



EMN Ad-Hoc Query on Specification of destination country in the return decision

Requested by Georgi SHARLANDZHIEV on 20th July 2017

Return

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Slovenia, Sweden, Switzerland, United Kingdom (22 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.


Background information:


In the Republic of Bulgaria, when issuing the return/expulsion decision, the specific country where the foreigner should be returned or expelled is not mentioned, as in most cases he/she is with undetermined identity. In order to be able to determine the country of origin or the third safe country it is necessary to confirm the TCN's nationality.





Questions



1. 1. When issuing return/expulsion decisions, is the state indicated where the foreigner should be return or expelled?
2. 2.If the return/ expulsion decision does not indicate the country where the return/ expulsion could be done, do you issue an additional decision where it is mentioned that the foreigner has to be returned in specific country, if yes, at what stage of the removal/return procedure?
3. 3. How the return decision is motivated when it is determined that the life and freedom of the foreigner in the particular country are not endangered?



Responses


	Country	Wider Dissemination	Response
	Austria	Yes	<ol style="list-style-type: none">1. Yes (Art. 52 para 9 Aliens Police Act).2. N/A.3. In particular, a removal is inadmissible if it would lead to a violation of Art. 2 or 3 ECHR or of the abolition of the death penalty or to a serious threat to the life or the integrity of the third-country national as a civilian due to arbitrary violence in the course of an international or national conflict. Furthermore, a removal is inadmissible, if the life or freedom of the third-country national would be threatened on account of the race, religion, nationality, membership of a particular social group or political opinion within the meaning of Art. 33 para 1 of the Geneva Refugee Convention, unless an alternative for flight exists within the particular country (Art. 50 Aliens Police Act). Whether a removal is admissible has to be determined on a case-by-case basis.


			<p>However, especially the case law of the European Court of Human Rights and of the Austrian higher courts may serve as guidance for this examination.</p>
	Belgium	Yes	<p>1. No. Since in many cases we're not sure that the declared identity or nationality is correct, the destination country is not mentioned. Furthermore, before really removing the person, we have to check whether there are no problems related to infringement of articles 3, 8 or 9 ECHR. Above all, the Belgian Immigration Act foresees that the returnee has the choice to go to the country where he wants to go to (which is not necessarily his country of origin), provided that he has the necessary documents to enter and stay in that country and provided that this country is agreeing with the entrance and staying of the returnee.</p> <p>2. No. The returnee is informed about his removal 48 hours prior to the removal. This also includes the destination. In many cases the person has already indicated beforehand where he wants to go to. And if he does not indicate a destination (because he does not want to return), the Immigration Office will choose on his behalf on the basis of the nationality which has been confirmed by the authorities of the third country or on the basis of his passport / ID card.</p> <p>3. If possible this will already in beforehand be checked through an interview ("right to be heard") based on the fundamental rights Charter. If the person indicates that his life and freedom could be in danger, the Immigration Office will have to double-check (art. 3 ECHR) this information and motivate in the return decision why this is not the case. If the returnee indicates this information after the return decision, this will also be double-checked. The returnee will be informed about the conclusions of this check (is not a new decision, but an information form). If there are really problems with art. 3 ECHR, there will be no return effectuated. The returnee has also the right to apply for asylum / subsidiary protection in the stage before the organisation of the return. He can also appeal against the return decision in "extreme urgency". The alien's litigation court (administrative court for all immigration decisions) will then verify whether there are infringements of art. 3 ECHR and can suspend any return decision if this would be the case.</p>



