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The Effectiveness of Return in Lithuania: challenges and good practices linked to EU rules and standards

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EMN STUDY



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Summary

Context. Unlawfully entering or illegally staying aliens are issued a return decision, which sets a period for voluntary departure during which an alien must depart on his own. A decision on expulsion is issued to aliens who fail to leave within the prescribed period for voluntary departure and on other grounds established by law (for example, an alien represents a threat to national security or public policy).

On average, Lithuania issues approximately 1 500 return decisions each year: in 2016, 1 571 decisions were issued, in 2015 – 1 469 decisions. The absolute majority of the decisions (87-90%) are enforced, and illegally staying aliens leave Lithuania within the set period.

Although currently Lithuania faces no systemic issues concerning return, the geography of the aliens returned is expanding and the number of the aliens detected without personal documents is increasing (since 2014, Lithuania has faced the issue of the return of citizens of Vietnam, because problems arise in establishing their identity and in obtaining travel documents), therefore, return issues remain topical.

Return Directive. The Return Directive was transposed into the Lithuanian legal framework on 1 February 2012. The Directive applies to all unlawfully entering and illegally staying aliens, except for those who have been refused admission into the territory of the Republic of Lithuania. Returns cover both voluntary departure and forced return. In accordance with the Law on the Legal Status of Aliens (hereinafter: the 'Law'), the following decisions are issued:

- *a return decision* (corresponds to the term 'voluntary departure/return' in the Return Directive), which specifies a period for voluntary departure and includes a warning that, unless the decision is complied with, an alien will be expelled from Lithuania. Return decisions may be issued by the Migration Department, the State Border Guard Service and the police. The enforcement of the decisions is controlled by the police and officers of the State Border Guard Service.

- **a decision on expulsion** (corresponds to the term ‘forced return’ in the Return Directive). Decisions on expulsion are issued by the Migration Department. The decisions are enforced by the State Border Guard Service or the police. The decision on expulsion is of unlimited duration, i.e., if an alien cannot be expelled due to objective circumstances or is not accepted by a third country, the enforcement of the decision on expulsion is suspended, however the decision remains in force until the expulsion of the alien or the change of his legal status.

Enforcement and suspension of the enforcement of return decisions and decisions on expulsion. A return decision or a decision on expulsion is issued in respect of all unlawfully entering or illegally staying aliens, except for the aliens who cannot be returned or expelled in accordance with the principle of non-refoulement. The return decision or the decision on expulsion can be issued only if an alien’s identity has been established. If the alien does not cooperate with the responsible authorities in establishing his identity and there is a ground for believing that he may abscond to avoid return or expulsion, he may be detained by a court decision.

In Lithuania, a temporary residence permit may be issued to the unaccompanied minors who cannot be returned, to the aliens who cannot leave for humanitarian reasons and to the aliens to whom the principle of non-refoulement applies.

If a foreign state refuses to accept an alien, he is in need of basic medical aid or he cannot be expelled for objective reasons, the enforcement of the decision on expulsion is suspended. If one year has lapsed after the issue of the decision to suspend the expulsion and the alien has not been detained, he may be issued a temporary residence permit valid for one year. In the event of a change in the circumstances, the decision on expulsion must be enforced without delay.

Voluntary departure. A return decision specifies a period for voluntary departure and includes a warning that, unless the decision is complied with, an alien will be expelled from Lithuania. The duration of the period for voluntary departure is between 7 to 30 days. This period may be extended depending on the specific circumstances of the particular case (for example, the length of stay, whether the alien has children attending school, and whether there exist other family and social ties), but may not exceed 60 days. The granting of the period for voluntary departure may be refused or a period shorter than seven days is granted if there is a ground for believing that an alien may abscond in order to avoid return.

Detention. In a return procedure, an alien may be detained only if the detention is necessary for the issue and/or enforcement of a return decision or a decision on expulsion (for example, if an alien hampers the issue and/or enforcement of the decision, may abscond to avoid return, expulsion or transfer).

An alien may be detained for a period exceeding 48 hours only by a court decision. Detained aliens are accommodated at the Foreigners’ Registration Centre. On average, approximately 300 aliens are detained in Lithuania annually by court decisions. An alien may be detained for a period of up to six months. If the alien does not cooperate with the responsible authorities, the period of detention may be extended for a further 12 months. The maximum length of detention may not exceed 18 months. Upon the expiry of this period, the alien must be released from a detention facility without delay.

Alternatives to detention. The court, when deciding on the detention of an alien, decides at the same time on the possibility of providing an alternative to detention. Having regard to the fact that an alien’s identity has been established, he does not represent a threat to national security and public policy and assists the court, the court may provide the alternative to detention (for example, the obligation to periodically report to a police station at a specified time).

Control of the enforcement of return decisions. The enforcement of returns is controlled by the police and the State Border Guard Service. When an alien departs via a border crossing point, the officers of the SBGS mark that the alien has left and forward a decision to the authority which has issued it. If the authority which has issued the decision does not receive the enforced decision, it must take steps to ascertain that the alien has left (check databases, visit the alien’s place of residence, etc.). If the alien has departed across the external border of the neighbouring Member States it is possible to check his departure only by making special enquiry via the national coordination centre or contact points.

Entry bans. A decision on expulsion is issued together with an entry ban, but the length of the entry ban is determined individually. If a return decision is issued, then the entry ban is not imposed in this decision, however, the entry ban may, having regard to all the relevant circumstances of the particular case, be imposed upon such an alien by a separate decision (return decisions are issued by the police, the SBGS and the Migration Department, and entry-ban decisions – only by the Migration Department). The length of the entry ban is determined on a case-by-case basis, having due regard to all the relevant circumstances of the particular case. In practice,

the most common length of entry bans is one to three years. The maximum length is five years. If an alien represents a threat to national security or public policy, he may be banned from entry for a period exceeding five years.

Detention and return of vulnerable persons. Vulnerable persons and families with minors may be detained only in exceptional cases having regard to the best interest of a child and the vulnerable persons. The Law provides for certain derogations regarding the return of vulnerable persons (a return decision, rather than a decision on expulsion, is issued to vulnerable persons, even if they have unlawfully entered or are illegally staying in the country and agree to voluntarily return assisted by an international or non-governmental organisation). Unaccompanied minors, regardless of their legal status in the country, may be returned only provided that they will be duly taken care of in the foreign state to which they are returned.

Appeal against decisions. An alien may appeal to the court against decisions on return, expulsion or detention. An appeal may be filed with an administrative court within 14 days from the service of a decision upon the alien. The court must examine the appeal not later than within two months. A decision adopted by this court may be appealed against within 14 days to the Supreme Administrative Court of Lithuania. A decision of this court is final and not subject to appeal.

Recognition of decisions and a European travel document. Lithuania recognises the decisions on expulsion issued by other Member States. Nevertheless, neither EU legislation nor the national law of Lithuania stipulates that an alien holding a return decision issued by one Member State may, in complying with this decision, pass in transit through the territory of other Member States. This means that the return decisions issued by the EU Member States are valid only within in the territory of the issuing Member State. Lithuania decides on the issues of return or expulsion of aliens based on provisions of the Law. Legal acts provide that Lithuania may issue a European travel document to third-country nationals.

Key judicial decisions. The Supreme Administrative Court of Lithuania has found in the case of 3 August 2017 that, according to the Return Directive, priority should be given to voluntary return against forced return and an alien should be granted a period for voluntary departure, except for exceptional cases (for example, when there is a ground for believing that the alien may abscond). The Court has ruled that the current legal regulation, under which a return decision in respect of unlawfully entering aliens may be issued only under certain additional conditions (when an alien is a vulnerable person or an asylum applicant or an alien who has not been granted asylum and who agrees to return assisted by an international or non-governmental organisation), is not appropriate. The Court has noted that in all cases when there is no likelihood of adversely affecting the objectives of the return procedure, priority must be given to the voluntary return procedure and a return decision must be issued. In the absence of a prior return decision granting a period for voluntary departure, a decision on expulsion may be issued only if it indicates the reasons for which a more stringent measure, namely, expulsion, is selected.

1.

Overview of the National
Situation Concerning the
Return of Third-Country
Nationals

Question (further – Q) 1. Please provide an overview of the national measures implementing the Return Directive (including judicial practices, interpretations and changes related to case law concerning the Return Directive) in Lithuania.

The Law Amending and Supplementing Articles 2, 19, 77, 113, 114, 125, 126, 127, 128, 129, 132, 133 and 139 of and the Annex to the Law on the Legal Status of Aliens (hereinafter: the ‘Law’), which transposed 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 (hereinafter: the ‘Return Directive’), entered into force on 1 February 2012.

Subsequent amendments to the Law were adopted to ensure the proper implementation of the Return Directive:

- Law No XII-548 of 10 October 2013 (the Law stipulates the possibility for the aliens who are vulnerable persons or asylum applicants and who have unlawfully entered and are illegally staying in the country to return voluntarily to the country of origin with the assisted by an international or non-governmental organisation);
- Law No XII-1396 of 9 December 2014 (the Law establishes criteria for determining that an alien may abscond in order to avoid return to a foreign state or expulsion from the Republic of Lithuania; provides for the possibility of setting a shorter period within which the alien is obliged to voluntarily leave the Republic of Lithuania or not granting such a period if there is a ground for believing that the alien may abscond; indicates the circumstances under which the time limit for the alien to voluntarily depart from the Republic of Lithuania can be extended; establishes that the Ministry of the Interior together with international and non-governmental organisations carries out the monitoring of the expulsion of aliens from the Republic of Lithuania).

Moreover, the Order of the Minister of the Interior on the Approval of a Description of the Procedure for Issuing and Enforcing Decisions on Placing of Aliens under the Obligation to Leave, Aliens’ Expulsion, Return and Passing in Transit through the Territory of the Republic of Lithuania¹ (hereinafter: the ‘Return Description’) has been supplemented with provisions of the Return Directive.

Key judicial decisions:

- One of the most important court decisions on the return of aliens is the case of 31 October 2012² heard by the Supreme Administrative Court of Lithuania, in which it is established that the issue of the legal status of an alien is to be settled in a single administrative procedure. The Court has ruled that in the Republic of Lithuania, the issue of granting or refusal of asylum to an alien and his expulsion or non-expulsion from the Republic of Lithuania is resolved in a single administrative procedure (this corresponds to the provision of Article 6(6) of Directive 2008/115/ EC permitting the Member States to adopt a decision on the ending of a legal stay together with a return decision and/or a decision on expulsion and/or entry ban in a single administrative or judicial decision or act). According to this decision, the issue of granting or refusing to grant asylum and return or expulsion of the alien is resolved in one administrative decision.
- Another important court decision related to the return or expulsion of unlawfully entering or illegally staying aliens has been adopted by the Supreme Administrative Court of Lithuania in a case of 3 August 2017³. The Court has found that, according to the Return Directive, priority should be given to voluntary return against forced return and an alien should be granted a period for voluntary departure, except for exceptional cases (for example, when there is a ground for believing that the alien may abscond). The Court has ruled that the current legal regulation, under which a return decision in respect of unlawfully entering aliens may be issued only under certain additional conditions (when an alien is a vulnerable person or an asylum applicant or an alien who has not been granted asylum and who agrees to return assisted by an international or non-governmental organisation), is not appropriate. The Court has indicated that in all cases when there is no likelihood of adversely affecting to the objectives of the return procedure, priority must be given to the voluntary return procedure and a return decision must be issued. In the absence of a prior return decision granting a period for voluntary departure, a decision on expulsion must first assess the possibilities for voluntary departure or indicate the reasons for which a more stringent measure, namely, expulsion, is selected.

