



RETURNING REJECTED ASYLUM SEEKERS: CHALLENGUES AND GOOD PRACTICES

SPAIN 2016



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Its objective is to meet the information needs of EU institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

The Spanish NCP is composed by experts from the Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Cooperation, and Ministry of Justice and the General Prosecutor's Office. It is coordinated by the Deputy General Directorate for Legal Affairs of the General Secretariat for Immigration and Emigration.

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EMN FOCUSSED STUDY 2016

**Returning Rejected Asylum Seekers: challenges and
good practices**

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Top-line "Factsheet" (National Contribution)

The non-return of rejected asylum seekers is not (yet) considered a major issue in Spain, when comparing the situation with other Member States. However, the importance of this issue is growing, as is the number of asylum seekers. On the other hand, the return of irregularly staying third country nationals in general (including rejected asylum seekers) is a national priority.

Rejected asylum seekers are given a period of 15 days to leave. A fully fledged return decision is only issued, following the procedure for irregularly staying third country nationals, if the person does not leave in that period.

In these cases, the issuance of travel documents and the cooperation needed from the countries of origin is not such a relevant matter as in other cases of irregular stay, since those documents are normally already available during the asylum procedure.

The main reason for non-return is absconding. Consequently, the State has to adopt effective measures to ensure return and avoid the risk of absconding. These measures may include the regular reporting to the authorities; the compulsory residence in a specific location; the withdrawal of the passport; the preventive detention with a maximum period of 72 hours; or the placement, with judicial approval, in an internment centre.

With regard to the immediate consequences of the rejection, apart from the given period to leave the country, rejected asylum seekers have to leave the reception centres within 15 days (30 days if Dublin Regulation applies). In addition, they are not entitled to access to the labour market and have limited access to health care (in the same way as the rest of irregular foreigners¹). They have no right to take part in educational programmes, although in cases with minors attending school, this situation of vulnerability will be taken into account.

It seems to be a good practice the cooperation with third countries. Spain has carried out negotiations on return agreements with some origin and transit countries, including material, economic and humanitarian support for these countries. These agreements initially only set the provisions for readmission, but, afterwards, they broadened the scope, including the management of migratory flows and development cooperation.

¹ Emergency healthcare for serious illness or accidents, pregnant women and minors.

Section 1: Overview of the national situation

Q1. To what extent is the non-return of rejected asylum seekers considered a major issue in your Member State? Is the return of rejected asylum seekers a national policy *priority*? Please provide qualitative evidence e.g. from reports, political debate and media reports (*quantitative evidence is requested in subsequent questions so should not be covered here*)

The non-return of rejected asylum seekers is not (yet) considered a major issue in Spain, when comparing the situation with other Member States. However, the importance of this issue is growing, as is the number of asylum seekers. On the other hand, the return of illegally staying third country nationals in general (including rejected asylum seekers) is a national priority.

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

- The total number of rejected asylum seekers who were issued an enforceable return decision in 2011-2015 disaggregated by sex;²
- The number of rejected asylum seekers who were effectively returned from your Member State to third countries in 2011-2015 (if possible disaggregated by sex and by type of return (voluntary / assisted voluntary / forced).

The table requests information on the total number of rejected asylum seekers returned, as well as data for the top ten citizenships of rejected asylum seekers in your Member State in the period 2011-2015 disaggregated by sex.

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

NOTE: In March 2016, EASO has started asking the Member States to provide statistics on return decisions and effective returns of rejected asylum applicants (whose application for international protection has been withdrawn or rejected). These are the statistics that Spain has started compiling on this matter, and only since March 2016.

Q3. Please provide national estimates, disaggregated by sex, of (a) the share of rejected asylum seekers out of the total number of TCNs issued a return decision in 2011-2015 and (b) the share of rejected asylum seekers issued a return decision who were effectively returned, by completing the table below and indicating whether the share is:

- a) Between 90 to 100%
- b) Between 51 to 90%
- c) Between 31 to 50%
- d) Less than 30%

² As outlined in section 2.1 of this Common Template, this group includes rejected asylum seekers who may yet be able to appeal the decision on their asylum case, but who are nonetheless obliged to return under return legislation.