	Croatia	Yes	<p>1. 1. Yes. According to the Article 112 of the Amendments to the Aliens Act came into force on 30 June 2017, decision on expulsion shall indicate a specific country where foreigner should be returned.</p> <p>2. 2. N/a.</p> <p>3. 3. The list of safe countries is regularly verified and revised by the Ministry of the Interior. The returnee's removal has to be to the safe destination and should not violate the principle of non-refoulement.</p>
	Cyprus	Yes	<p>1. Yes, in return decisions it is stated that the migrant must return to his/her country of origin and in expulsion decisions the specific country of origin is stated.</p> <p>2. n/a</p> <p>3. All return decisions against migrants are issued with the condition that, unless the migrant departs within the specified period, measures of forced return (detention and expulsion) will be taken against him/her.</p>
	Czech Republic	Yes	<p>1. NO</p> <p>2. NO</p> <p>3. The decision on administrative expulsion is based on the binding opinion issued by the Ministry of the Interior of the Czech Republic and its Department for Asylum and Migration Policy, where it is assessed whether the life and freedom of a foreigner in a particular country would be threatened and whether a foreigner's travel to a given country is possible or not.</p>
	Estonia	Yes	<p>1. According to the Estonian legislation, expulsion is the enforcement of an obligation to leave in the cases and pursuant to the procedure provided by law. A precept to leave Estonia shall be</p>




			<p>issued to an alien who is staying in Estonia without a basis for stay. When issuing a precept to leave, the country where the foreigner should be expelled is usually indicated.</p> <p>2. No additional decision is made in such cases.</p> <p>3. The above mentioned issues are often assessed and motivated in previous proceeding and thereof not separately indicated in the motivational part of the precept to leave. The principle of non-refoulement is always assessed in case of expulsion and if life and freedom of the foreigner are endangered the precept to leave will not be enforced. Foreigner has the possibility to apply for international protection prior to the expulsion.</p>
	Finland	Yes	<p>1. Yes. A foreigner shall, as a rule, be returned to the home country or alternatively to the other country of residence, which are indicated in the return decision. In most cases the foreigner should be returned to the home country only. However, in some decisions both alternatives (home country and country of residence) may be mentioned.</p> <p>2. n/a</p> <p>3. The return decisions are justified, inter alia, by reference to the principle of non-refoulement. This justification is usually applied to the former asylum seekers and the other returnees as well.</p>
	France	Yes	<p>1. Yes. It is mandatory to indicate the country of return in a return decision.</p> <p>2. N/A</p> <p>3. A removal is inadmissible if it would lead to a violation of Art. 2 or 3 ECHR. Furthermore, a removal is inadmissible, if the life or freedom of the third-country national would be threatened on account of the race, religion, nationality, membership of a particular social group or political opinion within the meaning of Art. 33 para 1 of the Geneva Refugee Convention. Whether a removal is admissible has to be determined on a case-by-case basis. However, especially the case law of the European Court of Human Rights may serve as guidance for this examination. An interview with the applicant enable to determine whether he can benefit from the protections</p>



			<p>provided for in the Geneva Refugee Convention of 1951. If it's not the case, an assessment is made to determine if the life of the third-country national would be threatened in the country of return. In the return decision, a paragraph explains that the life and freedom of the third-country are not endangered within the country concerned. In a model of decision available for the officers, the motivation is drafted according to these terms: "Considering that the decision against the third-country national is not in violation with the provisions of Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms"</p>
	Germany	Yes	<p>1. Yes, it is. Remark: Generally, the Federal Office for Asylum and Refugees is only responsible for return decisions in connection with decisions on asylum applications (section 34 para. 2 Asylum Act). Other types of return decisions will be taken by local alien authorities.</p> <p>2. n/a.</p> <p>3. Return decisions in connection with asylum applications will make a reference to section 34 para. 1 Asylum Act: "Pursuant to Sections 59 and 60 (10) of the Residence Act, the Federal Office shall issue a written deportation warning if 1. the foreigner is not granted asylum status, 2. the foreigner is not granted refugee status 2a. the foreigner is not granted subsidiary protection, 3. the conditions of Section 60 (5) and (7) of the Residence Act are not met or if deportation is permitted on an exceptional basis, regardless of compliance with the conditions stipulated in Section 60 (7), first sentence of the Residence Act, and 4. the foreigner does not hold a residence title."</p>
	Hungary	Yes	<p>1. According to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter: RRTN) Section 46 Subsection (1) c) expulsion orders shall specify the country to which the person in question is expelled. On the base of the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 Section 118 Subsection (2) the country designated as the destination of expulsion shall be determined according to the following sequence: a) any Schengen State, if the third-country national has a valid residence permit that was issued by this Schengen State, b) a Member State of the European Union, if the third-country national in question is holding a residence permit issued by that Member State certifying long-term residence status under Council Directive 2003/109/EC or is in possession of a valid residence</p>


