

## EMN FOCUSED STUDY 2017

### The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards

#### Top-line "Factsheet" (National Contribution)

##### National contribution (one page only)

*Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

From the migration perspective Hungary is considered a transit country, therefore it is priority to manage the return or the problem of the non-return of third-country nationals who are illegally residing in the territory of the country. The Government also reflected on this priority in its policy (Schengen 2.0 Action Plan, Migration Strategy).

In general, the Hungarian legislation on return and expulsion is more stricter than the EU standards, but it is completely in line with the Return Directive. Several different bodies are entitled to issue return decisions which promotes the efficiency of return.

Owing to the fact that Hungary is a transit country the risk of absconding is very high and the authorities cannot prevent it. The greatest challenge for the authorities is to find the right balance between the proper application of detention and its alternatives.

However, despite the fact the Migration Strategy of Government prefers voluntary return, the number of voluntary returnees -due to the transit nature of country-is very low.

In view of the above-mentioned risks, Hungary applies the following measures beyond the administrative actions suggested by the EU Action Plan, namely the applicants may submit their request only in person in the transit zones according to the provisions of border procedure. Thus, it is not possible to abuse the asylum procedure and to stay unlawfully within the Schengen area - in the case of return decision or the rejection of expulsion either. Since new asylum system entered into force in the Spring of 2017, the practical implementation of the EU Action Plan has become negligible in Hungary.

#### Section 1: Contextual overview of the national situation concerning the return of third-country nationals

*The introductory section of the Synthesis Report will aim at contextualising the study by providing a brief overview of the overall situation in the Member States as regards the return of third-country nationals. It will succinctly review the national measures implementing the Return Directive (including judicial practices and interpretations) or equivalent standards (for Member States that are not bound by the Directive) and examine the policy debate concerning the return of third-country nationals in the Member States. The section will also include quantitative data extracted from Eurostat to estimate the scale of the main issues concerning return (e.g. number of third country nationals ordered to leave and of third country nationals returned following an order to leave).*

**Q1.** 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) or equivalent standards (for Member States which are not covered by the Directive) in your Member State.

The transposition of the Return Directive was fully implemented by amending the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. The Hungarian provisions are more strict than it is required by the Return Directive. In addition, in 2015 the Act C of 2012 on the Hungarian Criminal Code was amended by the Act CXL of 2015 introducing the following new criminal acts: the unlawful crossing of border fence, destroying and vandalizing the fence, obstructs the construction or maintenance of the fence.

**Q2.** [EC Recommendation (8)] Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?<sup>1</sup> Yes/**No**

Please briefly elaborate on important exceptions to the general rule stated above

If Yes, please describe:

- a) 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);
- b) 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.)

**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).

The Hungarian Criminal Code was amended by the Act CXL of 2015 - entered into force on the 15 September 2015 - introducing the followings criminal acts: the unlawful crossing of the border fence (Section 352/A), vandalism of the border fence (Section 352/B) or obstruction of construction works on the border fence (Section 352/C). The introduction of the above-mentioned criminal acts also contributed to the amendment the regulation of expulsion as in case of , perpetrators of the unlawful crossing of the border barrier , vandalism of border fence or obstruction of construction works on border fence an executable term of imprisonment should be imposed and expulsion may not be omitted. If expulsion is ordered for a specific term, it shall be the double of the term of imprisonment, but at least two years. The term of expulsion may be determined either in years, months or days.

The Hungarian Criminal Code included vandalism of border fence, because according to the previous regulations the damage causing less than fifty thousand forints is not considered as a criminal offense, but only a petty crime. Damage causing up to five hundred thousand forints is considered as a misdemeanor that shall be awarded imprisonment not exceeding one year. However, this regulation does not provide adequate protection to the state border, therefore it was required to place it in the Criminal Code. Thus, those person who committed the vandalism of border fence punishable by imprisonment between one to five years, insofar as the act did not result in a more serious

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<sup>1</sup> 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)).

criminal offense.

#### Unlawful Crossing of Border Barrier

Section 352/A (1) Any person who enters the territory of Hungary by unlawfully crossing the barrier deployed for the protection of State borders is guilty of a felony punishable by imprisonment not exceeding three years.

(2) The penalty shall be imprisonment between one to five years if the criminal offense described in Subsection (1) is committed:

- a) by displaying a deadly weapon;
- b) by carrying a deadly weapon;
- c) by participating in civil disturbance.

(3) Any person who commits the criminal offense defined in Subsection (1) by displaying a deadly weapon or by carrying a deadly weapon, by participating in civil disturbance shall be punishable by imprisonment between two to eight years.

(4) The penalty shall be imprisonment between five to ten years if the criminal offense defined in Subsection (2) or (3) results in death.

#### Section 352/B

(1) Any person who destroys and vandalizes the barrier or the means deployed for the protection of State borders is guilty of a felony punishable by imprisonment between one to five years, insofar as the act did not result in a more serious criminal offense.

(2) The penalty shall be imprisonment between two to eight years if the criminal offense defined in Subsection (1) is committed:

- a) by displaying a deadly weapon;
- b) by carrying a deadly weapon;
- c) by participating in civil disturbance.

(3) Any person who commits the criminal offense defined in Subsection (1) by displaying a deadly weapon or by carrying a deadly weapon, by participating in civil disturbance shall be punishable by imprisonment between five to ten years.

(4) The penalty shall be imprisonment between ten to twenty years if the criminal offense defined in Subsection (2) or (3) results in death.

#### Section 352/C

Any person who obstructs the construction or maintenance of the barrier deployed for the protection of State borders is guilty of a misdemeanor punishable by imprisonment not exceeding one year, insofar as the act did not result in another criminal offense.

Furthermore, the Government Decree No. 41/2016 (III.9.) ordered the state of emergency due to the mass influx of migrants across the territory of Hungary. The Act XX of 2017 amended the Act I of 2007 and Act II of 2007 regarding the declaration of the migration crisis, as well as the force of the declaration. The amendments include the following regulations: declaration of the state of emergency due to mass influx of migrants, the possible temporary applicable, other authority actions and procedural rules applicable during a state of emergency. In sum this amendments includes all measures ordered in transit zone.

**Q4.** Is the return of irregularly staying third-country nationals a priority in your Member State? **Yes/No**

If Yes, please provide a brief overview of the national debate on return in your Member State. Please indicate key points of discussion and players involved in this debate, and reference the information provided. Sources of national debate to include may be national media reports, parliamentary debates, and statements or reports of NGO/civil society organisations or International Organisations (IOs).

Since the outbreak the migration crisis in 2014, it has been proven that Hungary is still a transit country. The majority of irregular migrants apply for asylum for the sole reason to delay their expulsion from the territory of the EU or to abuse the more lenient rules of the asylum procedure in order to the continue their way towards Western Europe. Consequently, in order to ensure the effective actions against abuses migration-related abuses, the return or non-return of third country nationals is a priority for Hungary.

The Migration Strategy of Hungary<sup>2</sup> gives a significant role to the fight against illegal migration by enhancing the effectiveness of border controls and by developing global partnership with countries of origin and transit amongst others. In addition, the immediate and unavoidable enforcement of legal consequences of measures against abusers is also priority goal.

The implementation of humane, effective and sustainable return in favour of voluntary return is also contained amongst the strategic priorities as well as increasing the use of inland transit through the territory of EU Member States and the scope of cooperation with other EU Member States in order to ensure the return of voluntary returnees. In addition, taking the necessary measures to prefer voluntary, non-sanctioned returns with the appropriate incentives is also included in the strategy.

Furthermore, according to the ten-point Schengen 2.0 Action Plan of the Hungarian Government which was released on the 15th April 2016 in order to handle the migration crisis irregular migrants should be sent back to safe countries of origin and transit and readmission and return agreements should be signed and implemented in cooperation with these countries.

## Section 2: Systematic issuance of return decisions

*This section of the Synthesis Report will provide information on Member States' practices with respect to the issuance of a return decision to any third-country national staying irregularly on their territory (as per Article 6 of the Return Directive). The section will consider, among others, whether the issuance of a return decision is subject to the possession of travel or identity documents by the third-country national concerned and examine if Member States issue joint decisions concerning the ending of a legal stay and a return decision in a single administrative or judicial decision (Article 6(6) of the Return Directive). The section will also provide information on the frequency with which Member States choose to grant an autonomous residence permit for compassionate, humanitarian or other reasons (Article 6(4) of the Return Directive) or refrain from issuing a return decision due to the third-country national being the subject of a pending procedure for renewing his or her residence permit (Article 6(5) of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q5.** Who are the competent authorities to issue a return decision in your Member State?

In Hungary the following three authorities are responsible for issuing a return decision: the alien policing authority, the asylum authority and the court.

The asylum authority may decide on the expulsion and deportation as well as the period of entry ban of a third country national in its decision refusing the application for recognition<sup>3</sup>. The alien policing authority is responsible for the implementation of expulsions and deportations ordered by the asylum authority.<sup>4</sup>

If the authority finds that a third-country national who has lawfully resided in the territory of Hungary no longer has the right residence, adopts a resolution to refuse his/her application for a residence permit or to withdraw the document proving the right of residence of the third-country national concerned, and obliges him/her to leave the territory of the Members States of the European Union. The third-country nationals may seek remedy against the expulsion order in the appeal submitted to challenge the resolution adopted to refuse the application for residence

<sup>2</sup> Government Decree 1698/2013. (X. 4.) p. 42-43. and 52.

<sup>3</sup> Asylum Act, Section 45 5 lit b

<sup>4</sup> Asylum Act, Section 45 8

permit or to withdraw the document proving the right of residence. If the court's decision is for expulsion or the alien-policing authority considers that the conditions for the third-country national's expulsion under the TCN Act are met, the alien-policing authority shall adopt a decision ordering the third-country national in concerned to leave the territory of the Member States of the European Union.<sup>5</sup> The third-country nationals may seek remedy against the expulsion order in the appeal submitted to challenge the resolution adopted to refuse the application for residence permit or to withdraw the document proving right of residence. The alien-policing authority implements the court's decision thereby adopts a decision ordering the third-country national to leave the territory of the Member States of the European Union.<sup>6</sup>

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

- a) The whereabouts of the third-country national concerned are unknown; **Yes/No**
- b) The third-country national concerned lacks an identity or travel document; **Yes/No**
- c) Other (please describe)

The immigration authority may order entry ban and prohibition of stay independently against the third-country national whose whereabouts are unknown because issuing the return decision related to the person.<sup>7</sup> Consequently, the immigration authority orders entry ban against the third-country national whose whereabouts are unknown or who resides abroad by decision. It is important to note that the Hungarian terminology makes a difference between the person whom domicile is unknown and the person who does not appear before the authority.