¹ The version of Order No 1V-382 of the Minister of the Interior of 15 May 2012, as subsequently amended, is currently in force.

² Decision of the Supreme Administrative Court of Lithuania of 31 October 2012 in Case No N-575-1297-12

³ Decision of the Supreme Administrative Court of Lithuania of 3 August 2017:

<http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=fa69ad8b-0337-4309-bbe0-143a69ff9cf5>

Q2. [EC Recommendation (8)] Does Lithuania make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?⁴

Lithuania has made use of the possibility, as provided for in Article 2(2)(a) of the Return Directive, not to apply the provisions of the Return Directive to those aliens who are subject to a refusal of admission into Lithuania under the decisions of the State Border Guard Service refusing an alien's admission, i.e., only to the aliens who are not present on the territory of Lithuania.

Lithuania has also made use of the possibility provided in Article 2(2)(b) of the Return Directive.

If Yes, please describe:

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

Lithuania has made use of the possibility, as provided for in Article 2(2)(a) of the Return Directive, not to apply the provisions of the Return Directive to those aliens who are subject to a refusal of admission into Lithuania under the decisions of the State Border Guard Service refusing an alien's admission, i.e., only to the aliens who are not staying on the territory of Lithuania. The entry of aliens into Lithuania across the external border of the European Union, also across the internal border of the European Union, when its control is temporarily reintroduced, is controlled by the State Border Guard Service. Officers of the State Border Guard Service must, when admitting an alien into the Republic of Lithuania, determine whether he fulfills the conditions laid down in the Schengen Borders Code and whether there are any grounds, as established in the Schengen Borders Code, precluding the alien's entry to Lithuania. According to Article 8 of the Law, a decision to refuse the alien admission into Lithuania is issued by the State Border Guard Service. The decision refusing the alien's admission into Lithuania is not issued in respect of an alien who has lodged an application for asylum in Lithuania. If the decision refusing admission is issued, decisions on return (whether voluntary or forced) are not issued, because the alien is not staying on the territory of Lithuania.

Lithuania has also made use of the possibility provided in Article 2(2)(b) of the Return Directive. The Criminal Code of the Republic of Lithuania does not stipulate any sanctions which would have return as their constituent element or as a consequence of the application of a sanction. As extradition is carried out in Lithuania under international agreements, the Return Directive does not apply (Article 144 of the Law stipulates that if international treaties of the Republic of Lithuania stipulate other provisions than the Law, the provisions of the international treaties apply).

If an alien is staying on the territory of Lithuania, the issue of his return to a foreign state is resolved in accordance with provisions of the Law.

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

There have not been any major changes, national regulation and practices are in line with the Commission Recommendation.

Q4. Is the return of irregularly staying third-country nationals a priority in Lithuania?

Yes. At the political level, the position of the State on return is clearly stated. The Lithuanian Migration Policy Guidelines approved by Resolution No 29 of the Government of the Republic of Lithuania of 22 January 2014 list the key priorities of the country's migration policy. One is "to ensure the effective implementation of the policy of the return of aliens to the countries

⁴ Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b)).

of origin or to the foreign states to which they are entitled to depart and the readmission of illegally staying third-country nationals, while fully respecting the fundamental human rights and allowing them to depart with dignity, to promote voluntary return and thus save state funds” (sub-point 22.3.4).

According to experts, despite arising difficulties with individual cases of the aliens who cannot be returned/expelled, return is not a systemic issue in Lithuania. There are not many such aliens, and the majority of the cases are individual situations when the country of origin does not issue travel documents.

For the last several years, Lithuania has faced the issue of the expulsion of citizens of Vietnam. There is no embassy of the Socialist Republic of Vietnam in Lithuania and there is no agreement on readmission with Vietnam. In addressing the issue of a person’s identification and obtaining of travel documents, Lithuania cooperates with the embassy of the Socialist Republic of Vietnam in Poland. In some cases, the issue of a travel document takes longer than six months, and there have also been the cases of the embassy failing to provide official responses to enquiries about the persons who introduced themselves as being citizens of Vietnam but were not in possession of any identity documents. In such cases, it is not possible to enforce a decision on expulsion.

There have also been isolated cases when an alien could not be returned to the country of origin in accordance with the principle of non-refoulement and could neither be issued a temporary residence permit in Lithuania on grounds of representing a threat to national security. At the moment, these are isolated cases, but the number of such cases may increase in the future.

2.

Systematic Issuance of
Return Decisions

Q5. Who are the competent authorities to issue a return decision in Lithuania?

According to Article 127 of the Law:

- a decision on the expulsion of an alien from the Republic of Lithuania (i.e., on forced return) is issued by the Migration Department and is enforced by the police and the State Border Guard Service.
- a decision on the return of an alien to a foreign state (i.e., on voluntary return) is issued by the Migration Department, the police or the State Border Guard Service, and its enforcement is controlled by the police and the State Border Guard Service. Return decision can be issued by:
 - a police authority within the territory in which the alien is staying or resides or is detained, is arrested, is subject to administrative arrest or is serving arrest or custodial sentence;
 - a unit of the State Border Guard Service, within the territory in which the alien is staying or resides or is detained;
 - the Migration Department, if it establishes, when issuing a decision to refuse to asylum in the Republic of Lithuania, to terminate the examination of an application for asylum in the Republic of Lithuania or to withdraw the granted asylum in the Republic of Lithuania, that there is a ground for issuing a decision on the return of the alien as specified in Article 125(1) of the Law.

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

- **The whereabouts of the third-country national concerned are unknown**

No. When the whereabouts of an illegally staying third-country national are unknown, a decision to return him is not automatically issued. For a decision on the return of the alien (i.e., voluntary return) or a decision on his expulsion (i.e., forced return) to be issued, it is necessary to collect documents substantiating the ground for the issue of such a decision, therefore the alien must be interviewed and the alien's interview sheet must be filled out. However, this does not apply in the cases when, based on an assessment by the State Security Department of the Republic of Lithuania, the Police Department under the Ministry of the Interior of the Republic of Lithuania or the State Border Guard Service, the alien needs to be expelled without delay on grounds of representing a threat to national security, public policy or the community and thus it is objectively impossible to collect and obtain the mentioned information. In accordance with points 31.2 and 56.1 of the Return Description, an alien must be familiarised with both a return decision and a decision on expulsion in a language which he understands and must sign it. Since aliens are detained only as a measure of last resort, in practice there occur cases when the aliens who have not been detained may abscond (change their place of stay or residence), therefore there may be no possibility of familiarising them with the decision until they are found.

- **The third-country national concerned lacks an identity or travel document**

No, a decision is issued. If the grounds for issuing a return decision or a decision on expulsion as stipulated in Article 125 or Article 126 of the Law are established, the return decision or the decision on expulsion is issued also in the cases when an alien is not in possession of a document confirming his identity or a travel document. If the alien is not in possession of a valid travel document and cannot obtain such a document for objective reasons (there is no diplomatic mission or consular post of that foreign state in Lithuania, etc.), a police authority or the State Border Guard Service, which collects the documents regarding the return or expulsion of the alien, acts as an intermediary when the alien is applying to the diplomatic mission or consular post of the foreign state concerned regarding the issue of the travel document to return to the foreign state or addresses the diplomatic mission or consular post of the foreign state concerned. In certain cases (if there is no diplomatic mission or consular post of the alien's country of origin in the Republic of Lithuania and if the foreign state to which the alien is expelled or returned agrees to accept him under this document), a European travel document for the return of illegally staying third-country nationals⁵ may be issued. If the circumstances, as established in the Law, due to which the enforcement of the decision on the alien's expulsion is suspended transpire and these circumstances do not disappear within ten days after their transpiration, the authority enforcing the decision on the alien's expulsion immediately gives a written notice to

⁵ A European travel document for the return of illegally staying third-country nationals of the model set out in the Annex to Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994.

the Migration Department, which has issued the decision on expulsion, and the latter immediately issues a decision to suspend the enforcement of the decision on the alien's expulsion until the disappearance of the reasons for suspending the enforcement of the decision.

- Other

A return decision or a decision on expulsion is not issued if an alien's identity is not established. If the alien does not cooperate in establishing his identity and/or citizenship, this may be considered as a ground for believing that the alien may abscond and that detention is necessary for the issue or enforcement of the return decision or the decision on expulsion. Thus, such an alien may be detained in order to avoid absconding, and the return decision or the decision on expulsion is issued upon establishing his identity.

Q6b. In connection with Q6a a) above, does Lithuania have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown? If Yes, please elaborate on the type of measures.

The stay and residence of aliens in Lithuania are controlled by the police, the Migration Department and the State Border Guard Service. The officers of the State Border Guard Service together with the police carry out targeted preventive measures. Upon establishing that an alien is staying illegally in Lithuania and if there exist grounds for the return or expulsion of the alien as stipulated by the Law, the police or the officers of the State Border Guard Service immediately assess whether the detention of the alien is necessary for the issue or enforcement of such a decision, i.e., whether there are grounds for detention and a ground for believing that the alien may abscond, and, in such a case, apply to the court for the imposition of detention or an alternative to detention. Such an immediate assessment is apparently justified, as the vast majority of return and expulsions decisions are enforced.

In 2016, 1 571 return decisions were issued, 87% of these decisions were enforced (in 2015, 1 469 decisions were issued, 90% of them were enforced); in 2016, 202 decisions on expulsion were issued, 83% of these decisions (167 decisions) were enforced (in 2015, 433 decisions were issued, 99% of them were enforced).

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

Yes. If the officers of the State Border Guard, when conducting an exit check of aliens, establish the fact that an alien is staying illegally and there is a ground, as stipulated by the Law, for issuing a return decision (i.e., voluntary return), this decision is issued at a border crossing point. If the return decision cannot be issued and a decision on expulsion must be issued (for example, if the alien has not departed during the period for voluntary departure granted in the return decision), documents are submitted to the Migration Department for the issue of the decision on expulsion. In this case, it is possible that aliens will be detained for up to 48 hours or, under appropriate circumstances, for more than 48 hours by a court decision and then accommodated at the Foreigners' Registration Centre.