			<p>document; c) the country that is liable to accept the third-country national in question; d) the country where the third-country national's permanent or temporary residence is located; e) the country in which the third-country national in question has a citizenship; f) any third country prepared to accept the third-country national in question. With the exception contained in Paragraphs a) and b) of Subsection (2), expulsion may not be carried out to any Member State of the European Union.</p> <p>2. See above.</p> <p>3. On the base of the Act II of 2007 Section 51 (1) third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be subjected to persecution on the grounds of his/her race, religion, nationality, social affiliation or political conviction, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to the actions or conduct defined in Article XIV(2) of the Fundamental Law (non-refoulement). According to the Section 52 Subsection (1) the immigration authority shall take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures. According to the Government Decree 114/2007 Section 124 Subsection (3) the competent immigration authority is under obligation to request the opinion of the refugee authority to determine as to whether the principle of non-refoulement applies as regards the proceedings for ordering expulsion or for carrying out an expulsion measure. The refugee authority shall comply with the above request without delay. The competent immigration authority shall not derogate from the opinion of the refugee authority. The restriction referred to in Subsection (1) of Section 51 of the RRTN shall not apply if the person affected is returned to the territory of an EEA Member State. Before ordering the expulsion measure in an asylum procedure, the refugee authority shall examine as to whether the principle of non-refoulement applies.</p>
	Ireland	Yes	<p>1. Ireland does not participate in the Return Directive 2008/115/EC. Deportation orders are issued under the International Protection Act 2015 (for rejected asylum seekers) and the Immigration Act 1999 (for other irregular migrants). The risk of refoulement is assessed prior to the making of the</p>


			<p>deportation order. The format of the deportation order is set out in the Immigration Act 1999 (Deportation) Regulations 2005 available at: http://www.irishstatutebook.ie/eli/2005/si/55/made/en/print , and the International Protection 2015 (Deportation) Regulations 2016, available at: http://www.irishstatutebook.ie/eli/2016/si/668/made/en/print . The State to which the person should be returned is not specified in the deportation order.</p> <p>2. No.</p> <p>3. A deportation order is served to the third country national requiring that they remove themselves from the State and remain thereafter outside the State. A deportation order is accompanied by a covering letter, referred to as an ‘arrangements letter’. The arrangements letter specifies the date by which the person is required to leave the State. If the person does not leave the State, they are obliged to report to the Garda National Immigration Bureau (GNIB) at a time specified in the arrangements letter to allow for arrangements to be made for deportation. At the appointment, the person is required to produce any travel documents, such as tickets, which could help in their removal from the State. The arrangements letter also notes that if the person fails to comply with the terms of the deportation order, or contained in the arrangements letter, the person may be liable to arrest without warrant and detention under the terms of Section 5 of the Immigration Act 1999.</p>
	Italy	Yes	<p>1. Yes</p> <p>2. If it is not possible to determine the alien’s Country of origin with certainty and proceed to expulsion with a clear end destination, the alien, subjected to a return/expulsion order not immediately executable due to problems of identification and definition of the country of origin, may be detained, by the Questore ’s decision (territorial head of police), within the Permanent Return Centers (Centri permanenti per il rimpatrio). Entrance to these centers can only take place if the foreigner has refused the possibility of assisted voluntary return, thus avoiding expulsion (the possibility is offered only if the expulsion order is not dictated by dangerousness to society reasons).</p>

