purposes, this Study refers to 'asylum seeker' in the global sense of the term – i.e. as "in the global context, a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments." (See EMN Glossary 3.2, online version).

[16] COM (2015) 453 final, p. 5.

[17] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L 348, 24.12.2008 (from hereon 'Return Directive'), pp. 98–107.

[18] Article 33(1) of the Geneva Convention Relating to the Status of Refugees of 28 July 1951 provides that 'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' The obligation for EU Member States to respect this principle is explicitly stated, among others, in Article 78(1) of the Treaty on the Functioning of the European Union, and Article 18 and 19 of the EU's Charter of Fundamental Rights, Article 21(1) of the recast Qualification Directive (2011/95/EU) and Recital (3) of the recast Asylum Procedures Directive (2013/32/EU).

[19] Denmark, **Ireland** and the **United Kingdom** have not participated in the adoption and are therefore not bound by the Return Directive.

1.3 STUDY AIMS

The overall aim of this study is to inform decision-makers at both EU and national level including the European Commission, the European Asylum Support Office (EASO) and the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), practitioners, policy officers and academic researchers and the general public on Member States' approaches to the return of rejected asylum seekers, examining existing policies and identifying good practices.

More specifically, the study aims to:

- Map the estimated scale of rejected asylum seekers and the proportion who are and are not effectively returned;
- Obtain insights into Member States' policy on the return of rejected asylum seekers, identifying any recent changes to policy;
- Examine how and to what extent Member States' return procedures are linked to the asylum procedure;
- Provide an overview of the challenges to return and the measures taken to deal with such challenges; and
- Examine Member State alternative approaches to rejected asylum seekers who cannot be immediately returned.

1.4 SCOPE OF THE STUDY

The overall focus of the study was primarily on **rejected asylum seekers who have been issued an enforceable return decision** following one or more negative decisions on their application for international protection (for the purpose of this study referred to as 'asylum application'). This group included, in some Member States, asylum applicants who had not yet exhausted all of their appeals, but who were still required to return, having been issued a return decision. The study also investigated, albeit to a lesser extent, national measures to prepare **asylum seekers in the asylum procedure** for return in case their application would be rejected.

Several forms of return can be distinguished:

- **Voluntary return** is the assisted or independent return of a third-country national to a country of origin, transit or other country, based on the free will of the returnee.[20] This can take place *during* the asylum procedure, for example if the applicant decides to no longer pursue a claim or realises (by the fact that their application has been fast tracked) that it is unlikely that they will be granted protection;
- **Voluntary departure** is voluntary return that is compliant with the obligation to return within the time-limit fixed in a return decision.[21] Exceptionally Member States may extend this period, e.g. if the returnee begins to participate in an assisted voluntary return programme (see below);
- **Removal** entails the physical transportation of a third-country national out of the Member State in order to enforce the obligation to return. This takes place if the period of voluntary departure has not been complied with within the time-limit set or if no period for voluntary departure was granted;[22]
- **Assisted Voluntary Return (AVR)** is voluntary return or voluntary departure supported by logistical, financial and/or other material assistance[23] usually granted through national programmes.
- **Assisted Voluntary Return and Reintegration (AVRR)** programmes are AVR programmes which, in addition, provide support - either cash, in kind or combined - to a returnee, with the aim of helping the returnee to lead an independent life in the host country after return.[24]

Each of these forms of return are covered within the scope of this study.

1.5 STRUCTURE OF THE REPORT

Following this introduction (section 1), the study is divided into a further seven sections (2-8):

[20] EMN Glossary, online version. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_v_en.htm, last accessed on 26th August 2016.

[21] EMN Glossary, online version.
[22] See Article 8 of the Return Directive.
[23] EMN Glossary, online version.
[24] See definition of 'reintegration assistance' in the EMN Glossary, online version.

Box 1 Overview of the Structure of the Report

Section 2: Provides a brief overview of the scale of the problem.

Section 3: Provides an outline of national policy specifically recent policy on the return of rejected asylum seekers in Member States and Member State approaches to encouraging return.

Section 4: Outlines the specificities of national legislation framing the return of rejected asylum seekers, focussing on the nexus between asylum and return decisions.

Section 5: Describes the main challenges to the return of rejected asylum seekers and measures taken in Member States to address these.

Section 6: Describes what happens when return is not immediately possible, specifically whether Member States grant a status to such third-country nationals and how measures taken enable the eventual return or not.

Section7: Provides the overall conclusions of the study

2 The scale of rejected asylum seekers in the EU and the scale of non-return

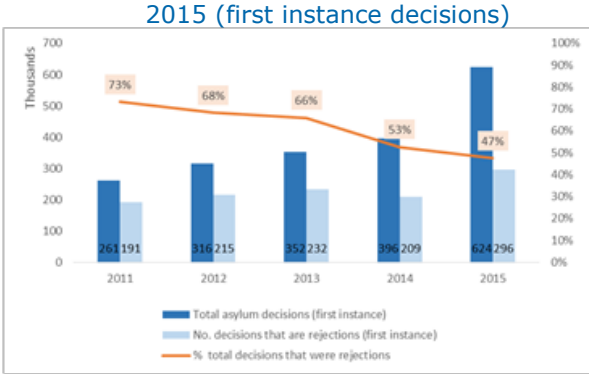
The rise in asylum applications in the EU 2011-2015

The number of asylum applications lodged in the EU has significantly increased in recent years (see Table A2.1 in Annex 2). According to Eurostat,[25] between January 2011 and December 2015, 3.2 million asylum applications were lodged in the EU. The number of applications more than doubled between 2009 (263,835) and 2014 (626,960) and then again from 2014 to 2015 (1.32 million applications).

The rise in rejected asylum applications 2011-2015

Whilst for many asylum applications in the EU an international protection status is granted, from 2010 to 2013 more than 60% of all first instance decisions on asylum were rejections (see Table A2.2 in Annex 2 and Figure 1).[26] In 2014 and 2015 a smaller proportion (53% and 47% respectively) of first instance asylum decisions were negative. This was likely because of the increase in applicants with clear protection needs from (predominantly) Syria.

Figure 1.1 Total asylum decisions and number and proportion that were negative (i.e. rejections) 2011-2015 (first instance decisions)



Source: Eurostat migr_asydcfsta

Figure 2.1 also shows that while the proportion of asylum decisions that were negative fell from 2011 to 2015, the *number* of asylum applications rejected in the first instance grew. This was particularly the case in **France**, **Germany**, **Italy**, **Sweden** and the **United Kingdom**, while in other Member States the number of negative first instance decisions (also as a proportion of all decisions) decreased (BE, CY, EL,[27] NL) or stayed roughly the same (ES) (see Table A2.2 in Annex 2 for full data).

Figure 2.2 demonstrates that final decisions on asylum applications 2011-2015[28] were much more likely to be negative / rejections. This is largely because evidence supporting a positive decision will have already been considered during earlier stages of the appeal and thus the probability of a positive decision becomes smaller. There was a marginal rise in the proportion of final decisions that were negative from 2014 to 2015, though this is not significant enough a change to be considered a trend. (See Table A2.3 in Annex 2 for full data on final instance asylum decisions).

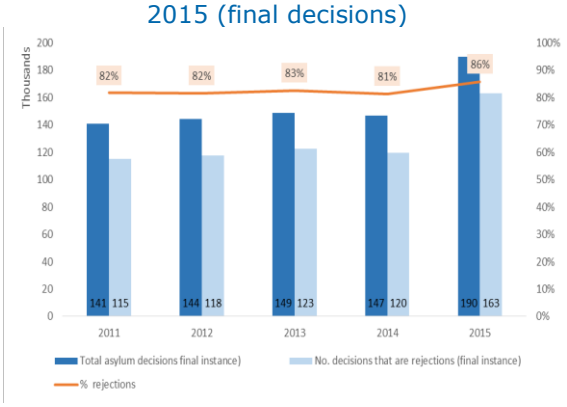
[25] Eurostat database migr_asyappctza

[26] Asylum aplications are rejected when they are considered inadmissible or unfounded.

[27] Numbers rose 2011-2013 then decreased 2013-2015.

[28] Eurostat defines final decisions as those taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy.

Figure 1.2 Total asylum decisions and number and proportion that were negative (i.e. rejections) 2011-2015 (final decisions)



Source: Eurostat migr_asydcfina

The number of first instance negative decisions are almost always higher than the number of final negative decisions because the former do not always lead to final negative decisions being made (e.g. if an applicant receives a positive decision following a first negative decision (i.e. on appeal) or if an applicant returns immediately following a first negative decision). Differences may also be due to first instance decisions being issued one year (e.g. towards the end of the year) with final decisions being issued in the following year creating a discrepancy in the statistics. This likely explains why in 2014 the number of final negative decisions in Sweden was higher than the number of first instance negative decisions.

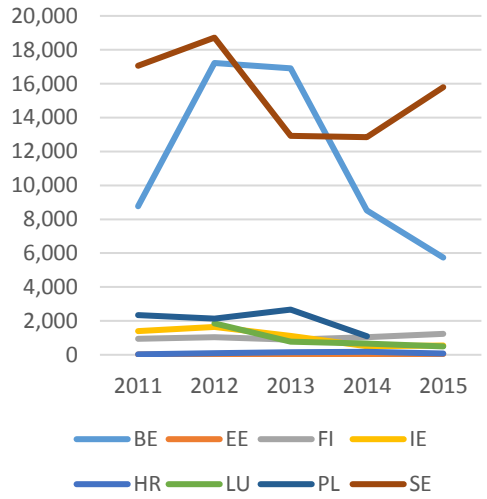
The relationship between negative asylum decisions and return decisions

Asylum seekers who receive a (final) negative decision on their application for international protection in general no longer have a legal right to stay in the EU and will in most cases (though not all) hence be issued a return decision (for discussion see section 4).

Within specific Member States (for which data were available), rejected asylum seekers make up either: a high proportion (over 60%) of all third-country nationals issued a return decision (**Ireland** and **Luxembourg**); less than 30% (**Lithuania**); between 10 and 35% (**Finland**, **France**, **Hungary**, **Italy**[29] and **Poland**[30]) or less than 10% of all return decisions issued (**Bulgaria**, **Estonia** and **Latvia**).[31]

For the purpose of this study, data on return decisions issued to rejected asylum seekers was only available for some Member States for this study (see Figure 2.3 below and Table A2.6 in Annex 2).

Figure 1.3 Return decisions issued to rejected asylum seekers 2011-2015



Source: National data from National Reports

The data show that while some Member States (EE, FI, SE) saw a rise in return decisions issued to rejected asylum seekers, especially in 2014 and 2015, others (BE, HR, IE, LU, PL) saw their numbers decrease. The decrease in return decisions issued appears to have been proportional to a decrease in applications rejected. However, the rise in return decisions in **Estonia** and **Sweden** has not always been proportional to the number of applications rejected. The rise may be therefore due to improvements in the efficiency of the return procedure or improvements in coordination between the asylum and return procedures. Indeed, because of the number of asylum applications received in 2015, some Member State immigration services reinforced their human resources to enable quicker processing, which may have led to the increase in return decisions.

It is important to note that a one-to-one relationship between negative asylum decisions and return decisions can only exist in Member States (e.g. AT, DE, FI, FR, SE, UK) where return decisions are usually issued at the same time as (first instance) negative asylum decisions.

[29] Except in 2015 when almost 53% of all third-country nationals issues a return decision were rejected asylum seekers.

[30] Data only available for 2014 and 2015.

[31] No data were available for other Member States.

When there is no such relation, the stage at which a return decision is issued may vary, as further described in section 4, which also means that data on return decisions issued to rejected asylum seekers is not fully comparable between Member States.

The proportion of rejected asylum seekers required to return who actually do so

The data on return decisions presented above show only return decisions issued, without taking into account whether these were enforceable or not (e.g. because an appeal against the decision had a suspensive effect) nor showing the proportion of rejected asylum seekers who actually returned, as data on these aspects is not commonly available.

Qualitative data (see section 5) suggests that Member State authorities encounter similar challenges with the return of rejected asylum seekers as they do with the return of other third-country nationals, although for rejected asylum seekers some of these common challenges may be intensified or combined with additional issues which are specific to this group (see also section 5). While, on the basis of the sparse information available, it is not possible to draw any conclusions on whether rejected asylum seekers who cannot return / be returned represent a large or particularly problematic sub-group of the global group of persons whose return is not immediately possible in the EU, the fact that both the number of asylum applications lodged and the asylum applications rejected has risen in the last three years in the EU, has spurred some Member States to place increasing policy importance on the return of this particular group (see section 3).

3 National policies and measures to encourage rejected asylum seekers to leave the EU territory

This section provides an overview of the policies and measures that Member States make use of to encourage the return of rejected asylum seekers who have been issued an enforceable return decision. Section 3.1 first describes the extent to which Member States prioritise the return of rejected asylum seekers within their migration and asylum policy. Subsequently, section 3.2 provides a general overview of policies and strategies to encourage return (and deter irregular stay).

Section 3.3 provides a more detailed overview of how such policies and strategies shape the rights/benefits granted to rejected asylum seekers, providing an overview of the immediate consequences that an enforceable return decision may have from their point of view. Section 3.4 then maps the various measures taken by Member States to prevent absconding during the return procedure and finally section 3.5 describes national measures taken during the asylum procedure (i.e. before a return decision is issued) to facilitate return.

3.1 NATIONAL PRIORITISATION OF THE RETURN OF REJECTED ASYLUM SEEKERS

Whilst all Member States consider important the return of third-country nationals with no legal right to stay in the EU, the extent to which the return of rejected asylum seekers is a *policy priority* varies significantly between Member States:

- In several Member States (AT, BG, DE, FI, HU, SE) the return of rejected asylum seekers specifically has become a priority due to the recent increase in asylum applications;[32]
- In others (BE, EL, ES, FR, LU, MT, NL, UK), their return is prioritised only as part of a wider national priority on return.
- In others still (CY, EE, HR, IE, LT, LV, PL, SI, SK), the (comparatively small) scale of asylum seekers generally, and of those who cannot be returned specifically, influences the extent to which the topic is seen as a national priority. Nonetheless, these Member States recognise that the swift and effective return of rejected asylum seekers is crucial for the maintenance of the credibility of the asylum system. In **Estonia**, **Lithuania**, **Poland** and **Spain**, returning rejected asylum seekers may become more important in the future given that these Member States all have or are expecting an increase in the number of asylum seekers.

When comparing this information with the data in section 2 on the proportion of rejected asylum seekers amongst all third-country nationals issued a return decision, it seems that national policy is not driven by the extent to which rejected asylum seekers form a large proportion of the total number of third-country nationals required to return, but is **more likely to be driven by the total number of asylum applications lodged**.

[32] However, it should be noted that in **Bulgaria** and **Hungary**, the vast majority (over 80%) of all applications were terminated by the applicant before a decision was made, meaning that these two Member States do not face high numbers of *rejected* applicants.

That is, Member States receiving the highest numbers of applications (i.e. **Austria**, **Belgium**, **France**, **Germany**, **Hungary**, **Italy**, the **Netherlands**, **Sweden**, **United Kingdom**) or experiencing the sharpest increases in applications (e.g. **Austria**, **Bulgaria**, **Finland**, **Germany**, **Hungary**, **Sweden**) are those most likely to prioritise their return.

3.2 POLICIES AND STRATEGIES TO ENCOURAGE RETURN AND DETER (IRREGULAR) STAY ONCE A RETURN DECISION IS ISSUED

Member States implement a mixture of policies and strategies to ensure that rejected asylum seekers return. In line with the Return Directive, all Member States generally first **encourage** rejected asylum seekers to return **voluntarily**. If, however, the rejected asylum seeker refuses to cooperate, Member States use **forced return**, including the use of **coercive methods**, as also allowed as a last resort by the Return Directive. As such, the return procedure consists of **different stages** and may encompass **various types of return measures**, depending also on whether or not the third-country national **cooperates** in the procedure.

The development and implementation of AVR(R) programmes, including counselling, features prominently among the **measures** used by Member States **to incentivise return** (this was described as a key measure by AT, BE, BG, CY, CZ, DE, EE, FI, FR, HU, IE, LT, LU, LV, MT, NL, PL, SE, SI, SK, UK). Twelve Member States (AT, BE, BG, DE, EE, EL, FI, IE, IT, MT, PL, SE) have AVR(R) programmes in place which are (at least partly) targeted at rejected asylum seekers. For example, in **Luxembourg** only asylum seekers who have been in the asylum procedure for at least six months or who have contacted the authorities within 30 days of receiving a return decision are eligible for the complete AVR(R) package, while other irregularly staying third-country nationals are only eligible for basic aid. **Belgium** also offers differentiated return packages to (rejected) asylum seekers. The **United Kingdom** makes assisted voluntary return available to rejected asylum seekers, vulnerable individuals and families with dependent children.

Within the more general framework of AVR(R) some Member States place emphasis on the provision of counselling early on in the asylum procedure in order to 'prepare' potential rejected asylum seekers to return (e.g. AT, BE, CZ, DE, FI, FR, IT, SE).[33]

In **Austria** return counselling is mandatory for those asylum seekers who are likely to be rejected, while **Finland** provides information about voluntary return in reception centres,[34] as the majority of voluntary returnees are in fact people who applied for asylum.