Q7. [EC Recommendation (5) (c)] In Lithuania, is the return decision issued together with the decision to end the legal stay of a third-country national? If No, when is the return decision issued?

Yes. If the Migration Department, when issuing a decision not to grant asylum to an alien in Lithuania, to terminate the examination of an application for asylum in Lithuania or to withdraw the granted asylum in Lithuania, establishes that there is a ground, as stipulated by the Law, for issuing a return decision (i.e., voluntary return) or a decision on expulsion (i.e., forced return), it issues the return decision or the expulsion decision together with the former decision. If the Migration Department, when issuing a decision not to issue a residence permit in Lithuania to an alien, to revoke the issued residence permit in Lithuania or the right of the alien to temporarily or permanently reside in Lithuania, establishes that there is a ground, as stipulated by the Law, for issuing a decision on expulsion (i.e., forced return), it issues the decision on expulsion together with the former decision. It should be noted that in certain cases it is not possible to issue a return decision until the decision to end aliens' legal stay becomes effective (for example, when a decision to revoke a residence permit is appealed to court). If the court issues the final negative decision, then the return decision is issued.

Q8. Does the legislation in Lithuania foresee the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on their territory? If Yes, please elaborate on the type of permit/ authorisation granted and to which type of third-country national it is granted.

No. Certain reasons may form a separate ground for obtaining a temporary residence permit in Lithuania, but there is no autonomous type of a residence permit or another document granting the right to reside in Lithuania for illegally staying aliens.

A temporary residence permit in Lithuania may be issued if, inter alia, an unaccompanied minor is not returned to a foreign state, an alien cannot leave Lithuania for humanitarian reasons (illness, another acute health disorder or condition of the alien's organism, a personal reason which the alien could not foresee and avoid, force majeure due to which the alien is unable to leave the Republic of Lithuania), an alien cannot be returned to a foreign state or expelled from Lithuania in accordance with the principle of non-refoulement or the enforcement of the expulsion of the alien from Lithuania is suspended due to the circumstances specified in Article 132(1) of the Law.

Pursuant to Article 132(1) of the Law, if the enforcement of a decision to expel an alien is suspended due to the following circumstances:

- the foreign state to which the alien may be expelled refuses to accept him;
- the alien is in need of basic medical aid, the necessity of which is confirmed by the medical advisory committee of a health care institution;
- the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.),

and these circumstances do not disappear within one year after the suspension of the enforcement of the decision to expel the alien from Lithuania and the alien has not been detained, he is issued a temporary residence permit. After the lapse of one year, when the alien applies for the renewal of a temporary residence permit, the alien is subject to re-assessment of the possibility to expel him.

Q9a. [EC Recommendation (6)] In Lithuania, do return decisions have unlimited duration? If No, for how long are return decisions valid?

In Lithuania, two types of return decisions are issued:

- a return decision (i.e., voluntary return), which provides for a period during which an alien is required to voluntarily depart from Lithuania;
- a decision on expulsion (i.e., forced return), which is issued if the alien is not granted the period for voluntary departure on grounds of a risk of absconding or if the alien fails to depart during the period specified in the return decision. The decision on expulsion has unlimited duration. If the enforcement of a decision on expulsion is suspended for the reasons provided for by the Law, the decision remains in force and must be enforced after the circumstances leading to its suspension disappear.

Q10. Does Lithuania have any mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of refoulement before enforcing a removal? If Yes, please describe such mechanism.

Yes. Article 128 of the Law lists the circumstances which must be taken into account when issuing a decision to expel an alien from the Republic of Lithuania:

- the length of his stay in the Republic of Lithuania;
- the family relationship with persons residing in the Republic of Lithuania;
- existing social, economic and other ties with the Republic of Lithuania, also whether he has minor children studying under a formal education programme/programmes in the Republic of Lithuania;

- the nature and extent of dangerousness of the committed offence.

Article 130 of the Law stipulates the cases when it is prohibited to expel or return an alien:

- It is prohibited to expel or return the alien to a state where his life or freedom is in danger or where he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a state from where he may later be expelled to such a state⁶;
- The alien is not expelled or returned to a state where there are serious grounds for believing that in that state the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment; the alien is not expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court.

Q11. [EC Recommendation (7)] Does Lithuania systematically introduce in return decisions the information that third-country nationals must leave the territory of Lithuania to reach a third country?

Yes. Return decisions (i.e., decisions on voluntary return) are issued in a set format which must indicate to what specific state and within what period a person must voluntarily depart. The decisions also include a warning that, in the event of a failure to depart from Lithuania within the specified period, a decision on expulsion will be issued. The decision on expulsion also indicates the state to which the alien is to be expelled.

An alien is informed that he must depart directly to a third country, but there occur cases when the aliens who leave independently buy a return ticket via another Schengen State and are unable to board the plane because they have no right for transit via another Schengen State with the return decision.

⁶ This provision does not apply to an alien who, for serious reasons, represents a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgment of a grave crime and constitutes a threat to the community.

3.

Risk of Absconding

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

Table 1. Assessment of the risk of absconding

Elements/behaviours	Yes/No	Comments
Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints	Yes	Point 1 of Article 113(5) of the Law: an alien is not in possession of an identity document and fails to cooperate in establishing his identity and/or citizenship (refuses to provide his personal data, provides false information, etc.).
Violent or fraudulent opposition to the enforcement of return	Yes	This provision is not explicitly stipulated in the Law, but all the relevant circumstances would be assessed when issuing decisions. Article 114(5): An alien may not be detained for a period in excess of six months, with the exception of the cases when he does not cooperate in the process of his expulsion from the Republic of Lithuania (refuses to provide his personal data, provides false information, etc.) or when the documents required for the expulsion of such an alien from the State's territory are not received. In such cases, the period of detention may be extended for an additional period not exceeding 12 months.
Explicit expression of the intention of non-compliance with a return decision	Yes	Such a criterion is not explicitly stipulated in the Law, but could be applied on the basis of the circumstances provided for in this Law: Point 1 of Article 113(5): an alien fails to cooperate in establishing his identity and/or citizenship (refuses to provide his personal data, provides false information, etc.); Point 6 of Article 113(5): the person fails to comply with the alternative to detention imposed by the court; Point 7 of Article 113(5): an alien accommodated at the Foreigners' Registration Centre without restricting his freedom of movement has violated the procedure for temporary absence from the Foreigners' Registration Centre.
Non-compliance with a period for voluntary departure	Yes	Point 5 of Article 113(5) of the Law: the person failed to voluntarily leave the Republic of Lithuania within the time limit stipulated in a return decision.
Conviction for a serious criminal offence in the Member States	Yes	According to the criteria of the Police Department assessing a threat to public policy.
Evidence of previous absconding	Yes	Such a criterion is not explicitly stipulated in the Law, however courts, when deciding on the detention of an alien, take into account all factual circumstances, and the evidence of previous absconding may be considered as a risk of absconding.
Provision of misleading information	Yes	Point 1 of Article 113(5): an alien fails to cooperate in establishing his identity and/or citizenship (refuses to provide his personal data, provides false information, etc.).
Non-compliance with a measure aimed at preventing absconding	Yes	The provisions of points 6 and 7 of Article 113(5) of the Law stipulate that the situation when an alien fails to comply with an alternative to detention provided by a court decision or violates the procedure for

		temporary absence from the Foreigners' Registration Centre of the State Border Guard Service is considered as a risk of absconding.
Non-compliance with an existing entry ban	Yes	This provision is not explicitly stipulated in the Law, but all the relevant circumstances would be assessed when issuing decisions.
Lack of financial resources	Yes	Point 4 of Article 113(5) of the Law: the person does not possess means of subsistence in the Republic of Lithuania.
Unauthorised secondary movements to another Member State	Yes	This provision is not explicitly stipulated in the Law, however if the court decides on the detention of an alien, it will take into consideration all the factual circumstances of the particular case: whether the person's identity has been established, whether the alien assists authorities in determining his legal status, whether he has departed from Lithuania without an authorisation pending a final decision, whether the alien's explanations contradict each other, whether he has been returned by another Member State under the Dublin Regulation, whether his stay represents a threat to security and public policy, etc.
Other		In addition to the above-mentioned circumstances, pursuant to Article 113(5) of the Law, when deciding whether there is a ground for believing that an alien may abscond, the following circumstances are also assessed: 1) the person does not have a place of residence in the Republic of Lithuania or is absent from/does not reside at the indicated address of the place of residence; 2) the person does not have family relationship with persons residing in the Republic of Lithuania or social, economic or other ties with the Republic of Lithuania; 3) in order to escape criminal liability for illegal border crossing, the person has lodged an application for asylum pending pre-trial investigation against him; 4) the alien's stay in the Republic of Lithuania may represent a threat to public policy; 5) pending the examination of his application for asylum, the person fails to cooperate with civil servants and employees of the competent authorities.

Q13. What measures are in place in Lithuania to avoid the risk of absconding for the duration of the period for voluntary departure?

- Regular reporting to the authorities
- Deposit of an adequate financial guarantee
- Submission of documents
- Obligation to stay at a certain place
- Other

The measures listed in the question do not apply at the time of voluntary departure.

If there is a ground for believing that an alien may abscond in order to avoid return to a foreign state, a period shorter than seven days during which the alien is obliged to voluntarily leave the Republic of Lithuania may be determined in a decision to return the alien to the foreign state, or the period for voluntary departure is not granted and a decision on expulsion is issued.

If the risk of absconding transpires after granting the period for voluntary departure, the authorities refer to the court for the imposition of detention or provision of an alternative to detention.

Q14. Please indicate any challenges associated with the determination of the existence of a risk of absconding in Lithuania.

The Law of 9 December 2014 establishes criteria for deciding whether aliens may abscond in order to avoid return to a foreign state or expulsion from the Republic of Lithuania. The amendments came into effect on 1 March 2015. Until the adoption of the amendments, courts, when deciding to detain an alien/determining his legal status in Lithuania, took account of all the circumstances and comprehensively assessed all the criteria (whether the alien's identity has been established, whether the alien may hamper the issue or enforcement of the decision, whether there is a ground for believing that the person abuses the asylum procedure, whether the alien assists the authorities in determining his legal status, whether he has departed from Lithuania without an authorisation pending a final decision, whether the alien's explanations contradict each other, whether he has been returned by another Member State under the Dublin II Regulation, whether his stay represents a threat to security and public policy, etc.).

Q15. Please describe any examples of good practice in Lithuania's determination of the existence of a risk of absconding, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation.

N/a.

4.

Effective Enforcement of
Return Decisions

Q16. [EC Recommendation (11)] Does national legislation in Lithuania foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes? If Yes, please specify to whom such sanctions apply and their content.

No.

In accordance with Article 206 of the Code of Administrative Offences, a breach of the procedure for aliens' entry into the Republic of Lithuania, stay or residence in it, transit through it or departure from it is punishable by a warning or a fine in the amount from 72 up to 289 euros.