The immigration authority may order a return decision before establishing the identity of a third country national or in the absence of travel documents (the establishment the identity and obtaining the travel document is possible during the whole implementation of return decision). For example, the Office of Immigration and Asylum regularly issues the return decision based on pronounced data, because the authority obtains the travel document during the forced return procedure.<sup>8</sup>

Enforcement of an expulsion measure may be suspended until the necessary means and conditions are secured, i.e. until the travel document, visa, transport ticket is obtained. The decision ordering suspension cannot be contested.<sup>9</sup> However the third country national will not expelled who readmitted by other Member State.

**Q6b.** In connection with Q6a a) above, does your Member State have any measures in place to effectively locate and apprehend those irregularly-staying third-country nationals whose whereabouts are unknown?  
**Yes/No**

If Yes, please elaborate on the type of measures

In order to locate a third-country national whose whereabouts are unknown, the immigration authority may issue a warrant, which is mandatory to prioritize in the police records and in the immigration records as well. However, the result of warrant is doubtful.

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

**Yes/No**

<sup>5</sup> Act II of 2007, Section 42 1 lit

<sup>6</sup> Act II of 2007, Section 42 2 lit

<sup>7</sup> Act I of 2007, Section 39

<sup>8</sup> Based on the information provided by the Office of the Immigration and Asylum

<sup>9</sup> Act II of 2007, Section 48 3 lit

Please briefly elaborate on important exceptions to the general rule stated above

The current legislation does not make a difference between the irregular stay is detected in depths of the country or during the exit, therefore the immigration authority have to apply the general rules in both cases.

Therefore, the immigration authority shall order the expulsion of a third-country national under immigration laws who has crossed the frontier of Hungary illegally, or has attempted to do so; fails to comply the right of residence; was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision; whose entry and residence represents a threat to national security, public security or public policy; or whose entry and residence represents a threat and is potentially dangerous to public health.<sup>10</sup>

The immigration authority shall not order the expulsion of any third-country national who has been expelled by the competent authority of another Member State of the European Union for the reason that the person in question represents a genuine, present and sufficiently serious threat affecting national security or public security; in connection with a conviction under the laws of the country where the resolution was adopted for an offence punishable by a penalty involving imprisonment of at least one year; based on suspicion of serious criminal offences; or based on failure to comply with regulations on the entry or residence of foreign nationals.<sup>11</sup>

The immigration authority shall not order the expulsion of any third-country national residing unlawfully, who submitted an application for asylum according to the Act on Asylum,<sup>12</sup> or who has been readmitted by another Member State of the European Union under a bilateral readmission agreement or other similar agreement signed before 13 January 2009.<sup>13</sup> In these cases the immigration authority decides on the readmission based on the readmission agreement by way of a ruling, that may be contested by the third-country national affected by lodging a complaint within twenty-four hours following the time of delivery of the ruling. Implementation of the ruling on the return order shall not be suspended upon receipt of the said complaint.

The immigration authority does not expel the illegally residing third-country national who applies for asylum in the transit zone<sup>14</sup> or during the crisis caused by mass influx of migrants.<sup>15</sup>

**Q7.** [EC Recommendation (5) (c)] In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national? **Yes/No**

If No, when is the return decision issued? *Please specify.*

The expulsion orders shall specify:

- a) the discretionary criteria for examining family links;
- b) the duration of entry ban and prohibition of stay;
- c) the country to which the person concerned is expelled;
- d) the time limit for voluntary departure from the territory of the Member States of the European Union, or from the territory of Hungary;
- e) a warning to the third-country national affected of facing expulsion in the eventuality of his/her refusal to depart voluntarily; and
- f) the obligation for being photographed and fingerprinted.

The expulsion orders may not be appealed; however, a petition for judicial review may be lodged within eight days of

<sup>10</sup> Act II of 2007, Section 43 lit 2

<sup>11</sup> Act II of 2007, Section 45/A lit 1

<sup>12</sup> Act II of 2007, Section 45/ C

<sup>13</sup> Act II of 2007, Section 45/ B

<sup>14</sup> Act on Asylum, Section 71/A. lit b

<sup>15</sup> Act II of 2007, Section 45/C

the date when the resolution was delivered. The court shall adopt a decision within fifteen days upon receipt of the petition. The final decision of expulsion and the duration of exclusion shall be recorded in the passport in the form of an entry, unless the third-country national affected is holding a valid residence permit issued by any Member State of the European Union. The entry ban shall not be recorded if the foreign national concerned agrees to leave Hungary on his/her own accord, or leaves the territory of Hungary within the framework of a voluntary return program.<sup>16</sup>

**Q8.** Does the legislation in your Member State 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? **Yes/No**

If Yes, please elaborate on the type of permit/ authorisation granted and to which type of third-country national it is granted.

If there is no safe third country offering refuge to the third-country national concerned, if assisted return or expulsion is not an option (non-refoulement), the refugee authority extends temporary protection to the third-country national in question, and issues a humanitarian residence permit for the person concerned.<sup>17</sup> 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 corporal punishment, torture, other inhuman treatment or punishment (non-refoulement).<sup>18</sup>

Additionally, in the absence of the conditions of legal stay and in the event of withdrawal of expulsion and entry ban orders after 12 month the immigration authority shall issue a residence permit to the third-country national affected on humanitarian grounds if the third-country national: cooperated with the immigration authority in the process of carrying out the expulsion; complied with the prescribed rules of conduct and with the obligation to report on a regular basis; and is not implicated in a criminal proceeding and does not have a criminal record.<sup>19</sup>

In the above mentioned cases the validity of residence permit granted on humanitarian grounds is one year that can be extended up to one year each time.<sup>20</sup> A residence permit granted on humanitarian grounds may not be extended, or it shall be withdrawn if any requirement for issue is no longer satisfied; the third-country national concerned has disclosed false information or untrue facts to the competent authority in the interest of obtaining the right of residence, withdrawal is requested by the authority or body on whose initiative it was issued for some other reason.<sup>21</sup>

A certificate of temporary residence is issued to any third-country national who remained in the territory of Hungary beyond the duration of lawful residence due to humanitarian reasons or for personal or some other unavoidable reasons beyond his/her control.<sup>22</sup> A certificate of temporary residence constitutes the right of residence in the territory of Hungary, it may not be used for exit or reentry, it become void upon the third-country national's departure, when it shall be surrendered. The certificates surrendered shall be returned to the issuing authority.<sup>23</sup>

The validity of the certificate is 3 months that can be extended up to 3 months each time. A certificate of temporary residence may not be extended, or it shall be withdrawn if any requirement for issue is no longer satisfied.<sup>24</sup>

**Q9a.** [EC Recommendation (6)] In your Member State, do return decisions have unlimited duration? **Yes/No**

<sup>16</sup> Act II of 2007, Section 46

<sup>17</sup> Act II of 2007, Section 52/A

<sup>18</sup> Act II of 2007, Section 51 Paragraph (1)

<sup>19</sup> Act II of 2007, Section 29 Paragraph (1a)

<sup>20</sup> Act II of 2007, Section 29 Paragraph (2) Points b) and f)

<sup>21</sup> Act II of 2007, Section 29 Paragraph (3)

<sup>22</sup> Act II of 2007, Section 30 Paragraph (1) Point c)

<sup>23</sup> Act II of 2007, Section 30 Paragraph (5)

<sup>24</sup> Act II of 2007, Section 30 Paragraph (2) Point a) and Section (4)

In the Hungarian Criminal Code, the penalties have a decisive roles in the sanction system, while the measures have a more preventive purpose. This sanction system applies expulsion as a penalty, which can be ordered for a definite term, or permanently. In the former case the minimum duration of a fixed-term expulsion is one year, its maximum duration is ten years. The important exceptions to the general rule that the expulsion may not be omitted in the following cases: the unlawful crossing of border barrier (Criminal Code, Section 352/A), vandalism of border barrier (Criminal Code, Section 352/B) or obstruction of construction works on border barrier (Criminal Code, Section 352/C) and the expulsion is ordered for a specific term, it shall be the double of the term of imprisonment, but at least two years. The term of expulsion may be defined either in years, months or days.

Permanent expulsion may be imposed upon a person who was sentenced to a term of imprisonment of ten years or more, and presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety taking into account the severity of the criminal offense, the nature of the act and the connections of the perpetrator. A person with the right of free movement and residence cannot be expelled permanently.<sup>25</sup> Upon request, the court may release a person subject to permanent expulsion from the effect of such expulsion if such person is deemed worthy and if ten years have passed since the expulsion

Periods of prescription is suspended during the period of execution suspension, but any enforcement action interrupts it. However the decision cannot be enforced ten years after the decision becomes final.

**Q9b.** If No, for how long are return decisions valid?

See Q9a.