Sweden reported that in the past few years, the Swedish Migration Agency has developed specific methods for persuading rejected asylum seekers to return, called 'motivational interviewing' techniques.

In **Sweden**, in the case of asylum seekers from the Western Balkans, it was also found that the provision of early information about the consequences of forced return (notably the imposition of an entry ban) often led them to withdraw their applications for international protection and return voluntarily. The effectiveness of communicating information about entry bans as a deterrence measure was similarly highlighted by the **Netherlands** and **Germany**.

Concerning the effectiveness of AVR(R) measures, the **United Kingdom** has conducted a number of evaluations that have found that AVR(R) schemes may encourage rejected asylum seekers to comply with the return procedure. An evaluation carried out by **Sweden** in 2011 indicated that the reintegration efforts made by the Swedish Migration Agency would be more effective if combined with long-term development assistance to areas which receive high numbers of returnees.[35] **Luxembourg** described the AVR(R) programme as a good practice approach to the return of rejected asylum seekers, as they are less expensive than forced returns and allowed rejected asylum seekers to return in dignity and reintegrate in a more sustainable manner. In **Poland**, rejected asylum seekers have expressed limited interest in AVR(R) programmes: they make up only 23% of all beneficiaries of AVR. Around 50% of beneficiaries of the abovementioned programme are irregular migrants and third-country nationals who have withdrawn their application.

[33] For further details about Member States' return counselling and information policies, see EMN Synthesis Report for the EMN Focussed Study 2015, 'Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities', available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emnstudies/info_on_return_synthesis_report_20102015_final.pdf, last accessed on 9th August 2016.

[34] Assisted voluntary return programmes are specifically directed at asylum seekers who have either withdrawn their application or whose application has been rejected.

[35] Annual Report of the Swedish Migration Agency (Migrationsverket: Årsredovisning), 2011, p. 47.

Policies and strategies to encourage return, however, often include both a 'carrot' (voluntary return) and a 'stick' (forced return) element.

Member States tend to provide **incentives** at the beginning of the return procedure to encourage **voluntary return** (e.g. continued stay in reception facilities, provision of counselling, assisted voluntary return and reintegration (AVR(R)) etc.) which are then followed by **disincentives to stay** and measures to **enforce return** once the rejected asylum seeker refuses to cooperate (e.g. removing rights to accommodation, social benefits etc.).

Both incentives and disincentives are regarded as necessary elements for an effective return policy, as acknowledged in the EU Return Action Plan.[36]

Although all Member States pursue both voluntary and forced return (applying both incentives and disincentives), recent developments in some Member States have placed more focus on either one or the other dependent on Member States' needs, the challenges they face and the evolution of their return policies (see Boxes 2 to 5 below).

Box 2 Belgium and France – Focus on incentives: strengthening the voluntary return system

In **Belgium** a focus has been put in recent years on incentives to increase the effectiveness of the voluntary return system. In 2012, the 'return path' policy was established. This introduces voluntary return counselling for applicants still in the asylum procedure. Belgium also introduced so-called 'open return places' (located in the 'regular' reception centres for asylum seekers managed by the national reception agency, Fedasil), to which rejected asylum seekers are assigned following a negative appeal decision. In these places, rejected asylum seekers receive the same material aid as during the asylum procedure as well as intensive return counselling by both Fedasil and the Immigration Office. Rejected asylum seekers can stay in these open return places until the order to leave the territory expires (usually a maximum of 30 days) or until the moment of departure if they opt for AVR(R). Besides having a policy focus on voluntary return, Belgium also aims to improve forced return actions. Further details are available in the National Report.

France, on 1 April 2015, set up a voluntary return assistance and preparation centre targeting rejected asylum seekers in Vitry sur Orne, Moselle. Initially designed for an average of 40 people, it was enlarged in May 2016 to reach a maximum capacity of 80 places. Since its opening, 56 families have stayed in the centre, i.e. 205 people, including 98 children. Residents in the centre are supported to fill in applications for voluntary return assistance by the Immigration and Integration Office (OFII). Since its opening, 44.9% of all rejected asylum seekers hosted in the centre have been returned to their country of origin. The scheme brings together numerous actors at national and regional level, including OFII, the Prefecture, ADOMA (French semi-public company specialised in migrant housing), the French gendarmerie and the French Border Police (*Police aux Frontières - PAF*).

Box 3 Sweden – Shift in focus from benefits for rejected asylum seekers to disincentivising stay

In **Sweden,** during the period 2011-2015, rejected asylum seekers were allowed the right to accommodation and to receive daily allowances 'until they left the territory'. This meant that in practice there was hardly any difference in the right to accommodation as provided during and after the asylum procedure once an enforceable return decision was imposed.

In this way, according to the Swedish National Report, legislation and practice in this domain, i.e. accommodation 'did not encourage the return of rejected asylum seekers', and new rules were introduced in June 2016. Following these, rejected asylum seekers are only allowed to stay in reception facilities during the period of voluntary departure or if they cooperate in the return procedure. In addition, Sweden removed the right to financial assistance for adult rejected asylum seekers who had exhausted all appeals. Families with children and unaccompanied minors are exempt from the new rules.

Box 4 The Netherlands – Balancing incentives to encourage voluntary return and disincentives to deter irregular stay

In the **Netherlands**, voluntary return is the preferred option and third-country nationals can be assisted with voluntary return by the International Organisation for Migration (IOM) or non-governmental organisations (NGOs). During the period for voluntary departure some incentives are provided to encourage voluntary return, e.g. counselling, continued stay in reception facilities etc. However, after the 28-day period granted for voluntary departure, should the third-country national refuse to cooperate, all support and provisions are terminated. This is because the Netherlands links eligibility for benefits (in general) to residence status with a differentiation made between regularly and irregularly-staying third-country nationals. Only entitlements such as necessary healthcare, legal aid, education for minors, emergency healthcare or inoculations to prevent serious illness are accessible to all third-country nationals, including irregular migrants.

The Netherlands also introduced the possibility of requiring third-country nationals who are under an obligation to leave the Netherlands to make a 'security deposit' in 2014. The third-country national is asked to sign a return contract with the Repatriation and Departure Service (DT&V) which establishes their rights

[36] See the EU Action Plan on Return, p. 3.

and obligations. The security deposit is returned when the third-country national reports to the authorities at the airport and actually leaves the Netherlands. This measure is applied in a very small number of cases (less than 50 a year) but it almost always leads to effective departure.

Box 5 The UK – focus on disincentivising irregular stay

In the **United Kingdom**, rejected asylum seekers usually lose access to accommodation and subsistence once appeals have been exhausted and the period of voluntary departure has lapsed (21days after the final rejection of their asylum claim or any appeal). They only continue to receive support when they can show that there is a legal or practical obstacle that prevents them from leaving the UK. Changes introduced through the Immigration Act 2016 were also aimed at deterring irregular stay, though these are less likely to affect rejected asylum seekers since they focus on preventing longer-term integration prospects (e.g. the opening of bank accounts and obtaining of a driving license).

3.3 RIGHTS/BENEFITS GRANTED TO REJECTED ASYLUM SEEKERS

0 provides an overview of the rights which rejected asylum seekers are entitled to in the Member States after an enforceable return decision has been imposed. This table shows that the level and type of rights granted vary greatly between the Member States, as well as the conditions for accessing these. Some caution should be exercised however when interpreting the table, as rights may differ depending on *when* an enforceable return decision is imposed (i.e. *during* appeal procedures, *after* appeals, or once all legal means have been exhausted), *at what stage* the return procedure is at and whether or not the third-country national *cooperates* in this procedure.

Overall, in most Member States, the **rights** granted to rejected asylum seekers are generally **kept to a minimum**. Support provided consists mostly of material aid (i.e. accommodation and food) and emergency healthcare.

The rationale for keeping rights to a minimum flows directly from the desire to make further stay unattractive and to not undermine the credibility and sustainability of the EU migration and asylum systems.[37]

The sections below provide an overview of the rights for rejected asylum seekers who have been imposed an enforceable return decision to access **accommodation** and any **other rights** beyond material aid.

3.3.1 ACCOMMODATION

Under certain conditions,[38] Member States provide rejected asylum seekers with accommodation, depending on the stage of return and/or their cooperation (as explained below). This right is laid down in legislation in fourteen Member States (AT, BE, CZ, DE, EE, EL, FI, FR, HU, IT, NL, PL, SE, UK), whereas in seven (HR, IE, LT, LU, MT, LV, SI) it is granted only in practice. Most commonly, rejected asylum seekers:

- Continue to reside in **reception facilities** (AT, BE,[39] CZ, DE, EE, EL, FI, FR, IT, HU, IE, LT, LU, LV, MT, NL, PL, SE, SI, SK, UK);
- Are transferred to special **open return places** (BE), and/or;
- Can be accommodated in **special facilities** tailored to the needs of **vulnerable** third-country nationals, i.e. families, unaccompanied minors (UAMs), or other persons with special needs (e.g. NL)

A few Member States (e.g. BG, HR, HU, SI, SK[40]) also make use of **detention** for the purpose of return as a form of accommodation.

Accommodation for rejected asylum seekers during appeal procedures

0 indicates that all Member States who impose a return decision before the completion of an appeal procedure against the asylum decision (i.e. AT, BE,[41] CZ, EE[42], FI, HU, IT, LT,[43] LU, NL, SE, UK) allow third-country nationals to stay in **similar accommodation facilities** as where they were hosted **during the asylum procedure**.

[37] As argued by the Netherlands in their National Report, see p. 14.
[38] E.g. only during the period for voluntary return, and/or if a rejected asylum seeker applies for voluntary return and/or otherwise cooperates in the return procedure and/or if the asylum seeker in an appeal procedure, etc.
[39] In **Belgium**, rejected asylum seekers are usually transferred to 'open return places', which are located in 'regular' reception centres. Certain categories of rejected asylum seekers are exempt from this transfer, or the transfer can be postponed.
[40] Upon considering the existence of legal grounds for detention and special circumstances of the case.
[41] Rejected asylum seekers have a right to material aid during the appeal procedure before the Council for Alien Law Litigation (see details in national report). An appeal in cassation before the Council of State does not lead to a right to material aid (this right is only reactivated when the appeal has been declared admissible).
[42] In **Estonia** this practice has changed from 1st May 2016, from there on the return decision is issued after the final asylum decision.
[43] Only for third country nationals whose application is being accessed in the accelerated (urgency) procedure.

Accommodation after a final negative decision: the period of voluntary departure

Once a negative asylum decision is final, several Member States (AT, BE, CZ,[44] DE, FI, FR, HU, IE, LT, LU, LV, MT, NL, PL, SE, SI, UK) still allow rejected asylum seekers a period of **continued residence in reception facilities**.[45]

For most of these Member States, there is a limit for such continued residence which usually equates to the period of voluntary departure (7-30 days).[46] In others (e.g. AT, DE, IE), however, there is no such limit for continued residence.

Accommodation after the period of voluntary departure has lapsed: conditional on cooperation?

Once the period for voluntary departure has lapsed, the provision of accommodation becomes, in some Member States (e.g. BE, CZ, FI, LU, NL, PL, SE, SI, UK), **conditional on the third-country national cooperating with the authorities during the return procedure**. In these Member States, following a negative decision on the application, provisions and rights terminate after the period for voluntary departure **unless the third-country national opts for assisted voluntary return**. In the **United Kingdom** rejected asylum seekers who cooperate in the return procedure can stay in accommodation facilities also after the voluntary departure period (21 days), as long as the obstacle preventing their voluntary return exists. Rejected asylum seekers with dependent children will continue to receive accommodation and subsistence, irrespective of obstacles to return.

In **Austria** cooperation in the return procedure also constitutes a precondition for receiving Basic Welfare Support, which may be reduced or withdrawn if third-country nationals do not comply with their cooperation duties.[47] This can however also already occur during the voluntary departure period. The underlying idea of **withdrawing accommodation in cases of non-cooperation**, is, as explained by **Austria**, expected to lead to third-country nationals leaving the territory.

In **Belgium**, rejected asylum seekers who have signed up for voluntary return can stay in the open return places until the moment of departure (see Box 2).

In other Member States (DE, IE), continued stay in reception facilities is **not conditional on cooperation during the return procedure**. For example, in **Ireland** asylum seekers may stay in direct provision accommodation until 'such times as they are granted some form of status and move into the community, leave the State voluntarily or are removed.'[48]

In **Germany** rejected asylum seekers from safe countries of origin *have to* stay in reception centres for the entire time until their departure. All other rejected asylum seekers *can stay* in reception centres 'as long as no other accommodation is available'. The person in question will either be returned at one point or if return is not possible the person in question may still remain in accommodation facilities if he/she cooperates with the authorities. If this is not the case, detention pending return may be applied. Continued stay in accommodation facilities is motivated by the desire **to maintain contact** with the third-country national (i.e. knowing his/her whereabouts) in order to ultimately make return more likely.

Finland and **Sweden** used to apply similar practices: In Sweden (up to mid-2016) and Finland (up to mid-2015) rejected asylum seekers could stay in reception centres, irrespective of their cooperation, until they left the territory. However, **Finland** explains that this was later regarded as a disincentive to return following which practices changed. Since July 2015, rejected asylum seekers can only stay in accommodation facilities if they cooperate with the authorities. Since July 2015, the main principle remains that rejected asylum seekers may remain in reception facilities until they leave the territory. However, if it becomes evident that return will not take place, either because the rejected asylum seeker refuses to leave voluntarily or because the police are not able to enforce return, reception services are terminated after a 30-day period.

Similarly, in **Sweden**, starting from June 2016, rejected asylum seekers, except for UAMs and families, who do not cooperate are no longer allowed continued residence beyond the period for voluntary departure and Swedish authorities do not offer any alternative accommodation to replace it. More information on specific facilities or rules for third-country nationals with special needs is presented in Box 6 below.

[44] Only if the applicant applied for voluntary return.
[45] The time period for continued residence is however usually limited.
[46] See also the Return Directive, Art. 7.
[47] See National Report for details of the national legislation framing this.
[48] See Irish Report to Government on Improvements to the Protection Process, paragraph 1.30

Box 6 Accommodation for third-country nationals with special needs

A few Member States (e.g. BE, FI, FR, NL, SE, SI) provide specific facilities and/or exempt rejected asylum seekers who have special needs from specific conditions for continued accommodation. For example, in the **Netherlands**, families with minor children are usually placed in a family care facility. In **Sweden**, families with minor children will continue to receive accommodation irrespective of their cooperation in the return procedure. In **Finland** accommodation services are terminated 30 days after the return decision has become enforceable if the rejected asylum seeker refuses to return voluntarily and the police cannot enforce return. However, the director of the reception centre may decide that a person will continue to receive reception services for a reasonable period of time on special personal grounds. Practices are currently similar in the **United Kingdom**. However, once the Immigration Act 2016 is implemented, rejected asylum seekers with children will lose access to accommodation and subsistence support 90 days after the final rejection of their asylum claim or any appeal unless there is an obstacle to their voluntary departure from the UK.

3.3.2 OTHER RIGHTS

This study has also reviewed whether rejected asylum seekers continued to have access to a selection of other rights and support measures, namely social benefits, employment, education, and healthcare. 0 provides a detailed overview of access to these rights. In most Member States the set of rights granted to rejected asylum seekers differs depending on whether the return decision is enforceable, whether all appeals have been exhausted and whether the applicant is within the period for voluntary departure or not. Sometimes access to rights also depends on the extent to which the rejected asylum seeker cooperates with return or not.

Rights during appeal procedures

For those Member States who impose a return decision *before* all asylum appeals are exhausted, the rights granted during the appeal stage remain similar to those granted during the first instance asylum procedure.

Rights once the final return decision has been issued: the period of voluntary departure

Once the final return decision has been issued, a few Member States continue to provide access to the same level of healthcare provided during the asylum process (BE,[49] BG, EL, FI, FR, IE, IT, LU, MT, NL, PL, UK), social benefits in cash (DE, FI,[50] FR, NL, PL, SE), access to education for adults (BE,[51] FI,[52] IT, MT, NL,[53] PL, UK[54]) and employment (DE,[55] EL, HR,[56] IT,[57] MT, SE[58]) during the period of voluntary departure. **Some of these Member States** (EL, UK) **use these as incentives to encourage (voluntary) return**.

In **Malta**, rejected asylum seekers are allowed to work for a period of time determined by the Refugee Commission and on the basis of social considerations. Generally, employment licences issued are valid for three months and renewable. If a rejected asylum seeker leaves the country, the Refugee Commission notifies the Employment and Training Corporation and the permit is cancelled accordingly.

In other Member States (BG, HU, LT, LV, SI, SK) rejected asylum seekers who are required to return may not access any rights except for the two basic minimum rights: access education for children and emergency healthcare for adults and children and accommodation (in the case of **Lithuania**), unless (in the case of **Bulgaria**), the rejected asylum seeker is staying in detention facilities in which case they can access wider healthcare.

Rights after the period of voluntary departure has finished

Once the period of voluntary departure has ended, almost all Member States end access to benefits.

In **Ireland** and **Luxembourg**, in practice, rejected asylum seekers may stay in reception facilities until they leave the territory. There they will have no access to employment or (adult) education, but will have access to full healthcare and an 'exceptional needs' payment can be granted.