4.1. MUTUAL RECOGNITION

Q17a. [EC Recommendation (9) (d)] Does Lithuania systematically recognise return decisions issued by another Member State to third-country nationals present in the territory?

Yes. Lithuania has transposed into national legislation the provisions of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals and recognises the decisions on expulsion (i.e., forced return) issued by other Member States. However, neither EU legislation nor the national law of Lithuania stipulates that an alien holding a voluntary return decision issued by one Member State may, in complying with the decision, pass in transit through the territory of other Member States. This means that the decisions on voluntary departure issued by the EU Member States are valid only within the territory of the issuing Member State, while other Member States can only recognise such a decision (if they decide so in accordance with their national legislation) and allow the alien to pass in transit without any additional formalities through their territories or to depart across their external borders.

This means that Lithuania, having detected an alien who is not authorised to stay or reside in Lithuania and who passes in transit through the territory of Lithuania or who intends to depart from Lithuania across its external border in complying with a decision on voluntary return issued by another Member State, resolves the issue of the legal status of this alien in accordance with the provisions of the Law and issues either a new decision on the return of the alien or a decision on his expulsion.

Q17b. If Yes, does Lithuania:

- Initiate proceedings to return the third-country national concerned to a third country
- Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision
- Other

National legal acts stipulate that, in the event of detection in Lithuania of an alien in respect of whom another Member State has issued a decision on expulsion (i.e., forced return), the Member State which has issued the decision on expulsion is consulted regarding the enforcement of this decision and the Migration Department issues a national decision on the enforceability of the decision on expulsion issued by another Member State.

However, in practice, no decisions have been issued regarding the enforceability of a decision issued by another Member State, since the procedure for obtaining information on the return decisions issued by other Member States has not been established and an appropriate communication mechanism has not been developed.

Q17c. If No, please specify the reasons why Lithuania does not recognise return decisions issued by another Member State

N/a.

4.2. TRAVEL DOCUMENTS

Q18a. [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?⁷ If Yes, in which cases do you issue these documents?

Yes. If an alien is not in possession of a valid travel document and a decision has been issued to expel him or to return him on the ground stipulated in point 7 of Article 125(1)⁸ of the Law on the Legal Status of Aliens or if there is a case referred to in Article 125(3)⁹ of this Law, the alien is issued a European travel document of a specified model for the return of illegally staying third-country nationals (hereinafter: a 'European travel document').

This document is issued if there are no diplomatic missions or consular posts of the alien's country of origin in the Republic of Lithuania and if a foreign state agrees to accept him under this document.

Q18b. If Yes, are these documents generally accepted by third countries?

There have not been any cases in Lithuania yet when a European travel document could be issued. There occur cases when travel documents are not received for citizens of Vietnam, but given the fact that there is no readmission agreement with Vietnam, which would impose on Vietnam an obligation to accept its citizens under a European travel document, European travel documents have not been issued.

Q19. In Lithuania, what is the procedure followed to request the third country of return to deliver a valid travel document/ to accept a European travel document? Please briefly describe the authorities responsible for carrying out such requests and the timeframe within which these are lodged before third countries.

European travel documents may be issued to third-country nationals only under separate agreements (Lithuania does not have any such agreement). Travel documents are requested on the basis of a readmission agreement (the authority responsible for the implementation of readmission agreements is the Migration Department, however before the implementation of the readmission agreement an implementing protocol must be signed identifying the responsible authorities, etc.). Another option is to contact the embassy of a third country with a request to issue a travel document by submitting appropriate documents, which is done by the institution in charge of an alien (usually the Foreigners' Registration Centre). All procedures concerning the identification and documentation of aliens are carried out as speedily as possible in order to shorten the time spent by the aliens at the Foreigners' Registration Centre.

4.3. USE OF DETENTION IN RETURN PROCEDURES

Q20a. [EC Recommendation (10) (a)] In Lithuania, is it possible to detain a third-country national within the context of the return procedure?

⁷ Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994, OJ L 311, 17.11.2016

⁸ The alien has unlawfully entered the Republic of Lithuania or is illegally staying in it, however he is a vulnerable person, an asylum applicant or an alien who has been refused asylum and who agrees to voluntarily return to a foreign state assisted by an international or non-governmental organisation.

⁹ It shall be possible not to take a decision to return an alien to a foreign state or to impose an obligation to leave the Republic of Lithuania where under an international treaty on the return/readmission of illegally staying persons to which the Republic of Lithuania is a party the alien illegally staying in the Republic of Lithuania is received by:

- 1) an EU Member State, where this treaty entered into force before 13 January 2009;
- 2) a state other than an EU Member State.

Yes. In the ruling of 5 February 1999, the Constitutional Court of the Republic of Lithuania has held that the detention of a person is a measure of last resort (*ultima ratio*) and may only be applied in the cases when the goals set by laws cannot be achieved by any other means. An alien may be detained for more than 48 hours only by a court decision.

Article 113(2) of the Law provides that, when deciding on the return of an alien, the alien may be detained only if the detention is necessary for the issue and/or enforcement of the relevant decision (if the alien hampers the issue and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer).

An asylum applicant may be detained only on the grounds provided for in Article 113(4) of the Law:

- in order to establish and/or verify his identity/citizenship;
- to identify the grounds underlying his application for asylum (the information on the grounds could not be obtained without detaining the asylum applicant), also when [...] there are grounds for believing that he may abscond to avoid return to a foreign state or expulsion from the Republic of Lithuania;
- when an alien lodges an application for asylum at the time of deciding on his return, and there is a serious ground for believing that the application has been lodged for the sole purpose of suspending or hampering the enforcement of a decision to return him to the foreign state, and the alien already had access to the asylum procedure;
- in accordance with Article 28 of Regulation (EU) No 604/2013;
- when the asylum applicant represents a threat to national security or public policy.

Vulnerable persons¹⁰ and families with minor aliens may be detained only in exceptional cases having regard to the best interest of a child and the vulnerable persons.

The Lithuanian case law adheres to the principle that “[...] vulnerable persons and families with minor aliens may be detained only in exceptional cases having regard to the best interests of a child and the vulnerable persons. [...] although the objective circumstance that an asylum applicant, while grossly ignoring explicit prohibitions, attempted to depart from the Republic of Lithuania without a valid travel document, may be a ground for restricting his freedom of movement within the Republic of Lithuania, including the imposition of detention; such a measure may be imposed against a person being under the obligation to take care of the minors who reside together with him and whose living conditions are also significantly affected by the imposition of such a measure against the person being under the obligation to take care of them only in exceptional cases, i.e., when both the ground for the measure of detention is exceptional (a threat to national security, etc.) and when there is no other alternative (the person violates an alternative provided to him, etc.). [...]”¹¹

Unaccompanied minors as other vulnerable persons may only be detained in an exceptional case considering the best interest of a child. In practice unaccompanied minors are not detained and they are accommodated at a social institution, namely, the Refugee Reception Centre by a decision of the State Child Rights Protection and Adoption Service.

Q20b. If Yes, please specify the grounds on which a third-country national may be detained:

- If there is a risk of absconding: Yes
- If the third-country national avoids or hampers the preparation of a return or removal process: Yes
- Other

Article 113 of the Law provides an exhaustive list of grounds for detention:

1. An alien may be detained on the following grounds:
 - 1) in order to prevent the alien from entering the Republic of Lithuania without a permit;
 - 2) the alien has unlawfully entered the Republic of Lithuania or illegally stays in it;

¹⁰ Vulnerable person means a person with special needs (such as a minor, a disabled person, a person over the age of 75, a pregnant woman, a single parent with minor children, a person suffering from mental disorders, a victim of trafficking in human beings or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

¹¹ Decision of the Supreme Administrative Court of Lithuania of 12 February 2015 in Administrative Case No A-1798-624/2015

- 3) when it is attempted to return the alien who has been refused admission into the Republic of Lithuania to the country from which he arrived;
 - 4) when the alien is suspected of using counterfeit documents;
 - 5) when a decision is taken to expel the alien from the Republic of Lithuania or another state to which the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals applies;
 - 6) in order to prevent the spread of dangerous or especially dangerous contagious diseases;
 - 7) when the alien's stay in the Republic of Lithuania represents a threat to national security, public policy or public health.
2. When deciding on the return of an alien to a foreign state or his expulsion, the alien may be detained only if the detention is necessary for the taking and/or enforcement of the relevant decision (if the alien hampers the taking and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer).

Q21. How often does Lithuania make use of detention for the purpose of removal? Please complete the table below for each reference year.

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

	2012	2013	2014	2015	2016	Comments
Total number of third-country nationals placed in detention	375	363	292	353	232	Aliens detained for unlawful entry and/or illegal stay.
Source: Register of Aliens						
Number of third-country nationals placed in detention (men)						Data are not collected.
Number of third-country nationals placed in detention (women)						Data are not collected.
Number of families in detention						Data are not collected.
Number of UAMs in detention						<p>Until 1 December 2015, all unaccompanied minor aliens were provided an alternative to detention, namely, entrusting the custody of an unaccompanied minor alien to the relevant social body. Since 1 December 2015, upon the entry into force of amendments to the Law, unaccompanied minors aliens are accommodated at the Refugee Reception Centre by a decision of the State Childs Rights Protection and Adoption Service.</p> <p>Under the Law, unaccompanied minors may be detained, but in practice there have not been any such cases.</p>

Q22a. [EC Recommendation (10) (b)] In Lithuania, what is the overall maximum authorised length of detention (as provided for in national law or defined in national case law)?

Article 114 of the Law provides that an alien may not be detained for a period in excess of six months, with the exception of the cases when he does not cooperate in the process of his expulsion from the Republic of Lithuania (refuses to provide his personal data, provides false information, etc.) or when the documents required for the expulsion of such an alien from the State's territory are not received. In such cases, the period of detention may be extended for an additional period not exceeding 12 months.

Article 114(6) of the Law also stipulates that an alien's detention must be as short as possible, and in the cases referred to in Article 113(2)¹² of this Law the alien may be detained for no longer than is necessary for the enforcement of a decision.

A decision to detain a person is issued and the period of detention is determined by the court having regard to all factual circumstances. The court has also held¹³ that the competent authorities, when deciding on the detention of an alien, may not rely for an unlimited period on the fact that his identity has not been established/confirmed. The ground for detention, namely, the need to identify and/or verify an alien's identity/citizenship, can only be relied upon for a limited period during which the competent authorities must take all necessary measures to establish the identity of the alien.

Q22b. Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded?

No. The maximum authorised length of detention is 18 months. An alien may be detained for a period of up to six months. If he does not cooperate in the process of his expulsion from the Republic of Lithuania (refuses to provide personal data, provides false information, etc.) or if the documents necessary for the expulsion of such an alien from the territory of the country are not received, this period may be extended for a further 12 months.

A decision to detain a person is issued and the period of detention is determined by the court having regard to all factual circumstances.