**Q10.** Does your Member State 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? **Yes/No**

If Yes, please describe such mechanism:

Fundamental Law of Hungary declares that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.<sup>26</sup>

The immigration authority examines the prohibition of non-refoulement exist or not in each cases . The immigration authority shall takes into account the principle of non-refoulement in the proceedings relating to the ordering and the enforcement of expulsion measures.<sup>27</sup>

In the event that there is any doubt as to whether or not the principle of non-refoulement applies as regards the ordering and execution of assisted return, the competent immigration authority shall request the opinion of the refugee authority. The refugee authority shall comply with the above request without delay.<sup>28</sup>

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 asylum authority shall comply with the above request without delay. The competent immigration authority shall not derogate from the opinion of the asylum authority. The restriction shall not apply if the person affected is returned to the territory of an EEA Member State. Before ordering the expulsion

<sup>25</sup> Act C of 2012, Section 60

<sup>26</sup> Fundamental Law of Hungary, (25 April 2011), Section 14, 2 lit

<sup>27</sup> Act II of 2007, Section 52, 1 lit

<sup>28</sup> Government Decree No. 114/2007, Section 124, 2 lit



measure in an asylum procedure, the asylum authority examines as to whether the principle of non-refoulement applies.<sup>29</sup> A prohibition of enforcement of expulsion measures ordered by the court may be imposed by the sentencing judge. The person expelled may appeal directly to the sentencing judge on one occasion to declare the expulsion non-enforceable. If the person expelled submits his request which was addressed to the sentencing judge to the immigration authority, the immigration authority shall forward it without delay to the competent sentencing judge with its opinion attached. The procedure of the sentencing judge has a suspensive effect on the enforcement of expulsion. The sentencing judge made decision on the request within eight days.<sup>30</sup> If the third-country national submitted the request directly to the sentencing judge, the court or the public prosecutor contact to the refugee authority to request a prompt opinion without delay regarding the existence the prohibition of non-refoulement.<sup>31</sup> If there is no safe third country which accepted the third-country national affected, and return or expulsion is not an option, the asylum authority extends temporary protection to the third-country national in question, and shall issue a humanitarian residence permit.<sup>32</sup>

**Q11.** [EC Recommendation (7)] Does your Member State systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country? **Yes/No**

Please briefly elaborate on important exceptions to the general rule stated above

Yes. Hungarian authorities always indicate the country to which the person concerned is expelled.<sup>33</sup>

The final decision of expulsion and the duration of entry ban is recorded in the passport, unless the third-country national affected is holding a valid residence permit issued by any Member State of the European Union. The recorded shall not be made if the third country national affected agrees to leave Hungary on his/her own accord, or leaves the territory of Hungary within the framework of a voluntary return program.<sup>34</sup> The country designated as the destination of expulsion is 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 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.<sup>35</sup>

### Section 3: Risk of absconding

*This section will examine Member States' practices and criteria to determine the risk of absconding posed by third-country nationals who have been issued a return decision (to the extent that it has not been covered*

<sup>29</sup> Government Decree No. 114/2007, Section 124, 3 lit

<sup>30</sup> Act II of 2007, Section 52, 2-4 lit

<sup>31</sup> Government Decree No.114/2007, Section 124, 1 lit

<sup>32</sup> Act II of 2007, Section 52/A

<sup>33</sup> Act II of 2007, Section 46

<sup>34</sup> Act II of 2007, Section 46, lit 4

<sup>35</sup> Government Decree No. 114/2007, Section 118

in previous EMN studies/outputs),<sup>36</sup> as well as measures aiming to avoiding the risk of absconding (as per Article 7(3) of the Return Directive).

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

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

Table 6 Assessment of the risk of absconding

Elements/ behaviours	Yes/No	Comments
<b>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</b>	No.	The authority evaluates it in its decision individually.
<b>Violent or fraudulent opposition to the enforcement of return</b>	Yes.	The authority evaluates it in its decision individually.
<b>Explicit expression of the intention of non-compliance with a return decision</b>	No.	The authority evaluates it in its decision individually.
<b>Non-compliance with a period for voluntary departure</b>	No.	The authority evaluates it in its decision individually.
<b>Conviction for a serious criminal offence in the Member States</b>	No.	The authority evaluates it in its decision individually.
<b>Evidence of previous absconding</b>	No.	The authority evaluates it in its decision individually.
<b>Provision of misleading information</b>	No.	The authority evaluates it in its decision individually.
<b>Non-compliance with a measure aimed at preventing absconding</b>	No.	The authority evaluates individually in its decision.
<b>Non-compliance with an existing entry ban</b>	No.	The authority evaluates it in its decision individually.
<b>Lack of financial resources</b>	Yes.	The authority evaluates it in its decision individually.

<sup>36</sup> For example, the EMN Focussed Study 2014 on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'; the Ad-Hoc Query on objective criteria to identify risk of absconding in the context of reception directive art 8 (recast) and Dublin regulation no 604/2013 art 28 (2)" (Requested by Estonian NCP on 15 October 2014); and the "Ad-Hoc Query on the Return Directive (2008/115/EC)article 3(7) objective criteria for the "risk of absconding" (Requested by LT EMN NCP on 11 February 2013).

<b>Unauthorised secondary movements to another Member State</b>	Yes.	The authority evaluates it in its decision individually.
<b>Other (please describe)</b>		<p>In order to secure the expulsion of a third country national, the immigration/alien-policing authority may detain the person concerned if:</p> <p>A) he / she is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;</p> <p>B) he / she has refused to leave the country, or, based on other substantiated reasons, it is allegedly delaying or preventing the enforcement of the expulsion, or there is a risk of absconding of the third country national;</p> <p>C) he / she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;</p> <p>D) he / she has failed to appear before the authority as ordered, despite being so advised, by which to prevent the conclusion of the pending immigration proceeding; guard</p> <p>E) he / she is released from prison for a deliberate crime.<sup>37</sup></p>

**Q13.** What measures are in place in your Member State to avoid the risk of absconding for the duration of the period for voluntary departure?

- a) Regular reporting to the authorities; **Yes/No**
- b) Deposit of an adequate financial guarantee; **Yes/No**
- c) Submission of documents; **Yes/No**
- d) Obligation to stay at a certain place; **Yes/No**
- e) Other (please describe)

Not relevant.

**Q14.** Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State. 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)

From the migration aspect Hungary is a transit country as the majority of the irregular migrants entering the country with the goal to travel other countries of European Union. Furthermore the summary opinion of the Working Group on Case Analysis of Curia (the Hungarian Supreme Court) suggested to the relevant judicial bodies to apply alternative coercive measures instead of the prolongation of the detention.<sup>38</sup> In case of private accommodation, the judicial body supports the application of alternative measures despite the opinion of the immigration authority. However, based on the experience of the authority, in this cases the majority of the migrants have absconded.

<sup>37</sup> Act II of 2007, Section 54

<sup>38</sup>Retrieved from: [http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti\\_osszefoglalo\\_velemeny\\_kuria.pdf](http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemeny_kuria.pdf) (last accessed: 16.08.2017)

**Q15.** Please describe any examples of good practice in your Member State'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. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

The competent and independent judicial body examines the risk of absconding during the procedure of ordering the detention, and during which the immigration authority have to justify why the alternative measure is not sufficient.

In doing so, the judicial body examine the following:

How the third country national entered to the Schengen area? Did She/he respect the immigration laws? If she/he did not respect the immigration laws, she/ he had got contact with competent authority and had presented him/her self before the competent authority or the police had apprehended it. Furthermore, the judicial body examines the standard of living of the third country national, his/her residence is secured and his/her behavior is cooperative during the expulsion. If the , migrant refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion, or there is a risk of absconding of the third-country national; whether the judicial body ordered his/her detention.

The detention is ordered if he/she is released from imprisonment as sentenced for a deliberate crime. prolongation of the detention is assessed individually by judicial authority. In cases when the court rejects the prolongation of detention, migrants leave to the unknown places.

#### Section 4: Effective enforcement of return decisions

*This section of the Synthesis Report will present Member States' practices in relation to the effective implementation of return decisions. In particular, it will examine the following issues (to the extent that they are not already covered by previous EMN studies and recent EMN Ad-Hoc Queries): the application of the principle of mutual recognition of return decisions by the Member States (as provided for by Council Directive 2001/40/EC<sup>39</sup> and Council Decision 2004/191/EC;<sup>40</sup> the use of detention and alternatives to detention in return procedures (as per Article 15 of the Return Directive); the extent to which emergency situations have led national authorities to apply derogations from the standard periods of judicial review and general detention conditions (Article 18 of the Return Directive); and the use of European travel documents for return in accordance with Regulation 2016/1953.<sup>41</sup>*

*Please note that similar information was requested in the EMN 2014 Study on 'The use of detention and alternatives to detention in the context of immigration policies' and the EMN Ad-Hoc Query on the Use of Detention in Return Procedures (update) requested by the European Commission on 9<sup>th</sup> August 2016. Please review your Member State contribution to the aforementioned Study and Ad-Hoc Query (if completed) and provide only updated information here.*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q16.** [EC Recommendation (11)] Does national legislation in your Member State foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes? **Yes/No**

If Yes, please specify to whom such sanctions apply and their content

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<sup>39</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 2.6.2001

<sup>40</sup> Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, OJ L 60, 27.2.2004.

<sup>41</sup> 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

In order to ensure the implementation of the immigration procedures or the expulsion of third-country nationals staying illegally on the territory of Hungary, they may be detained by immigration authority according to Act II of 2007. Taking away of travel documents or imposing a designated place to stay for the third country national can be applied as alternative measures.

In order to ensure the expulsion of a third-country national the immigration authority may detain the person concerned if:

- a) he/she is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;
- b) he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion, or there is a risk of absconding of the third-country national;
- c) he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;
- d) he/she has failed to appear before the authority as ordered despite of being so advised, by means of which to forestall conclusion of the pending immigration proceeding; or
- e) he/she is released from imprisonment as sentenced for a deliberate crime.<sup>42</sup>

Before ordering detention on the basis of points a) or b), the immigration authority shall consider whether the expulsion can be ensured by taking away of travel documents or imposing a designated place to stay.<sup>43</sup>

In order to secure the enforcement of an expulsion measure the immigration authority is authorized to confiscate the travel document of the third-country national affected; this action cannot be contested.<sup>44</sup> Furthermore, the immigration authority has the power to assign designated place to stay for a third-country national if the third-country national concerned: cannot be returned or expelled due to commitments of Hungary conferred upon it in international treaties and conventions; is a minor who should be placed under detention; should be placed under detention, in consequence of which his/her minor child residing in the territory of Hungary would be left unattended if he/she was to be detained; is released from detention, however, there are still grounds for his/her detention; has a residence permit granted on humanitarian grounds; has been expelled, and is lacking adequate financial resources to support himself and/or does not have adequate dwelling; should be placed under detention and detention would result in a disproportionate punishment taking into account the state of health and age of the third-country national concerned. The decision shall specify the place of compulsory confinement, the code of conduct to be observed and the obligation to appear at specific intervals before the authority if the place is not a community shelter or a reception centre. The code of conduct has to also state that the third-country national is not authorized to move outside the territory of the county specified in the decision except if the third-country national holds a humanitarian residence permit issued or if so authorized by the immigration authority at the third-country national's request. The designated place is a community shelter or a reception centre, if the third-country national is not able to support himself, and has no adequate accommodation, financial resources, income, or host or relative who can be compelled to provide support.<sup>45</sup>

#### SECTION 4.1. MUTUAL RECOGNITION

**Q17.** [EC Recommendation (9) (d)] Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory? Yes/No

Please briefly elaborate on your practice and any exception to the general rule stated above.