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These estimates may be made available through national studies, or may be identified through consultation with relevant national authorities for the purpose of this study. For every estimate, please indicate in the final column the source of the estimate and – where possible – the method used.

| Year | % rejected asylum seekers out of total no. TCNs issued a return decision | | | % rejected asylum seekers out of total no. TCNs effectively returned | | | Source / method of the estimate |
|------|--|--------|-------|--|--------|-------|---------------------------------|
| | Male | Female | Total | Male | Female | Total | |
| 2011 | | | | | | | |
| 2012 | | | | | | | |
| 2013 | | | | | | | |
| 2014 | | | | | | | |
| 2015 | | | | | | | |

Following initial estimations, currently the % rejected asylum seekers out of total no. TCNs issued a return decision is 1%, and the % rejected asylum seekers out of total no. TCNs effectively returned is 2-3%.

Q4a. If available, please provide any national estimates on the total number of rejected asylum seekers disaggregated by sex who, despite having been imposed a return decision, continue to reside in your Member State during the period 2011-2015 because they could not be returned (see also sections 3 and 4)?

| Year | # rejected asylum seekers imposed an enforceable return decision who continue to reside in the Member State | | | Source / method of the estimate |
|------|---|--------|-------|---------------------------------|
| | Male | Female | Total | |
| 2011 | | | | |
| 2012 | | | | |
| 2013 | | | | |
| 2014 | | | | |
| 2015 | | | | |

(Not available).

Q4b. Please provide, if possible, a breakdown of the statistics described in 4a by **reason for non-return**. If statistics are not available disaggregated by reason, please describe any qualitative evidence of the main reasons in your Member State for the non-return of rejected asylum seekers described in 4a. *Reasons may include the successful or on-going appeal of the asylum decision, the successful or on-going appeal of the return decision, problems with readmission, returnee resistance, etc. Please note that more detailed questions on challenged to return are outlined in section 4.*

(Not available)

Section 2: Member States' policies and measures vis-à-vis rejected asylum seekers at the point of rejection

SECTION 2.1: HOW ASYLUM DECISIONS TRIGGER THE ISSUANCE OF THE RETURN DECISION

Q5 At what stage in the asylum decision-making procedure can an enforceable return decision (i.e. one that can lead to the return of the asylum seeker) be *issued*? Please select one of the following options:

- a) after the first instance decision (all applications for international protection);
- b) after the first instance decision (only for applications for international protection considered unfounded – e.g. if they are lodged by an applicant from a safe country of origin);
- c) after *some* appeals on the asylum decision have been lodged, but before *all* possibilities for appeal on the asylum decision have been exhausted;
- d) only after *all* asylum appeals have been exhausted;
- e) under other circumstances (*please describe*).

After the first instance decision, unless an appeal has been lodged.

Q6. If the return decision can enter into force *before* all asylum appeals have been exhausted, how often, in practice does this lead to the applicant being returned? (e.g. in all cases, most cases, some cases, rarely, never)?

Given the timeframes for appeal and for completing the administrative return procedure, a return decision is never enforced before the time to appeal the negative asylum decision has been exhausted.

Q7a. Is the authority responsible for issuing the return decision in your Member State the same as the authority who is responsible for making decisions on the application for asylum? *Yes / No*

If no, how do these authorities coordinate and communicate to ensure that asylum decisions trigger the return procedure at the right time? *Please describe any coordination arrangements and how they work in practice.*

No.

Asylum decisions don't trigger a return procedure. With a negative asylum decision, a period of 15 days is given for compulsory departure. This is similar to a return decision, but technically not the same. An independent return decision can only be issued if the applicant overstays this 15 day period.

Q 7b. When a decision on an asylum application triggers a return decision, how soon after the rejection is the return decision issued? Please select among the following options:

- a) The return decision is issued at the same time the decision rejecting the asylum application enters into force/becomes executable.
- b) The return decision is issued within 24 hours of the rejection decision entering into force/becoming executable.
- c) The return decision is issued within a week of the rejection decision entering into force/becoming executable.
- d) The return decision is issued within a month of the rejection decision entering into force/becoming executable.

Please provide further details on current practice in your Member State, in particular if not covered under the options above

Not applicable. See above.

Q8. In your Member State, is it possible to use the information that is obtained from the applicant in the course of the asylum procedure for the purposes of facilitating return? Yes / No

If yes, is such information regularly used? *(for example, documentation and declarations that were made as part of the asylum claim, family connections stated, etc. may be used after a return decision has entered into force as supporting evidence for the purpose of establishing identity and obtaining travel documents to the relevant (consular) authorities of the third-country)*

General information can be used for the return procedure, but not information that is obtained exclusively for asylum purposes.

SECTION 2.2: IMMEDIATE CONSEQUENCES FOR REJECTED ASYLUM SEEKERS REQUIRED TO RETURN

Q9. What are the immediate consequences for the rejected asylum seeker of the return decision entering into force? Please answer this question by completing the table below. Please note that similar information was requested in the Ad-Hoc Query on 'the right of residence provided for TCNs to whom international protection application has been rejected' requested 30th December 2015. Please review your Member State to this AHQ (if completed) and provide only updated information here.