Q23a. In Lithuania, is detention ordered by administrative or judicial authorities?

- **Judicial authorities**

An alien may be detained for a period exceeding 48 hours only by a court decision. When issuing a decision, the court assesses each situation on a case-by-case basis and issues the decision having regard to the particular situation and all the relevant circumstances.

- **Administrative authorities**

An alien may be detained for a period not exceeding 48 hours by an officer of the police or another law enforcement institution.

- **Both judicial and administrative authorities**

N/a.

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

- **The lawfulness of detention is reviewed by a judge *ex officio*. If Yes, how long after the start of detention?**

Administrative authorities (other than courts) may detain an alien for a period not exceeding 48 hours. The alien may be detained for more than 48 hours only by a court decision.

¹² When deciding on the return of an alien to a foreign state, his expulsion from the Republic of Lithuania, the obligation of the alien to leave from the Republic of Lithuania or the transfer of an asylum applicant to another EU Member State responsible for examining an application for asylum, the alien may be detained only if the detention is necessary for the taking of and/or enforcement of the relevant decision (if the alien hampers the taking and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer).

¹³ <http://liteko.teismai.lt/viesasprendimupaiseska/tekstas.aspx?id=d4900547-ff71-4af2-86fd-02b1de99714c>

- The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention. If Yes, how long after the initiation of such proceedings by the third-country national?

According to Article 117 of the Law, an alien has the right to appeal against a decision of a district court to detain him or to extend the period of his detention or to provide an alternative to detention to the Supreme Administrative Court of Lithuania in accordance with the procedure established by the Law on Administrative Proceedings within 14 days from the service of the decision. The appeal may be filed through the Foreigners' Registration Centre. The Foreigners' Registration Centre forwards the alien's appeal to the Supreme Administrative Court of Lithuania.

The Supreme Administrative Court of Lithuania examines an alien's appeal in accordance with the procedure established by the Law on Administrative Proceedings and issues a decision not later than within ten days from the acceptance of the appeal.

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

No. Such an application is not provided for in Lithuania.

The issue of an alien's detention for more than 48 hours is decided by the court, which assesses the situation of a specific alien and all factual circumstances and determines the period of detention. Upon expiry of the period of detention of the alien, the alien must be released from a detention facility without delay or the responsible authority submits a repeated request for extension of the period of detention.

An alien may appeal against a decision of the court to detain him or to extend the period of his detention to the Supreme Administrative Court of Lithuania.

Q24b. In Lithuania, how often is the stay of a third-country national in detention reviewed?

The period of detention is determined by the court. Upon the disappearance of grounds for an alien's detention, the alien is entitled to, whereas the authority which is in charge of the alien must immediately, refer to a district court of the alien's place of stay with a request to review a decision to detain the alien¹⁴.

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

- Judicial authorities

No, unless an alien appeals against a decision or an authority refers to a district court with a request for review of the decision to detain the alien, i.e., to extend the period of his detention.

- Administrative authorities

N/a.

- Both judicial and administrative authorities

N/a.

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

¹⁴ Article 118(1) of the Law

Table 3. Detention capacity as of 31st December 2016

		Situation as of 31st December 2016	Comments
Number of detention centres		1	
Number of places available in detention centres per category of third-country nationals	Men	70	
	Women	12	
	Families	12	
	Unaccompanied minors	N/A	Unaccompanied minors are not detained. In practice there have been no such cases. They are accommodated at a social institution.
	Total	94	

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

The average area per detained alien is not less than five square meters per person.¹⁵

Q27a [EC Recommendation (21) (c)]. In Lithuania, are third-country nationals subject to return procedures detained in specialised detention facilities (i.e. a facility to keep in detention third-country nationals who are the subject of a return procedure)?

Yes. Detained aliens are placed in the closed corps of the Foreigners' Registration Centre. It is a specialised and the only centre in Lithuania intended to accommodate the detained aliens who are illegally staying in Lithuania or have unlawfully entered it.

Q27b. If No, please specify the kind of facilities which are used to detain third-country nationals.

N/a.

Q28a. Has Lithuania faced an emergency situation where an exceptionally large number of third-country nationals to be returned placed an unforeseen heavy burden on the capacity of the detention facilities or on the administrative or judicial staff?

During 2014-2015, Lithuania faced an increase in the number of unlawfully entering and illegally staying citizens of Vietnam, who were detained by a court decision at the Foreigners' Registration Centre. As they were not in possession of identity documents, their prompt return to their country of origin was not possible.

Q28b. Has Lithuania's capacity to guarantee the standards for detention conditions, as defined in Article 16 of the Return Directive, been affected due to an exceptionally large number of other categories of third-country nationals (e.g. Dublin cases) being placed in detention facilities?

No.

¹⁵ Based on Lithuanian Hygiene Norm HN 61:2005 "Foreigners' Registration Centre. Hygiene Standards and Rules" approved by Order No V-836 of the Minister of Health of the Republic of Lithuania of 28 October 2005

Q28c. If Yes to Q28a, please describe the situation(s) in additional detail and provide information on any derogations that Lithuania may have decided to apply with respect to general detention conditions and standard periods of judicial review.

Due to the situation described in Q28a, the capacity of accommodation of detained aliens at the Centre was exceeded.

4.4. USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

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

Table 4. Alternatives to detention

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	Yes. An alien must periodically report at a fixed time at the relevant territorial police authority.
Obligation to surrender a passport or a travel document	No
Residence requirements (e.g. residing at a particular address)	No
Release on bail (with or without sureties) <i>If the alternative to detention "release on bail" is available in Lithuania, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group).</i>	No
Electronic monitoring (e.g. tagging)	No
Guarantor requirements <i>If this alternative to detention is available in Lithuania, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	Yes. Entrust the custody of an alien to a citizen of the Republic of Lithuania or to an alien lawfully residing in the Republic of Lithuania who has a kinship relationship with the alien whose detention is being considered, if that person undertakes to take care of and to support the alien.
Release to care worker or under a care plan	No
Community management programme	No
Other alternative measure available in Lithuania	- an alien must inform the relevant territorial police authority about his whereabouts at a fixed time using means of communication; - accommodation of an alien at the Foreigners' Registration Centre without restricting his freedom of movement (applies only to asylum applicants)

Q30. Please indicate any challenges associated with the implementation of detention and/ or alternatives to detention in Lithuania.

In Lithuania, a decision to detain an alien or to provide an alternatives to detention is issued by the court. The court may, having regard to the fact that an alien's identity has been established, he does not represent a threat to national security and public policy and assists the court in determining his legal status in the Republic of Lithuania and to other circumstances, decide not to detain the alien and to provide to him an alternative to detention. Usually, the court provides the alternative to detention in the cases when an alien has means of subsistence as well as social or family ties in Lithuania. The examination of the case law allows for the conclusion that aliens often fail to fulfil these conditions, therefore alternatives to detention are provided rarely.

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

N/a.

5.

Procedural safeguards and
remedies

Q32a. [EC Recommendation (12) (d)] Is the application of the principle of non-refoulement and/or of Article 3 European Convention on Human Rights systematically assessed as part of the procedure to take a return decision?

Article 130 of the Law stipulates that:

1. It shall be prohibited to expel or return an alien to a country where his life or freedom is in danger or where he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a country from where he may later be expelled to such country.
2. An alien shall not be expelled from the Republic of Lithuania or returned to a country where there are serious grounds for believing that in that country the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment.
3. The provisions of paragraph 1 of this Article shall not apply to an alien who, for serious reasons, represents a threat to the security of the Republic of Lithuania or who has been convicted by an effective court judgment of a grave crime and constitutes a threat to the community.

Q32b. If the answer to Q32a is No, under which circumstances is it assessed?

- It is never assessed as part of the return procedure: No.
- It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure: Yes.
- Other: N/a.

Q33. In Lithuania, before which authority can a return decision be challenged?

- Judicial authority
- Administrative authority
- Competent body composed of members who are impartial and who enjoy safeguards of independence

An appeal against a return decision or a decision on expulsion may be filed with a relevant regional administrative court within 14 days from the service of the decision. The court must examine the appeal not later than within two months from the day the court passes a ruling on the admissibility of the appeal.

A decision of a regional administrative court may be appealed against within 14 days to the Supreme Administrative Court of Lithuania. A decision of this court is final and not subject to appeal.

Q34a. [EC Recommendation (12) (b)] Is there a deadline for the third-country national concerned to appeal the return decision?

Yes.

Q34b. If Yes, please specify whether the deadline is:

- Less than a week
- Two weeks
- One month
- As long as the return decision has not been enforced
- Other

An appeal against a return decision or a decision on expulsion may be filed with a relevant regional administrative court within 14 days from the service of the decision (Article 138 of the Law).

Q35. [EC Recommendation (12) (c)] In Lithuania, does the appeal against a return decision have a suspensive effect? If Yes, under which conditions? Are there cases where the appeal is not suspensive (please describe)?

Pursuant to Article 139 of the Law, the appeal against a return decision has a suspensive effect in the following cases:

- an application for asylum lodged by an alien entering the Republic of Lithuania from a safe third country is refused to be unexamined and he is returned or expelled from the Republic of Lithuania to the safe third country;
- an alien is refused asylum, with the exception of the cases when a decision is issued upon examining an application for asylum as to substance as a matter of urgency, the examination of the application for asylum is terminated or the granted asylum is withdrawn and he is expelled from the Republic of Lithuania or returned to a foreign state.
- in other cases, the enforcement of the decision appealed against may be suspended only by an order of the relevant administrative court regarding enforcement measures, with the exception of the cases when an alien must be expelled due to a threat to national security or public policy represented by him, and a citizen of an EU Member State, his family member or another person who enjoys the right of free movement under legal acts of the European Union – due to an extreme threat to national security represented by him (point 1 of Article 128(2) of the Law).

Q36. Does national legislation in Lithuania provide for an administrative/judicial hearing for the purposes of return?

Yes. According to the provisions of the Return Description, in order to issue a decision on the return of an alien (i.e., voluntary return) or his expulsion (i.e., forced return) it is required to collect the documents substantiating the ground for such a decision, including the alien's interview sheet. This means that the alien must be interviewed before issuing the decision. However, this does not apply in the cases when, based on an assessment by the State Security Department of the Republic of Lithuania, the Police Department under the Ministry of the Interior of the Republic of Lithuania or the State Border Guard Service, the alien needs to be expelled without delay on grounds of representing a threat to national security, public policy or the community and thus it is objectively impossible to collect and obtain the mentioned documents.

Q37. [EC Recommendation (12) (a)] In Lithuania, is there a possibility to hold the return hearing together with hearings for different purposes? If Yes, which ones (e.g. hearings for the granting of a residence permit or detention)?

Legal acts do not provide for such a procedure, but it is neither stipulated that interviews cannot be held together.

Q38. Is there an obligation for the third-country national concerned to attend the hearing in person?