[49] If the rejected asylum seekers is staying in an open return place.
[50] Same provision as during asylum process.
[51] See Belgian National Report for details.
[52] Similar access to education as during the asylum process.
[53] Those who enrolled in educational programmes before the age of 18 are allowed to finish them.
[54] Rejected asylum seekers are permitted to engage in further or higher education but this must be at their own cost.
[55] Provided the third-country national cooperates with the foreigners office in returning voluntarily.
[56] In practice only.
[57] Existing employment may sometimes continue for a while.
[58] Provided the third-country national cooperates with the Migration Agency in returning voluntarily.

Some Member States (BE,[59] EE, IT) also provide the possibility for rejected asylum seekers to receive social benefits in case of urgent humanitarian needs.

3.4 MEASURES TAKEN TO FACILITATE RETURN BY PREVENTING ABSCONDING

According to Arts. 7 and 15 of the Return Directive, Member States can impose several measures to prevent third-country nationals from absconding during the return procedure.

Detention, used in all Member States, is one of the main instruments to prevent absconding. The Return Directive stipulates stringent requirements for the use of detention, which can only be applied if 'other sufficient or other less coercive measures' cannot be applied effectively.[60] A further elaboration on the use of detention is beyond the scope of this study, but the reader is referred to the EMN Inform on 'The Use of Detention in Return Procedures' for further information.[61]

In line with the Return Directive, Member States initially give preference to a range of alternatives to detention to prevent absconding. These include the following:

- Regular reporting (AT, BE, DE, EE, EL, ES, FI, FR, HR, IE, IT, LV, LU, MT, NL, PL, SE, SI, SK, UK)
- Requiring a security deposit (AT, BE,[62] EL, FI, HR, LU, NL, PL, SI, SK)
- Handing over of ID or travel documents (BE,[63] DE, EE, EL, ES, FI, HR, HU, IT, LU, LV, MT, NL, PL, SI)
- Order to take residence at a certain place (AT, DE, EE, EL, ES, FI,[64] FR, HR, HU, IT, LU, PL, SI, UK)
- Inspection of residence (LU, PL)
- Electronic monitoring (UK)
- Obligation to inform the authorities should a change of residence be considered (DE, EE, MT)

In addition to detention, **Belgium** also emphasises the **role of counselling** and the establishment of **individual contact** with the returnee as important tools to prevent absconding. Similarly, the **Netherlands** emphasises the importance of **coordination** between different authorities as well as a **comprehensive** and **personal approach** as important elements to prevent absconding.

A step-by-step description of these measures is provided in Box 7 below.

Box 7 Netherlands: preventing absconding

In the **Netherlands** shortly after the asylum seeker has received a return decision, the Repatriation and Departure Service (DT&V) conducts a departure interview. Additionally, a Local Return Consultation (LTO) takes place to jointly organise the departure of the third-country national. The aim is to intensively work together and to seek and maintain contact with all relevant stakeholders involved in this process. The LTO's responsibility is to harmonise the departure strategy, to monitor progress, and discuss a risk analysis of the third-country national. If one of the LTOs indicates that they are unable to implement the departure strategy, the Regional Return Consultation (RAO) is alerted. If, despite efforts to realise voluntary return, the third-country national is not prepared to cooperate, return will be carried out by force. There are several measures to enforce departure, of which detention is the most severe, but in practice alternatives to detention are more frequently used to prevent absconding.

3.5 POLICY ON THE EARLY PREPARATION OF ASYLUM SEEKERS FOR POTENTIAL RETURN

In 2015, the EMN published a study on *Dissemination of Information on Voluntary Return: how to reach irregular migrants not in contact with the authorities*. This study found that providing information as early as possible to potential beneficiaries of AVR(R) was a good practice both because it enabled the authorities to speak to third-country nationals about return whilst they had guaranteed contact with them and also because it gave the person concerned more time to think about and consider return.

As discussed above (section 3.2), both **Austria** and **Belgium** have a clear policy on the provision of information and return counselling to asylum seekers as early as possible during the *asylum* procedure. Such a policy is planned in **Cyprus** for the coming years (to be implemented by IOM).

As part of the content of the orientation provided to asylum seekers on *arrival* in **Germany**, return counselling is currently implemented particularly for those asylum seekers whose prospects to remain are unclear.

[59] Irregularly staying families with minor children who cannot support their children can apply for material aid under certain conditions.
[60] Return Directive, Art. 15.
[61] EMN Inform, the Use of Detention in return Procedures, forthcoming (2016).
[62] This is defined by law but not applied in practice so far.
[63] A copy only.
[64] At the time of writing this report, The Ministry of Interior had submitted a government bill that would add this interim measure as an alternative to detention.

The EMN 2015 study – and this study – found that State authorities or external service providers (e.g. NGOs) in other Member States (CZ, EE, FI, FR, HU, IT, LU, LV, MT, PL, SE, SK, UK) and Norway provide information on voluntary return to applicants for international protection when applying for asylum (AT, BE, CZ, DE, EE, IT, LU, MT, SE, SK, UK, NO), when the application is examined (AT, BE, CZ, EE, FI, FR, LU, SE, SK, UK, NO) or at the instance that the asylum application is rejected (AT, BE, CZ, DE, EE, FI, FR, HU, LT, LU, LV, NL, PL, SE, SK, UK, NO). This policy is outlined in legislation and soft law in **Austria**, **Belgium** and **Slovakia** and in soft law in **Finland** and **Sweden**. Elsewhere the principle of providing information on return early in the asylum procedure is not codified, but is standard practice, except in **Croatia**, **Cyprus**, **Greece** and **Slovenia** where there are reportedly not preparatory measures for return during the asylum procedure or in **Ireland** where information is made available on the website of the Department of Justice and the Equality Reception and Integration Agency for those potential returnees seeking out the information.[65]

4 National legislation framing the return of rejected asylum seekers

This section provides an overview of the nexus between asylum and return procedures and decisions. Section 4.1 first presents the ways in which negative asylum decisions trigger return decisions and describes the interaction between asylum appeals and return decisions. Next, an overview of the possibilities for appealing a return decision are discussed, focussing on the extent to which appeals on the return decision can delay or stop return (see section 4.2). Section 4.3 then describes the extent to which rejected asylum seekers who are issued an enforceable return decision can lodge subsequent asylum applications.

The last section (section 4.4) describes Member State measures undertaken to speed up the return of asylum seekers whose applications are unlikely to lead to a status being granted.

4.1 NEXUS BETWEEN ASYLUM AND RETURN DECISIONS

Article 6(1) of the Return Directive provides that Member States have an obligation to issue a return decision to any third-country national staying irregularly on their territory.

According to Article 9 of the recast Asylum Procedures Directive (2013/32/EU),[66] asylum applicants have the right to remain on the territory for the purpose of the procedure, **until a decision on their application is made**. Article 46(5) further provides that Member States must allow all applicants to remain on the territory until the time limit within which they can **exercise their right to an effective remedy has expired**.[67] This time limit must be set by Member States and must be 'reasonable'.[68] The article adds that applicants must be allowed to stay on the territory '**pending the outcome of the remedy**'.[69] However, where the appeal is against a decision on a manifestly unfounded or inadmissible application, or following an accelerated procedure, no automatic suspensive effect applies. In such cases the national court or tribunal shall be able to decide on the applicant's right to stay on the territory or not.

The above means that, according to the Asylum Procedures Directive,[70] a return decision can only be issued against an asylum seeker once a decision rejecting their application, or declaring it inadmissible and/or manifestly unfounded, has been issued. It also implies that the asylum applicant should be given the opportunity to challenge a negative asylum decision and to exert his/her right to an effective remedy to at least the first level of appeal - which requires physical presence on the territory. In general, they thus can only be returned once the negative decision on their asylum application has been 'confirmed' by at least a first level appeal court.

Figure 4 overleaf describes the intersection between asylum and the enforceability of return decisions.

It shows that **a limited number of Member States allow the return decision to be enforced before the deadline for the asylum applicant to appeal the negative asylum decision has expired**, in exceptional cases. However, overall, in most Member States, first level appeals have a suspensive effect.

[65] No information for **Spain**, nor for Portugal and Romania who did not participate in this study.
[66] recast Asylum Procedures Directive.
[67] Article 46(5) of the recast Asylum Procedures Directive
[68] Article 46(4) of the recast Asylum Procedures Directive
[69] Article 46(5) of the recast Asylum Procedures Directive
[70] Article 9 of the Return Directive, which sets out situations in which removal of a third-country national can be postponed, does not refer to pending appeals against a rejected application for asylum as one of the mandatory or optional grounds for postponing a removal.

In Member States where first level appeals do not have a suspensive effect, this appears to be related to the nature of the claim and the associated conditions. This is described further in the bullet points below. However, in sum, taking into consideration the legal provisions set out above and shown in Figure 4, there is **no uniform practice** amongst Member States as to **when during or after the asylum procedure a return decision becomes enforceable**.

The following scenarios have been identified, although in most Member States more than one of the scenarios can apply depending on the context:

- In exceptional cases (as described below Figure 4) the return decision becomes enforceable **before the expiration of the period set for** the asylum seeker to exercise his/her right to challenge the asylum decision: BE, DE, FI,[71] FR, MT, NL, SE, SK, UK;
- The return decision becomes enforceable **pending the outcome of the first level appeal** because it does not have suspensive effect on the return decision: AT,[72] CZ, LT,[73] NL, SK (as described below Figure 4);
- The return decision generally becomes enforceable **after the first level appeal on the asylum decision** because this appeal has suspensive effect on the return decision (i.e. the return decision becomes enforceable once the court has ruled on the matter): AT, BE, CY, CZ, DE, EE,[74] ES, FI, LU,[75] HU, NL, PL, SK;
- The return decision becomes enforceable **pending the outcome of appeals in higher instances** because they generally do not have suspensive effect on the return decision (i.e. the return decision can be enforced while the ruling is pending): AT, CY, CZ; or
- The return decision becomes enforceable **after all possibilities for appeal of the asylum decision are exhausted**: AT, BG, CZ, EE,[76] EL, FI, FR, HR, IE, IT, LT, LU, LV, PL, SE, SI, SK, UK.

Where Member States allow for asylum seekers to be removed before they have exercised fully their right to an effective remedy, they do so **only in specific situations**. For example, in the **United Kingdom**, an appeal against an asylum decision may be lodged after the return decision has become enforceable in cases where the person concerned originates from a safe country of origin. The National Report specified that such appeals, which represent a minority of cases, could still be lodged from a third country following removal. In addition, in **Finland** just like in **Sweden** and **Germany**, removal prior to the completion of the appeal process is also possible when the application is considered manifestly unfounded or inadmissible. In **Belgium**, an appeal against a decision of the CGRS to not take into consideration a subsequent asylum application is not suspensive when the return decision does not lead to a risk of direct or indirect refoulement and it is a first subsequent asylum application lodged within 48 hours before the removal in order to delay or prevent it; or it is a second (or more) subsequent asylum application.

Where first instance appeals against asylum decisions have no suspensive effect on the return decision in specific cases (AT, FI, LT, NL, PL, SK), this is for the following reasons:

- The appeal concerns a subsequent application that does not provide new grounds justifying the third-country national's need for protection (FI, NL, SK);
- The asylum seeker originates from a safe country of origin (AT, FI, NL, SK) and more generally when the application is assessed under an accelerated procedure (FI, LT);[77]
- The asylum seeker has been granted international protection in another EU Member State (FI, NL);
- The asylum seeker poses a threat to public policy, public or national security (AT, PL, SK).[78]

[71] An application for the suspension of enforcement must be lodged with the Administrative Court within 7 days after the notification of the return decision. The Administrative Court must make a decision on the application within 7 days. The Administrative Court may order that the return decision is suspended until the appeal on the negative asylum decision and return decision has been decided on.

[72] In exceptional cases.

[73] For asylum decisions under the accelerated procedure.

[74] If the rejected asylum seeker makes an appeal to the second instance court, the suspensive effect is at the court's discretion. Before the legislative change in May 2016, the return decision in general was not enforced before all possibilities for appeal on the asylum decision were exhausted.

[75] For asylum decisions under the accelerated procedure.

[76] In practice only.

[77] In the case of **Lithuania**, a court can still request the appeal to have a suspensive effect.

[78] Note that appeals likely do not have suspensive effect in other Member States under this circumstance.

In four Member States (ES, FI,[79] NL, PL) the suspensive effect of appeals on the return decision must be *requested* from the authorities by the asylum seeker appealing the negative asylum decision. In the **Netherlands**, most rejected asylum seekers make use of this possibility and therefore few return decisions are enforced after the negative asylum decision is issued.

In those Member States that only enforce return decisions after all or some means of appeal against the asylum decision are exhausted there may be exceptions to this principle, such as:

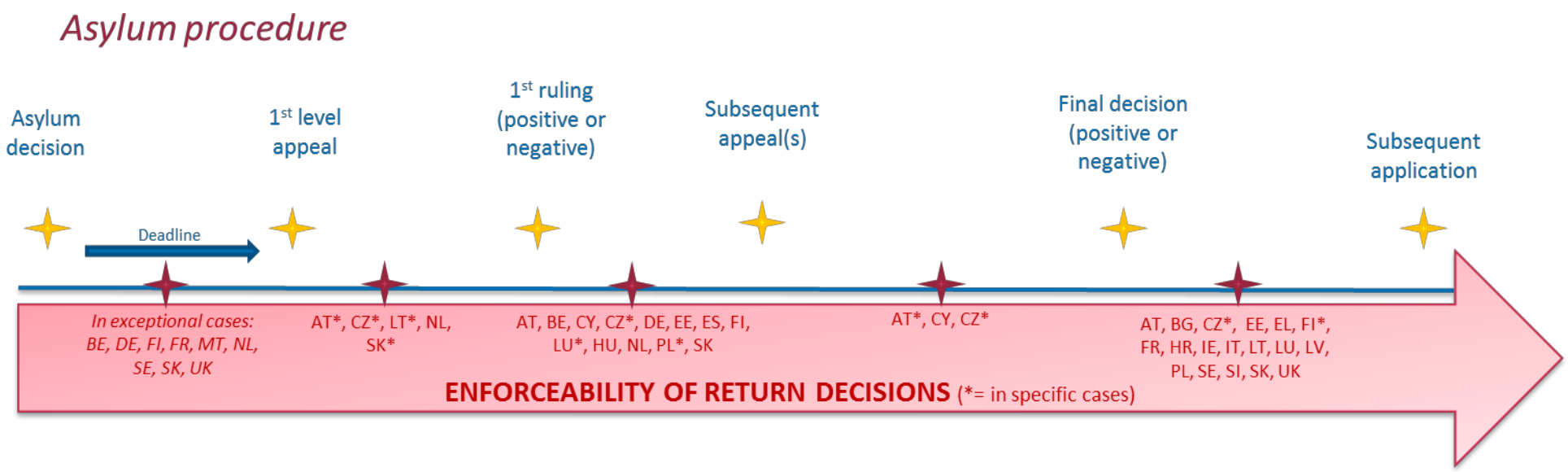
- The person posing a threat to national security or society (BG, FR, HR, NL, SK); and
- The person having been sentenced for a specific crime[80] (IT, SK).

While data was not available for all the Member States participating in this study, different outcomes were observed at the national level as regards the actual implementation of returns where the return decision could enter into force before all asylum appeals had been exhausted (i.e. in all Member States except for BG, EL, IE, LV).

[79] In **Finland**, only *final* instance appeals need to be requested by the rejected asylum seeker, from the Supreme Administrative Court.

[80] E.g. crime against peace, a war crime or a crime against humanity, a serious crime outside the hosting country before being admitted as a refugee or of acts against the aims and the principles of the United Nations.

Figure 4.1 The intersection between asylum and return decisions



Authorities in charge of asylum and return decisions

In the majority of Member States (AT, DE, EE, FI, HR, HU, IE, LT, LU, NL, SE, UK) the same authority is responsible for issuing both asylum and return decisions, which facilitates coordination between the asylum and returns procedures. Where this is not the case, Member State authorities have in place a variety of mechanisms to ensure that information on asylum decisions is communicated to return authorities. These are described in Box 8.

Box 8 Mechanisms to ensure that information on asylum decisions is communicated to return authorities

Each of the authorities responsible for asylum decisions, return decisions and appeals in **Belgium** is given access to the 'Waiting Register', which is a specific sub-set of the Population Register specifically for Asylum Seekers. Each of the authorities is responsible for recording the outcomes of procedures in it, so that asylum (and return) information is always up-to-date. Similarly in **Cyprus**, the asylum and the return authority share a common database with detailed information on each third-country national, including information regarding asylum decisions. In **Greece**, the documents' folder is handed over to the competent service of the Hellenic Police, while the decision is posted in the electronic database (called "Alkyoni") and becomes accessible to all relevant services. In **Slovakia**, the competent authorities share an analytical and registration information system (IS MIGRA - migration and international protection information system).