Both/Partially. The Hungarian legislation provides the immigration authority shall not order the expulsion of any third-country national who has been expelled by the competent authority of another Member State of the European Union:

a) for the reason that the person in question represents a genuine, present and sufficiently serious threat affecting national security or public security;

b) in connection with a conviction under the laws of the country where the resolution was adopted for an offence punishable by a penalty involving imprisonment of at least one year;

c) based on suspicion of serious criminal offences; or

d) based on failure to comply with regulations on the entry or residence of foreign nationals.<sup>46</sup> Furthermore, it is important to note that the return decision is not available to the relevant authority in general, and in the most of the cases it is attached to the SIS alerts or to obligations of voluntary return there is not the formal decision of other EU

<sup>42</sup> Act II of 2007, Section lit (1) points a)-e)

<sup>43</sup> Act II of 2007, Section 54 lit (1)

<sup>44</sup> Act II of 2007, Section 48 lit (2)

<sup>45</sup> Act II of 2007, Section 62 lit (1)-(3)

<sup>46</sup> Act II of 2007, Section. 45/A, lit 1

Member State.

If Yes, does your Member State:

- a) Initiate proceedings to return the third-country national concerned to a third country; *Yes/No*
- b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision; *Yes/No*
- c) Other (*please specify*)

Not relevant

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

See above.

#### SECTION 4.2 TRAVEL DOCUMENTS

**Q18.** [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953?<sup>47</sup> **Yes/No**

If Yes, in which cases do you issue these documents?

The Office of Immigration and Asylum issues travel documents to the Afghan citizens based on the "Joint Way Forward on migration issues between Afghanistan and EU".

If Yes, are these documents generally accepted by third countries? **Yes/No**

Please briefly elaborate on important exceptions to the general rule stated above

The police has not issued any travel document based on the new regulation of the European Travel Document yet. However, the police has issued travel documents to Kosovar citizens based on Council Recommendation of 30 November 1994 because the Serbian authorities did not accept Kosovars' return permits but they authorized entry and transit the Kosovars by Hungarian escorts with laissez-passers issued by the Hungarian authorities.

**Q19.** In your Member State, 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 (where relevant, for each type of document, e.g. laissez-passer, EU travel documents...) and the timeframe within which these are lodged before third countries.

If there is a valid readmission agreement between Hungary or EU and the third country the police otherwise the Office of Immigration and Asylum is the competent authority. The Hungarian authority sends a request to the diplomatic mission of the third country with the personal data, the fingerprint and photos of the third country nationals. If the identity of third country national is identified by the third country, the competent authority issues the travel document. The deadline is set out in all readmission agreements and their implementation protocols.

#### SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law.

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<sup>47</sup> Ibid

**Q20a.** [EC Recommendation (10) (a)] In your Member State, is it possible to detain a third-country national within the context of the return procedure? **Yes/No**

Please briefly elaborate on any exceptions to the general rule stated above

Third country nationals illegally staying on the territory of Hungary (except for asylum-seekers) may be detained by the immigration authority in order to ensure the implementation his/her expulsion. In order to **ensure the expulsion of a third-country national** the immigration authority have powers to detain the person if he/she is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way; he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion, or there is a risk of absconding of the third-country national; he/she has seriously or repeatedly violated the code of conduct of the place of compulsory confinement; he/she has failed to appear before the authority as ordered despite of being so advised, by means of which to forestall conclusion of the pending immigration proceeding; or he/she is released from imprisonment as sentenced for a deliberate crime.<sup>48</sup>

In addition, the immigration authority may order the detention of the third-country national **prior to expulsion in order to ensure the conclusion of the immigration procedure pending** if his/her identity or the legal grounds of his/her residence is not conclusively established, or if the return of the third-country national under the bilateral readmission agreement to another Member State of the European Union is pending.<sup>49</sup>

**The detention shall be terminated if:** the conditions for carrying out the expulsion are provided for; it becomes evident that the expulsion cannot be executed; after six months from the date when ordered, or twelve months; the third-country national is entitled to reside in the territory of Hungary in accordance with the relevant legislation based on his/her application for international protection; or detention of the third-country national is ordered in asylum proceedings.<sup>50</sup>

**Q20b.** If Yes, please specify the grounds on which a third-country national may be detained (select all that apply)

- a) If there is a risk of absconding; **Yes/No**
- b) If the third-country national avoids or hampers the preparation of a return or removal process; **Yes/No**
- c) Other (please specify).

See 20a.

**Q21.** How often does your Member State make use of detention for the purpose of removal? Please complete the table below for each reference year (covering a 12-month period, from 1st January to 31st December).<sup>51</sup>

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

	2012	2013	2014	2015	2016	Comments
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<sup>48</sup> Act II of 2007, Section 54 lit (1)

<sup>49</sup> Act II of 2007, Section 55 lit (1)

<sup>50</sup> Act II of 2007, Section 54 lit (6)

<sup>51</sup> The following (Member) States provided quantitative information on the use of detention for the period 1<sup>st</sup> January 2012 -31<sup>st</sup> July 2016 through the EMN Ad-Hoc Queries on the 'Use of Detention in Return Procedures - Requested by COM on 30th November 2015' and 'Use of Detention in Return Procedures (update) -Requested by COM on 9th August 2016': Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, and Norway. Therefore, they should only provide complete data for the period 1<sup>st</sup> January-31<sup>st</sup> December 2016.

<b>Total number of third-country nationals placed in detention</b>	5919	4246	4841	7843	2048	
<b>Number of third-country nationals placed in detention (men)</b>	5569	4051	4672	7366	1977	
<b>Number of third-country nationals placed in detention (women)</b>	350	195	169	476	71	
<b>Number of families in detention</b>						No data.
<b>Number of UAMs in detention</b>	-	-	-	-	-	Unaccompanied minors cannot be detained.

**Q22a.** [EC Recommendation (10) (b)] In your Member State, what is the overall maximum authorised length of detention (as provided for in national law or defined in national case law)?<sup>52</sup>

Detention may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court by reference to the place of detention until the third-country national's expulsion, not exceeding sixty days at a time. That may be extended by up to six additional months on the expiry of a period of six months, if carrying out the expulsion order takes more than six months, in spite of having taken all necessary measures, due to: the failure of the third-country national affected to cooperate with the competent authority, or delays in obtaining the documents required for deportation attributable to the authorities of the third-country national's country of origin, or another state liable for readmission under readmission agreement or which is otherwise liable to accept him/her. Detention shall be ordered by way of a formal resolution, and shall be carried out when communicated.<sup>53</sup>

Detention prior to expulsion is ordered by way of a formal resolution, and is carried out upon its communication. It may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court by reference to the place of detention until the third-country national's identity or the legal grounds of his/her residence is conclusively established, or for a maximum of thirty days.<sup>54</sup> The request for the extension of detention lodged by the authority ordering the detention shall contain the information concerning the measures taken to establish the identity or the legal grounds for the right of residence of the third-country national or the travel arrangements made for the third-country national affected during the first six months of detention. A copy of the request for extension is sent to the legal representative of the third-country national or to the appointed representative ad litem. The authority ordering detention encloses with its motion for the extension of detention made after six months of detention information describing the lack of cooperation on the third-country national's part, or in connection with obtaining the documents required for expulsion, a demonstration of the facts in proof of delays in the proceedings of the authorities of the third-country national's country of origin or the country that is liable to take charge or accept

<sup>52</sup> Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

<sup>53</sup> Act II of 2007, Section 54, lit 3-5

<sup>54</sup> Act II of 2007, Section 55 lit (2)-(5)



him/her, that is to be sent to the third-country national's legal representative or to the appointed representative ad litem as well.<sup>55</sup>

**Q22b.** Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded? **Yes/No**

Please elaborate under which circumstances:

See Q22a.

**Q23a.** In your Member State, is detention ordered by administrative or judicial authorities?

a) Judicial authorities; *please specify*

b) Administrative authorities; *please specify*

The immigration authority may order detention under immigration laws that is carried out when communicated. Detention under immigration laws may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court by reference to the place of detention until the third-country national's deportation, not exceeding sixty days at a time. So, immigration authority can order it, but the court can extended it.

c) Both judicial and administrative authorities; please specify

**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:

a) The lawfulness of detention is reviewed by a judge ex officio: **Yes/No**

If Yes, how long after the start of detention?

See below.

b) The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention; **Yes/No**

If Yes, how long after the initiation of such proceedings by the third-country national?

Detention under immigration laws is ordered by way of a formal resolution and carried out when communicated. The immigration detention may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court by reference to the place of detention until the third-country national's expulsion, not exceeding sixty days at a time. The detention may be extended by up to six additional months on the expiry of a period of six months, if carrying out the expulsion order takes more than six months, in spite of having taken all necessary measures, due to: the failure of the third-country national affected to cooperate with the competent authority, or delays in obtaining the documents required for deportation expulsion state liable for readmission under readmission agreement or which is otherwise liable to accept him/her. The immigration authority files its request for an extension beyond the seventy-two-hour time limit at the district court within twenty-four hours from the time when the detention was ordered.<sup>56</sup> The court may grant an extension of detention in immigration proceedings for a maximum duration of sixty days at a time. Any additional sixty-day extension of detention in immigration proceedings may be requested at the court by the

<sup>55</sup> Government Decree No. 114/2007., Section 128

<sup>56</sup> Act II of 200, Section 54 lit (3)-(5)

immigration authority, where the court must receive the request within eight working days prior to the due date for extension.<sup>57</sup>

**Q24a.** In your Member State, 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, t Q24a and Q24b and 24c below refer to the review of the duration of the stay of the third-country national in detention.*

See Q23a. and Q23b.