Yes.

6.

Family Life, Children and
State of Health

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

Article 2(18²) of the Law stipulates that a vulnerable person means a person with special needs (such as a minor, a disabled person, a person over the age of 75, a pregnant woman, a single parent with minor children, a person suffering from mental disorders, a victim of trafficking in human beings or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

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

Points 2 and 3 of Article 128(1) provide that when issuing a decision to return an alien to a foreign state or to expel the alien from the Republic of Lithuania, account is taken of his family relationship with the persons residing in the Republic of Lithuania, existing social, economic and other ties with the Republic of Lithuania, also whether he has minor children studying under a formal education programme/programmes in the Republic of Lithuania.

Article 129 of the Law provides that an unaccompanied minor alien illegally staying on the territory of the Republic of Lithuania or unlawfully residing in it is returned only provided that he will be duly taken care of in the foreign state to which the unaccompanied minor alien is returned taking into consideration his needs, age and level of independence. The Migration department provides information whether it is safe for an UAM to return to his country of origin or a foreign state. If the unaccompanied minor cannot be returned to the foreign state, he is issued a temporary residence permit valid for a period not exceeding one year (Article 129(2) of the Law).

Article 114(4) of the Law provides that vulnerable persons and families with vulnerable minor aliens may be detained only in exceptional cases having regard to the best interest of a child and vulnerable persons.

Pursuant to Article 32(1) of the Law, a representative is appointed without delay to unaccompanied minor aliens regardless of the legitimacy of their stay in the territory of the Republic of Lithuania in accordance with the procedure laid down by legal acts of the Republic of Lithuania for the period of their stay in the Republic of Lithuania. If a legal person is appointed as the representative, it appoints a responsible person to carry out the duties of the representative of the unaccompanied minor alien.

Upon detecting an unaccompanied minor alien, the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour issues, without delay, a decision on his accommodation at the Refugee Reception Centre. The child rights protection division of the administration of the municipality within whose territory the Refugee Reception Centre is located organises the procedure for appointing a representative for the unaccompanied minor alien. If a legal person is appointed as the representative, it appoints a responsible person to carry out the duties of the representative of the unaccompanied minor alien.

Having received information on the family members or other legal representatives of unaccompanied minor aliens and having considered the best interests of an unaccompanied minor alien, the Refugee Reception Centre draws up and submits to the child rights protection division a recommendatory conclusion regarding the issue of a decision on the transfer of the unaccompanied minor alien to his family members or other legal representatives and a recommendatory conclusion on the termination of the representation of the unaccompanied minor alien.

Having considered the mentioned conclusion, the child rights protection division organises the procedure for the termination of the representation of the unaccompanied minor alien. The representation of the unaccompanied minor alien is terminated on the grounds established by the Civil Code of the Republic of Lithuania. When carrying out procedural actions and issuing decisions according to the description, the child's interests are always taken into account.

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

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

Elements considered	Yes/No	Comments
Child's identity	Yes	When issuing a return decision, all factual circumstances are assessed.
Parents' (or current caregiver's) views	Yes	When issuing a return decision, all factual circumstances are assessed.
Child's views	Yes	When issuing a return decision, all factual circumstances are assessed.
Preservation of the family environment, and maintaining or restoring relationships	Yes	When issuing a return decision, all factual circumstances are assessed.
Care, protection and safety of the child	Yes	When issuing a return decision, all factual circumstances are assessed.
Situation of vulnerability	Yes	When issuing a return decision, all factual circumstances are assessed.
Child's right to health		
Access to education		
Other		

Q42. In the event a return decision against an unaccompanied minor cannot be carried out, does Lithuania grant the minor a right to stay? If Yes, please describe any relevant practice/case law.

Yes. Article 129(2) of the Law provides that, if an unaccompanied minor alien cannot be returned to a foreign state, he is issued a temporary residence permit valid for a period not exceeding one year. It may be renewed, unless there is a change in circumstances.

Q43. [EC Recommendation (13) (c)] Does Lithuania have in place any reintegration policies specifically targeted to unaccompanied minors? If Yes, please describe such policies.

An unaccompanied minor alien illegally staying in the territory of the Republic of Lithuania or unlawfully residing in it may be returned only provided that he will be duly taken care of in the foreign state to which he is returned taking into consideration his needs, age and level of independence.

Q44. In Lithuania, can the enforcement of the return decision be postponed on the grounds of health issues? If Yes, please describe any relevant practice/case law.

Yes. Article 127(2) of the Law provides that the enforcement of a decision on expulsion may be suspended if an alien is in need of basic medical aid, the necessity of which is confirmed by the medical advisory committee of a health care institution.

Q45. In Lithuania, how is the assessment of the state of health of the third-country national concerned conducted?

- The third-country national brings his/her own medical certificate
- The third-country national must consult with a doctor appointed by the competent national authority
- Other

The legal acts regulating voluntary and forced return procedures do not stipulate the obligation to provide an alien with a medical certificate or the obligation to check his health (the alien's health is checked only upon arrival at the Foreigners' Registration Centre).

The enforcement of a decision on the expulsion of an alien is suspended if the alien is in need of basic medical aid, the necessity of which is confirmed by the medical advisory committee of a health care institution.

Q46. When returnees suffer from health problems does Lithuania take into account the accessibility of medical treatment in the country of return? If Yes, which authority is responsible for this assessment of the accessibility?

Legal acts do not stipulate the obligation to assess, in a return procedure, the accessibility of medical treatment in a country to which an alien is returned.

Q47. When returnees suffer from health problems, does Lithuania make provision for the supply of the necessary medication in the country of return? If Yes, for how long is the medication provided?

Legal acts do not provide for such a procedure.

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

Yes, although this is not explicitly provided for by legal acts. Pursuant to Article 2(18²) of the Law, a pregnant woman is considered to be a vulnerable person¹⁶. Legal acts do not contain explicit provisions on the duration of pregnancy, but the duration of pregnancy and an alien's well-being would be taken into account not only when issuing a return decision or a decision on expulsion, for example, in determining the duration of the period for voluntary departure, etc., but also when enforcing these decisions (if necessary, providing an escort, etc.).

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

Pursuant to Article 114(4) of the Law, vulnerable persons and families with minors may be detained only in exceptional cases having regard to the best interest of a child and the vulnerable persons.

Point 1 of Article 32(2) of the Law stipulates that unaccompanied minor aliens, regardless of the legitimacy of their stay in the territory of the Republic of Lithuania, have the right to be provided with free accommodation and be supported in accordance with the procedure laid down by the Minister of Social Security and Labour of the Republic of Lithuania.

Unaccompanied minors are, by a decision of the State Child Rights Protection and Adoption Service, accommodated at a social body, namely, the Refugee Reception Centre.

Q49b. If applicable, under which conditions can vulnerable persons be detained?

Pursuant to Article 114(4) of the Law, vulnerable persons and families with minor aliens may be detained only in exceptional cases having regard to the best interest of a child and the vulnerable persons. In practice, such cases occur very rarely.

In practice, unaccompanied minors are not detained. They are, by a decision of the State Child Rights Protection and Adoption Service, accommodated at a social body, namely, the Refugee Reception Centre.

¹⁶ Vulnerable person means a person with special needs (such as a minor, disabled person, person over the age of 75, pregnant woman, single parents with minor children, person suffering from mental disorders, victim of trafficking in human beings or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

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

According to the data of the Foreigners' Registration Centre, there have been several cases when it was necessary to organise an escort for the expulsion of disabled persons. A medical escort has been provided to them.

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

In carrying out the return of vulnerable persons, the Foreigners' Registration Centre involves the medical personnel, social workers and psychologists, who work at the Centre and, when necessary, escort the vulnerable persons together with officers.

As a good practice, the Foreigners' Registration Centre has indicated cooperation with IOM Vilnius, which assists in returning the aliens who have unlawfully entered the Republic of Lithuania or are illegally staying in it, but are vulnerable persons, asylum applicants or the aliens who have been refused asylum and who agree to voluntarily return to a foreign state.

7.

Voluntary Departure

Q52a. [EC Recommendation (17)] In Lithuania, is a period of voluntary departure granted:

- a) Automatically with the return decision? Yes.
- b) Only following an application by the third-country national concerned for a period for voluntary departure? No.

If a return decision is issued, a period for departure is automatically granted in it without an alien's application. The duration of the period for voluntary departure is determined having regard to all the relevant circumstances of the particular case.

If there is a risk of absconding (this is determined during an interview prior to issuing a decision) or there is a ground for expulsion, a decision on expulsion is issued. In this case, a period for voluntary departure is not granted.

Q52b. If Yes to b) of Q52a, how does Lithuania inform the third-country nationals concerned of the possibility of submitting such an application? Please specify:

- The legal/ policy provisions regulating the facilitation of such information
- The actors involved / responsible
- The content of the information provided (e.g. the application procedure, the deadlines for applying, the length of the period for voluntary departure, etc.)
- The timing of the information provision (e.g. on being issued a decision ending legal stay/return decision)
- The tools of dissemination (in person (written), in person (oral), via post, via email, in a telephone call, in public spaces, etc.)
- The language(s) in which the information must be given and any accessibility / quality criteria (visual presentation, style of language to be used, etc.)
- Any particular provisions for vulnerable groups (e.g. victims of trafficking, unaccompanied minors, elderly people) and other specific groups (e.g. specific nationalities)

N/a.

Q53. In Lithuania is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?¹⁷

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

In Lithuania a) and b) are applied.

Q53a. If Yes to Q53, when does Lithuania refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days?

- When there is a risk of absconding

Yes. If there is a ground for believing that an alien may abscond in order to avoid return to a foreign state, in a decision to return the alien may be granted a period shorter than seven days during which the alien is obliged to voluntarily leave the Republic of Lithuania, or the period for voluntary departure is not granted, i.e., a decision on expulsion is issued.

- When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent

¹⁷ Article 7(4) of the Return Directive reads: 'If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days'.

No. The mere fact that an application for a legal stay has been dismissed as manifestly unfounded or fraudulent does not constitute a ground for granting a period for voluntary departure shorter than seven days or not granting such a period. However, all circumstances would be considered.

- When the person concerned poses a risk to public policy, public security or national security

Yes. If an alien's stay represents a threat to national security or public policy, the alien is expelled from the Republic of Lithuania without granting to him a period for voluntary departure.

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

The Law provides that a return decision, having regard to the alien's possibilities to leave as soon as possible, determines a period of between 7 to 30 days within which the alien is obliged to voluntarily leave from the Republic of Lithuania.

If there is a ground for believing that an alien may abscond in order to avoid return to a foreign state, in a return decision the alien may be granted a period shorter than seven days during which the alien is obliged to voluntarily leave the Republic of Lithuania, or the period for voluntary departure is not granted, i.e., a decision on expulsion is issued.