Furthermore, in **Belgium**, the two authorities responsible for asylum decisions and for appeals on asylum decisions respectively send copies of their decisions to the Immigration Office which is responsible for return. Similarly in **Cyprus**, all decisions of the asylum authority and the appeals court regarding asylum decisions are notified to the Civil Registry and Migration Department, which ensures that no appeal is pending before issuing a return decision. In **Bulgaria** the asylum authority also informs the return authority in writing of any decisions for refusal, termination or revoking of international protection. In **Slovakia** immediately upon delivery of the asylum decision on which an appeal does not have a suspensive effect, the Migration Office of the Ministry of Interior informs the competent department of the Bureau of Border and Alien Police of the Presidium of the Police Force and sends them a fax copy of the asylum decision.

In **France**, most prefectures consult the 'TelemOfpra' database updated by OFPRA via a secure internet link.

This database contains information on asylum application decisions by OFPRA and the CNDA, the date of the decision, the date of issue, the status of the appeal, the admissibility of the appeal, the dates of hearings, etc.

In **Slovenia** the only information handed over to the Police by the organisational unit of the ministry responsible for asylum applications is the reference number and issuing date of the rejection decision and the date it became final and executable. The Police do not have access to other parts of the rejection decision or the asylum file due to the confidentiality of asylum procedures and protection of personal information. In case a specific document is required by the Police from the asylum file to successfully carry out the return procedure, a specific request for this can be made.

4.2 POSSIBILITIES FOR APPEALING THE RETURN DECISION

According to Article 13 of the Return Directive, third-country nationals subject to a return decision must be granted an effective remedy against it, either in the form of an appeal or a review.[81] The authority in charge of the remedy has the power to suspend the enforcement of the decision, unless a temporary suspension is applicable under national law.

Overall, the majority of Member States participating in this study (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, LT, LU, MT, NL, PL, SE, SI, SK)[82] offer the possibility for asylum seekers whose applications were rejected to **challenge a return decision**. In **Finland** and the **Netherlands**, the return decision is an integral part of the asylum decision, therefore the appeal against a return decision is part of the appeal against the rejection of the asylum application.

Time limits for lodging an appeal against the return decision start from the notification of the decision and vary to the following, depending on the Member State: three days (SI); five days (EL); seven days (DE,[83] LV); eight days (HU); Ten days (EE); two weeks (AT, BE when the third-country national is in detention, DE, FR[84], LT); 15 days (SK); three weeks (FI, SE); 30 days (BE, LU).

In most Member States (AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV for higher instances, LT, LU, NL, SE, SK) the available remedy takes place **before a court**. In **Ireland,** the court rules in law and not in fact, meaning that it only reviews the lawfulness of the proceedings and not the facts of the case.

[81] Appeals are brought to challenge the outcome of a decision by the authority concerned while reviews analyse whether this decision was lawful or not.
[82] The **United Kingdom** does not offer this possibility, but it is not bound by the Return Directive so it not breaching EU legislation.
[83] Only in cases of manifestly unfounded applications. It is two weeks in all other cases.
[84] With the Law of 7th March 2016 FR has reduced the time limit for lodging an appeal against the return decision to 15 days (30 days before). This measure will be enforced as from November 1, 2016.

In three Member States (IE, LV, SI) in first instance and SK in both instances, a review of the decision by an administrative authority is also available.

In **Ireland,** this procedure involves an application for revocation of the decision, which does not constitute an appeal and is an alternative to a judicial appeal.[85]Fourteen Member States (AT, CZ, DE, EL, FI, HR, IT, LU, LT, MT, NL, SE, SI, SK) indicated that appeals against the return decision in general have a **suspensive effect**. However, **Austria, Finland** and the **Netherlands** indicated that in general final instance appeals did not have such an effect. Moreover, examples of exceptions to the suspensive effect of first level appeals against a return decision included cases where:

- It is lodged by a rejected asylum seeker originating from a safe country of origin (AT, DE, FI, NL)**;**
- It is lodged by a rejected asylum seeker, who attempted to deceive the asylum authority, or who refused to have their fingerprints taken (AT, DE, NL)**;**
- The claim was manifestly unfounded (DE, FI, NL);
- It is the third subsequent application lodged (HR, NL);
- The applicant originates from a safe third country (FI, NL)**;**
- The application is a subsequent application that does not provide new grounds justifying the applicant's need for protection (DE, FI), NL**;**
- The application is assessed under the accelerated procedure (DE, LT, NL);
- The police department specified in the return decision that it cannot be suspended in case of appeal due to general interest or if there is a risk that - by suspension - the rejected asylum seeker or any other person would suffer irreparable harm (SK)

In **Belgium, Estonia, Germany**, **Greece** and the **Netherlands**, an appeal for annulment against a return decision is not automatically suspensive, but it can be lodged together with a request for suspension. In **Finland,** this is the case for appeals before the Supreme Administrative Court.

In the **United Kingdom**, which is not bound by the Return Directive, return decisions **cannot be appealed**. The return decision is usually (except in those circumstances mentioned in section 4.1) issued at the same time as all asylum appeals are exhausted and is therefore considered a final decision.

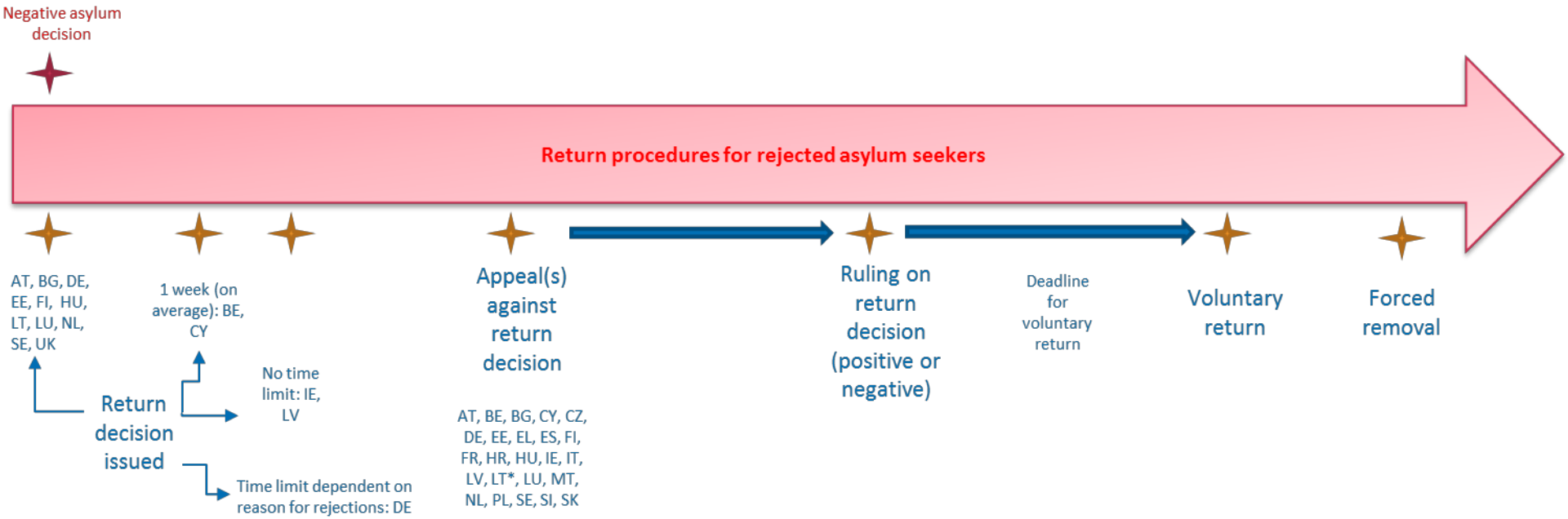
An appeal is only possible in the case of a subsequent asylum application based on new elements being lodged.

Several Member States (BG, DE, FR, HR, LV, LT, PL, SE, SI) reported that in practice, **appeals against a return decision rarely had an impact on its enforcement** although **Belgium, Croatia** and **Ireland** reported that this can happen in some cases.

Figure 4.2 provides an overview of the return procedure for asylum seekers whose claim was rejected. The golden stars underneath the main arrow indicate the time period in which return actions occur. As shown in the diagram, the initial return decision is usually issued at the same time as or within a few days of the negative asylum decision.

[85] For more information on the legal procedures in **Ireland**, **Latvia**, **Slovenia** and **Slovakia**, please see National Reports.

Figure 4.2 The return procedure for asylum seekers whose claim was rejected



4.3 POSSIBILITIES FOR LODGING SUBSEQUENT ASYLUM APPLICATIONS

According to Article 2 (q) and 40 of the recast Asylum Procedures Directive 'subsequent application' means a further application for international protection made after a final decision has been taken on a previous application. EU law does not foresee nor exclude subsequent applications after a return decision, it only **requires that the applicant presents new elements or findings**. Article 5(3) of the recast Qualification Directive (2011/95/EU)[86] optionally allows Member States to foresee that an applicant filing a subsequent application should 'not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin.'

As the way in which subsequent applications are assessed varies significantly across Member States,[87] the European Commission recently proposed further harmonisation. In particular, the Commission's proposal for a Regulation amending the recast Qualification Directive[88] makes the higher level of scrutiny for subsequent applications based on circumstances which the applicant has created by their own decision obligatory for Member States. In addition, the European Commission's proposal for a Regulation amending the recast Asylum Procedures Directive[89] reinforces the Member States' ability to respond to subsequent applications which are considered to abuse the asylum procedure, in particular by enabling the removal of such applicants from Member States' territories before and after an administrative decision is taken on their applications.

In all Member States participating in this study,[90] persons issued with a return decision can lodge subsequent asylum applications. In **Sweden,** for applications which are rejected, the return decision has a statutory limitation period of four years. Only after that period can a rejected applicant lodge a subsequent application for asylum, unless the Swedish Migration Agency receives new information – e.g. on changes in the political situation in the country of origin or on a life-threatening illness of the applicant.

In this case, the Migration Agency can examine whether the new information provides reasons not to enforce the return decision (impediments to enforcement).

In three Member States (EE, EL UK), no specific conditions apply to subsequent applications, whereas in other Member States specific provisions apply. For example, in **Austria** and **Hungary,** a subsequent application does not entail *de facto* protection against deportation if lodged shortly before the date of removal. The consent of the Minister for Justice and Equality is required in **Ireland** for a subsequent application for asylum to be assessed. If such consent is given, the assessment follows the same procedure as a first instance application. If the Minister does not consent, the applicant can apply for a review of the refusal decision. In **Slovakia** the subsequent application can be submitted at any time after termination of the previous asylum procedure. In **France**, for subsequent applications to be admissible, new elements must have emerged after the rejection decision of the first asylum application.

Box 9 Statistical information on subsequent applications in Belgium

In **Belgium,** the Commissioner General for Refugees and Stateless Persons (CGRS) can decide to take a subsequent application into consideration or not within eight working days (two working days in case of detention). An answer to a Parliamentary question illustrated that for the period from 1st September 2013 to 31st May 2015, the CGRS decided to take into consideration around 42% of subsequent asylum applications. An average of 36.7% of the subsequent asylum applications taken into consideration led to a protection status being granted by the CGRS following an examination on the merits.

[86] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, pp. 9–26.

[87], ICF, Evaluation of the application of the recast Qualification Directive (2011/95), forthcoming.

[88] Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM(2016) 466 final.

[89] Proposal for a Regulation of the European Parliament and of the Council establishing a Common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final.

[90] Except for **Cyprus**, for which there was no information available.

The fact that a subsequent application was lodged *after* a return decision had been issued may be taken into account in the assessment of the *credibility* of the subsequent application in nine countries (AT, BE, BG, ES, FI, HU, NL, LV, SK), whereas ten Member States (DE, EE, FR, HR, IE, LU, PL, SE, SI and UK) judge subsequent applications purely on their own merits.

In six Member States which assess the credibility of subsequent applications differently from other applications, particular focus is put on assessing whether the subsequent application aims to hamper or delay the return process (BE,[91] BG, FI, HU, NL, SK). According to the evaluation of the recast Qualification Directive,[92] several Member States (CZ, EL, LU, MT, SE, SI) apply a generally higher level of scrutiny when they assess subsequent applications than when they assess first applications, irrespective of whether a return decision has already been issued.

Some Member States (BE, DE, EE, FI, HR, HU, LT, LV, MT, NL, and PL)[93] note that subsequent applications can be subject to accelerated assessment procedures (see section 4.4 below).

Box 10 Examples of additional mechanisms preventing misuse of the asylum system through subsequent asylum applications.

The **Netherlands** has introduced a wide array of measures to deal with the high numbers of subsequent asylum applications. These include:

- A parallel examination procedure, according to which the Immigration and Naturalisation Service (IND) not only examines the grounds for obtaining asylum but also for getting other types of residence permit (e.g. as a victim of trafficking, due to medical conditions, etc.);
- A broader interpretation of the ex-nunc ('from now on') examination by the court, in which this already takes into account new facts and circumstances or revised asylum policy during the appeal proceedings;
- A fast track examination that takes three days for subsequent asylum applications;
- A 'no cure less fee' policy, according to which legal aid providers receive less remuneration for second or subsequent applications which are rejected and for which there are no new facts and circumstances.

However, an evaluation conducted on the implementation of these measures concluded that the number of subsequent applications had not decreased.

In **Hungary**,[94] the following barriers to prevent misuse of the asylum system are in place:

- An application can be examined in an accelerated procedure if it is submitted for the only reason of delaying or frustrating the expulsion of the applicant
- If the subsequent application is submitted right before the execution of expulsion, and there are no new facts or circumstances which could be the basis for the granting of international protection, the applicant has no right to stay in the territory of Hungary
- If the third or any later application was submitted following a final rejection decision of the asylum seeker's second or later application, which can no longer be challenged, the applicant has no right to stay in the territory of Hungary.

4.4 MEMBER STATE MEASURES TO ENSURE THAT UNFOUNDED APPLICATIONS LEAD TO SWIFT RETURN (ACCELERATED PROCEDURES)

The EU Action Plan on Return emphasises the need to ensure that unfounded asylum claims lead to swift removal of the person from the European territory.[95] On the basis of Article 31(8) of the recast Asylum Procedures Directive, Member States bound by the Directive[96] and who contributed to this study make use of accelerated procedures for asylum applications likely to be unfounded. In several Member States (AT, DE, EE,[97] FI, HU, IT, LT, LU, NL, SI) these measures were introduced or recast in the last two years. **Poland** is making plans to introduce such procedures.

[91] However, the key question in assessing an asylum application – irrespective of the fact whether it concerns a subsequent application or a first application - is always whether the person is at risk of persecution or at risk of serious harm in his country of origin. If this is the case, the (subsequent) applicant will be granted protection and cannot be returned

[92] ICF, Evaluation of the application of the recast Qualification Directive (2011/95), forthcoming.

[93] EMN Ad-Hoc Query on abuses in requests for asylum -Requested by ES EMN NCP on 30th October 2015, available at: http://www.emn.fi/files/1358/Compilation_Responses_Urgent_ES_Ad_Hoc_Query_on_Abuses_in_request_for_asylum_wider_dissemination.pdf, last accessed on 26th August 2016 and in ICF, Evaluation of the application of the recast Qualification Directive (2011/95), forthcoming.

[94] EMN Ad-Hoc Query on abuses in requests for asylum
Requested by ES EMN NCP on 30th October 2015, available at: http://www.emn.fi/files/1358/Compilation_Responses_Urgent_ES_Ad_Hoc_Query_on_Abuses_in_request_for_asylum_wider_dissemination.pdf, last accessed on 26th August 2016.

[95] EU Action Plan on return, p. 5.

[96] EU 28, except for **Ireland**, Denmark and the **United Kingdom**, see Recital 58 and 59), are bound by the recast Asylum Procedures Directive.

[97] In Estonia, accelerated examination procedure of applications was also possible prior to the introduction of legislative changes in 1st May 2016, however, the new legislation is more precise.

By contrast, in 2015, the **United Kingdom** *suspended* its main procedure for accelerating the processing of asylum applications, the detained fast-track procedure, to enable its review and to ensure that the right structures were put in place to minimise any risk of unfairness following a series of litigation challenges.[98]

Article 31(8) mentioned above lists ten situations in which Member States may provide for the procedure to be accelerated:

a) the applicant does not present evidence as to whether he or she qualifies as a beneficiary of international protection;

b) the applicant is from a safe country of origin;

c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or identity documents;

d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;

e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing;

f) the applicant has introduced a subsequent application that is not inadmissible in accordance with Article 40(5);

g) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent removal decision;

h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible;

i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with the Eurodac Regulation; or

j) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or has been forcibly expelled for serious reasons of public security or public order under national law.

Figure A3.1 in Annex 3 presents *the extent to which* and *the regularity with which* these above-listed situations lead to accelerated procedures in the Member States.

It demonstrates that only in **Lithuania** do each of the situations a-j lead to accelerated procedures in *all* cases. In **Belgium**, **Bulgaria**, **Croatia**, **France**, **Germany**, **Latvia**, **Poland** and the **United Kingdom** do some of the situations lead to accelerated procedures in *most* cases.[99] The three situations most likely to trigger accelerated procedures in Member States are (a), (b) and (i) – i.e. the applicant presenting insufficient evidence or being from a safe country of origin or refusing to comply with obligation to have his/her fingerprints taken. However, not all Member States maintain lists of safe countries of origin (e.g. CY, EE, EL, FI, IT, LV, LT, PL, SE do not). A list of safe countries of origin and accompanying accelerated procedures were introduced in **Hungary** only in 2015 and in **Croatia** and **Slovenia** in 2016. **Estonia** also introduced – in 2016 - the possibility for the Police and Border Guard to develop a list of safe countries of origin. The establishment of such a list is under consideration in **Poland**.