**Q24b.** In your Member State, how often is the stay of a third-country national in detention reviewed (e.g. every two weeks, every month, etc.)?

The immigration authority may order immigration detention for a maximum of seventy-two hours. It may request the extension of the detention form the competent district court which may extend it for a maximum of sixty days each time. Consequently, the detention of third country nationals is reviewed at least in seventy-two hours and then at least in sixty days each time.<sup>58</sup> Detention prior to expulsion may be ordered by the authority for a maximum of seventy-two hours that can be extended upon request by the competent district court for a maximum of thirty days. Thus in this case the detention is reviewed at least in seventy-two hours.<sup>59</sup>

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

a) **Judicial authorities;** *please specify*

The lawfulness of the detention is always reviewed by the competent courts.

b) Administrative authorities; *please specify*

c) Both judicial and administrative authorities; *please specify*

*For example: detention is in general reviewed by administrative authorities but will be reviewed by a judge in cases of prolonged detention (over one month)*

**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 31<sup>st</sup> December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors.<sup>60</sup> If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

<sup>57</sup>Act II of 200, Section 58

<sup>58</sup> Act II of 2007, Section 54 lit (3) and (4) and Section 58 lit(2)

<sup>59</sup> Act II of 2007, Section 55 lit (3)

<sup>60</sup> Please review your contribution to the EMN Ad-Hoc Query Use of Detention in Return Procedures (update) - Requested by COM on 9th August 2016' and provide only updated information in response to this question.

Table 3 Detention capacity as of 31<sup>st</sup> December 2016

		Situation as of 31 <sup>st</sup> December 2016	Comments
<b>Number of detention centres</b>		4	
<b>Number of places available in detention centres per category of third-country nationals</b>	<b>Men</b>	397	
	<b>Women</b>		
	<b>Families</b>	46	Families, single women, and other vulnerable persons with special needs as well as married couples are accommodated in special detention facility with a capacity of 46 persons.
	<b>Unaccompanied minors</b>	Not relevant.	UAMs cannot be detained.
	<b>Total</b>	443	

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

The capacity of detention places is measured in terms of number of beds.

**Q27.** [EC Recommendation (21) (c)]. In your Member State, 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/**No**

Please briefly elaborate on important exceptions to the general rule stated above

There is no exception.

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

The immigration authority carries out the detention in places designated for this purpose.<sup>61</sup>Detention facility mean a restricted access facility designed specifically for the detainment of aliens whose personal liberty is restricted as

<sup>61</sup> Act II of 2007, Section 61 lit (1)

ordered in immigration proceedings.<sup>62</sup>

Detention facilities have to satisfy the following criteria:

- a) the living quarters of detained third-country nationals must have at least 15 cubic meters of air space and 5 square meters of floor space per person, plus a separate living space of at least 8 square meters for married couples and families with minor children, taking also into account the number of family members;
- b) they must have a common area for dining, for recreational purposes - including games and other similar activities for minors - and for receiving visitors;
- c) they must have separate washrooms and showers and toilets for men and women, with hot and cold running water, in sufficient capacity consistent with the number of detainees;
- d) they must have an infirmary for providing basic medical care;
- e) they must have a medical examination room and an isolation room;
- f) they must have sufficient space for outdoor activities;
- g) they must have lighting sufficient to satisfy the standards laid down in the national requirements concerning regional development and construction;
- h) they must have an uninterrupted power supply;
- i) they must have a separate room for receiving visitors;
- j) they must have telephone facilities;
- k) they must have natural ventilation in the living quarters of third-country nationals and in the staff rooms, in the medical rooms, in the visitors areas, in the kitchen and in the dining room, and in the common areas.<sup>63</sup>

Detention facilities may not be installed in police detention facilities or in penal institutions.<sup>64</sup> It shall not apply in situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of accommodation of restricted access, or on the immigration authority itself<sup>65</sup> if placement in an immigration detention facility cannot be ensured.<sup>66</sup> If in this special circumstance third country nationals who are detained are placed in penal institutions the rules laid down in Ministerial Decree No. 27/2007. (V. 31) IRM on the rules implementing alien-policing detention also applicable.<sup>67</sup>

**Q28a.** Has your Member State 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? **Yes/No**

Please elaborate on the circumstances in which this happened:

If an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention center, or on the immigration authority itself, the detention may enforce in penal institutions according to the Return Directive. In these cases, as long as the exceptional situation persists, the immigration authority may decide to request the district court within five days from the date when the detention was ordered to extend the period of detention after the past seven days.<sup>68</sup>

According to Article 18 (2) Return Directive Hungary notified to the European Commission in November 2015 that the detention was not performed temporarily in the detention facilities because of the unforeseen large number of third-country nationals to be detained. In the first half of 2016, Hungary notified the European Commission about the termination of reason, since then Hungary applies the general rules of detention again.

**Q28b.** Has your Member State'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? **Yes/No**

If an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention centers, or on the immigration authority itself, the immigration authority may carry out the detention at a place other than it is defined Act II of 2007. In these cases, the procedure are determined by the Ministerial Decree<sup>69</sup> and the Return Directive.

<sup>62</sup> Act II of 2007, Section 2 Point u)

<sup>63</sup> Government Decree 114/2007 (V. 24.) Section 129 lit (1)

<sup>64</sup> Government Decree 114/2007 (V. 24.) Section 129 lit (2)

<sup>65</sup> Act II of 2007, Section 61/A lit (1)

<sup>66</sup> Government Decree 114/2007 (V. 24.) Section 129 lit (2a)

<sup>67</sup> Ministerial Decree 27/2007. (V. 31) IRM Section 1 lit (3)

<sup>68</sup> Act II of 2007, Section 62/A, lit 1

<sup>69</sup> 27/2007. (V. 31) IRM Section 1 lit (3)

**Q28c.** If Yes to Q28a, please describe the situation(s) in additional detail and provide information on any derogations that your Member State may have decided to apply with respect to general detention conditions and standard periods of judicial review (e.g. *during the emergency situation, third-country nationals had to be detained in prison accommodation in order to increase the detention capacity, the detention was reviewed once a month instead of once a week, etc.*)

See 28a.

#### SECTION 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 your Member State 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)
<p><b>Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)</b></p>	<p>If the immigration authority designated a place to reside for the third country national, he/she is obliged to report at the immigration authority regularly in order to extend the validity of his/her certificate of temporary stay.</p> <p>The asylum authority applies the same practice in connection with humanitarian residence permits of asylum-seekers, while reporting to the police may be ordered in criminal procedures when deciding on displacement ban as a security measure.</p>
<p><b>Obligation to surrender a passport or a travel document</b></p>	<p>In order to ensure the execution of the expulsion order, the immigration authority may take away the travel documents of third country national.</p>
<p><b>Residence requirements (e.g. residing at a particular address)</b></p>	<p>The immigration authority have powers to order the confinement of a third-country national in a designated place, if the third-country national concerned :</p> <ul style="list-style-type: none"> <li>a) cannot be returned or expelled due to commitments of Hungary conferred upon it in international treaties and conventions;</li> <li>b) is a minor who should be placed under detention;</li> <li>c) should be placed under detention, in consequence of which his/her minor child residing in the territory of Hungary would be left unattended if he/she was to be detained;</li> <li>d) is released from detention, however, there are still grounds for his/her detention;</li> <li>e) has a residence permit granted on humanitarian grounds;</li> <li>f) has been expelled, and is lacking adequate financial resources to support himself and/or does not have adequate dwelling.</li> <li>g) should be placed under detention under immigration laws according</li> </ul>

	to Paragraph <i>a</i> ) or <i>b</i> ) of Subsection (1) of Section 54 of the Act II of 2007, and detention would result in a disproportionate punishment taking into account the state of health and age of the third-country national concerned. <sup>70</sup>
<p><b>Release on bail (with or without sureties)</b></p> <p><i>If the alternative to detention "release on bail" is available in your (Member) State, 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></p>	<p>Asylum bail is applicable in the asylum procedure. During its procedure the asylum authority examines whether the presence of the applicant can be ensured by the asylum bail.</p> <p>In alien-policing procedures the detention cannot be altered by bail with special attention to the fact that the asylum authority may confiscate the sum necessary for buying the travel tickets and for issuing the travel documents. This sum may be given to authority by anyone but this does not mean itself a cause for terminating the detention, however it may refer to a willingness to return and to cooperate that may justify the application a less severe coercive measure.</p>
<b>Electronic monitoring (e.g. tagging)</b>	No. It is not applied in immigration procedures.
<p><b>Guarantor requirements</b></p> <p><i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	To a small extent. The immigration authority may take into account the receiving statement of family members or the request of the embassies when deciding on the voluntary or forced nature of the return, or on the application of coercive measures.
<b>Release to care worker or under a care plan</b>	No.
<b>Community management programme</b>	No.
<b>Other alternative measure available in your (Member) State. Please specify.</b>	No.

**Q30.** Please indicate any challenges associated with the implementation of detention and/ or alternatives to detention in your Member State

In replying to this question please note 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)

Not relevant.

<sup>70</sup> Act II of 2007, Section 62 lit (1)

**Q31.** Please describe any examples of good practice in your Member State'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. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Since 2011, the National Police Headquarters - in cooperation with Menedék, Hungarian Association for Migrants-employs the civilian social and community workers in order to assist the detainees to use their leisure time meaningfully in the alien policing detention and to reduce the tension caused by the lack of information as well as to facilitate successful return.