			<p>3. Expulsion decision may be motivated by the following reasons: • reasons of public order or state security, illegal immigration, irregular stay and dangerousness to society (administrative expulsion); • sentence for crimes for which a mandatory or optional arrest in flagrante is foreseen [crime against State officials; a sentence of at least 10 years or for crimes involving expulsion (e.g. smuggling)], in case the foreign is considered socially dangerous (expulsion as a security measure); • replacement, by judicial authority, of a non-culpable punishable offense, not exceeding two years, with the expulsion for a period of at least five years. Replacement can be put in place if the assessment of identity or nationality of the foreigner as well as the relief for humanitarian reasons or health problems are not needed (expulsion as an alternative sanction).</p>
	Latvia	Yes	<p>1. In the return decision issued by Latvia it is mentioned that the person shall leave the territory of EU Member States, but the destination country to which the person shall depart is not always mentioned in the return decision. It depends on the situation and the circumstances of the case. In case of forced return before removal a foreigner is provided in written form with detailed information on the planned removal date, time, means of transport to be used and destination country. It should be pointed out that during the meetings and interviews carried out with the foreigner while organizing the removal process the country of return and possibilities of return to a certain destination country are discussed.</p> <p>2. No additional decisions specifying the country of return is issued for the foreigners by the competent authorities of Latvia.</p> <p>3. When issuing a return decision non-refoulement principle is always evaluated by the competent authorities issuing a decision. In some decisions reference to the circumstances justifying the fact that non-refoulement principle has been evaluated is mentioned.</p>
	Lithuania	Yes	<p>1. Yes, in the return decision the state where a foreigner should be returned is indicated.</p> <p>2. N/a</p>

			<p>3. The return decision states that reasons prohibiting return or expulsion as specified in the Law (Article 130) were not established during the examination of his/her case.</p>
	Luxembourg	Yes	<p>1. Yes. Article 111 (1) of the amended law of 29 August 2008 expressly indicates that return decisions, declaring a foreigner's stay to be irregular, are accompanied by an obligation requiring the foreigner who is present on the territory to leave, and shall state the time allowed for doing this voluntarily together with the country to which s/he will be returned in the event of enforcement by the authorities of the decision in question.</p> <p>2. Article 2 of any return decision reads as follows: The individual concerned must leave the territory without delay to the country of which s/he is a national, XXXXX, or to a country which have issued a valid travel, or to any other country in which s/he is entitled to stay. This article covers all cases even if the Directorate of Immigration does not know the country of origin/provenance or if it is discovered that s/he is national from another country. With this formulation it unnecessary to issue a new return decision.</p> <p>3. The Directorate of Immigration has the COI (Country of Origin) Unit for conducting research on the countries of origin. They determine that in the country of return of the individual the life and freedom of the foreigner is not endangered. In case the Directorate of Immigration considers that in the country of return the life or freedom of the returnee is endangered, article 129 amended Law of 29 August 2008 clearly establishes that the return or expulsion cannot be carried out.</p>
	Malta	Yes	<p>1. Yes, changes are being made to have this information included in the return decision.</p> <p>2. N/A</p> <p>3. TCN is given full access to the asylum system prior any actual removal being contemplated.</p>
	Netherlands	Yes	<p>1. No</p>