The two situations *least* likely to trigger accelerated procedures are the possibility for the applicant to be returned to a safe third country (in line with Article 38 of the recast Asylum Procedures Directive) and Article 31 (8) (h) - the applicant irregularly entering the territory and not presenting him/herself to the authorities.

5 Challenges to the return of rejected asylum seekers and Member State policies to manage these

The purpose of this section is to discuss some of the factors that can prevent the return of rejected asylum seekers and to identify any good practices to managing or preventing these. While the section seeks to single out those challenges which are specific to the return of rejected asylum seekers (see section 5.2), in practice there are few challenges that uniquely affect this group and hence general barriers to return apply.

[98] House of Commons (2015) Written statement from the Minister of State for Immigration, 02 July 2015, available at http://www.parliament.uk/documents/commons-vote-office/July%202015/2%20July/6-Home-Asylum.pdf, last accessed on 26th August 2016.

[99] Presenting insufficient evidence (LU, PL), being from a safe country of origin (BE, DE, LU, UK), refusing to comply with the obligation to have his or her fingerprints take (BE, DE), lodging an application to delay or frustrate enforcement of removal (BE), presenting false or contradictory information (BG), introducing a subsequent application not in line with Article 40(5) (BE, DE) and posing a danger to national security or public order (BE).

5.1 GENERAL OVERVIEW OF CHALLENGES

The return of irregularly staying third-country nationals is a complex process which poses major challenges to all stakeholders involved. Research conducted in this area (including by the EMN) has identified a number of **main general challenges** that Member States face when trying to effect the return of irregular migrants:[100]

- **Resistance of the third-country national to return** in the form of physical resistance, self-injury (including hunger striking), absconding and the presentation of multiple asylum applications to prevent removal;
- **Lack of cooperation from the authorities of the countries of return**, including:
  - Refusal to readmit their citizens, particularly when they have been returned forcibly (*inter alia* Afghanistan, Eritrea, Ethiopia, Rwanda and South-Central Somalia refuse to accept their nationals returned forcibly against their will);[101]
  - Refusal to admit escorts accompanying returnees;
  - Refusal to issue travel and identity documents within the context of return procedures; and
  - Issuance of travel documents with a very short validity, or restricted geographic scope, which makes the return very difficult, if not impossible, from an organisational point of view.
- **Other difficulties in the acquisition of travel and identity documents**, especially when copies of the originals are not available (and e.g. identification can only be verified through fingerprints) or when citizenship determination is complex (e.g. involving married couples from different countries or citizens who were born in another country);
- **Administrative and organisational challenges** can slow down administrative procedures (e.g. make any obligatory consular interviews costly and challenging to arrange).
  A lack of sufficient human resources, or unsatisfactory assistance from external service providers (e.g. escorts or airline services) in implementing returns may also hamper their effectiveness.
- **Medical reasons** – i.e. if the returnee has a medical problem rendering travel difficult or impossible.

Besides the main obstacles mentioned above, within the context of the research carried out for the purposes of this study Member States have identified a number of **additional barriers** to the implementation of return decisions, several of which are further elaborated upon below:

- Special considerations required when returning **vulnerable persons** (AT, BE, FI, FR, SE, UK) (for more information, see below);
- Obstacles connected to the use of **detention in return procedures** concerning in particular legal limits to the use of detention (AT, BE, DE, FR, SK, UK) and insufficient detention capacity (BE, LU, UK);
- Inability to **cover expenses** for the implementation of the return (EL);
- **Public resistance and political pressure** (BE, DE, FR, NL) (for more information see below); and
- **Risk of detention in the country of return**, i.e. where returnees face the risk of being detained for criminal or administrative offences, this might deter them from returning voluntarily to their country or may inhibit organisations involved in AVR(R) from supporting the return process (AT).

Specific issues related to vulnerability also frequently obstruct the return of UAMs and families. In **Austria**, for example, a UAM may need the approval of a legal representative/guardian in order to return voluntarily. While Article 24 of the recast Reception Conditions Directive requires Member States to ensure the representation of UAMs, in practice it may be challenging to establish who the legal representative is. Both **Sweden** and the **United Kingdom** stressed the challenges of ensuring that appropriate reception conditions were in place for UAMs in the country of return. In **Ireland** removals may be delayed when the family members of a third-country national is at an early stage of the asylum procedure.

[100] See for example the following EMN studies**:** EMN, '2015: Focussed Study: Dissemination of information on voluntary return: How to reach irregular migrants not in contact with the authorities', 2015; EMN, 'Practical responses to irregular migration', 2012; EMN, 'Programmes and Strategies in the EU Member States Fostering Assisted Return to and Reintegration in Third Countries', 2011. Relevant information can also be found in a number of EMN Ad-Hoc Queries (for a list, see the 'Common Template of EMN Focussed Study 2016 - Returning Rejected Asylum Seekers: challenges and good practices', 30th May 2016.

[101] See the following EMN ad-Hoc queries: Return and reintegration to Eastern Africa – requested 30th October 2015; Return of rejected asylum seekers to North Darfur and Somalia – requested 15th May 2014; Returns of rejected asylum seekers to Afghanistan, Algeria, Iraq and Nigeria – requested 2014.

As regards public resistance to return, in **Germany** this has taken the form of active resistance of the local population, e.g. representatives of religious organisations or by activists (e.g. by guarding the place where third-country nationals are residing, letting them stay on religious premises and even boarding flights through which returns are to be carried out). Similarly, there have been instances of intense public pressure to halt return for specific cases.

A combination of public resistance and public pressure has also been experienced in the **Netherlands**, sometimes in association with interventions in individual cases by political figures such as mayors and members of parliament.

5.2 CHALLENGES SPECIFIC TO THE RETURN OF REJECTED ASYLUM SEEKERS

Besides the general factors identified above, some barriers to return are specific to the situation of rejected asylum seekers. These also include those challenges which are general in nature but may adversely affect the ability of the authorities to implement the return of this target group in a particularly intense manner.

Eleven Member States (AT, BG, CZ, EE, FI, LT, LV, MT, SI, SK, UK) indicated that, in their experience, there **was generally no difference** between the obstacles hindering the return of rejected asylum seekers and those hindering the return of other irregularly staying third-country nationals. Two others (CY, IE) lacked relevant data and thus were not in a position to identify any divergences.

In contrast, nine Member States identified the following challenges as **specific to the return of rejected asylum seekers**:

- Opposition by the Member State population and representatives of religious organisations, which was greater for rejected asylum seekers than for other third-country nationals (DE);
- The return of asylum seekers excluded from refugee status or subsidiary protection status on the basis of article 1F of the 1951 Refugee Convention is often not possible due to the prohibition of refoulement (Art. 3 ECHR)[102] (BE, FR);
- Stronger individual resistance to return than in the case of other third-country nationals, which may rule out voluntary return and increase the reluctance of countries of origin to cooperate (HU, MT) and issue a travel document (SI);
- Impossibility for the Member State to establish contact with the authorities of the country of origin before the procedure is closed in order to establish return (LU, MT). In this regard, the recast Asylum Procedures Directive prohibits the disclosure of information to and the collection of information from the alleged actor(s) of persecution or serious harm on individual asylum cases;[103]
- The fragile security situation in countries of origin (DE, NL). Some of the main countries of origin of persons applying for asylum in Europe (e.g. Iraq, Afghanistan, Eritrea) present fluid and volatile security situations, which makes it particularly difficult to implement the return of rejected asylum seekers due to legal and logistical considerations. Perceived security risks are also likely to reduce the willingness of rejected asylum seekers to cooperate with the authorities in the framework of the return procedure;
- Greater prevalence of medical cases (which can delay return) amongst rejected asylum seekers than other third-country nationals (NL);
- Legislation limiting the use of accelerated international protection procedures and the detention of asylum seekers (PL).[104]

Additionally, aspects of the due process of the asylum procedure, such as the possibility for lodging late-stage appeals and judicial reviews can and in some Member States (BE, UK) often do delay return, especially in the case of rejected asylum seekers. In **Poland** the length of court procedures linked to some asylum decisions and appeals delays return. Similarly, **France** and **Sweden** comment that longer-than-expected/desired processing times for asylum applications often lead to asylum seekers becoming integrated into and attached to the host country creating a greater likelihood of reluctance to return.

[102] Article 1F of the Refugee Convention (the 1951 Geneva Convention on the Status of Refugees) deals with the exclusion from refugee status of those persons for whom there are serious reasons to consider that they had committed a crime against peace, a war crime, or a crime against Humanity or a serious non-political crime, or have been guilty of acts contrary to the purposes and principles of the United Nations.

[103] Article 30 of the recast Asylum Procedures Directive.

[104] In Poland, prior to October 2015, it was possible to apply accelerated procedures in cases of asylum seekers held in guarded accommodation; this, Poland reports, significantly facilitated the enforcement of return decisions. However, transposition of the recast Asylum Procedures Directive led to the shortening of the authorised period of detention of asylum seekers and extended protection against the enforcement of a return decision in cases when a subsequent application is presented.

While not a challenge exclusive to the return of rejected asylum seekers, rejected asylum seekers might find it more difficult than other returnees to obtain the documentation necessary to effect return, because they lack travel documents more frequently than other third-country nationals (DE, FI).

The **United Kingdom** indicates that rejected asylum seekers may be more likely than other groups to face challenges in re-documenting, because they are more likely to have first entered the UK clandestinely or to have concealed or destroyed travel documents when claiming asylum.

5.3 MEASURES TAKEN TO ADDRESS CHALLENGES

Member States have implemented a wide range of measures to address the main return challenges identified above.

5.4 MEASURES TO ADDRESS INDIVIDUAL RESISTANCE TO RETURN

Measures taken by Member States to encourage return once a return decision is enforceable were described in section 3.2. These measures comprised a mixture of incentives and disincentives which had as aim to encourage return by preventing or mitigating potential challenges, including individual resistance to return.

To a lesser extent the section also described some measures taken when rejected asylum seekers failed to cooperate in return procedures. This section builds on section 3.2 and describes national measures taken *in response to* this challenge if it presents itself. This usually happens *after* the period of voluntary departure has ended and concerns third-country nationals who do not cooperate with return. By this stage, measures are necessarily more punitive and restrictive and focus less on incentives. Such measures include:

- The use of detention to prevent absconding. This constitutes a common measure, although it is usually not specifically targeted at rejected asylum seekers (AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR[105], HU, IE, LT, LU, LV, MT, NL, PL, SE, SI, SK, UK).
- Surprise raids to enforce removals are also possible in some Member States (AT, BG, DE, EE, HU, IE, PL, SE, SK, UK), whilst not allowed or subject to strict limitations in others.

  For example, in **Belgium** it is possible to carry out 'pin-point' address controls but not surprise raids, whereas in **Finland** a decision by the Parliamentary Deputy Ombudsman established that returnees must be informed of removal in advance, thus making surprise enforcement impossible.

Other disincentives aimed at encouraging return when the individual resists return concern the reduction of social assistance and the prohibition of employment if the person refuses to cooperate in the removal process (see section 3.2 and 3.3).

5.5 MEASURES TO PROMOTE THE COOPERATION OF THIRD COUNTRIES

Common measures to promote the cooperation of third countries' authorities include the signature of **readmission agreements** (either at the EU or national level), and the establishment of **diplomatic relations** (including through the setup of diplomatic representations) with third countries. However, these measures are of a general nature and thus not specifically targeted at the return of rejected asylum seekers.

As in the case of individuals, Member States apply a combination of **incentives** and **disincentives** to persuade third-country authorities to cooperate in return procedures. Positive incentives such as aid packages are offered by five Member States (BE, CY, ES, FR, NL). Eight Member States also apply political pressure on third countries' authorities so that these accept returns (BE, DE, FR, LT, NL, PL, SE). Similarly, for **Estonia** the establishment of collaboration relations with third countries was considered challenging because of its limited network of foreign missions in third countries combined with the fact that many third countries do not have diplomatic and consular missions in Estonia. **Germany** indicated that only measures at the highest political level seemed to be effective in increasing the willingness of third countries to cooperate.

5.6 MEASURES TO ENHANCE THE RE-DOCUMENTATION PROCESS

One of the key challenges to enforcing returns concerns the difficulty in identifying third-country nationals and of obtaining travel documents from third countries.

[105] This is used in case of lack of sufficient guarantees to prevent absconding

To address these challenges, Member States have put in place a range of measures such as the repetition of fingerprint capture attempts, including by using special software to read damaged fingerprints (BG, CY, DE, ES, FI, FR, LU, NL, PL, SI, UK) and the use of language experts to detect nationality (AT, BE, BG, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, NL, PL, SI, SK). Additional examples of the measures introduced are briefly described below.

In order to establish identity and tackle non-compliance with the documentation process, the **United Kingdom** has in place a broad package of initiatives such as early screening interviews to establish nationality, biometric checks on previous visa applications and in national identity databases and language analysis. These actions have proven to speed up and improve the effectiveness of the re-documentation process. Identification interviews are sometimes performed by third country officials for the purposes of the re-documentation of rejected asylum seekers. Similar practices happen in other Member States; the practices taken in the **Netherlands** and **Sweden** are described below.

Box 11 Involving third countries in re-documentation: Netherlands and Sweden

Since 2007, the **Netherlands** has been organising 'task forces' of delegations of ministries from the countries of origin involved in the return of own citizens. During these visits third-country nationals in the DT&V's caseload can be presented directly to the authorities of the relevant country of origin who are competent to issue laissez passers for returns or to confirm the nationality of the third-country nationals concerned. On this basis, a laissez passer can then be issued at the time of departure by the relevant consular representation. More than 30 task forces have so far taken place, from countries such as Armenia, Azerbaijan, Guinea, Iraq, Liberia, Nepal, Nigeria and Sierra Leone.

In **Sweden** the 'Collaborative Interview Project (CIP) – Improved identification through dialogue' was used to deal with a small number of returns to Kyrgyzstan, Vietnam and Armenia which were being blocked due to re-documentation issues. Delegations from these countries were brought to Sweden to interview the persons who had been issued enforceable return decisions to confirm their nationality in order to issue travel documents. The project led to an increase in the issuance of accepted travel documents and a reduction in return delays. Because return occurred more quickly there was a reduction in spending on reception facilities of approximately SEK 6 million[106] (~653,000 EUR)[107]. The project also created cost-savings because it replaced the time-consuming processes of obtaining documents through the embassies.

5.7 MEASURES TO ADDRESS ORGANISATIONAL/ ADMINISTRATIVE CHALLENGES

To overcome organisational and administrative challenges (Member) States have, *inter alia*:

- Provided for a certain amount of budget flexibility to allow for the allocation of additional resources to return (AT, BE, BG, EE, ES, FI, FR, HU, IE, LU, NL, PL, SE, SK, UK);
- Established particular cooperation arrangements among relevant national authorities (BE, BG, CY, DE, EE, ES, FI, FR, IE, LT, LU, NL, PL, SE, SI, SK, UK);
- Appointed or made use of other Member States' service providers, either at the national level or in third countries (AT, BE, EE, FI, FR, LU, UK).

Austria reported that budget flexibility was possible to a certain extent. In general, the National Council passed a federal budget for each year, which could however in certain circumstances be exceeded with the approval of the Ministry of Finances. In this regard, organisations providing return counselling had to enter into negotiations with the Federal Ministry of the Interior if they needed additional resources.

The budget flexibility afforded to AVR(R) by the Asylum, Migration and Integration Fund (AMIF) was similarly limited. Within the context of the Joint EU-Turkey Statement of March 18th, 2016 and subsequent returns from Greece to Turkey, **Greece** imposed a time limit of two weeks for the examination of asylum applications at first and second instance to speed up the returns.

Concerning cooperation arrangements among national authorities, **Finland** reported on the establishment of a working group to improve the efficiency of the asylum process involving the following institutions: the Finnish Immigration Service, the Police, the Finnish Border Guard, the Ministry of Employment and the Economy, the Ministry of the Interior and the Ministry of Justice. In the **Netherlands**, relevant stakeholders take part in 'local return consultations' where a harmonised return approach to each individual case is reached. By contrast, the clear separation between the authorities responsible for admission (including decisions on asylum claims, namely the IND) and return (namely DT&V) was perceived as a good practice, allowing DT&V to specialise in devising targeted solutions to return and providing clarity to third-country nationals as to which organisation was responsible for what.

[106] Migrationsverket: Årsredovisning 2015, p. 141.

[107] Based on XE Currency website's historic data for 31st December 2015 when the CIP programme ended.

In **Sweden** major overhauls to intra-agency practices and inter-agency relations have been credited with creating better structures to facilitate returns.

Box 12 Measures to develop more effective intra-agency practices an strengthen interagency cooperation in Sweden

In **Sweden** the 'REVA' project, implemented 2010-2014, has been considered a successful example of organisational changes leading to the creation of better structures to facilitate returns. The project defined the roles of different actors and created an interface between the Swedish Migration Agency and the Police based on common objectives. Within the framework of the project, the Police developed more uniform and team-based work practices towards returns, e.g. they began to hold daily/weekly meetings to discuss work flows/processes. The adoption of a Joint Action plan on Return between the Migration Agency and the Police followed in 2013. Collaboration between the responsible agencies now takes place at the national, regional and local levels, with the identification and application of best practices being an integral part of these cooperative efforts. Meanwhile, the Migration Agency has also streamlined its return efforts by centralising support services related to return to a particular unit as well as establishing a network for its return practitioners.