In the framework of projects funded by the European Return Fund (EVA) and the Asylum, Migration and Integration Fund (MMIA), the authorities provide the following supports: individual consultation opportunities, community programs, internet access, psychological and psychiatric assistance. The success of these projects are acknowledged by the NGOs and international organizations (UNHCR, Hungarian Helsinki Committee, IOM) operating in Hungary during the transition period between EVA and MMIA UNHCR financially supported these kind of activities in several places of detention..<sup>71</sup>

## Section 5: Procedural safeguards and remedies

*This section will study Member States practices on the interpretation and implementation of EU rules relating to appeal deadlines and suspensive effect of appeals (as per Articles 13 of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q32.** [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? Yes/No

Please briefly elaborate on important exceptions to the general rule stated above

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 capital punishment, torture, other inhuman treatment or punishment(non-refoulement).<sup>72</sup>

The immigration authority take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of expulsion measures.<sup>73</sup>

In the event there is any doubt as to whether or not the principle of non-refoulement applies as regards the ordering and execution of assisted return, the competent immigration authority requests the opinion of the asylum authority. The asylum authority has to comply with the above request without delay.

The competent immigration authority shall not derogate from the opinion of the asylum authority. The restriction shall not apply if the person concerned is returned to the territory of an EEA Member State. Before ordering the expulsion measure in an asylum procedure, the refugee authority examines whether the principle of non-refoulement applies.<sup>74</sup>

A ban for the enforcement of expulsion measures ordered by the court may be imposed by the sentencing judge. If the person expelled may appeal directly to the sentencing judge on one occasion - in connection with the execution of the same judgment - to declare the expulsion non-enforceable. If the person expelled submits his request which was

<sup>71</sup> Based on the information of Police Headquarters

<sup>72</sup> Act II of 2007, Section 51, 1 lit

<sup>73</sup> HAct II of 2007, Section 52, 1 lit

<sup>74</sup> Government Decree 114/2007, Section 124, 2-3lit

addressed to the sentencing judge to the immigration authority, the immigration authority forwards it without undue delay to the competent sentencing judge with its opinion attached. The enforcement of expulsion is suspended for the duration of the proceeding of the sentencing judge. The sentencing judge shall decide on the appeal within eight days.<sup>75</sup>

If a third-country national lodged a request of the RRTN directly to the sentencing judge, the court or the public prosecutor contacts the asylum authority to request a prompt opinion as to whether the principle of non-refoulement applies.<sup>76</sup>

If No, under which circumstances is it assessed?

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

Not relevant.

**Q33.** In your Member State, before which authority can a return decision be challenged?

- a) Judicial authority; **Yes/No**
- b) Administrative authority; *Yes/No*
- c) Competent body composed of members who are impartial and who enjoy safeguards of independence. *Yes/No*

If Yes to c), please specify

Not relevant.

**Q34.** [EC Recommendation (12) (b)] Is there a deadline for the third-country national concerned to appeal the return decision? **Yes/No**

If Yes, please specify whether the deadline is:

- a) Less than a week;
- b) Two weeks;
- c) One month;
- d) As long as the return decision has not been enforced.
- e) **Other** (please specify)

According to Section 46 Paragraph (2) of Act II of 2007 expulsion orders may not be appealed; however, a petition for judicial review may be lodged within eight days of the date when the resolution was delivered. The court shall adopt a decision within fifteen days upon receipt of the petition.

**Q35.** [EC Recommendation (12) (c)] In your Member State, does the appeal against a return decision have a suspensive effect? **Yes/No**

If Yes, under which conditions? Are there cases where the appeal is not suspensive (please describe)?

<sup>75</sup> Act II of 2007, Section 52, lit 2-4

<sup>76</sup> Government Decree 114/2007, Section 124,1 lit



Not relevant

**Q36.** Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? Yes/**No**

Please briefly elaborate on important exceptions to the general rule stated above

The question is not clear. During the establishment of identity of third country nationals an interview is always conducted. However, the Hungarian national law orders interview during the alien policing procedure, not specifically linked to expulsion. In any case concerning the extension of detention beyond the seventy-two-hour time limit by the court, and in proceedings relating to complaints and further extension of detention the detainee is granted a personal hearing upon request. The hearing may be conducted also in the absence of the third-country national's legal representative. The hearing shall be conducted at the place of detention if the relevant conditions are met at the place of detention. The court may disregard the holding a hearing if the third-country national is unable to attend due to being treated in a medical institution, or if the complaint or the motion does not originate with a party entitled to do so. The third-country national and the immigration authority present their evidence in writing or orally during the hearing. The parties shall be given the opportunity to study the evidence presented. If the third-country national is not present, or the proponent authority is not represented, but they have submitted their comments in advance in writing, they will be introduced by the court.<sup>77</sup>

**Q37.** [EC Recommendation (12) (a)] In your Member States, is there a possibility to hold the return hearing together with hearings for different purposes? Yes/**No**

If Yes, which ones (e.g. hearings for the granting of a residence permit or detention)?

See Q36.

**Q38.** Is there an obligation for the third-country national concerned to attend the hearing in person? Yes/**No**

If No, please describe what alternatives can be used (e.g. phone, videoconference...)

Owing to the fact that in alien-policing procedures conducted by the Police third country nationals are present, there is a possibility to conduct hearings in person. If the third country national is in detention one more hearing can be held in the following ways:

1. the immigration authority invites the competent immigration authority at the place of detention to conduct the hearing; or
2. the police conducts the hearing if it has a system with simultaneous audio and video transmission appropriate for distance interpreting.

## Section 6: Family life, children and state of health

*This section will study Member States' practices on the interpretation and implementation of EU rules relating to: the assessment of the best interest of the child; the assessment of family life; the assessment of the state of health of the third-country national concerned; irregularly staying unaccompanied minors; and the use of detention in the case of minors, as per Articles 3, 10 and 17 of the Return Directive. Questions referring to children below refer both to accompanied and unaccompanied minors, unless specified*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q39.** In your Member State, 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)?

<sup>77</sup> Act II of 2007, Section 59, lit 5-8

Please differentiate between return and detention if applicable

As regards the personal scope of expulsion and detention, Act II of 2007 sets out a single regulation for vulnerable persons according to which persons eligible for preferential treatment means unaccompanied minors, or vulnerable persons such as minors, elderly people, disabled people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, if they are found to have special needs after an individual evaluation of their situation.<sup>78</sup>

**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?

As a general rule, a third-country national who is a minor may not be detained.<sup>79</sup> Families with minors may only be detained as a measure of last resort and for not more than thirty days where the best interests of the child is a primary consideration, if the immigration authority is of the opinion that the objective of detention cannot be ensured by confiscate the travel documents or by the confinement of a third-country national in a designated place.<sup>80</sup>

**Q41.** In your Member State, 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
<b>Child's identity</b>	Yes.	
<b>Parents' (or current caregiver's) views</b>	Yes.	
<b>Child's views</b>	Yes.	
<b>Preservation of the family environment, and maintaining or restoring relationships</b>	Yes.	
<b>Care, protection and safety of the child</b>	Yes.	
<b>Situation of vulnerability</b>	Yes.	
<b>Child's right to health</b>	Yes.	
<b>Access to education</b>	No.	
<b>Other (please describe)</b>		

<sup>78</sup>Act II of 2007, Section 2 point b) of

<sup>79</sup> of Act II of 2007, Section 56 lit (2)

<sup>80</sup> of Act II of 2007, Section 56 lit (3)

**Q42.** In the event a return decision against an unaccompanied minor cannot be carried out, does your Member State grant the minor a right to stay? **Yes/No**

If Yes, please describe any relevant practice/case law.

An unaccompanied minor third country national may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.<sup>81</sup> If the expulsion cannot be implemented the refugee authority grant a temporary protection and issues a humanitarian residence permit which is valid for 1 year that can be extended with 1 year each time.<sup>82</sup>

**Q43.** [EC Recommendation (13) (c)] Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors? **Yes/No**

If Yes, please describe such policies

The Hungarian Assisted Voluntary Return, Reintegration and Information Programme lead by IOM Budapest aims to facilitate the voluntary return of migrants in Hungary to their home countries in safety and dignity, and to contribute towards the sustainability of their return through reintegration assistance. Its reintegration component assists vulnerable returnees, such as minors and unaccompanied minors with their reintegration in the country of origin, by offering – based on a needs assessment – reintegration counselling and a reintegration grant from which the beneficiary can finance the various activities of a pre-defined reintegration plan. The project is implemented with the support of the Asylum, Migration and Integration Fund.<sup>83</sup>

**Q44.** In your Member State, can the enforcement of the return decision be postponed on the grounds of health issues? **Yes/No**

If Yes, please describe any relevant practice/case law.

If there is evidence that the expulsion measure cannot be carried out after twelve months from the date when detention was ordered, or thirty days in the case of families with minor children, such as the conditions for his/her exit cannot be ensured or the expelled person is to be hospitalized for an extended duration due to his/her health the detention should be terminated and should be issued a certificate of temporary residence.<sup>84</sup>

**Q45.** In your Member State, how is the assessment of the state of health of the third-country national concerned conducted?

- a) The third-country national brings his/her own medical certificate; **Yes/No**
- b) The third-country national must consult with a doctor appointed by the competent national authority; **Yes/No**
- c) Other (*please describe*)

After a general examination the physician provides a general medical opinion on the basis of his examination and records the current state of health of the detainee in writing. This written statement must include the measured and physically determined data on the state of the detainees' vital organ.<sup>85</sup>

<sup>81</sup> Act II of 2007, Section 45 lit (5)

<sup>82</sup> Act II of 2007, Section 52/A, Section 29 lit (1) Point b) and lit (2) Point b)

<sup>83</sup> Retrieved from: <http://www.volret.hu/en/about-the-project> (accessed: 3 September 2017)

<sup>84</sup> of Government Decree 114/2007, Section 126 lit (6) and (7)

<sup>85</sup> National Police Order 43/2008. (OT 25.) on rulings of the Police's detention facilities, Point 61

**Q46.** When returnees suffer from health problems does your Member State take into account the accessibility of medical treatment in the country of return? Yes/No

If Yes, which authority is responsible for this assessment of the accessibility?