*Returning Rejected Asylum Seekers: obstacles challenges and good practices***Table 2.1: The immediate consequences for the rejected asylum seeker of the return decision entering into force**

| Questions | ... according to law | ... as carried out in practice | Provide here evidence to suggesting this contributes to encouraging or deterring return |
|---|---|--------------------------------|---|
| Accommodation | | | |
| <p>Can the applicant stay in reception centres once rejected? Yes/no</p> | <p>Yes, the notification of non-admission of the asylum application lodged in Spanish territory, shall be accompanied by an order of compulsory departure or expulsion within the deadline set by that decision, depending on the circumstances of the case (art.23 Royal Decree 203/1995)</p> <p>The notification of the rejection of the asylum application shall be accompanied by the mandatory order of departure, within the deadline set by that decision, according to the current immigration regulations (art. 31 Royal Decree 203/1995).</p> <p>After this deadline, the rejected applicant will not be able to receive the social benefits covered by art.15 Royal Decree 203/1995: welfare, education and health delivered by public administration; and shall be subject to an initiation of an expulsion procedure (art. 31 Royal Decree 203/1995)</p> <p>In both cases, generally, if non</p> | <p>Yes: idem.</p> | <p>n.a.</p> |

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|--|--|----|------|
| | admission or rejection of the application has been produced, the resident should leave the reception centre in a maximum period of 15 days from the notification of the resolution. There is an exception in the cases where Dublin Regulation is applicable, with a maximum period of one month to leave from the notification of the resolution. This period can be extended by exceptional reasons with the authorisation of the Sub-directorate General of Immigrants Integration. | | |
| <i>If you stated yes above, please indicate for how long after receiving the return decision they can stay in the reception centre (e.g. X days or 'until the return decision is enforced and the individual returns')</i> | <p>General period of 15 days</p> <p>Exception: Dublin Regulation (one month).</p> <p>In the cases where general period is applicable, if there are circumstances of special vulnerability, the person will be able to continue the stay in the reception system until the deadline given by the managing body.</p> | | |
| <i>If you stated no above, are they accommodated elsewhere (e.g. special open return centres) or elsewhere? Yes/no and – for yes, briefly describe accommodation service provided</i> | | | |
| Employment | | | |
| <i>Are rejected applicants entitled to access /</i> | No. However, the rejected asylum seeker would be able to stay in | No | n.a. |

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| | | | |
|---|---|-----------|------|
| <i>continue accessing the labour market? Yes/No</i> | Spain if requirements of general legislation on foreign nationals are fulfilled. Also, Minister of Home Affairs may authorise the stay in Spain by substantive reasons and founded on real risk to life or physical integrity in the event of return; or by different humanitarian reasons than indicated. The result may be a temporary residence authorisation. | | |
| <i>If yes, please indicate for how long after receiving the return decision they can continue to work (e.g. X days or 'until the return decision is enforced and the individual returns')</i> | | | |
| <i>If yes, please describe any specific conditions attached to their employment</i> | | | |
| Welfare | | | |
| <i>Are rejected applicants entitled to receive any social benefits? Yes/No</i> | No. Idem | No | n.a. |
| <i>If yes, please briefly describe what these benefits are</i> | | | |
| <i>If yes, please indicate for how long after receiving the return decision they can continue to receive the benefits (e.g. X days or 'until the return decision is enforced and the individual returns')</i> | | | |
| Healthcare | | | |
| <i>Are rejected applicants still entitled to healthcare? Yes /no</i> | Yes. As foreigners in irregular status, they may receive healthcare in accordance with the following | Yes. Idem | n.a. |

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|--|---|--|------|
| | <p>modalities:</p> <ul style="list-style-type: none"> a) Emergency healthcare for serious illness or accident, whatever the cause, until medical discharge. b) Pregnant women: medical care during pregnancy, childbirth and postnatal period. c) Minors: healthcare in the same terms as Spaniards. | | |
| <i>Does it include all healthcare or only emergency healthcare?</i> | | | |
| Education | | | |
| <i>Are rejected applicants still entitled to participate in educational programmes and/or training? Yes / no</i> | <p>No. Same as above.</p> <p>In cases with minors attending school, this situation of vulnerability will be taken into account. It will not be appropriate to apply the expulsion decision until the completion of the academic year (art. 246 Royal Decree 557/2011).</p> | | n.a. |
| <i>If yes, please indicate for how long after receiving the return decision they can continue to participate in educational activities (e.g. X days or 'until the return decision is enforced and the individual returns')</i> | | | |
| Other? | | | |
| <i>Are any other measures taken which are relevant to mention here? Please describe</i> | No | | n.a. |

Q10. When a rejected asylum seeker receives an enforceable return decision, what measures does the Member State take to enforce the return decision and prevent absconding (e.g. regular reporting)?

