



AD HOC QUERY ON 2019.94 AHQ on the application of the principle of non-refoulement in return procedures in EU Member States plus Norway and Switzerland

Requested by Jessica Pradille on 21 October 2019

Compilation produced on 31 December 2019

Responses from Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Luxembourg, Sweden plus Norway (15 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.

1. Background information

Building on existing synergies, EASO and the EMN are taking forward an initiative on the principle of non-refoulement as it intersects with asylum and return procedures. This initiative will provide a comprehensive overview on the legal basis the principle of non-refoulement and how it is applied in practice across EU Member States plus Norway and Switzerland (herein after EU+ countries).

This exercise will complement a wider data collection initiative on the implementation of the principle of non-refoulement undertaken by the EASO Information and Analysis Sector as part of its engagement to develop the Information and documentation System (IDS) on CEAS implementation.

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The non-refoulement is a core principle of international refugee and human rights law.

The principle is also reflected in the EU legislation. Specifically in the context of return, the Return Directive (2008/115/EC), mandates Member States to respect the principle of non-refoulement in return procedures (see recital 8 of the preamble, art. 5, art. 9).

Instructions:

- This AHQ is to be compiled by the EMN REG members.
- Due to the length and complexity of the questionnaire, for budgetary purposes this AHQ can be accounted as 2 AHQ.
- If you responded to the EMN Ad-Hoc Query on “The Return Directive (2008/115/EC) and the obligation to respect the non-refoulement principle in the return procedure” of the 13th August 2018, respond to the complementary questions (namely 1 (listing articles only), 1.b, 1. c; 2, 3, 4, 6, 7a, 7b, 8, 9, 10), and confirm the validity of your replies or update as necessary.

2. Questions

1. 1. Please answer the attached document

We would very much appreciate your responses by **25 November 2019**.

3. Responses



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		Wider Disseminatio n ²	
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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	EMN REG Practitioner s Belgium	Yes	1. easo_emn_initiative_on_non_refoulement_emn_ahq_belgium.docx
	EMN REG Practitioner s Bulgaria	Yes	<p>1. Question 1. The legislative act regulating the issuance of a return decision is the Law on the foreigners in the Republic of Bulgaria.</p> <p>a/ The return decision is an individual administrative act where the individual approach prevails throughout the administrative procedure. Therefore, the legislator has provided that when issuing a return decision, the competent authorities shall take into account the duration of the foreign national's residence on the territory of the Republic of Bulgaria, as well as the categories of vulnerable persons, the existence of ongoing procedures under the Law on asylum and refugees, or procedures on the renewal of residence permits or other permits giving a right to reside. They shall also take into account the family status and the existence of any family, cultural or social relations with the person's country of residence.</p> <p>b, c/ The main principle laid down in the specific laws and regulations is the obligation of the State to protect and guarantee the fundamental rights of the child in all the fields of the social life, providing for and implementing measures for the protection of the rights of the child. The protection of the rights of the child is a system of legislative, administrative and other measures guaranteeing the rights of every child. Minors are not subject to return decisions, since according to the Bulgarian law, subject to administrative penalties shall be adult persons who have reached 18 years of age and who have committed violations in a sane state. The legislator has provided for that minors have no administrative legal capacity — this is the capacity of the person to exercise personally his rights and fulfil his obligations. However, liable to administrative penalties shall also be underage persons who have accomplished 16 years of age, but who have not accomplished 18 years of age, where they have been in a position to understand the nature and the importance of the committed violation and to manage their conduct.</p> <p>In the light of the foregoing, the authorities under Article 44, Paragraph 1 of the Law on the foreigners in</p>