The Documentation Centre of the Office of Immigration and Asylum issues detailed and up-to-date country of origin information on the destination countries including information on the health care system of the country concerned on which the decision of the immigration authority on whether the expulsion of third country national can be ordered or not is based. For example third-country nationals with diabetes and dialysis were deported to Western Africa according to this practice.

**Q47.** When returnees suffer from health problems, does your Member States make provision for the supply of the necessary medication in the country of return? Yes/ No

If Yes, for how long is the medication provided?

The health care is provided to a third-country national until his transfer to the authorities of the country of return.

**Q48.** Does your Member State 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*)

The special needs of persons eligible for preferential treatment must be take into account during his/her expulsion thus in special cases there is a possibility to prolong the voluntary stay.<sup>86</sup>Therefore, when ordering expulsion, it is always examined whether the third-country national belongs to a category of persons requiring special treatment so the fact that return does not endanger the health of the fetus and the mother is the subject of the procedure. The Hungarian national legislation provide for the extension of stay in very limited cases only and for a limited period of time. Additionally, the pregnancy of a women is taken into account during the deportation procedure as well.

**Q49a.** [EC Recommendation (14)] In your Member State, 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.

Persons belonging to vulnerable groups may be detained with regard to their special needs with the following exceptions. Third-country nationals who are a minors may not be detained.<sup>87</sup> Families with minors may only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration, if the immigration authority is of the opinion that the objective of detention cannot be ensured by other alternatives.<sup>88</sup>

<sup>86</sup> Act II of 2007,Section 42 lit (8)

<sup>87</sup> of Act II of 2007,Section 56 lit (2)

<sup>88</sup> of Act II of 2007, Section 56 lit (3)

**Q49b.** If applicable, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

See Q49a.

**Q50.** Please indicate any challenges associated with the implementation of the return of vulnerable persons in your Member State. 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)

Not relevant.

**Q51.** Please describe any examples of good practice in your Member State 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. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Vulnerable persons are placed in detention facilities tailored to their special needs where the necessary tools and human resources are available. Their care is provided by the involvement of well-trained social and community workers.

## Section 7: Voluntary departure

*This section of the Synthesis Report will review Member States' practices in implementing EU rules relating to voluntary departure (to the extent that the issue was not covered in other EMN studies/outputs), in particular concerning: the length of the period for voluntary return granted (Article 7(1) of the Returns Directive); the use of the possibility to subject the granting of a period for voluntary departure to an application by the third-country national concerned (Article 7(1) of the Returns Directive); the granting of an extension to the period for voluntary return taking into account the specific circumstances of the individual case (Article 7(3) of the Returns Directive); and the cases where the period for voluntary return is denied (Article 7(4) of the Return Directive).*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return Directive or relevant case law**

**Q52a.** [EC Recommendation (17)] In your Member State, is a period of voluntary departure granted:

a) Automatically with the return decision? Yes/**No**

OR

b) Only following an application by the third-country national concerned for a period for voluntary departure? **Yes**/No

Please briefly elaborate on important exceptions to the general rule stated above

The decision ordering expulsion contains the criteria to be considered, the factual and legal reasons of the decision, the country of return, the deadline for leaving the territory of the EU, the possibility of participating in AVRR program, (in some cases) the period of entry ban, the possibility of reviewing the decision in judicial procedure, the duty to fulfill the decision otherwise the third country national will be deported as well as the obligation for being photographed and fingerprinted.<sup>89</sup> Upon delivering the decision ordering expulsion the irregularly staying third country national should be

<sup>89</sup> Act II of 2007, Section 46 lit (1)-(2)

informed about the conditions of participating in AVRR programs as well as the possibility to request the necessary documents to fill in and sign.

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

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

See Q52a.

**Q53.** In your Member State 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?<sup>90</sup>

- 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.

If Yes, when does your Member State refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days? Please select all that apply:

- a) When there is a risk of absconding; **Yes/No**
- b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent; **Yes/No**
- c) When the person concerned poses a risk to public policy, public security or national security; **Yes/No**
- d) Other (*please specify*)

No time limit for voluntary departure is specified or the immigration authority may set the deadline for leaving the territory of the Member States of the European Union before the seventh day following the time of delivery of the resolution for expulsion in the following cases:  
a) the third-country national's right of residence was terminated due to his/her expulsion or exclusion, or for whom an alert has been issued in the SIS for the purpose of refusing entry and the right of residence;  
b) the third-country national's application for residence permit was refused by the authority on the grounds referred to in Paragraphs b) and d) of Subsection (1) of Section 18;

<sup>90</sup> 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'.

c) the third-country national has expressly refused to leave the territory of the Member States of the European Union voluntarily, or, based on other substantiated reasons, is not expected to abide by the decision for his/her expulsion;  
d) the third-country national's residence in Hungary represents a serious threat to public security, public policy or national security.<sup>91</sup>

If according to the decision expulsion is to be carried out by way of deportation, a time limit is not specified for voluntary departure.<sup>92</sup> New residence permits or the extension of existing ones shall be refused, or if they have already been issued shall be withdrawn from third-country nationals who have disclosed false information or untrue facts to the competent authority in the interest of obtaining the right of residence, or misled the competent authority in respect of the purpose of residence; or who established the family relationship for the purpose of obtaining a residence permit on the grounds of family reunification.<sup>93</sup>

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

If the third-country national concerned agrees to leave the territory of the Member States of the European Union on his/her own accord the immigration authority prescribes the time limit for voluntary departure in its decision ordering expulsion, or in its ruling adopted for carrying out the expulsion ordered by the court that falls between the seventh and the thirtieth day following the time of delivery of the decision for expulsion of the third-country national. The time period provided for above shall not exclude the possibility for the third-country national concerned to leave earlier. Where it is justified by the personal circumstances of the person expelled - such as the length of stay in the territory of Hungary, on account of which more time is required for making preparations for departure, or the existence of other family and social links -, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure is ordered by way of a ruling.<sup>94</sup>

**Q55.** [EC Recommendation (19)] In determining the duration of the period for voluntary departure, does your Member State assess the individual circumstances of the case? *Yes/No*

If Yes, which circumstances are taken into consideration in the decision to determine the duration of the period for voluntary departure? Please indicate all that apply:

- a) The prospects of return; *Yes/No*
- b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; *Yes/No*
- c) Other (*please specify*)

Where it is justified by the personal circumstances of the person expelled - such as the length of stay in the territory of Hungary, more time is required for making preparations for departure, or the existence of other family and social links -, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period of up to thirty days. If the child who is in the parental custody of an expelled third-country national pursues studies in a public education institution, the immigration authority may - upon request or on its motion - extend the period for voluntary departure by a period up to the end of the running semester. Extension of the time limit for voluntary departure is ordered by way of a ruling.<sup>95</sup>

**Q56.** Is it part of your Member State's policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? *Yes/No*

If Yes, which circumstances are taken into consideration in the decision to extend the period for voluntary departure? Please indicate all that apply:

<sup>91</sup> Act II of 2007, Section 46 lit (6)

<sup>92</sup> of Act II of 2007, Section 46 lit (7)

<sup>93</sup> Act II of 2007, Section 18 lit (1) Points b) and d)

<sup>94</sup> Act II of 2007, Section 42 lit (3) and (4)

<sup>95</sup> of Act II of 2007, Section 42 lit (4)

- a) The length of stay; **Yes/No**
- b) The existence of children attending school; **Yes/No**
- c) The existence of other family and social links; **Yes/No**
- d) Other (*please specify*)

See	Q55.
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**Q57.** [EC Recommendation (24)(b)] In your Member State, 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? **Yes/No**

If Yes, please describe:

In general the answer is no except for participating in IOM's voluntary return (AVR) program or leaving the Schengen area through Hungary because in this case the fact is registered in the HERR system.

**Q58.** Please indicate whether your Member State 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 7: Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
<b>Insufficient length of the period for voluntary departure</b>	In some cases	Although authorities often assume the unwillingness to return behind the request of third country nationals to extend the time limit for voluntary departure, the replacement of travel documents and buying flight tickets are also frequently the reasons for the extension of time limits.
<b>Absconding during the period for voluntary departure</b>	Yes	Without a common European border registration system and internal border control it is impossible to decide whether third country nationals fulfill their obligation to leave the territory of the EU or illegally travel to another Member State, or even simply withdraw themselves from the alien-policing procedure by modifying their place of residence.
<b>Verification of the departure within the period of voluntary departure</b>	In some cases	It is rare that the authorities are able to contact the third country nationals and they even more rarely certify that they have fulfilled their obligation to return.



<b>Other challenges (please specify and add rows as necessary)</b>	Yes	Third country nationals withdrawing themselves from the procedure provide false place of residence or change it without notification in order to hamper the procedure.
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**Q59.** Please describe any examples of good practice in your Member State 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. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Not relevant.

### Section 8: Entry bans

*This section of the Synthesis Report will study Member States' practices on the interpretation and implementation of EU rules relating to the conditions to impose an entry ban (as per Article 11 of the Return Directive), including as regards the reasons to refrain from issuing, withdraw or suspend an entry ban (Article 11(3) Return Directive).*

*Please note that similar information was requested in the EMN 2014 Study on 'Good Practices in the return and reintegration of irregular migrants: Member States' entry bans policy & use of readmission agreements between Member States and third countries'. Please review your Member State contribution to this Study (if completed) and provide only updated information here.*

**Please indicate in your answers if any of the measures described in this section were introduced or changed as a result of implementing EU rules, namely the Return directive or relevant case law**

**Q60.** In your Member State, 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/No**
- b) Entry-bans are automatically imposed on all return decisions other than under a); **Yes/No**
- c) Entry bans are issued on a case by case basis on all return decisions other than a); **Yes/ No**

**Q61.** What are according to national legislation in your Member State 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 8: Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
<b>Risk of absconding<sup>96</sup></b>	No.	
<b>The third-country national concerned poses a risk to public policy, public security or national security<sup>97</sup>.</b>	Yes.	
<b>The application for legal stay was dismissed as manifestly unfounded or fraudulent<sup>98</sup></b>	No.	

<sup>96</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

<sup>97</sup> As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).