			<p>2. No</p> <p>3. The Netherlands has no separate return decision, the return decision is a part of the decision to reject the application for the residence permit.</p>
	Slovak Republic	Yes	<p>1. Yes.</p> <p>2. N/A</p> <p>3. The authority taking decision about the administrative expulsion of the third-country national takes into account several facts effecting its decision whether the country in question can be considered safe. This also includes the exact place of the country where the person will be deported to. This is based on the information provided by the returnee, the general information available about the country of origin, close cooperation with the Ministry of Foreign Affairs which maps the situation in the third-countries through consulates, information available to the respective Police departments and the Ministry of Interior which follow the situation in the third-countries. It is always on a case-by-case basis.</p>
	Slovenia	Yes	<p>1. No.</p> <p>2. No, we do not specify country of return.</p> <p>3. It can be motivated by the AVRR program. There are hardly any other means of motivation available. Nevertheless several of TCN decide to return because of lack of possibilities to maintain a living and decide to return voluntarily. Forced return does not require motivation.</p>
	Sweden	Yes	<p>1. Sweden uses a single procedure which means that the decision to reject an asylum application is issued together with the decision to which country the third-country national should be returned or expelled.</p>

			<p>2. Not applicable</p> <p>3. There are several requirements when writing decisions in which there is a rejection of an asylum application and a decision of return. Regulations in place is the Swedish Aliens Act and the Asylum Procedures Directive. First and foremost the decision should be written in a way that makes it easy and clear for the third-country national to understand why a permission has not been granted and on which grounds. The reasons in fact and in law should be stated in the decision. For additional guidance there is as well the UNHCR handbook. There should be an account of which facts that has been examined and how the facts has been assessed, how the benefit of the doubt has been implemented and which obligations that have been imposed on the applicant and how this has been assessed, including an assessment of the credibility of the statements given in the case. To ensure the principle of non-refoulement impediments of enforcement are examined before the third-country national is returned or expelled.</p>
	Switzerland	Yes	<p>1. If the prerequisites for processing an asylum application are fulfilled, the State Secretariat for Migration first examines whether applicants are eligible for refugee status under the provisions of Article 3 of the Asylum Act. Persons requesting asylum are granted refugee status if their reasons for claiming asylum are credible, and if they are in danger of persecution as defined under the Asylum Act. Persons who do not fulfil the provisions for obtaining refugee status will have their application rejected and be ordered to leave Switzerland. If the State Secretariat for Migration rejects an application for asylum, it examines in the same decision whether the asylum seeker can indeed be expelled from Switzerland. This stage consists of three steps: It is examined, first, whether the removal of a person is admissible (that is, whether it is in accordance with Switzerland's international obligations); second, whether it is reasonable to remove a person to his or her home country or a third country on account of the general situation in the country in question; and third, whether the removal of the person is possible. Asylum seekers who are not eligible for refugee status and whose removal from Switzerland is admissible, reasonable and possible, are set a deadline by which they must leave Switzerland. The examination whether the removal from Switzerland is admissible, reasonable and possible usually refers to one specific country. However, if an asylum seeker claims an identity that is not credible, his or her nationality</p>

			<p>is considered as unknown. In such a case, the removal from Switzerland is issued without an examination of the admissibility, reasonability and possibility regarding any specific country.</p> <p>2. There is only one decision (see answer 1), no additional decision is issued.</p> <p>3. See answer 1.</p>
	<p>United Kingdom</p>	<p>Yes</p>	<p>1. In reaching a decision to remove a person from the UK we would indicate the country (or countries) to which they might be removed. Paragraph 8 to schedule 2 of the Immigration Act 1971 sets out where a person can be returned to namely (i) a country of which he is a national or citizen; or (ii) a country or territory in which he has obtained a passport or other document of identity; or (iii) a country or territory in which he embarked for the United Kingdom; or (iv) a country or territory to which there is reason to believe that he will be admitted.</p> <p>2. Not applicable</p> <p>3. The UK has a proud history of providing protection to those who need it in accordance with our obligations under the Refugee Convention and all asylum claims are carefully considered on their individual merits. Decision-makers carefully assess protection needs following an interview by assessing all available evidence provided by the claimant in light of published country information. Protection is normally granted when someone establishes a well-founded fear of persecution or serious harm on return to their country. Those who are found not to need protection are refused but have a right of appeal to the independent courts. Once their appeals rights are exhausted they are required to leave the UK. If they do not we may enforce their removal.</p>