European Commission

EMN INFORM

Good practices in the return and reintegration of irregular migrants:

Member States' entry bans policy and use of readmission agreements between Member States and third countries

1. INTRODUCTION

This EMN Inform summarises the main findings of the EMN Main 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.* The Study was based on contributions from EMN National Contact Points in 24 Member States'[1], plus Norway, collected via common specifications to ensure comparability. The key findings are set out below.

2. KEY POINTS TO NOTE

- The Return Directive has resulted in an **increased harmonised legal framework on entry bans** at national level. However, different approaches for the imposition of entry bans remain along with differences in the institutional framework for the enforcement, with (Member) States adopting either more stringent or lenient approaches.

- **Entry bans** may be applied as a coercive policy measure to serve as a deterrent for irregular third-country nationals, and as an "incentive" to encourage voluntary return, through their withdrawal/suspension where voluntary return has taken place in compliance with the return decision.

- Limited evaluation as well as limited conclusive statistical evidence makes it **difficult to draw firm conclusions on the effectiveness of entry bans**; however, the Study identifies both emerging **good practices in terms of cooperation** between Member States when enforcing entry bans, and some **practical cooperation problems limiting their effectiveness**. One of the most important **challenges** is the non-systematic entering of entry ban alerts into the SIS by Member States imposing them, thereby potentially obstructing enforcement of the entry ban in the Schengen area.

- Where data is available, the Study shows that **EURAs are generally effective return tools** in relation to the share of readmission applications receiving a positive reply, and overall, no **systematic problems** in cooperating with third countries under EURAs were identified in the Study. However, some **practical challenges** may limit their effectiveness. National evaluations have been limited, but where available show the extent to which EURAs can be judged effective depends on the **agreement and the cooperation with a given third country**.

- The **majority of (Member) States** have **also signed national bilateral admission agreements** as well as certain **non-standard agreements**. These are mainly (though not exclusively) used to carry out forced return. The main benefits of bilateral agreements include efficient practical cooperation under agreed

[1] The Study was based on contributions from 24 Member States: **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom,** plus **Norway** (25 countries in total).

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

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procedures.

- **Practical implementation obstacles** include **insufficient cooperation from third countries** and **delays in receiving replies on readmission requests**. Few evaluations of national readmission agreements have been conducted; however, their effectiveness appears again to be dependent on cooperation with a given third country.

- **Synergies** amongst the various tools at their disposal to bring about better outcomes for sustainable return have been developed in some Member States, but are at the **early stages of development**. There is scope for learning between Member States on making links across the different practices in place.

3. AIMS OF THE STUDY

The EU aims to prevent and control irregular migration pressures, whilst fully respecting the right to asylum. For the credibility of the EU common migration and asylum policy and in the fight against irregular migration, it is crucial that those who do not, or who no longer, fulfil the conditions for entry, stay or residence in a Member State are effectively returned, respecting their fundamental rights and dignity. Return policy has proved to be difficult to implement in practice, and a large gap exists between return decisions and the number of returns effected – fewer than half of the return decisions taken in the EU are carried out in practice.

The Study's main aims were to:

- Analyse similarities and differences between Member States concerning the legal and institutional framework on entry bans;

- Explore the practical application of entry bans by mapping and reviewing whether Member States make use of a graduated approach (including withdrawal/suspension of entry bans and in what circumstances); and investigating cooperation mechanisms between Member States;

- Analyse the effectiveness of entry bans by reviewing available statistical evidence on their impacts, exploring practical implementation challenges; and identifying any good practices;

- Explore the practical application of readmission agreements distinguishing between agreements concluded by the EU level and by Member States with third countries on a bilateral basis and specifying the extent to which such agreements are used in the context of forced and voluntary returns;

- Collect new statistical evidence on the use of readmission agreements, exploring practical challenges to their implementation and identifying good practice for their use.

- Briefly compare the possible synergies between entry bans and readmission agreements on the one hand and reintegration assistance on the other hand as tools to assist Member states in their implementation of return policies more broadly.

Based on the EMN Focussed Study, this Inform presents an analysis of (Member) States' use of entry bans and readmission agreements with a specific focus on their practical application and effectiveness, whilst also identifying good practices in their use, including possible synergies, in the implementation of return and reintegration measures.

4. MAIN FINDINGS

What are the grounds for imposing an entry ban?

(Member) States' **national legal frameworks** for the use of entry bans in respect of their **grounds for imposition** and **exclusion,** primarily reflect provisions included in the Return Directive[2], the Charter for Fundamental Rights and obligations flowing from international law, and are thus **broadly similar**. Approaches do vary however, with (Member) States adopting either more stringent or lenient approaches. Art. 7(4) refers to the grounds upon which Member States may refrain from granting a period for voluntary departure, or to grant a period of voluntary departure shorter than seven days. These are where: there is a risk of absconding; the person concerned poses a risk to public policy, public security or national security; an application for legal stay has been dismissed as manifestly unfounded or fraudulent. Eleven (Member) States (**Belgium**, **Bulgaria**, **Czech Republic**, **Greece**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **Netherlands**, **Slovak Republic**, **Spain**) additionally provide for other grounds beyond those laid down in the Return Directive, based on which they can impose entry bans.