<b>The obligation to return has not been complied with<sup>99</sup></b>	Yes.	Also in case of late voluntary return.
<b>Other (e.g. please indicate and add rows as appropriate)</b>	Yes.	The immigration authority order the exclusion of a third-country national independently whose whereabouts are unknown or who resides outside the territory of the Hungary, and: a) who must not be allowed to enter the territory of Hungary under international commitment; or b) who is to be excluded by decision of the Council of the European Union; c) whose entry and residence represents a threat to national security, public security or public policy; d) who has failed to repay any refundable financial aid received from the State of Hungary; e) who has failed to pay any instant fine or a fine imposed in conclusion of a misdemeanor proceeding within the prescribed deadline, and there is no possibility to enforce it; f) who did not pay the customs penalty imposed by final decision under the Act on the Implementation of Union Customs Law, or if the enforcement thereof is not possible. <sup>100</sup>

**Q62a.** In your Member State, which is the maximum period of validity of an entry ban?

According to the relevant provision of Act II of 2007, the duration of entry ban that was ordered independently under Paragraphs a)-b) of Subsection (1) of Section 43 is adapted to the period of the underlying obligation or exclusion. While the duration of entry ban that was ordered independently under Paragraphs c)-f) of Subsection (1) of Section 43 shall be determined by the competent immigration authority, for a period of up to three years, and it may be extended by maximum three additional years at a time. An exclusion order must be cancelled forthwith when the grounds therefore no longer exist.<sup>101</sup>

The duration of an entry ban ordered in conjunction with expulsion or separately, must be determined in years, and may not exceed five years with the exception if the third-country national's residence in the territory of Hungary represents a serious threat to public security, public policy or national security when the duration of an entry ban may not exceed ten years. The duration of exclusion ordered in conjunction with expulsion is applicable from the date of departure from the territory of the Member States of the European Union, or if this is not known, from the deadline prescribed therefore. Third-country nationals whose entry ban was ordered may enter the territory of Hungary only upon the special consent of the ordering authority.<sup>102</sup>

**Q62b.** Does legislation in your Member State provide for different periods of validity for the entry bans? **Yes/**  
*No*

If Yes, what is the most common period of validity?

Yes. It has maximum limits of 3, 5, or 10 years which must be determined in years in each case. The most common period of validity cannot be clearly defined, it is adjusted to the degree of infringement and starts from the median value.

<sup>98</sup> As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).

<sup>99</sup> As stipulated in the Return Directive Article 11(1)(b).

<sup>100</sup> of Act II of 2007, Section 43 Paragraph (1)

<sup>101</sup> *Ibid.*

<sup>102</sup> of Act II of 2007, Section 47 Paragraphs (5)-(8)

The duration of entry ban that was ordered independently under Paragraphs a)-b) of Subsection (1) of Section 43 is adapted to the period of the underlying obligation or exclusion. While the duration of entry ban that was ordered independently under Paragraphs c)-f) of Subsection (1) of Section 43 shall be determined by the competent immigration authority, for a period of up to three years, and it may be extended by maximum three additional years at a time. An exclusion order must be cancelled forthwith when the grounds therefore no longer exist. The duration of an entry ban ordered in conjunction with expulsion or separately, must be determined in years, and may not exceed five years with the exception if the third-country national's residence in the territory of Hungary represents a serious threat to public security, public policy or national security when the duration of an entry ban may not exceed ten years.<sup>103</sup>

**Q62c** Does national legislation and case law in your Member State establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry? Yes/**No**

If Yes, please specify (for example, if the third-country national concerned poses a threat to public order or national security a five-year entry ban is imposed; if the third-country national concerned has not complied with the obligation to return a three-year entry ban is imposed, etc.):

Not relevant.

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

- a) On the day the return decision is issued; Yes/**No**
- b) On the day in which the third-country national leave the EU; **Yes/No**
- c) Other (please specify)

If the date of departure from the territory of the Member States of the European Union, is is not known from the deadline prescribed therefore.<sup>104</sup>

**Q64.** [EC Recommendation (24)(c)] Does your Member State 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)? **Yes/No**

Please specify whether;

- a) Alerts are entered into the SIS systematically; Yes/**No**
- b) Alerts are entered into the SIS on a regular basis; Yes/**No**
- c) Alerts are entered into the SIS on a case-by-case basis; Yes/**No**
- d) Other (please specify)

When ordering the entry ban (regardless whether it is order independently or not) mainly the authority decides on entering an alert into the Schengen Information System which is reasoned in its administrative decision in its discretion. The authority also justifies if deciding not to enter an alert in the SIS.

**Q65.** [EC Recommendation (24)(d)] If a return decision is issued when irregular stay is detected on exit (see Q4c above), does your Member State also issue an entry ban? Yes/**No**

<sup>103</sup> Act II of 2007, Section 44 Paragraphs (1), (5) and (6)

<sup>104</sup> Section 47 Paragraph (7) of Act II of 2007

Please briefly elaborate on important exceptions to the general rule stated above

See Q6c. and Q9b.

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

- a) Yes, a misdemeanor
- b) Yes, a criminal offence
- c) **No**

Not relevant.

**Q67.** Has your Member State conducted any evaluations of the effectiveness of entry bans? *Yes/No*

If Yes, please provide any results pertaining to the issues listed in Table 7 below. The full bibliographical references of the evaluations can be included in an Annex to the national report.

Table 10 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	Yes.	It has preventive effect.
Contribute to ensuring compliance with voluntary return <sup>105</sup>		
Cost-effectiveness of entry bans	Yes.	Costs are recovered.
Other aspects of effectiveness (please specify)		

**Q68.** Please indicate whether your Member State 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.

Table 12 Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
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<sup>105</sup> 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?

<b>Compliance with entry bans on the part of the third-country national concerned</b>	In some cases.	
<b>Monitoring of the compliance with entry bans</b>	No.	
<b>Cooperation with other Member States in the implementation of entry bans<sup>106</sup></b>	No.	
<b>Cooperation with the country of origin in the implementation of entry bans</b>	No.	
<b>Other challenges (please specify and add rows as necessary)</b>		Not relevant.

**Q69.** Please describe any examples of good practice in your Member State 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. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Not relevant.

## Section 9 Conclusions

*This section of the Synthesis Report will to draw conclusions as to the impact of EU rules on return – including the Return Directive and related case law from the Court of Justice of the European Union (CJEU)– on Member States' return policies and practices and on the effectiveness of return decisions issued across the EU.*

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

From the migration perspective, Hungary is considered as a transit country. Therefore, in order to respond to the migration related abuses effectively, the problem of return or non-return of third country nationals illegally staying on the territory of the country is a priority issue which is also reflected emphatically in the Government's policy.

All in all, the Hungarian legislation on expulsion and return sets out more stricter rules than the EU standards. Three different authorities/bodies are entitled to issue an expulsion order: the asylum authority, the alien-policing authority and the courts. The provisions regulating the expulsion/return decision are fully in line with the provisions of the Return Directive in particular the detection, its issuance, its validity and information provision about it.

During the return procedure, while balancing the the risk of absconding, the authorities evaluate adequately the facts and behaviours falling under the scope of rebuttable presumption. The greatest challenge for the authorities is the risk of absconding which is high during the period of voluntary return and they cannot prevent it effectively.

The mutual recognition of return decisions is not typical, while the issuance of the European Travel Document is incidental (e.g. the Office of Immigration and Asylum issued such a travel document for Afghan citizens).

In order to prevent the above mentioned abuses, the authorities systematically use detention while balancing its alternatives adequately. The rules of detention are in line with the provisions of the Return Directive (e.g. legal remedy, treatment of vulnerable persons, etc.). Nevertheless, with regard to the migration pressure prevailing since 2015, Hungary had to derogate temporarily from the general rules laid down in the Return Directive several times.

The Act II of 2007 determines the notion of persons with special needs that contains concrete examples for

<sup>106</sup> This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

its possible personal scope thereby helping them to receive the adequate treatment during the return procedure.

In line with the EU principles, Hungary prefers voluntary return and considers forced return as a last resort. Consequently, the third country national should be informed about the conditions of participating in the voluntary return programs and they should be provided the necessary documents upon request. Finally, the issuance of entry ban and prohibition of stay is based on an individual assessment in each case.

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

The Recommendation on Returns and the EU Renewed Action Plan on Return provide actions to improve the efficiency of national return (alien-policing) systems. They also aims at developing cooperation with third countries through monitoring the implementation of existing readmission agreements and concluding new readmission agreements (Tunisia, Nigeria, Jordan) as well as convincing Morocco and Algeria about the importance of the readmission agreements and launching program to develop return capacity in third countries.

Nevertheless, the Renewed Action Plan pointed out that according to the current statistics Member States are facing the same problems, namely the number of executed expulsions remains only 40%. According to the Commission estimations there were around 2.6 million asylum applications in 2015/2016 only, and taking into account that the first instance recognition rate stands at 57%, Member States may have more than 1 million people to return once their asylum applications have been processed.

Based on the above, Hungary applies stricter administrative measures than the Action Plan have suggested in order to prevent abusing the asylum system including the following measures: the applicant may submit his/her request personally at the transit zone during the border procedure. Thus, this asylum procedure does not allow any possibility of unlawful stay on the territory of Hungary and in the Schengen area as well as to refuse expulsion in case of final decision. Consequently, by applying a new asylum system that came into force in the Spring of 2017, the practical implementation of the Action Plan became "marginal" in Hungary.

Source:

1. Fundamental Law of Hungary
2. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
3. Act LXXX of 2007 on Asylum
4. Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
5. Government Decree No. 191/2015. (VII.21.) on establishing the safe countries of origin and safe third countries on the national level
6. Schengen 2.0 Action Plan, Migration Strategy
7. Working Group on Case Analysis of Curia: [http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti\\_osszefoglalo\\_velemenye\\_kuria.pdf](http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemenye_kuria.pdf) (last accessed: 16.08.2017.)
8. Act C of 2012, Criminal Code
9. Directive of 2008/115 EC on common standards and procedures in Member States for returning illegally staying third-country nationals