5.8 MEASURES TO FACILITATE THE RETURN IN MEDICAL CASES

Measures to address the specific needs of returnees with medical issues that might delay / prevent return have been widely implemented in the Member States and include, *inter alia*, the organisation of medical transfers, the facilitation of medical support in the country of destination and the provision of medical support before and during travel. **Austria, Finland** and **Spain** reported, for example, that a medical personnel (i.e. a doctor in Austria and a doctor or a nurse in Finland) was generally present in flights chartered for the purposes of forced return operations. Concerning reception arrangements in the country of destination, in **Finland** information is exchanged with the authorities of the country of destination so that preparations can be made for returnees requiring treatment.

In one case, the Supreme Administrative Court required that the returnee was received by healthcare personnel in the country of destination as a condition for the return to be enforced. **Spain** also facilitates or arranges medical support on arrival for returnees. In **Belgium**, the Immigration Office implements a 'special needs' project which provides tailored support to some vulnerable migrants who are being forcibly returned, during their return (e.g. medical/social escort) and – in some cases - afterwards.

Box 13 Exchange of information about reception standards for medical cases in third countries: the MedCOI project

The MedCOI project ("Medical Country of Origin Information") aims at researching and sharing information on the medical treatments available in countries of origin between the participating 16 Member States.[108] This information focuses on two aspects: the *availability* of medical treatment in the countries of origin and the *accessibility* to the relevant medical treatment for the person concerned upon return. Medical Country of Origin Information (COI) is used by the Member States to determine whether the medical situation of an asylum seeker is relevant when deciding upon the possibility of granting a protection status or to implement a return decision when an asylum application has been rejected.[109]

6 When return is not (immediately) possible

This section sets out Member States' approaches in dealing with those rejected asylum seekers (and other irregular migrants who are issued a return decision) who, for various reasons, cannot return and/or be returned.

6.1 PROVISION OF STATUS

Member States differ in their approaches when it comes to dealing with third-country nationals who cannot immediately return / be returned. Whereas a majority of Member States may in some circumstances officially acknowledge when a third-country national cannot (immediately) be returned (AT, BG, CY, CZ, DE, EE,[110] EL, FI, HR, HU, LV, LT, LU, MT, NL,[111] SE, SI, SK, UK), in others (BE, FR, IE, IT, PL) no such official acknowledgement is given.

[108] **Austria**, **Belgium**, **Bulgaria**, **Czech Republic**, Denmark, **Finland**, **Germany**, **Ireland**, **Italy**, **Lithuania**, **Luxemburg**, **Netherlands**, **Sweden**, **Slovenia**, **Slovakia** and the **United Kingdom**. Switzerland and Norway also participate.

[109] For further information on the MedCOI project and on Member States' practices as regards medical immigration claims and medical COI, see the International Policy Centre for Migration and Development (ICMPD), 'Comparative Research on the State Practices on the Accessibility of Medical Treatment and/or Medication in Countries of Origin', February 2015.

[110] It is possible by law, but there is no practice.

[111] However, this is an exception to the rule. The Dutch government applies the principle that rejected asylum seekers in principle can return to their country of origin or former residence and that the realisation of those returns is their own responsibility. The mere fact that the authorities cannot remove a rejected asylum seeker does not lead to the conclusion that return is not possible.

As for the first group, there are different ways in which Member States officially acknowledge that it is not immediately possible to return a third-country national, including by:

- Issuing an order to suspend removal (BG, DE, EE, LT, LU[112])
- Revoking the return decision (CY)
- Providing 'leave to remain' (CZ,[113] UK)
- Producing a related document by the Police Administration (EL, HR, SI)
- Granting a tolerated stay or another temporary permit (AT, CZ, DE, FI, HU, LT, MT, NL, PL, SI, SK, UK)
- Extending the time limit for departure (NL, SK).

Belgium, **Finland**, **France**, **Ireland**, **Italy** and **Poland** do not issue an official acknowledgement, insofar as they **do not issue a separate decision** related to this. Rather, in **Belgium** if an obstacle to return exists and it is temporary, the **order to leave** is **extended**. In **Finland**, the police will make several attempts to return the individual, with the possibility of **delaying the enforcement of the return decision** until the obstacle to return no longer exists.

The **granting of a 'tolerated stay' status** (or a temporary permit on these grounds) may also be considered as an **implicit acknowledgement** of the inability of the third-country national to (immediately) be returned.

Indeed, if a third-country national cannot immediately be returned for reasons beyond his/her control, twelve Member States (AT, CZ, DE, FI, HU, LT, MT, NL, PL, SI, SK, UK) grant the concerned third-country national a temporary status.

The criteria for the granting of such status are diverse and are summarised in the table below.

Table 6.1: Criteria for the granting of a tolerated or another temporary status

Criteria	Member States
Reasons related to third-country national's individual circumstances (such as illness)	AT, CZ, DE, FI, LT, NL, PL, SI, SK, UK
The country of origin refuses admission of the concerned third-country national or other reasons related to the country of origin	AT, DE, FI, NL, LT, PL, SI
Serious threat to the life or the integrity of the third-country national (including, death penalty, national and international conflicts)	AT,[114] CZ, DE, HU, PL, SI, SK, UK
Reasons of legal and technical nature (lack of transportation routes, travel documents, etc.)	AT,[115] DE, LT, PL, SI, SK, UK
Serious threat to the life or the freedom of the third-country national on the basis of race, religion, nationality, membership of a particular social group or political opinion	AT, CZ, DE, HU, SI, SK, UK
Violation Art. 2 or 3 ECHR	AT,[116] DE, CZ, SI
Reasons related to facts which relate to Member State's territory/authorities	DE, SI, UK
Permission to deportation not granted by prosecutor	DE, SI

6.2 ACCESS TO RIGHTS AND BENEFITS

0 in Annex 1 maps the rights and benefits available to rejected asylum seekers who cannot immediately return and/or be returned.

When comparing the rights granted to rejected asylum seekers at the moment in which they are issued a return decision with those for whom return cannot be (immediately) implemented, it is clear that **certain basic rights are always granted**, **independently of the stage in the return procedure or the individuals' status** (e.g. access to emergency healthcare and in most Member States also some form of material aid). When a return decision has been issued, focus is placed on the provision of material aid with limited/no access to employment or education. Access to employment and education is granted by many more Member States once it has become clear that the third-country national cannot return/be returned. This is also linked to the fact that some Member States grant third-country nationals a tolerated status, which comes with access to certain rights.

The rationale for granting a tolerated status or temporary permit could relate to (a) preventing the formation of an increasingly large group of third-country nationals whose stay is, *de facto*, irregular and to prevent third-country nationals from drifting into criminality or being subjected to exploitation; and (b) ensuring that persons who cannot immediately return/be returned remain in contact with the authorities, so that they can easily be found when their return becomes viable (i.e. when the obstacles to return have disappeared).

[112] **Luxembourg** does not grant a tolerated status but a postponement of removal because of material, technical or medical reasons which are independent of the rejected asylum seeker.
[113] This is a long-term visa in the **Czech Republic** for which the third-country national can apply.
[114] In **Austria** and **Germany**, as well as possibly in other Member States, this only leads to temporary status in cases in which international or national protection grounds were determined but a residence permit could not be issued due to grounds for exclusion.
[115] See footnote 113
[116] See footnote 113

Finland, following this rationale provides temporary status in the rare instances when even voluntary return cannot be carried out.

6.3 PROCEDURES FOR REASSESSING THE POSSIBILITY OF RETURN

When it becomes clear that third-country nationals cannot (immediately) return / be returned, most Member States have in place the possibility for reassessing the possibility of return at a later stage.

Member States differ, however, as to the **frequency** with which such reassessment takes place. Some Member States (e.g. AT, EL, NL, MT, SI, UK) reported that a reassessment took place on a **regular basis**. Others (e.g. CZ[117], FR, IE, FI, LV, LU, PL, SE, SK) did not have a regular or structured approach in place and rather conducted re-assessments on a **case-by-case** basis, depending on individual circumstances, for example, when they became aware that the obstacle impeding return no longer existed. Various Member States (e.g. BE, DE, EE, FI, HU, LT, SK) reassessed the possibilities for return when (if relevant) the period of the tolerated stay or other given statuses had lapsed or when the order to leave the territory had expired.

Evidence on the extent to which reassessments actually lead to the return of rejected asylum seekers is rare.

6.4 THE POSSIBILITY OF REGULARISATION

Regularisation is a possibility in nine Member States (AT, BE, DE, EE, FR, HU, LU, NL, SE, SI, UK). A distinction can be made between:

- Member States who provide regularisations of a **general character** (AT, HU), and;
- Member States who provide regularisations only on a **case-by-case** basis **in specific circumstances** (BE, DE, EE,[118] ES, FR,[119] MT, SE, SI, UK).

For example, in **Austria**, if the stay of a third-country national is tolerated for **at least one year** and the circumstances for tolerated stay persist, they may be issued a Residence Permit for Individual Protection, valid for 12 months and under certain conditions followed by a Red-White-Red Card Plus.[120] Similarly in **Hungary**, a third-country national with tolerated status has the possibility to be naturalised **after eight years of continued residence**, if certain other requirements are also met (e.g. no criminal record, sufficient means of subsistence, accommodation available, successfully passing an exam etc.). In the **Netherlands**, amnesties have previously been issued to a general category of third-country nationals (in 1999 and 2007) and since 2013, all children and UAMs who have lived consecutively in the Netherlands **for five years** can also be granted a residence permit if they meet a number of specific conditions.

In contrast, in other Member States (BE, DE, EE, FR, LU, NL, PL, SE, SK), regularisations of a general character do not exist, but they can be applied on the basis of individual grounds. For example, in **Germany** third-country nationals with a tolerated status can be eligible for a residence permit **in case they are well integrated**, the so-called 'residence permit for well integrated young people and adolescents' and 'residence permit for thoroughly integrated foreigners'.[121] In **Belgium**, two possibilities for regularisation of irregular migrants exist: regularisation on **humanitarian grounds**[122] or regularisation on **medical grounds**.[123] In **Slovakia,** only stateless persons can be granted permanent residence, provided they meet conditions stipulated by law and the granting of permanent residence is in the national interest.

In other Member States (BG, CY, CZ, FI, HR, IE, LV, LT, LU,[124] PL, SK), except for the possibility to provide – in some cases - tolerated stay (see section 6.1), regularisation is not a possibility.

[117] In particular, in **Czech Republic** the non-legally binding opinion on whether return is feasible or not (hence a re-assessment of the situation) is issued under request of the Police.

[118] In **Estonia** it is possible only as an exception to issue a residence permit in this case and only if it becomes evident that requiring a third-country national to leave Estonia would be unduly burdensome. A third-country national cannot apply for such a residence permit by himself or herself.

[119] In **France**, being refused the right to asylum but not removed does not give the right to the systematic examination of an exceptional admission to stay ("regularisation"). However, third-country nationals refused the right to asylum may file an application for an exceptional admission to stay once they can provide the elements that allow the Prefect to judge if humanitarian considerations or exceptional reasons allow a regularisation. See National Report for more details.

[120] The Red-White-Red Card plus is a residence permit issued in **Austria**, which entitles third-country nationals to fixed-term settlement and unlimited labour market access (self-employment and gainful employment not limited to a specific employer). See the website of the Austrian migration authority: http://www.migration.gv.at for more details.

[121] See German National Report.

[122] Art. 9bis of the Immigration Act.

[123] Art. 9ter of the Immigration Act.

[124] Postponement of removal.

In **Ireland**,[125] however, the Working Group on the Protection Process recommended as an exceptional measure that deportation orders of persons staying in the system for five years or more should be revoked subject to their meeting certain conditions and that such persons should be granted leave to remain.

7 Conclusions

The number of rejected asylum applications in the EU has overall risen over the period 2011 to 2015, broadly following the increase in the number of applications for asylum. This has put significant additional pressure on Member States to increase the effectiveness of return in general and specifically of this group of irregular migrants.

Member States employ a range of measures to encourage return. In several Member States there has been a shift from incentivising return by maintaining access to accommodation and other rights for rejected asylum seekers after the time-limit for voluntary departure to reducing rights to disincentivise stay.

However, challenges to return are plentiful. The study found that on top of the common challenges of returning third-country nationals, rejected asylum seekers present some additional challenges. Common challenges which are of particular relevance to rejected asylum seekers include public resistance to return and political pressure not to implement removals; stronger individual resistance to return; greater difficulties in obtaining travel documents, compounded by the fact that asylum seekers are more frequently undocumented than other third-country nationals; and greater prevalence of medical cases among rejected asylum seekers than among other returnees.

Specific challenges to return rejected asylum seekers include the volatile security situation in countries of origin, and aspects of the due process of the asylum procedure, such as the possibility for lodging late-stage appeals and judicial reviews, combined with the impossibility for the Member State to establish contact with the authorities of the country of origin before the asylum procedure is closed, both of which may delay returns.

To counter these challenges, Member States have put in place different measures, for example readmission agreements and other cooperation arrangements in order to promote collaboration with third-country authorities in the identification and re-documentation process; use of database checks, early screening interviews and other identification measures; and the provision of medical support before, during and after travel for the purpose of return. To tackle individual resistance to return and prevent absconding, Member States also make use of detention (or alternatives thereof) and sometimes enforce removals through surprise raids.

In addition to the measures set out above to address challenges related directly to return operations (i.e. actual returns), several Member States have also introduced more general policies and measures to encourage return and to disincentivise irregular stay. Incentives to encourage return are generally provided within the framework of AVR(R) packages, while disincentives often relate to the withdrawal of certain rights and benefits, such as the rights to accommodation and employment.

The focus and the rationale behind the different policies and measures vary quite significantly and without evaluative evidence it is difficult to draw conclusions as to which practices are more effective. However, the practice of drastically removing rights following a rejection and/or return decision, in particular those related to accommodation and social benefits, which is a common practice in some Member States, may increase the likelihood of absconding, or at least of rejected asylum seekers falling out of contact with the authorities, thus affecting the feasibility and effectiveness of return operations. In some countries it may also increase the likelihood of destitution

The study also found that the variation existing between Member States, in terms of when they issue / enforce a return decision, leads to uneven treatment of asylum seekers across the EU, as at present, return decisions are issued and enforced at different moments in the asylum procedure.

For example, while in some Member States not all appeals have a suspensive effect, and therefore return decisions can become enforceable pending an appeal against the decision rejecting the asylum application, in others the enforceability of returns happens only after all possibilities for appeal of the asylum decision have been exhausted.

[125] Recommendation 3.134 from the Working Group on Protection Process suggested that deportation orders of persons staying in the system for five years or more should be revoked under certain conditions and persons should be granted leave to remain. This Recommendation is currently being implemented. However, this is still just an exceptional measure.

Such differences may undermine the coherence and level of harmonisation of Member States' asylum and return procedures, and may ultimately lead to breaches of the obligation defined under Article 46(5) of the Asylum Procedure Directive to allow applicants for international protection to remain on the territory until the time limit within which they should exercise their right to an effective remedy against a negative decision, and pending the outcome of this remedy.[126]

With regard to situations in which return is not immediately possible, there are also significant differences in national practice as to whether an 'official' status is granted. In this regard, the majority of Member States officially acknowledge when return cannot be immediately implemented, though only less than half of them then grant a status to the third-country national. In Member States which do not provide such acknowledgement, and also in those which provide one but without granting a status, third-country nationals for whom return is impossible risk staying in a limbo, as their situation is highly uncertain and may change every day. As regards the rights granted, the study shows that certain basic rights are always provided independently of the stage in the return procedure or the individuals' status and also that most Member States reinstate access to rights and services, including employment and education, once it has become clear that the third-country national cannot yet return. Member States providing such access consider this as a good practice, not only in terms of preventing the persons concerned from falling in situations of extreme social and economic vulnerability, but also in facilitating the eventual enforcement of returns by ensuring that they can be traced by the authorities.

[126] This may only be the case for those Member States that are bound by the Directive.

Annex 1 Rejected asylum seekers' access to rights and services

Table A1.1: Rejected asylum seekers' entitlement to rights once a return decision has entered into force

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
AT	✓	✓		✓[127]	✓	✓	✓	✓			These rights are accessible until a final decision on the asylum application is taken. After a final decision, such rights are provided only if the third-country national cannot be removed. In general, they may also be withdrawn if the third-country national does not cooperate with the return procedure.
BE	✓[128]	✓					✓	✓	✓[129]	✓	Rejected asylum seekers are usually moved to 'open return places' following a negative appeal decision. They are not entitled to employment or social benefits. Medical assistance is available to those in reception facilities. Emergency healthcare is available to all. Adults can access some educational programmes.
BG							✓[130]	✓			No entitlement to accommodation, employment, social benefits, or education. Medical care provided to those in detention and/or access to emergency healthcare for those not staying in organised accommodation.
CY		✓									Rejected asylum seekers can only stay in reception centres in special circumstances and with the approval of the head of the asylum service (and only before the return decision becomes enforceable). They cannot access education for adults, employment or full healthcare.
CZ	✓	✓			✓	✓	✓	✓			In case of voluntary return, rejected AS can stay in reception centres until return is carried out. In case of forced return, they cannot stay in reception facilities. Rejected asylum seekers have access to exceptional immediate aid (welfare assistance), and emergency healthcare. They don't have access to employment or education (for adults). Access to social benefits only concerns a very basic level.