Q55. [EC Recommendation (19)] In determining the duration of the period for voluntary departure, does Lithuania assess the individual circumstances of the case? If Yes, which circumstances are taken into consideration in the decision to determine the duration of the period for voluntary departure?

- The prospects of return: Yes.
- The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return: Yes.
- Other

In practice, when determining the duration of the period for voluntary departure account is taken of various circumstances (for example, family ties, state of health, the period during which an alien is actually able to depart from Lithuania, etc.).

Q56. Is it part of your Lithuania's policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? If Yes, which circumstances are taken into consideration in the decision to extend the period for voluntary departure?

- The length of stay: Yes.
- The existence of children attending school: Yes.
- The existence of other family and social links: Yes.
- Other.

It is part of your Lithuania's policy on return to extend the period for voluntary departure where necessary. The period for voluntary departure is extended having regard to individual circumstances. The period within which an alien is obliged to voluntarily leave from the Republic of Lithuania may be extended taking into account the following circumstances (however the total length of the period for voluntary departure may not exceed 60 days)¹⁸:

- the length of the alien's stay in the Republic of Lithuania,
- the family relationships of the alien with the persons residing in the Republic of Lithuania,
- existing social, economic and other ties of the alien with the Republic of Lithuania, also whether he has minor children studying under a formal education programme/programmes in the Republic of Lithuania;
- the alien is in need of basic medical aid, the necessity of which is confirmed by the medical advisory committee of a health care institution;

¹⁸ Article 127(3²) of the Law

- the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.).

Q57. [EC Recommendation (24)(b)] In Lithuania, is there a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure? If Yes, please describe.

When an alien departs from Lithuania via a border crossing point, an officer of the State Border Guard Service takes from the alien a return decision, marks in it that the alien has departed across the state border of the Republic of Lithuania and forwards the decision to the authority which has issued the decision. The authority which has issued the return decision must, not later than within ten days from the expiry of the period during which the alien ought to have voluntarily departed, verify the following: the police and the Migration Department – in the information system of the State Border Guard Service whether the alien has left Lithuania, a structural unit of the State Border Guard Service – in the Register of Aliens whether the date of enforcement of this decision has been entered. If the information system of the State Border Guard Service does not contain any data on the departure of the alien across the state border of the Republic of Lithuania or the Register of Aliens – on the date of enforcement of the decision on the return of the alien, then the police authority or the structural unit of the State Border Guard which has issued the decision to return the alien must visit the address indicated as the place of his stay or residence in the Republic of Lithuania and check whether the alien has left.

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

Table 6. Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
Insufficient length of the period for voluntary departure	In some cases	The duration of the period for departure is determined having regard to all the relevant circumstances, and if certain circumstances transpire after a decision has been issued, the period for voluntary departure may be extended. However, in certain cases, for example, when an alien is not in possession of a valid travel document and there are no consular posts of the country of origin of the alien in Lithuania, the maximum length of the period (60 days) may also prove to be insufficient to obtain a travel document and to organise a travel (to select the appropriate route, to purchase tickets, to obtain transit visas, etc.).
Absconding during the period for voluntary departure	Yes	Absconding is one of the reasons for failure to enforce voluntary return decisions, though it should be noted that the percentage of unenforced decisions in Lithuania is low.
Verification of the departure within the period of voluntary departure	In some cases	In the absence of a common Schengen information system in which data on departure from the Schengen Area would be accumulated, it is not possible to verify whether an alien has departed across the external border of another Schengen State. This increases time costs and financial burden for the authorities controlling the enforcement of voluntary departure decisions in carrying out checks according to the place of stay or residence as indicated by the alien. It should be noted that these checks also do not make it possible to reliably verify whether the alien has departed, as he may have absconded or departed across the external border of another Member State.

		Thus, it is a challenge to exercise proper control over the enforcement of return decisions and to collect reliable statistical data on the aliens who have actually departed.
<u>Other challenges:</u>		
Decisions on voluntary departure are not recognised by other Member States	In some cases	<p>Neither EU legislation nor the national law of Lithuania stipulates that an alien holding a voluntary return decision issued by one Member State may, in complying with this decision, pass in transit through the territory of other Member States. This means that the decisions on voluntary departure issued by the EU Member States are valid only within the territory of the issuing Member State, while other Member States can only recognise such a decision (if they decide so in accordance with their national legislation) and allow the alien to pass in transit without additional formalities through their territories or to depart across their external borders.</p> <p>This means that Lithuania, having detected an alien who is not authorised to stay or reside in Lithuania and passes in transit through Lithuania or who intends to leave Lithuania across the external border in complying with a decision on voluntary return issued by another Member State, determines the issue of the legal status of this alien in accordance with the provisions of the Law and issues either a new decision on the return of the alien (even if such a decision has been issued by another Member State and the alien is passing within the period for voluntary departure specified therein) or a decision on his expulsion.</p> <p>This not only results in time costs and financial burden for public authorities, but also prolongs the alien's illegal stay and allows for abuse of the possibility of voluntary departure.</p>
Some Member States do not have information on the voluntary return decisions issued by other Member States	In some cases	<p>If an illegally staying alien is detected in Lithuania, his legal status in Lithuania is determined in accordance with the Law, i.e., a new decision on return (i.e., voluntary return) is issued even if such a decision has been issued by another Member State and the alien is passing within the period for voluntary departure specified therein, or a decision on expulsion (forced return). This not only results in time costs and financial burden for public authorities, but also prolongs the alien's illegal stay and allows for abuse of the possibility of voluntary departure, does not allow for a comprehensive assessment of the threat posed by the irregular migration of the alien.</p>

Q59. Please describe any examples of good practice in Lithuania in connection with the period of voluntary departure, identifying as far as possible by whom the practice in question is considered successful, its relevance and whether its effectiveness has been proved through an (independent) evaluation.

N/a.

8.

Entry Bans

Q60. In Lithuania, which scenario applies to the imposition of entry bans?

- a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted

Yes. A decision on expulsion (i.e., forced return)¹⁹ is issued together with an entry ban, but the length of the entry ban is determined on a case-by-case basis, having due regard to all the relevant circumstances of the particular case

- b) Entry-bans are automatically imposed on all return decisions other than under a)

No (see c).

- c) Entry bans are issued on a case by case basis on all return decisions other than a)

No. If a decision on return (i.e., voluntary return) is issued, no entry ban is imposed in this decision. However, the entry ban may be imposed upon such an alien by a separate decision, having due regard to all the relevant circumstances of the particular case, since these decisions are issued by different entities (return decisions are issued by the police, the State Border Guard Service and the Migration Department, and entry-ban decisions – only by the Migration Department).

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

Table 7. Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
Risk of absconding²⁰	No	<p>The version of the Law on the Legal Status of Aliens currently in force does not explicitly refer to this criterion as a ground for imposing an entry ban.</p> <p>It should be noted that this criterion could be considered as a derivative criterion. An entry ban prohibiting entry into the Republic of Lithuania applies to an alien when he is expelled from Lithuania voluntarily within the period specified in a decision to return him to a foreign state, when he has not been given a period for voluntary departure, when he has unlawfully entered Lithuania or is illegally staying in it and there are no grounds, as specified in Article 125 of the Law, for the issue of a decision to return him to a foreign state or when the stay of the alien in Lithuania represents a threat to national security or public policy (Article 126(1) of the Law). It is in these cases that there is a ground for believing that the alien may abscond.</p>

¹⁹ Pursuant to Article 126(1) of the Law, an alien is expelled from the Republic of Lithuania where:

- 1) the person failed to comply with the obligation to leave the Republic of Lithuania within the specified time limit, failed to voluntarily leave the Republic of Lithuania within the time limit stipulated in a decision to return him to a foreign state or within a time limit extended on the ground indicated in Article 127(3²) of this Law or where he has not been granted a period for voluntary departure as there is a ground for believing that the alien may abscond;
- 2) the alien has unlawfully entered the Republic of Lithuania or is staying there illegally and there are no grounds, as laid down in Article 125 of this Law, for imposing on the alien the obligation to leave the Republic of Lithuania or a decision to return him to a foreign state is taken;
- 3) the alien's stay in the Republic of Lithuania represents a threat to national security or public policy;
- 4) a decision has been taken to expel the alien from another state to which Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals applies.

²⁰ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

The third-country national concerned poses a risk to public policy, public security or national security²¹	Yes	<p>Article 133(3) of the Law stipulates that, in view of such a circumstance, an alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years.</p> <p>Moreover, if an alien's stay in the Republic of Lithuania represents a threat to national security or public policy, the Law stipulates a separate ground concerning the alien's expulsion, and a decision on expulsion also imposes an entry ban prohibiting entry into Lithuania²².</p>
The application for legal stay was dismissed as manifestly unfounded or fraudulent²³	Yes	<p>Pursuant to Article 133(1) of the Law on the Legal Status of Aliens, an alien who has been refused a residence permit or a visa may be subject to an entry ban. A national visa is not issued if the alien makes statements of substantive fact which are untrue and submits counterfeit documents (Article 19 of the Law). The residence permit is not issued if the data submitted by an alien are not accurate or the submitted documents have been obtained fraudulently or are counterfeit (point 2 of Article 35(1) of the Law). A Schengen visa is refused in the cases stipulated by Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), including the cases when an alien presents a risk of illegal immigration (Article 21 of the Visa Code).</p> <p>When deciding to impose an entry ban upon an alien in the cases when the alien has been refused asylum, the examination of his application for asylum has been terminated or the asylum granted him has been withdrawn and he is returned to a foreign state, account is taken of the reasons for which asylum has been refused or the granted asylum has been withdrawn, also whether the alien has abused asylum procedures.</p>
The obligation to return has not been complied with²⁴	Yes	<p>The version of the Law on the Legal Status of Aliens currently in force does not explicitly refer to this criterion as a ground for imposing an entry ban. Pursuant to Article 133(1) of the Law, an alien who has been returned to a foreign state may be subject to an entry ban prohibiting entry into Lithuania. If the alien fails to leave within the period for voluntary departure granted to him, he is expelled, and a decision on expulsion also imposes the entry ban prohibiting entry into Lithuania.</p>
<u>Other:</u>		
The alien concerned has been returned to a foreign state	Yes	<p>Pursuant to Article 133(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien who has been returned to a foreign state may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years.</p>
The alien concerned has been expelled from the Republic of Lithuania	Yes	<p>Pursuant to Article 133(2) of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien who has been expelled from the Republic of Lithuania is subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years.</p>

Q62a. In Lithuania, which is the maximum period of validity of an entry ban?

²¹ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4)

²² Point 3 of Article 126(1) and Article 133(2) of the Law on the Legal Status of Aliens

²³ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4)

²⁴ As stipulated in the Return Directive Article 11(1)(b)

Five years. However, an alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years where he may represent a threat to national security or public policy.

Q62b. Does legislation in Lithuania provide for different periods of validity for the entry bans? If Yes, what is the most common period of validity?