The same set of measures is available as in any other case of irregularly staying third country nationals. In these cases art. 61 of Organic Law 4/2000 applies. These measures may include the regular reporting to the authorities; the compulsory residence in a specific location; the withdrawal of the passport; the preventive detention with a maximum period of 72 hours; or the placement, with judicial approval, in an internment centre.

SECTION 2.3 POSSIBILITIES FOR APPEALING THE RETURN DECISION

Q11. Are asylum seekers who have received an enforceable return decision able to lodge an appeal on the decision, before being returned? *Yes / No*

If yes, under what conditions can the appeal be lodged?

Yes. In any case. In accordance with article 29 of Law 12/2009 of 30 October, which regulates the right of Asylum and Subsidiary Protection, the administrative decision concludes the administrative proceeding and it's subject of administrative (facultative) or judicial review.

Q12. How frequently does an appeal on the return decision prevent the return of rejected asylum seekers (e.g. in all cases, most cases, some cases, rarely, never)? Do rejected asylum seekers appealing their return have a better chance of a positive decision on their return appeal than other third-country nationals required to return appealing the return decision? *Yes / No (and please explain your response)*

In some cases. It depends on the decision of the judge to suspend the enforcement of the return decision or not.

According to article 29 (2) of Law 12/2009 of 30 October, which regulates the right of Asylum and Subsidiary Protection, if an appeal has been lodged and the suspension of return is requested, this request will be considered of particular urgency. In that case, the judge or court, within two days, will decide whether or not to suspend the enforcement of the return decision³.

(Information about chances not available).

SECTION 2.4 POSSIBILITIES FOR LODGING SUBSEQUENT ASYLUM APPLICATIONS

Q13. Are asylum seekers who have received an enforceable return decision able to lodge a subsequent application in your Member State, before being returned? *Yes / No*

If yes, under what conditions can the subsequent application be lodged⁴

Yes. There are no specific conditions to lodge an asylum application after an enforceable return decision has been adopted. The application can be examined through a border procedure when the applicant is in an internment centre, but this applies to any asylum application lodged in an internment centre, whether there is an enforceable

³ Article 135 Law 29/1998 of 13 July, which regulates Contentious-Administrative Jurisdiction.

⁴ Note that the AHQ 2015.1007 launched by Ireland on 25 November asked questions related to this topic. It might be therefore useful to refer to your national responses to this AHQ in providing a response here.

return decision or not.

Q14. Is the fact that the application was lodged *after* a return decision was issued taken into account in assessing the *credibility* of the subsequent application? *Yes / No* If yes, does the issuance of the return decision make a negative decision on the subsequent application more likely? *Please refer to studies or governmental documents that provide evidence of these effects*

The fact that the international protection application has been lodged after a return decision is taken, is a criterion that can be taken into account when assessing the credibility of the application. Nevertheless, it does not imply necessarily that the application lodged after a return decision will be negative. The case officer must globally consider the circumstances of the case and make an assessment based on all those circumstances, not just the existence of a return decision.

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

Main challenges to return

The Ad-Hoc Queries as listed in section 5 of the background to this Common Template requested information on the main challenges to return as under the Return Directive. National responses indicate that Member States consider the main challenges to both voluntary and forced return to include:

★ **Resistance** of the **third-country national** to return, which can take the form of:

- > Physical resistance and restraint
- > Self-injury (including hunger striking)
- > Absconding

Note that third-country nationals may resist return for a variety of reasons including poor employment prospects on return, poverty and poor infrastructure in the country of return, levels of corruption in the country of return etc. and it may be relevant to address these drivers in trying to mitigate the challenge, as well as trying to address the challenge itself;

★ **Refusal** by the **authorities** in **countries of return** to readmit their citizens, particularly when they have been returned forcibly (*inter alia* Afghanistan, Eritrea, Ethiopia, Rwanda and South-Central Somalia refuse to accept their nationals returned forcibly against their will);

★ **Refusal** by the **authorities** in **countries of return** to issue travel documents;

★ **Refusal** by the **authorities** in **countries of return** to issue identity documents;

★ Problems in the **acquisition of travel documents** – especially when no copies of the originals are available (and e.g. identification can only be verified through fingerprints) or when citizenship is complex (e.g. involving married couples from different countries or citizens who were born in another country);

★ **Administrative and organisational challenges** due to e.g. a lack of Member State diplomatic representation in the country of return, which can slow down administrative procedures (e.g. make any obligatory consular interviews costly and challenging to arrange) and make negotiations more difficult.