[127] Existing employment may sometimes continue after a final negative decision.
[128] Rejected asylum seekers can stay in open return places, if moved there, until the order to leave the territory expires or – if they signed up for voluntary return - until the moment of departure. Afterwards, no accommodation is provided.
[129] Adults can participate in some educational programmes, but this is often difficult in practice.
[130] Only those who stay in reception centres/detention centres. Others are entitled to emergency health care

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
DE	✓	✓	✓[131]	✓	✓[132]	✓	✓	✓	✓[133]		Rejected asylum seekers can stay in reception centres as long as no other accommodation is available. During appeal procedures they have access to employment and education, but after final decision these rights cease. After appeal, rejected asylum seekers have access to social benefits in kind, i.e. stay in reception as well as a certain amount in cash and access to emergency healthcare.
EE	✓[134]	✓			✓[135]	✓[136]	✓	✓			After a final decision, rejected asylum seekers no longer have the legal right to accommodation in reception centre. However, in practice, they sometimes do stay in reception centres. Also special accommodation may be organised for vulnerable persons or for other humanitarian reasons. There is no right to employment or education and access to emergency social assistance is only provided in certain humanitarian situations. Access to all necessary healthcare is provided for all rejected asylum seekers, but education only for minors.
EL	✓		✓	✓	✓	✓	✓	✓			Access to the labour market is granted until the voluntary departure period is expired. Social benefits are granted if the Court of Appeal grants a suspension of the secondary negative decision until the examination of the writ of annulment. Greece intends to introduce policies on education soon.
ES							✓	✓			After the deadline for the voluntary departure, the rejected applicant cannot access social benefits (i.e. welfare, education and health). Only emergency healthcare and healthcare for pregnant women and children is provided. Education is only provided for minors.
FI	✓	✓			✓	✓	✓	✓	✓	✓	Access to reception services for those who choose AVRR or for the entire time that the police tries to enforce removal. If the third-country national refuses to return voluntarily and removal by the police proves not possible, reception services are terminated after 30 days. No access to employment.
FR	✓	✓			✓	✓					Rejected asylum seekers can stay in reception centres for a maximum one month after the final negative decision. Rejected asylum seekers can benefit from the AME (State Medical Aid) which gives them the right to 100% coverage of medical and hospital care up to the social security tariffs.

[131] People who have stayed in Germany for three months either lawfully or by virtue of his or her deportation having been suspended or by holding permission to stay (pending asylum procedures) can be granted the authorisation to take up employment. Once a final decision is taken, rejected asylum seekers no longer have a right to employment.
[132] Asylum seekers and rejected asylum seekers who neither have an income nor any assets, will obtain benefits - according to the age of the respective person and the number of family members living in the same household. The required needs in terms of food, accommodation, heating, clothes, healthcare as well as new durable and non-durable goods will be covered as benefits in kind during the stay in a reception centre. In addition to that, a certain amount in cash will be paid per month in order to cover any personal needs. People who are not or no longer accommodated in such a reception centre will preferentially be paid cash in order to cover their needs.
[133] Dependent upon whether third-country national has access to employment. Children are obliged to go to school.
[134] Although the law does not give the right for asylum seeker to stay in accommodation center, it stipulates other possibilities for accommodation.
[135] Only emergency social assistance
[136] Ibid.

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
HR		✓[137]		✓[138]			✓				In practice rejected asylum seekers can continue to stay in reception facilities in some situations. Employment can also continue in practice and emergency care and necessary treatment of illnesses and serious mental disorders is provided.
HU		✓					✓[139]	✓			Rejected asylum seekers usually stay in detention centres and/or a designated place of residence. No right to employment or education (excluding those issued a humanitarian residence permit), no additional social benefits. Access to emergency healthcare if in detention centre.
IE		✓						✓[140]			Accommodation not regulated by law, but in practice rejected asylum seekers stay in reception until they leave the territory. No access to employment or education. Access to full healthcare and exceptional needs payment can be granted if staying in direct accommodation provision (i.e. reception centres).
IT	✓		✓	✓	✓	✓	✓	✓	✓	✓	According to Italian legislation, accommodation is provided until the settlement of the appeal at first and second instance. There is no national welfare system, each local government has a framework of welfare and assistance services and interventions. Social assistance benefits are usually divided into economic benefits and social assistance services.
LT		✓						✓			Third-country nationals stay at reception centres until the return decision is enforced. No additional social benefits apart from accommodation including food. No access to employment or education. Access to emergency healthcare provided.
LU		✓				✓		✓[141]			According to law no right to accommodation, but in practice third-country nationals stay in reception centres until return decision is enforced. Social benefits via stay at reception including emergency social assistance. Continued access to full healthcare in practice. No access to employment/education.
LV		✓					✓	✓			Third-country nationals can stay in reception centres only for a short period of time (if not detained). Access to emergency healthcare is provided, but there is no access to employment, education or other social benefits.

[137] Only sometimes it happens in practice.
[138] Until the decision on the asylum application is final, a rejected asylum seeker can continue the existing employment for a while. After the decision is final, rejected applicants are not entitled to employment anymore.
[139] If in detention centre or detained. It concerns emergency health care
[140] Asylum seekers receive a medical card when staying in reception centres. As long as they stay at the reception centre (for continued residence after a negative decision) they in practice continue to have this card and can access healthcare.
[141] If the rejected applicant continues to present himself on a monthly basis to the authorities (OLAI), s/he will continue to be affiliated at the National Health Fund (CNS).

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
MT		✓	✓	✓				✓	✓	✓	Legislatively there is no right to reside in a reception centre, in practice this does take place. Current Maltese legislation states that when an appeal is lodged it does not lead to the withdrawal of a work permit. In the case of rejected asylum seekers, there is no legal provision indicating whether they should be granted access to the labour market with the duration of the licence depending on the status feedback from immigration entities. Rejected asylum seekers are however allowed to work for the duration as indicated by the Refugee Commissioner. Health care, screening & treatment continue until the departure date. Minor children of Rejected asylum seekers enjoy same access to education system as Maltese nationals, for as long as an expulsion measure issued against them or their parents is not actually enforced. In case of compulsory education, rejected applicants & their family members are exempt from paying, but applications should be submitted on annual basis.
NL	✓	✓		✓	✓[142]	✓	✓[143]	✓	✓[144]	✓	Whether or not the third-country national can stay in reception depends on the departure period set in the return decision (either 28 days or 0 days). In case of the latter, and if the appeal has no suspensive effect, reception is immediately terminated. There is no access to employment, a weekly financial grant is provided as long as the rejected asylum seeker remains in reception, as does access to full healthcare for those staying in reception; emergency healthcare for all others. third-country nationals who already started a training programme are usually allowed to finish.
PL	✓	✓			✓[145]	✓	✓[146]	✓	✓[147]	✓	All third-country nationals who opt for AVRR can stay up to max. 45 days
SE	✓[148]	✓	✓[149]	✓	✓[150]	✓	✓[151]	✓			During the period for voluntary departure third-country nationals can stay in reception facilities and have access to social benefits (daily allowance). After this period, only families with children are provided with accommodation. If third-country nationals cooperate in the return procedure they can continue to work. Access to emergency healthcare.

[142] Social benefits are granted as long as the third-country national remains in reception.
[143] Full access to those staying in reception, for all others access to emergency healthcare.
[144] Third-country nationals of 18 years or older who started a training programme are usually allowed to finish this before being removed.
[145] Third-country nationals remaining at the reception centre will receive a monthly allowance on similar conditions as during the asylum procedure till the decision on asylum is final or by the time a foreigner is returned within the assisted voluntary return programme.
[146] Access to all healthcare services is provided by the reception centre regardless its previous allocation – in or outside the reception centre.
[147] Polish language classes are available in all reception centres for those who remain there.
[148] Up to and including 2015, rejected asylum seekers continued to have the right to stay in reception centres until they left Swedish territory. However, starting from June 2016 this was changed and third-country nationals can only stay in reception during the period of voluntary return. Third-country nationals with medical needs and families with minor children can however still stay until they leave the territory.
[149] If third-country nationals cooperate in the return procedure, third-country nationals can continue to work until they leave Swedish territory.
[150] Social benefits granted during voluntary departure and for families and children until they leave the territory.
[151] Emergency healthcare.

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
SI		✓				[152]	✓	✓	✓	✓	If applicants are issued a return decision without a deadline for voluntary departure, they are detained in the Centre for Foreigners. The Police may ex officio, or at the request of an alien, issue a decision substituting detention in the Centre with a less stringent measure – allowing them to live outside the Centre at a private address[153]. The authorities do not provide accommodation outside the Centre for Foreigners. If applicants are issued a return decision with a deadline for voluntary departure, no accommodation is provided by the authorities.
SK	✓	✓					✓	✓			Rejected asylum seekers who are waiting for the implementation of the return decision cannot stay in the accommodation centre for asylum seekers,[154] unless they have applied for voluntary return (in which case they can stay there until return). Rejected asylum seekers staying in detention and waiting for the enforcement of the return decision and rejected asylum seekers who have applied for a voluntary return and are placed in an accommodation centre are entitled to healthcare to the extent necessary.
UK	✓[155]	✓			✓	✓[156]	✓[157]	✓	✓[158]	✓	Third-country nationals can receive accommodation and have access to social support during appeal and until appeals are exhausted. Once appeals are exhausted rejected asylum seekers will have access to support only if they can demonstrate that there is an obstacle to departure from UK. An exception to this is families with dependent children and those who can show a genuine obstacle to return. Full healthcare is provided for all asylum seekers, and rejected asylum seekers, on support. Emergency healthcare only is provided to rejected asylum seekers not on support. Others only emergency care. No access to employment, but access to adult education on third-country nationals own costs.

[152] They do not receive social benefits, however basic care (food, shelter, clothes etc.) is provided to detained aliens by the Centre for Foreigners (Aliens Act, Art. 76/6).
[153] Aliens Act, Art. 81.
[154] Only third-country nationals who are considered asylum seekers in line with the Act on Asylum are entitled to stay in the accommodation centre.
[155] Third-country nationals during appeal procedures or during the period for voluntary departure can remain in reception centres, also those third-country nationals who can prove that there is a genuine obstacle to return and families with children. The latter can stay for maximum 90 days after final decision after which their right to stay in reception automatically ceases.
[156] Generally no, but only in the limited circumstances if they are accommodated, i.e. when third-country nationals cannot be removed and families with under-aged children.
[157] Full healthcare for those staying in reception, otherwise emergency healthcare.
[158] If they meet the requirements for the course and they can afford to participate.

Table A1.2: Rights and services available to rejected asylum seekers who cannot be (immediately) removed

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
AT	✓	✓		✓[159]	✓	✓	✓	✓			Similar as to the rights granted to those against whom the return decision becomes enforceable
BE	✓	✓					✓	✓	✓	✓	Rejected asylum seekers (and other third-country nationals) who cannot be removed can be provided with accommodation in specific cases only (see National Report) can – in specific cases only – obtain an extension of their right to material aid. No access to the labour market, no social benefits. In principle access to some educational programmes for adults is not excluded, but this is difficult in practice. Access to emergency healthcare.
BG							✓	✓			Only access to emergency healthcare
CY		✓[160]	✓[161]		✓[162]		✓				Those who cannot return may temporarily be provided with accommodation. Employment is granted if a special residence title is issued. Social benefits only to minors. Access to emergency healthcare
CZ			✓[163]	✓	✓	✓	✓	✓	✓	✓	These rights apply to those third-country nationals who cannot be removed and who have already been issued 'leave to remain'
DE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	Those who cannot return and who are cooperating with the authorities are granted a 'Duldung' (tolerated stay) which gives them access to these rights, though these differ concerning the length of their stay. Healthcare concerns emergency healthcare in the first 15 months of stay. After that they receive all necessary health care. Furthermore, if someone who was granted a tolerated stay finds employment subject to social insurance, the health insurance covers regular healthcare. .
EE	✓	✓			✓[164]	✓	✓	✓			Access to emergency shelter organised by the local authority. No right to employment. Emergency social assistance is provided. Access to all necessary healthcare by the same service provider as in the detention centre. Education only for minors.
EL	✓		✓	✓			✓				Accommodation is granted in open temporary reception facilities for third-country nationals or stateless persons under return procedure, expulsion or whose removal has been postponed. The rejected asylum seeker maintains the same rights of access in the labour market. With regard to welfare, in cases of disability of 67% and above a disability allowance is granted.
ES							✓	✓			After the deadline for the voluntary departure, the rejected applicant will not be able to receive welfare, education and health delivered by public administration. Health care is only provided if emergency care is needed, for minors and pregnancy. Education is only provided for minors.
FI	✓	✓			✓	✓	✓	✓	✓	✓	Access to reception services for those who choose AVRR or for the entire time that the police tries to enforce removal. If the third-country national refuses to return voluntarily and removal by the police proves not possible, reception services are terminated after 30 days. No access to employment.

[159] Existing employment may sometimes continue after a final negative decision.
[160] Only temporarily
[161] Only if provided a special residence permit
[162] Only minors
[163] They need work permit.
[164] Emergency social assistance

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
FR											*See table A1.1 – the situation is the same.*
HR		✓					✓				Healthcare is restricted to emergency health services. Minors whose deportation has been temporarily postponed shall be entitled to education in accordance with a special regulation. Accommodation might be offered to a vulnerable person.
HU	✓	✓	✓	✓			✓	✓	✓	✓	These rights are granted to persons who have been granted tolerated stay. They can stay at community shelters, can access employment with consent of the immigration authority and can access full healthcare services. Adults are eligible for financial reimbursement for participation in educational programmes.
IE		✓						✓[165]			Accommodation not regulated by law, but in practice third-country nationals can stay in 'direct provision' until they are granted some form of status/leave the territory. No access to employment or education. Exceptional needs payment can be granted if staying in direct accommodation provision. Access to full healthcare if staying in direct provision.
IT	✓		✓		✓		✓	✓	✓	✓	Healthcare includes primary and emergency healthcare services. Education is granted only for minor children of compulsory school age.
LT			✓[166]				✓	✓			No accommodation, social benefits, or education, but if provided temporary residence may access employment. Access to basic healthcare.
LU		✓	✓		✓	✓	✓	✓			Only those who are granted a postponement of removal can stay in accommodation centres. Officially, they can obtain a temporary work authorisation but in practice issued extremely rare. Humanitarian social aid provided. Access to all healthcare services as any other person affiliated to the National Health Fund (NHF). Adult third-country nationals do not have access to education.
LV		✓[167]					✓	✓			No accommodation, except for those who have special needs. No employment, no social benefits, no access to education for adults. Emergency care for those not detained, full access to healthcare for those detained.
MT		✓									Rejected asylum seekers who cannot be immediately returned to their country of origin, both in accordance to the law and in practice, do not continue receiving any financial benefits from Social Security Dept.
NL	Yes and No	✓[168]		✓	✓[169]	✓	✓	✓[170]		✓[171]	

[165] Third-country nationals receive a medical card when staying in reception centres. As long as they stay at the reception centre (for continued residence after a negative decision) they in practice continue to have this card and can access healthcare.
[166] Access to the labour market is granted immediately when the temporary residence permit is being issued. However, the permit is issued after one year after suspension of the return decision.
[167] Only vulnerable persons
[168] Family friendly locations as long as the child has not turned 18 yet.
[169] As long as third-country nationals are staying in reception. In practice municipalities can also grant social benefits but this depends on the municipality.
[170] Only emergency healthcare is reimbursed.
[171] Once a training programme has started, it may always be completed.

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
PL	✓	✓			✓	✓	✓	✓	✓	✓	All third-country nationals can initially remain in reception centres for a period of 30 days. After these 30 days, only those who opt for AVRR can stay up to max. 45 days. If third-country nationals do not cooperate, access to reception ceases. After this period, only third-country nationals granted a tolerated stay or humanitarian stay may access these rights.
SE		✓[172]	✓	✓			✓	✓			Up to and including 2015, all rejected asylum seekers continued to have the right to stay in reception centres until they left SE territory. However, starting from June 2016 this was changed and third-country nationals can only stay in reception during the period of voluntary return (independent of whether return is immediately possible or not). Third-country nationals with medical needs and families with minor children can however still stay until they leave the territory. If third-country nationals cooperate in the return procedure, third-country nationals can continue to work until they leave SE territory. Emergency healthcare available to all third-country nationals.
SI					✓[173]	✓	✓	✓			Individuals that cannot be immediately returned can be granted "permission to stay". The permission is issued for six months and may be extended upon expiry. By granting the permission to stay and allowing the non-returnee access to rights, the authorities provide them with at least some minimal level of subsistence and formalize their stay in the country. This allows for a better overview of non-returnees living in the country and prevents potential unwanted situations resulting from their illegal stay.
SK	✓[174]	✓	✓[175]	✓			✓[176]	✓			Rejected asylum seekers who have not been granted a tolerated stay but are enrolled for the AVRR programme can be provided with accommodation till the moment of implementation of the return, but not for a longer period of time.