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			<p>the Republic of Bulgaria shall not issue return decisions towards the abovementioned category of persons.</p> <p>Article 26, Paragraph 1 of the Law on the administrative violations and penalties.</p> <p>The protection of the best interests of the child during the detention of unaccompanied minors is guaranteed by the State Agency for Child Protection.</p> <p>During their detention, the unaccompanied minors shall be transmitted to the relevant "Social Assistance" Directorate which takes measures under the Law on child protection.</p> <p>It should be noted that the national legislation does not provide for regulatory regimes of stay and residence of this category of persons. Those children shall be accommodated, by virtue of a protection measure under the Law on child protection, within the existing social care services for children, where they receive basic cares ensuring food and accommodation. However, the lack of a legal status makes impossible their exercise of fundamental rights, e.g. healthcare, education and legal aid.</p> <p>Question 2:</p> <p>Any return decision is subject to judicial control but there is no established practice of holding judicial hearings for the purposes of return. On the opening of any administrative proceedings, the authorities under Article 44, Paragraph 1 of the Law on the foreigners in the Republic of Bulgaria inform the interested persons and follow the rules of the administrative proceedings, thus completely ensuring the protection of the human rights in accordance with the international legal instruments.</p> <p>The national legislation does not allow exceptions imposing restrictions on a particular person or group of persons in terms of participation in administrative proceedings. Any third-country national has the right to an effective remedy, allowing his return decision to be appealed or reviewed. This includes the possibility for him to receive legal aid, translation and interpretation services and any other remedies during the administrative and judicial appeal.</p> <p>Question 3:</p> <p>See question 1, a</p> <p>Question 4:</p> <p>Art. 44, paragraph 2 of the Law on the foreigners in the Republic of Bulgaria provides for the following case: "When imposing compulsory administrative measures, the competent authorities shall take into account the duration of the foreigner's stay on the territory of the Republic of Bulgaria, the categories of vulnerable persons, the existence of procedures under the Law on Asylum and Refugees, or of procedures for renewal of residence permit or of another permit granting right to reside, his family status and the availability of family, cultural and social relations with the person's country of origin."</p>
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			<p>Question 5: Any return decision is subject to judicial review. There are no exceptions of this rule.</p> <p>Question 6: Yes, there are non-refoulement related reasons to suspend/postpone return. No, there is no a granted formal authorisation to reside.</p> <p>a. Art. 44b, paragraph 1 of the Law on the Foreigners in the Republic of Bulgaria provides for the following case: "If there is an impossibility of immediate expulsion or return of the foreigner or if the execution of these measures must be postponed due to reasons of legal or technical nature, the body which has issued the order for imposing compulsory administrative measure shall postpone its execution for a period until the dropping of the obstacles for its fulfilment." Paragraph 2: "When after expiration of the term of temporary protection under the Law on Asylum and Refugees, the expulsion or the return of the foreigner is impossible, or the execution of these measures must be delayed because of reasons of health or humanitarian nature, the authority which has issued the order for imposing a compulsory administrative measure, shall postpone the execution until dropping of the obstacles for its execution."</p> <p>b. No stay authorisation is granted.</p> <p>Question 7: a. Art. 67 of the Law on Asylum and Refugees provides for the following case: "The compulsory administrative measures "withdrawal of the right to stay", "return", "expulsion" and "prohibition of entry in the country" shall not be executed until finalisation of the procedure with enactment of a decision." b. No</p> <p>Question 8: a. See question 1, as well as the case under Art. 66 of the Law on Asylum and Refugees: "Art. 66. (1) "The provisions of the Law on the foreigners in the Republic of Bulgaria shall apply regarding a foreigner for whom a decision for refusal, termination or revoking of international protection has been enacted, or regarding whom the proceedings have been terminated."</p> <p>Question 9: There are no data on the number of postponed returns due to the application of the "non-refoulement" principle.</p> <p>Question 10: No information is available.</p>
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	EMN REG Practitioner s Croatia	Yes	1. Please find HR answers in the attached document. 2019.94_ahq_hr_comments.docx
	EMN REG Practitioner s Cyprus	Yes	1. Please see attached file easo_emn_initiative_on_non_refoulement_emn_ahq_final_21102019.docx
	EMN REG Practitioner s Czech Republic	Yes	1. Please see the attached file. cz_easo_emn_initiative_on_non_refoulement_emn_ahq_final_21102019.docx
	EMN REG Practitioner s Estonia	Yes	1. Please find the EMN Estonia answers in attached file. easo_emn_initiative_on_non_refoulement_emn_ahq_final_27112019.docx
	EMN REG Practitioner s Finland	Yes	
	EMN REG	No	



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	Practitioner s France		
	EMN REG Practitioner s Hungary	Yes	1. emh_com_non-refoulement.docx
	EMN REG Practitioner s Ireland	Yes	2.12.easo_emn_initiative_on_non_refoulement_emn_ahq_final_21102019ie_ieanswer_regrpractitionersq uery.docx
	EMN REG Practitioner s Italy	Yes	1. Please see attached document adhocquerynonrefoulementfinal.docx
	EMN REG Practitioner s Latvia	No	
	EMN NCP Luxembour g	Yes	1. Please find the Luxembourg answer in the attached document. lu_emn_ncp_answer_to_easo_emn_initiative_on_non_refoulement_emn_ahq_final_21102019_corrige e.docx

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	EMN REG Practitioners Sweden	Yes	1. Please see the attached document easo-emn_non-refoulement-return_002.docx
	EMN NCP Norway	Yes	1. see uploaded attachment no_response._eu_com_emn_easo_ahq_information_collection_on_the_application_of_the_principle_of_non-refoulement_2019.docx