Additionally, in preparing this Common Template, members of the Advisory Group have indicated that the following is a challenge to return:

★ **Medical reasons** – i.e. If the returnee has a medical problem rendering travel difficult or impossible.

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

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

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

| Challenge | Description of how this impedes return in your Member State | State whether the challenge is: general to return / more common to the return of rejected asylum seekers / exclusive to the return of asylum seekers |
|---|--|---|
| Some abusive behaviours such as last minute appeals or (subsequent) asylum applications, false claims of medical reasons. | It prevents from taking the returnee on board of already booked or chartered flights, and exhausts the permissible detention period. | General to return. |

Q16. In general, Member States undertake a broad range of measures to manage challenges to implementing return. Examples of measures that are undertaken, matched to the challenges, are mapped in the table below.

Please indicate with yes/no which measures your Member State implements and, if necessary, include other measures not (yet) listed in the table. If relevant, add comments to further explain your Member States' policy related to a specific measure.

| Challenges to return | Measures to manage challenges | Implemented? | Does the measure specifically target the return of rejected asylum seekers? |
|--------------------------------------|---|---------------------|--|
| Resistance of the returnee to return | Development AVRR programmes | <i>Yes/No</i> | <i>Yes/No</i> |
| | Detaining rejected asylum seekers to prevent absconding | <i>Yes/No</i> | <i>Yes/No</i> |
| | Physical force | <i>Yes/No</i> | <i>Yes/No</i> |
| | Surprise raids to enforce removal | <i>Yes/No</i> | <i>Yes/No</i> |
| | Delay or cancellation of the return procedure | <i>Yes/No</i> | <i>Yes/No</i> |

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

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|--|---|-----------------------|-----------------------|
| | Delay or cancellation of the return procedure | <i>Yes/No</i> | <i>Yes/No</i> |
| | Other? | | |
| Administrative/organisational challenges | Budget flexibility | <i>Yes/No</i> | <i>Yes/No</i> |
| | Coordination arrangements between authorities | <i>Yes/No</i> | <i>Yes/No</i> |
| | Designation of a Service Provider in third countries | <i>Yes/No</i> | <i>Yes/No</i> |
| | Establishment of a diplomatic representation in third countries | <i>Yes/No</i> | <i>Yes/No</i> |
| | Delay or cancellation of the return procedure | <i>Yes/No</i> | <i>Yes/No</i> |
| | Other? | | |
| Medical reasons | organising medical transfer | <i>Yes/No</i> | <i>Yes/No</i> |
| | facilitating medical support in the country of destination | <i>Yes/No</i> | <i>Yes/No</i> |
| | medical supervision during travel | <i>Yes/No</i> | <i>Yes/No</i> |
| | Delay or cancellation of the return procedure | <i>Yes/No</i> | <i>Yes/No</i> |
| | Other? | | |
| Other challenges? <i>Please describe and add rows if necessary</i> | <i>Please specify</i> | <i>Please specify</i> | <i>Please specify</i> |

Q17. From your experience, can you indicate if there are any challenges which affect the return of *rejected asylum seekers* more greatly than third-country nationals in general? *If there is no difference in the efficacy of returning rejected asylum seekers vis-à-vis third-country nationals in general please specify "no difference".*

The challenges mentioned above are also applicable to rejected asylum seekers. However, problems with the issuance of travel documents are less relevant (normally documents are already available during the asylum procedure) and the main problem is absconding.

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Q18. Has your Member State recently introduced any new measures/policies to ensure the return of third-country nationals (e.g. following the exceptional flows of asylum seekers arriving in the EU since 2014)?

No.

Q19. Are you able to identify, from the measures as set out in the table above, any good practices, i.e. measures that have proven particularly effective in overcoming challenges to return of rejected asylum seekers specifically?