Article 133 of the Law provides that an alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years. The alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years where he may represent a threat to national security or public policy.

The length of an entry ban is determined on a case-to-case basis with due regard to all the relevant circumstances of the particular case. The most common length of an entry ban is one to three years.

Q62c Does national legislation and case law in Lithuania establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry?

Yes. Article 133 of the Law provides that an alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years. The alien may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period exceeding five years where he may represent a threat to national security or public policy.

The length of an entry ban is determined on a case-to-case basis with due regard to all the relevant circumstances of the particular case under Order No 3L-33 of the Director of the Migration Department of 14 April 2014.²⁵

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

- On the day the return decision is issued
- On the day in which the third-country national leave the EU
- Other.

A decision on expulsion (i.e., forced return) is issued together with the imposition of an entry ban, and the entry ban starts applying from the date of the expulsion of an alien (i.e., the actual departure). However, if a decision on return (i.e., voluntary return) is issued, the entry ban, if it is decided to issue an entry ban, is imposed in respect of such an alien by a separate decision, since these decisions are issued by different entities (decisions on voluntary return are issued by the police, the State Border Guard Service and the Migration Department, while decisions on forced return (expulsion) and entry-ban decisions – by the Migration Department) and, for this reason, the entry ban starts to apply and begins to run from the date of the issue of the decision, i.e., the entry ban starts to apply later than the date of the departure of the alien.

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

- Alerts are entered into the SIS systematically
- Alerts are entered into the SIS on a regular basis
- Alerts are entered into the SIS on a case-by-case basis
- Other.

Alerts are entered into the SIS on a case-by-case basis in Lithuania.

Article 133 of the Law stipulates grounds for imposing an entry ban prohibiting entry into the Republic of Lithuania. Pursuant to Article 133(4) of the Law, the national no-entry list is drawn up and managed by the Migration Department, which publishes and forwards the data from this list to the second generation Central Schengen Information System (hereinafter: 'SIS II') in accordance with the procedure established by the Government of the Republic of Lithuania. According to point 11(1) of the

²⁵ <https://www.e-tar.lt/portal/lt/legalAct/ecc9f4e0c3a711e38c43fee5c144a67d/TYAkYdRsUd>

rules approved by Resolution No 436 of the Government of the Republic of Lithuania of 10 April 2005, data from the national list are forwarded to SIS II if a decision to ban an alien's entry into Lithuania on the basis of which the data are entered on this list conforms to the grounds stipulated in Articles 24 and 25 of Regulation (EC) No 1987/2006 (hereinafter: the 'SIS II Regulation'). A decision to enter in SIS II an alert on the alien's entry ban in accordance with Articles 24 and 25 of the SIS II Regulation is issued together with the decision banning the alien's entry into Lithuania.

However, the case-law shows that this is not always put into practice, since under Article 24(3) of the SIS II Regulation, an alert *may* be entered, rather than *shall* be entered, therefore, it is necessary to substantiate in each case, having regard to all the relevant circumstances, why an alert must be entered in SIS II, i.e., why it is not sufficient to ban entry only into Lithuania.

Q65. [EC Recommendation (24)(d)] If a return decision is issued when irregular stay is detected on exit (see Q4c above), does Lithuania also issue an entry ban?

The general rules that have already been described in this study apply, i.e., either a decision on return (i.e., voluntary return) or on expulsion (i.e., forced return) is issued. If the return decision is issued, an entry ban may be imposed by a separate decision, and if the decision on expulsion is issued, this decision also sets the length of the entry ban.

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

No.

Q67. Has Lithuania conducted any evaluations of the effectiveness of entry bans?

No.

Table 8. The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry	n/a	n/a
Contribute to ensuring compliance with voluntary return ²⁶	n/a	n/a
Cost-effectiveness of entry bans	n/a	n/a
Other aspects of effectiveness	n/a	n/a

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

²⁶ i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

Table 9. Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	In some cases	If an alien is banned from entering only Lithuania, some aliens, while being aware of this, enter Lithuania from another Schengen State across the internal border; there occur cases when aliens change their names and/or surnames or when, in the event of change of travel documents, their names and/or surnames are entered differently due to transcription and information systems do not recognise that a person is subject to an entry ban.
Monitoring of the compliance with entry bans	In some cases	There occur cases when aliens change their names and/or surnames or when, in the event of change of travel documents, their names and/or surnames are entered differently due to transcription and information systems do not recognise that a person is subject to an entry ban.
Cooperation with other Member States in the implementation of entry bans²⁷	In some cases	There occur cases when persons request the lifting of an alert on entry ban in the SIS II on the grounds that they have become citizens of an EU Member State or the persons enjoying the right of free movement within the EU, however other Member States sometimes delay in responding or do not respond to enquiries as to whether a person holds EU citizenship, is in possession of a valid residence permit, etc.
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges:		
Decisions of international organisations and the EU on restrictive measures aimed at preventing entry or transit often contain too little person identification data	Yes	Given the fact that the mere indication of the name and surname or the surname and the date of birth is not sufficient to identify a person, upon entering such a person in the national list it is difficult for officers to determine in practice whether the applicant and the person who is subject to an entry ban are the same person or not. This creates additional challenges for the persons who are actually not subject to restrictive measures, but whose names are identical to those to whom they apply.

Q69. Please describe any examples of good practice in Lithuania in relation to the implementation of entry bans, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation.

N/a.

²⁷ This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

Conclusions

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

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

1. Return of aliens in Lithuania is not a systemic issue. The absolute majority of illegally staying aliens are citizens of neighbouring or nearby countries with which good cooperation has been established, there are diplomatic missions of these countries in Lithuania, and readmission agreements have been signed, therefore the vast majority of return decisions (87-90%) are enforced and the illegally staying aliens leave Lithuania within the period set in a return decision. In 2016, 87% of return decisions were enforced, while in 2015, this figure amounted to 90%. However, with an increase in the number of the aliens entering the country from the states which do not have their diplomatic missions in Lithuania and do not possess travel documents the return process is likely to become more complicated and therefore returns remain a topical issue. Lithuania advocates the conclusion of readmission agreements at EU level, as they contribute to the effective implementation of the return process.
2. At present, most challenges in return procedures arise in relation to citizens of Vietnam. The majority of detained citizens of Vietnam are not in possession of travel documents, thus their speedy return to their country of origin is not possible. They are detained by a court decision in order to establish their identity. Since cooperation with Vietnam is very slow, the process takes a long time and this leads to the situation when a disproportionate burden is placed on the Foreigners' Registration Centre. The responsible authorities are making efforts to establish a closer relationship with the responsible authorities of Vietnam in order to speed up the return process.
3. The Return Directive has been transposed into national law, and the necessary amendments to the Law have been adopted. The Supreme Administrative Court of Lithuania has held in the case of 3 August 2017 that the provisions of the Law concerning voluntary return are not fully in line with the provisions of the Return Directive. The Court has noted that, in the absence of a prior return decision granting a period for voluntary departure, a decision on expulsion may be issued only by indicating the reasons for selecting such a more stringent measure as expulsion (e.g., there is a risk of absconding, a person represents a threat to national security, public policy or the community). Therefore, it is possible to conclude that the existing regulation will need to be improved.
4. In Lithuania, detention for a period exceeding 48 hours is a measure of last resort (*ultima ratio*), i.e., the court decides on an alien's detention on a case-by-case basis having regard to all the circumstances related to the alien (for example, it is assessed whether the alien may abscond in order to avoid return or expulsion or represents a threat to national security or public policy). The court has also stated that the competent authorities, in deciding on the detention of the alien, may not rely for an unlimited period on the fact that his identity has not been established and must take all necessary measures to establish the identity of the alien. If the authorities fail to take the necessary measures, it is possible that the period of detention will not be extended.
5. The court decides on the provision of alternatives to detention. The existing legal regulation provides that the alternatives to detention may be provided to irregular migrants only if the latter have means of subsistence and social or family ties in Lithuania. An analysis of the case law allows for the conclusion that aliens often do not fulfil these conditions, therefore an alternative to detention is provided rarely (in 2016 – 16 cases, in 2015 – 24 cases). Such a practice when aliens are not provided alternatives to detention for the sole reason of them not having the means of subsistence and social or family ties in Lithuania, etc. limits the provision of the alternatives to detention. It is suggested to consider the possibility of providing to the aliens whose identity has been established, who do not represent a threat to public policy, who assist the court, etc. an alternative to detention, namely, accommodation at the Foreigners' Registration Centre without restricting their freedom of movement.
6. The Law provides that vulnerable persons and families with minors may be detained only in exceptional cases, having regard to the best interest of a child and the vulnerable persons. Unaccompanied minors, just as other vulnerable persons, may be detained only in an exceptional case, but in practice they are accommodated at a social institution, namely, the Refugee Reception Centre. They may be returned only provided that they will be duly taken care of in the foreign state to which they are returned.

7. The experts working in the area of returns point out that neither EU legislation nor the national law of Lithuania currently stipulates that an alien holding a voluntary return decision issued by one Member State may, in complying with this decision, pass in transit through the territory of other Member States. This means that the decisions on voluntary departure issued by the EU Member States are valid only within the territory of the issuing Member State, while other Member States can only recognise such a decision (if they decide so in accordance with their national legislation) and allow the alien to pass in transit without additional formalities through their territories or to depart across their external borders.
8. Lithuania does not have an autonomous type of a temporary residence permit issued to illegally staying aliens who cannot be returned/expelled. If the enforcement of a decision to expel an alien is suspended (due to refusal of a foreign state to which he may be expelled to accept him, for medical reasons or due to other objective circumstances, for example, the alien is not in possession of a travel document, and these circumstances did not disappear during the year and the alien has not been detained), a temporary residence permit valid for a period not exceeding one year may be issued. There occur only several such cases per year.
9. When analysing the departure of aliens in complying with a return decision within the set period for voluntary return, it is not possible to verify whether an alien has departed across the external border of another Schengen State, as there is no common Schengen Information System in which data on departure from the Schengen Area would be accumulated. This increases the time costs and financial burden for the authorities controlling the enforcement of decisions on voluntary departure in carrying out checks according to the place of stay or residence as indicated by the alien. It should be noted that these checks also do not make it possible to reliably verify whether the alien has departed, since he may have absconded or departed across the external border of another Member State.

European Migration Network (EMN) is a network composed of migration and asylum experts from EU Member States, Norway and the European Commission. Its main objective is to collect, analyse and provide up-to-date, objective, reliable and comparable information on migration and asylum to policy makers at EU and Member State level and the general public.

The EMN National Contact Point (NCP) in Lithuania is composed of representatives from the Ministry of the Interior, the Migration Department, the State border guard service as well as the International Organization for Migration (IOM) Vilnius office which acts the national co-ordinator for the EMN activities in Lithuania. EMN NCP in Lithuania also collaborates with other entities from governmental as well as non-governmental institutions working in the area of migration.