[172] third-country nationals with medical needs and families with minor children only
[173] A third-country national with permission to stay has the right to financial social assistance under specific conditions.
[174] Rejected asylum seekers who were granted tolerated stay on the grounds of existence of an obstacle to expulsion or because departure is not possible and detention is not reasonable are not entitled to accommodation. An exception to this rule are persons who were granted a tolerated stay on the grounds that they became victims of trafficking in human beings or were illegally employed under particularly exploitative conditions or were illegally employed minors.
[175] The prohibition to enter labour relationships or other similar labour schemes does not apply to third-country nationals who have been granted a tolerated stay on the grounds of respecting their personal and family life, aliens whose tolerated stay has been extended because they became victims of trafficking in human being and those granted tolerated stay on the grounds that they were illegally employed under particularly exploitative conditions. In these cases, third-country nationals granted a tolerated stay have the right to work (but not the right to operate a business)
[176] In the case of tolerated stay, rejected asylum seekers are only entitled to urgent healthcare and are required to cover the costs of treatment. In the case that they are in detention in the Slovak territory, in custody or in prison, they are entitled to mandatory public health insurance, unless they are health insured in another EU Member State.

MS	Accommodation		Employment		Social benefits		Healthcare		Education (adults)		Comments
	In law	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	*In law*	*In practice*	
UK	✓	✓				✓[177]	✓[178]	✓	✓[179]		A rejected asylum seeker will usually lose access to accommodation and subsistence support 21 days after the final rejection of their asylum claim and any appeal. Generally, they will only continue to receive support when they can show that there is a legal or practical obstacle that prevents them from leaving the UK. Currently an exception is made to these arrangements if the failed asylum seeker has children in their household at the time that their asylum claim is rejected. In these circumstances, automatic access to accommodation and subsistence support continues.

[177] Not entitled to mainstream benefits, but they may receive support from the Home Office; rejected asylum seekers who have an obstacle to their departure receive £35.39 per person per week on a payment card. Those with dependent children receive £36.95 per person per week cash allowance.
[178] Rejected asylum seekers and their families who are supported by the Home Office are entitled to receive free healthcare. Those rejected asylum seekers not supported either by the Home office or by local authorities will be able to receive emergency treatment, but may be charged.
[179] On third-country nationals own costs

Annex 2 Statistical tables

Table A2.1 Number of first time asylum applicants by Member States and by year 2011-2015

	2011	2012	2013	2014	2015
Austria	:	:	:	25,675	85,505
Belgium	25,355	18,335	11,965	14,045	38,990
Bulgaria	705	1,230	6,980	10,805	20,165
Croatia	:	:	1,045	380	140
Cyprus	1,745	1,590	1,150	1,480	2,105
Czech Republic	485	505	490	905	1,235
Denmark	3,945	6,045	7,170	14,535	20,825
Estonia	65	75	95	145	225
Finland	:	2,905	2,985	3,490	32,150
France	52,140	54,265	60,475	58,845	70,570
Germany	45,680	64,410	109,375	172,945	441,800
Greece	9,310	9,575	7,860	7,585	11,370
Hungary	:	:	18,565	41,215	174,435
Ireland	1,280	940	940	1,440	3,270
Italy	40,320	17,170	25,720	63,655	83,245
Latvia	335	190	185	365	330
Lithuania	405	560	250	385	275
Luxembourg	1,915	2,000	990	1,030	2,360
Malta	1,865	2,060	2,205	1,275	1,695
Netherlands	11,560	9,660	9,815	21,780	43,035
Poland	4,985	9,175	13,970	5,610	10,255
Portugal	275	290	500	440	870
Romania	1,695	2,420	1,405	1,500	1,225
Slovakia	320	550	290	230	270
Slovenia	305	260	240	355	260
Spain	2,970	2,350	4,285	5,460	14,600
Sweden	29,630	43,835	54,255	74,980	156,110
United Kingdom	25,870	27,885	29,640	32,120	39,720
EU 28 total	263,160	278,280	372,855	562,680	1,257,030

*Source: Eurostat migr_**asyappctza** (data extracted 10/10/2016)*

Table A2.2 **Rejected asylum applications by Member States and by year 2011-2015: total number (#) and percentage (%) out of total first instance decisions**

	2011		2012		2013		2014		2015	
	#	%	#	%	#	%	#	%	#	%
Austria	9,155	69	11,435	72	11,690	70	2,230	24	6,050	29
Belgium	14,735	74	18,940	77	15,110	71	12,290	60	8,945	46
Bulgaria	410	68	470	73	355	13	430	6	580	9
Croatia	:		120	86	165	89	210	89	145	78
Cyprus	2,560	97	1,230	92	635	79	310	24	480	23
Czech Republic	365	53	540	75	555	62	625	63	875	66
Denmark	2,255	63	2,985	64	4,155	60	2,580	32	2,305	19
Estonia	50	83	45	82	45	82	35	64	100	56
Finland[180]	1,535	59	1,530	50	1,565	49	1,070	46	1,280	43
France	37,600	89	51,165	86	51,010	83	53,685	78	57,280	74
Germany	30,605	76	41,470	71	56,040	74	56,715	58	108,370	43
Greece	8,490	98	11,095	99	12,580	96	11,335	85	5,610	58
Hungary	740	83	750	68	4,180	92	4,935	91	2,915	85
Ireland	1,295	95	840	89	695	83	660	62	665	67
Italy	16,960	70	5,255	19	9,175	39	14,600	42	41,730	58
Latvia	70	78	120	83	65	68	70	74	145	85
Lithuania	285	93	335	86	120	69	110	59	95	53
Luxembourg	980	97	1,610	98	1,115	90	765	86	590	76
Malta	720	45	155	10	300	16	475	27	240	16
Netherlands	8,955	57	8,160	60	6,225	51	6,240	33	4,015	20
Poland	2,740	85	1,960	79	2,210	76	1,980	73	2,870	82
Portugal	50	43	130	57	170	56	115	50	180	49
Romania	1,000	93	1,390	86	515	36	845	53	840	64
Slovakia	100	47	250	57	125	66	110	39	50	38
Slovenia	185	88	175	83	160	82	50	53	85	65
Spain	2,405	71	2,070	80	1,835	78	2,035	56	2,220	69
Sweden	17,895	67	19,115	61	20,990	47	9,255	23	12,375	28
United Kingdom	15,715	68	14,150	64	13,895	62	15,695	61	24,175	63
EU 28	**177,860**	**75**	**197,495**	**68**	**215,680**	**67**	**199,470**	**54**	**285,220**	**48**

Source: Eurostat migr_asydcfsta (data extracted 25/08/2016)

[180] For the years 2011 to 2013 there are notable differences between national data and Eurostat data: according to national data, there were 940 first instance decisions in 2011, 1,031 in 2012 and 893 in 2013. The difference is due to differing definitions between national and Eurostat data. 2014 and 2015 Eurostat figure are in line with national data.

Table A2.3 Rejected asylum applications by Member States and by year 2011-2015: total number (#) and percentage (%) out of total final decisions

	2011		2012		2013		2014		2015	
	#	%	#	%	#	%	#	%	#	%
Austria	7,540	81	6,415	81	5,435	79	1,210	30	2,390	47
Belgium	9,985	95	12,160	97	11,060	96	7,480	94	7,260	94
Bulgaria	5	25	0	0	5	13	5	25	5	50
Croatia			100	74	95	100	110	100	85	100
Cyprus	3,110	98	1,500	97	875	91	275	56	285	50
Czech Republic	365	49	415	94	395	95	530	94	395	100
Denmark	1,810	81	1,085	73	1,110	67	1,495	84	1,050	79
Estonia	10	100	5	100	0	0	5	100	10	100
Finland[181]	65	19	50	15	55	24	45	21	55	N/A
France	28,425	82	30,570	84	32,100	85	31,260	84	29,190	84
Germany	21,200	86	24,420	83	30,705	84	37,340	84	86,535	92
Greece	215	34	1,115	68	2,990	77	5,785	75	5,810	76
Hungary	275	85	290	72	625	91	800	95	435	91
Ireland	1,250	94	645	93	525	91	115	55	305	58
Italy	1,175	78	445	36	20	21	10	18	5	25
Latvia	10	50	40	80	45	82	35	100	65	93
Lithuania	30	100	215	100	30	86	10	67	10	100
Luxembourg	325	87	900	99	660	99	725	98	445	95
Malta	505	100	415	95	135	96	225	87	300	81
Netherlands	1,205	44	645	84	820	43	745	52	490	45
Poland	2,175	96	900	93	1,000	95	1,360	99	1,820	97
Portugal	20	100	65	100	100	100	95	100	85	100
Romania	1,180	91	1,945	88	625	40	135	79	65	59
Slovakia	0	0	65	93	110	96	55	92	25	100
Slovenia	70	100	35	100	60	100	65	93	30	86
Spain	1,100	98	1,100	96	1,085	98	905	98	570	98
Sweden	11,375	86	13,060	82	10,575	82	10,755	82	10,510	82
United Kingdom	10,415	59	8,285	55	8,730	64	8,250	67	8,735	69
EU 28	**103,850**	**81**	**106,885**	**81**	**109,965**	**82**	**109,835**	**81**	**156,975**	**86**

Source: Eurostat migr_asydcfina (data extracted 25/08/2016)

[181] The Finnish data in Eurostat includes only final decisions that have changed in the Administrative Court or in the Supreme Administrative Court. It omits the first instance decisions that have de facto remained the final instance decisions after all appeals. The national data is as follows: 824 final negative decisions for 2011 (% not known), 904 negative decisions for 2012 (% not known), 761 negative decisions for 2013 (% no known), 783 negative decisions for 2014 (40% of all final decisions). For 2015 the preliminary figure, which will increase, is 449 (% not known as the figure is still preliminary).

Table A2.4 Proportion (estimated or actual) of persons issued a return decision who were rejected asylum seekers (out of total third-country nationals) (in %)

	2011	2012	2013	2014	2015
Bulgaria	37	23	11	6	3
Estonia	4	5	3	5	8
Finland	24	27	23	35	27
France	*No data*	26	24	26	28
Hungary	<30	<30	<30	<30	<30
Ireland	68	79	60	68	71
Italy	22	18	29	36	53
Lithuania	<30	<30	<30	<30	<30
Luxembourg	94	88	86	80	70
Latvia	6	4	3	6	4
Slovenia	<30	<30	<30	<30	<30

Source: National data provided in the National Reports. Note that the figures for Hungary, Lithuania and Slovenia are estimates and the remainder are actual data.

Table A2.5 Proportion (estimated or actual) of persons effectively returned who were rejected asylum seekers (out of total third-country nationals) (in %)

	2011	2012	2013	2014	2015
Bulgari	75	56	51	62	85
Estonia	3	3	2	3	3
Hungary	<30	<30	<30	<30	<30
Ireland	79	78	67	47	78
Luxembourg	53	74	86	91	85
Latvia	6	4	3	6	4
Slovenia	<30	<30	<30	<30	<30
Slovakia	2	5	1	3	2
United Kingdom	17	15	15	13	9

Source: National data provided in the National Reports. Note that the figures for Hungary and Slovenia are estimates and the remainder are actual data.

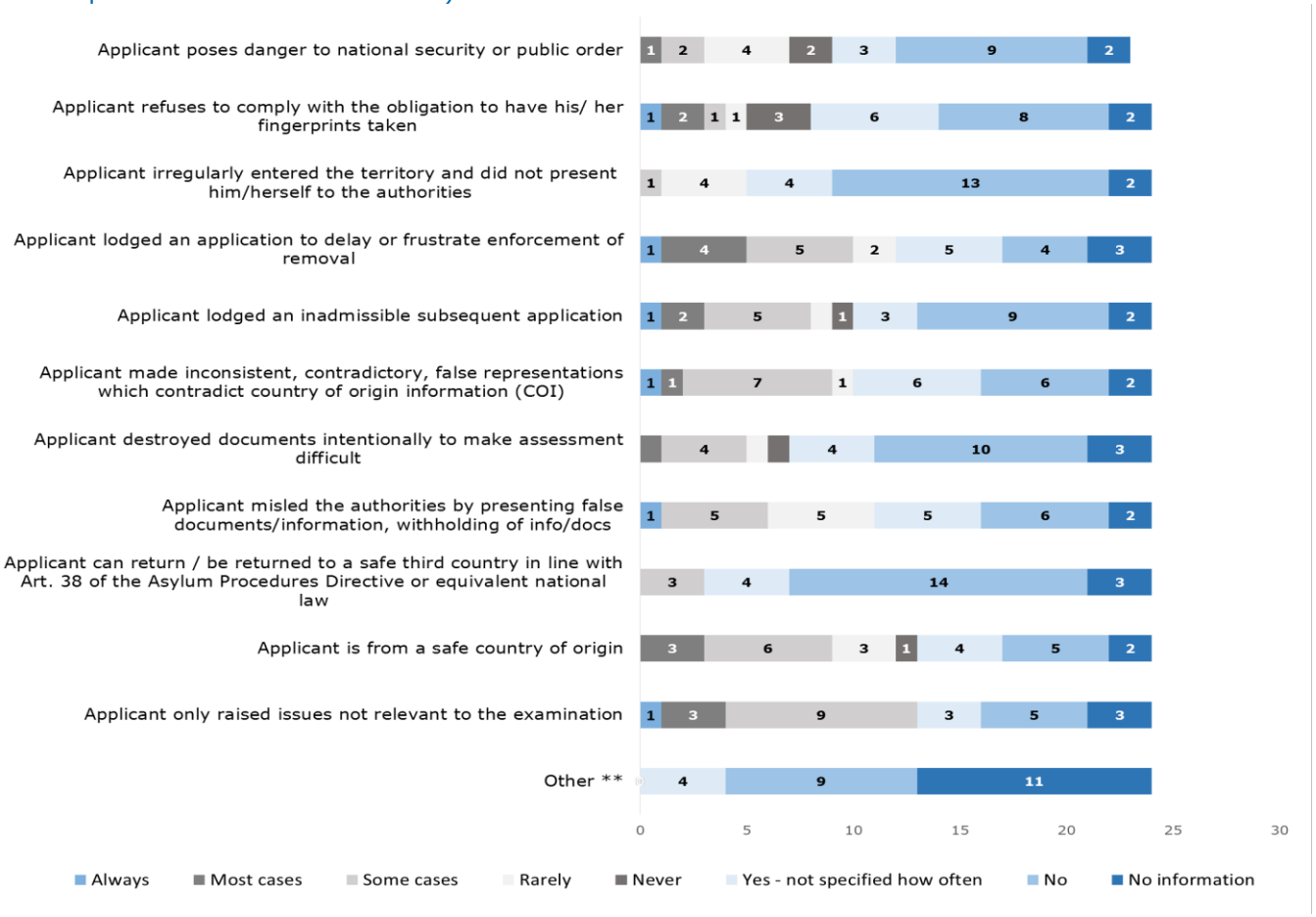
Table A2.6 Number of return decisions issued to rejected asylum seekers 2011-2015

	2011	2012	2013	2014	2015
Belgium	8,770	17,221	16,912	8,525	5,738
Estonia	19	28	17	26	46
Finland	940	1,031	893	1,048	1,236
Ireland	1404	1643	1108	506	545
Croatia	27	103	143	176	78
Luxembourg	n/a	1,855	770	666	495
Poland	2,352	2,130	2,667	1,095	n/a
Sweden	17,054	18,719	12,928	12,844	15,793

Source: National data provided in National Reports.

Annex 3 Use of accelerated procedures in the Member States

Figure A3.1 Number of Member States which apply accelerated procedures in different situations (and the regularity with which they use accelerated procedures in these situations)



Source: National Reports (23 Member States: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, IT, LT, LU, LV, NL, MT, PL, SE, SI, SK, UK)

Annex 4 List of abbreviations

ADOMA	The (French) semi-public company specialised in migrant housing
AMIF	Asylum, Migration and Integration Fund
AVR	Assisted Voluntary Return
AVR(R)	Assisted Voluntary Return and Reintegration
CGRS	(Belgian) Commissioner General for Refugees and Stateless Persons
CIP	Collaborative Interview Process
CNDA	The (French) National Asylum Court (*Cour Nationale du Droit d'Asile*)
CNS	National Health Fund (Luxembourg)
DT&V	Dutch Repatriation and Departure Service
EASO	European Asylum Support Office
Fedasil	Belgian Federal Agency for the Reception of Asylum Seekers
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IND	Immigration and Naturalisation Service
IOM	International Organisation for Migration
Med-COI	Medical Country of Origin Information
OFPRA	French office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*)
OFII	The French Immigration and Integration Office (*Office Français de l'Immigration et de l'Intégration*)
OLAI	Luxembourg Reception and Integration Agency (*Office luxembourgeois de l'accueil et l'intégration*)
PAF	The (French) Border Police (*Police aux Frontières*)
REVA	Legal and effective enforcement of return policy (*Rättssäkert och effektivt verkställighetsarbete*)
UAM	Unaccompanied minor

European
Commission