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

| Measure | Evidence of effectiveness / why the measure can be considered a 'good practice' | State whether the measure is effective in supporting the return of <u>rejected asylum seekers</u> |
|---|--|--|
| Bilateral cooperation with third countries/ establishment of diplomatic relations | During the years of massive arrivals in Spain (2006-2007) this proved to be the way to increase cooperation of countries of origin from 0 to very acceptable levels. | Equally effective but less relevant. |
| Using interpreters to detect cases of assumed nationalities | In case of massive arrivals, it is very important to make a pre-selection before presenting cases to third countries for identification. | This is not so much the case for asylum seekers, since identity and travel documents are normally available. |
| Internment | This is the only effective measure against absconding. Optimizing its use is an important target. | Equal to the general case. |

Q20. Are there any challenges to return which your Member State has so far been unable to address effectively through any counter-measures? *Yes / No*

If yes, please describe the most pressing challenges here and explain why they are so challenging in practice, elaborating on why the counter-measures implemented have not proven effective.

Yes:

- Lack of cooperation from some third countries. Reasons for lack of success: many different circumstances may be involved at technical and political level.
- Some abusive behaviours such as last minute appeals or (subsequent) asylum applications or false claims of medical reasons

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

Q21. If it becomes clear that a rejected asylum seeker cannot return / be returned, does a national authority official acknowledge this? *yes / no*

If no, what happens? Can the rejected asylum seeker continue to be issued return orders even though it has been established that they cannot be immediately returned, or is it communicated to the police / enforcement authorities that the person should be left to remain temporarily?

Return can be postponed. The authorities responsible for the procedure undertake consultations to assess the potential risk of return to the country of origin or departure, attending to the current situation in those countries. On the other hand, the return may not be carried out if, according to Aliens Act, the asylum seeker complies with the general requirements for a legal residence of stay; either the stay or residence are allowed by humanitarian reasons as defined by applicable law⁵.

Q22a. If it is formally acknowledged that a person cannot be (immediately) returned, who makes this formal decision? On the basis of which criteria is the decision made?

The same authority who issued the return decision.

Q22b. Is an official status granted to individuals who cannot be (immediately) returned? (*if no status is granted, please write "no status granted"*). In what circumstances may this be granted?

No status granted.

Q22c. If a status is granted, what advantages and disadvantages does the granting of such status to those who cannot return / be returned bring to the authorities of your Member State? (*e.g. advantages may include the possibility to maintain contact with the non-returnee in case return becomes viable in the future, the possibility for the non-returnee to contribute to society in the Member State, etc. and disadvantages may include the increased pressure on resources and the threat to the credibility of the asylum system*)

Not applicable.

Q23. What rights are available to rejected asylum seekers who are not able to return immediately? *Please answer this question by completing the table below.*

⁵ Art.37 Law 12/2009 of 30 October, which regulates the right of asylum and subsidiary protection.

*Returning Rejected Asylum Seekers: challenges and good practices***Table 2.2: Rights and services available to rejected asylum seekers who cannot be immediately returned**

| Questions | ... according to law | ... as carried out in practice | Provide here evidence to suggesting this contributes to encouraging or deterring return |
|---|----------------------|--------------------------------|---|
| Accommodation | | | |
| <i>Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/no</i> | No. See table 2.1 | | |
| <i>If you stated yes above, please describe the circumstances under which the accommodation can be provided</i> | | | |
| Employment | | | |
| <i>Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No</i> | No. See table 2.1 | | |
| <i>If you stated yes above, please describe the circumstances under which they can access the labour market</i> | | | |
| Welfare | | | |
| <i>Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes / no</i> | No. See table 2.1 | | |
| <i>If you stated yes above, please briefly describe what these benefits are</i> | | | |
| <i>If you stated yes above, please briefly describe under what conditions these benefits can be provided</i> | | | |

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| Healthcare | | | |
|---|--------------------|--|--|
| <i>Are rejected asylum seekers who cannot be immediately returned entitled to healthcare? Yes /no</i> | Yes. See table 2.1 | | |
| <i>Does it include all healthcare or only emergency healthcare?</i> | | | |
| Education | | | |
| <i>Are rejected asylum seekers who cannot be immediately returned still entitled to participate in educational programmes and/or training? Yes / no</i> | No. See table 2.1 | | |
| <i>If you stated yes above, please briefly describe under what conditions they can participate in educational programmes and training</i> | | | |
| Other? | | | |
| <i>Are any other measures taken which are relevant to mention here? Please describe</i> | No. See table 2.1 | | |

Q24. In terms of status and/or rights, does your Member State make a difference between those who cannot return / be returned through no fault of their own and those who are considered to have hampered their own return? *Yes / No*

If yes, (i.e. if you differentiate between these two groups), please describe the reasons for this differentiation and the method used to distinguish the two.

No.

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

Art. 31.2 Royal Decree 203/1995⁶ states: "the foreigner whose asylum application has been rejected, may remain in Spain if this person meets the general requirements of the general immigration legislation."

However, it should be taken into consideration that there are not regularisations strictly speaking according current legislation. Nevertheless, what does exist it is an authorisation of temporary residence by exceptional reasons (art. 131 Organic Law 4/2000⁷ and art.123 Royal Decree 557/2011⁸). The circumstances specified in these rules are working, family or social rooting; international protection; humanitarian reasons; cooperation with public authorities; for national security reasons; and public interest. Each of these reasons involves different requirements, not easy to accomplish due to its own exceptional nature. In any case, there is not a legal ban to prevent rejected asylum seekers from applying for this procedure.

Q26. Does your Member State regularly assess the possibilities of return for rejected asylum seekers who could not immediately return / be returned? If so:

- a. what are the mechanisms for this assessment?
- b. How regularly is it undertaken?
- c. Which types of persons does it cover (i.e. does it cover all persons who cannot return / be returned or only those not granted a status)?
- d. Is there a point at which an alternative to return (e.g. regularisation) becomes possible? If so, on what criteria is it decided that the alternative to return should apply?

No.

Q27. Do you have any evidence that rejected asylum seekers who could not be immediately returned were eventually returned during the period 2011-2015? *Evidence may include government reports, studies conducted by research institutes or migrant rights groups or testimonies of returned individuals.*

No data available.

⁶ Royal Decree 203/1995 (February 10) Approving the Implementation Regulation of Law 5/1984 (March 26) Regulating Refugee Status and the Right to Asylum.

⁷ Organic Law 4/2000 (January 11) on the rights and freedoms of foreigners in Spain and their social integration.

⁸ Spanish Royal Decree 557/2011 (April 20), approving the Regulation of the Organic Law 4/2000 (January 11) on the rights and freedoms of foreigners in Spain and their social Integration.

Section 5: Linking return policy to the asylum procedure: Member States' policies and measures to ensure that unfounded claims lead to swift removal and to prepare asylum seekers for return

SECTION 5.1 ACCELERATED PROCEDURES

According to recital 20 of the recast Asylum Procedures Directive (Directive 2013/32/EU), "in well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive". Accelerated procedures can help Member States to facilitate a swift return for asylum seekers whose applications are likely to be rejected. This sub-section explores whether – and under what circumstances – Member States use accelerated procedures.

Q28. Did your Member State make use of accelerated asylum procedures, as stipulated in Art. 31 (8) of the recast Asylum Procedures Directive 2011-2015? *Yes / No*

If yes, for what reasons/in what circumstances does your Member State make use of such accelerated procedures? Please complete the table below *Please indicate in the "comments" column if the measure is no longer applied, describing, if possible, why the measure was discontinued.*

| Grounds for accelerating the examination procedure | Is it policy accelerate the examination procedure when the application presents these characteristics? <i>Yes/No</i> | If policy, is the policy applied in practice to date? <i>Yes/No</i> | How often does this happen in practice? <i>in all cases, most cases, some cases, rarely, never</i> | What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal? |
|---|---|--|---|---|
| Applicant only raised issues not relevant to the examination | No. | | | |
| Applicant is from a safe country of origin | No. | | | |
| Applicant can return / be returned to a safe third country in line with Art. 38 of the Asylum Procedures Directive or equivalent national law | No. | | | |
| Applicant misled the authorities by presenting false documents/information, | No. | | | |

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| | | | | |
|--|---|------|---------------|-----------|
| withholding of info/docs | | | | |
| Applicant destroyed documents intentionally to make assessment difficult | No. | | | |
| Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI) | No. | | | |
| Applicant lodged an inadmissible subsequent application | No. | | | |
| Applicant lodged an application to delay or frustrate enforcement of removal | No. | | | |
| Applicant irregularly entered the territory and did not present him/herself to the authorities | No. | | | |
| Applicant refuses to comply with the obligation to have his/her fingerprints taken | No. | | | |
| Applicant poses danger to national security or public order | No. | | | |
| Other? (please specify and add rows if necessary) | Applications at the border, in transit areas or in detention centres. | Yes. | In all cases. | Positive. |

Q29. Does your Member State have a list of safe countries of origin / safe third countries? Yes / no

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

No.

Returning Rejected Asylum Seekers: challenges and good practices

Q30. Does your Member State implement any other measures to ensure that unfounded claims lead to the swift removal of concerned persons? *Please describe such measures*

No.

Q31. Have there been any recent changes to policy or practice **to ensure that claims considered unfounded lead to swift removal** (e.g. these may include changes to policy or practices with regard to accelerated procedures and the use of a list of safe countries of origin and/or other measures)? *Yes / No*

If yes, what are these changes? Why were they introduced (please specify if in response to the exceptional increase in asylum applications since 2014)? What are the likely effect of these changes (in particular to what extent will they contribute to ensuring the swift removal of applicants with unfounded claims)?

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

No.

SECTION 5.2 PREPARING ASYLUM SEEKERS FOR RETURN

Q32. Is it part of your Member State's policy on return to, early on and throughout different stages in the asylum procedure, prepare asylum seekers for return should their application be rejected? *Yes / No* If yes, is this policy formalised in:

- a) official communications,
- b) soft law or is it
- c) standard practice of the authorities?

Please describe the main features of this policy / what it involves (e.g. informing asylum applicants of voluntary return opportunities, making AVR available to all asylum seekers).

*Please note that this question is about **policy**. Please do not provide here information on the different approaches to inform asylum seekers about (voluntary) return. Such information is available in the EMN study on dissemination of information on voluntary return and should not be duplicated here, but can be cross-referenced to.*

The asylum seeker is informed when he or she lodges an application that any return decision will be suspended until the final decision on the international protection is made. Additionally, the asylum seeker is always assisted by a lawyer during border procedures and can benefit from free legal assistance in ordinary procedures. This assistance will include the information about the consequences of asylum denial. Finally, the notification of the negative decisions regarding international protection applications refer to the fact that the asylum seeker could be, from that moment on, returned.

Returning Rejected Asylum Seekers: challenges and good practices

Q33a. Have any recent changes taken place in your Member State policies with regard to *the preparation of asylum seekers for return* during the asylum procedure (notably following the exceptional flows of asylum seekers arriving in the EU since 2014)? *Yes / No* If yes, please describe such changes

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

No.

Q34. If no specific approaches/measures are currently implemented, is your Member State planning to introduce a specific approach/measures to prepare asylum seekers for return whilst they are still in the asylum procedure?

Please specify when these will be implemented, explain what they will entail and further elaborate on their main drivers? *(E.g. new measures to reach out to newly arriving asylum applicants to inform them of return options will be introduced in July 2016 in response to the exceptional flows of asylum seekers arriving in my Member State).*

No.

Section 6: Conclusions

Q35. Based on your answers provided, does your Member State tailor its return policies to rejected asylum seekers, and if so, how?

Spain is implementing the same return policies, whether for rejected asylum seekers or irregular migrants. It should be taken into account that irregular migration has been an agenda priority for many years in Spain, owing to its quantitative significance.

This same policy can be observed in almost all aspects of return. The only difference is the availability of personal documents in the case of asylum seekers, because these are required in the asylum procedure itself.

In legal terms, if a rejected asylum seeker does not leave the country within the period specified in the resolution, provisions of general legislation of foreigners are applicable, with the same proceedings of return and precautionary measures.

While there is not a tailored policy to rejected asylum seekers, there is a real interest to ensure the return, with full regard for legal safeguards. The different measures taken try to cope with return related challenges: absconding, resistance to return, refusal of the origin or third country authorities, organisational issues or medical reasons. Nevertheless, two issues have defied the actions in place: the lack of cooperation by some countries and the abusive behaviours.

Q36. Based on the evidence provided, which practices or policies in your Member State can be described as good practice approaches to return rejected asylum seekers?

a) Cooperation with the countries of origin.

Spain has carried out negotiations on return agreements with some origin and transit countries. These agreements include material, economic and humanitarian support for these countries. There was a first generation of agreements, being limited to set the provisions for readmission. Afterwards, the agreements have broadened the scope, including issues related to management of migratory flows and development cooperation. Many examples can be mentioned: Nigeria (2001), Guinea-Bissau (2003 and 2009), Mauritania (2003); Gambia (2006), Guinea (2007), Cape Verde (2008), Mali (2008), Niger (2008), among others.

b) Support from interpreters to detect cases of assumed nationality

This practice applies both to asylum and migration procedures. In the case of asylum seekers is less relevant, due to the availability of documentation.

c) Improving statistical data exploitation and analysis

Since March 2016 statistical data about return decisions issued and enforced, concerning rejected asylum seekers, are being compiled and disaggregated by the Ministry of Interior. Considering the increase of asylum applications over the last two years in Spain, it seems necessary to enhance the statistical capacity.

Annex 1

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

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

Data are obtained from the National Police database on aliens, which, for each person, stores information concerning return procedures, residence permits, asylum applications, etc.

Only data for March, April and May 2016 have been extracted, concerning return decisions issued and enforced.

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

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



Annex 1_Common
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