Under what circumstances is an entry ban not imposed?

Under return procedures, (Member) States must respect the fundamental rights of the returnee and

[2] **Ireland** and the **United Kingdom** opted out of the Return Directive and do not therefore apply entry bans as set out by the Directive, however, equivalent measures exist in these two countries. **Norway** is bound by this legislative instrument as a non-EU Member State associated to the Schengen Area.

other international obligations, including e.g. the right to seek asylum and the principle of *non-refoulement*[3]. (Member) States may refrain from issuing entry bans in *individual* cases for various humanitarian reasons and can also exclude certain *categories* of third-country nationals from the imposition of entry bans (see also Art. 11 (3) Return Directive). These typically include victims of trafficking in human beings, minors / unaccompanied minors, elderly people and the family members of EU citizens. The same humanitarian reasons and vulnerable categories of third-country national may also apply to the withdrawal/suspension of entry bans.

How are entry bans implemented in policy and practice, and are they effective as instruments to support return policy?

In terms of trends, the number of entry bans imposed shows an increasing trend in **Estonia, Finland, Hungary, Latvia Lithuania, Luxembourg, Sweden, Norway**, and a decreasing trend in **France, Greece, Germany, Poland, Croatia, Czech Republic, Bulgaria, Slovak Republic**. In **Cyprus** and **Ireland** the number of entry bans has remained relatively stable over the five year period. In **Sweden** it is reported that the implementation of the Return Directive has significantly influenced the number of entry bans imposed, which has increased significantly since 2012.

The majority of (Member) States **automatically impose entry bans**, in line with Art. 11 (1), in cases of forced return, whilst entry bans are reviewed on a case-by-case basis in situations of voluntary return, or are not imposed at all. Other (Member) States apply different practices than stipulated in the Return Directive insofar as that they do not make a distinction between forced/voluntary return when deciding on the imposition of an entry ban.

Entry bans may be applied **in different ways to meet various aims in the return process**. They may be applied as a coercive policy measure to serve as a deterrent for irregular third-country nationals; however, most (21 Member States) can also withdraw/suspend entry bans in cases where voluntary return has taken place in full compliance with the return decision, thus creating an "incentive" to encourage voluntary return.

Effective **practical application** of entry bans requires a high degree of **cooperation between (Member) States**. The Study shows that the **Schengen Information System** (**SIS**) is the primary communication channel used by most (Member) States for the enforcement of entry bans - it is the combined functioning of the national entry ban decision as well as the SIS alert which brings about the effective ban on entry to the territory of a (Member) State. Supplementary information may also be exchanged through communication channels such as Europol/Interpol, Immigration Liaison Officers (ILOs) including direct bilateral channels (e.g. face-to-face, telephone, e-mail). Several **good practice examples** for the exchange of information were identified and highlighted, such as the establishment of a National Coordination Centre (**Latvia**) and the use of ILOs and direct bilateral contact channels (**Ireland**);

The Study identifies emerging **good practices in terms of cooperation** between Member States when enforcing entry bans, and, on the other hand, **practical cooperation problems limiting their effectiveness** (see section 2.3 and 2.3.1). One of the most important **challenges** is the non-systematic entering of entry ban alerts into the SIS by Member States imposing them, thereby obstructing enforcement of the entry ban in the Schengen area.

Limited evaluation as well as limited conclusive statistical evidence makes it **difficult to draw firm conclusions on the effectiveness of entry bans** in EU (Member) States. The evaluation performed by the Netherlands found indications that entry bans may not be an effective tool to encourage voluntary departure. Beyond the practical cooperation problems between (Member) States, other factors (more general to the return process) also impact on the effectiveness of entry bans. These include difficulties in enforcing departure of the third-country national from the EU territory and the use of false travel documents/counterfeited identities by third-country nationals when trying to re-enter the EU territory.

How are readmission agreements implemented in practice and how do they support return policy?

International cooperation with countries of origin at all stages of the return process is important to achieving **effective and sustainable return**. Readmission Agreements (whether EU or national bilateral) appear to be key tools within this approach. (Member) States work within both EURAs as well as national readmission agreement systems, based on strategic bilateral cooperation with third countries.

Overall, EURAs are considered by Member States as **useful instruments** in **supporting return policies**, and the majority report that EURAs are **applied without major difficulties**. The **main benefits** highlighted included better cooperation with the third country; better predictability and uniformity; the

[3] A core principle of international Refugee Law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. Source: EMN Glossary V 2.0:

improved timeliness of responses and increased rates of successful readmissions.

The Study also shows that **EURAs are generally effective return tools**; the share of readmission applications receiving a positive reply (out of the total number of readmission applications sent by (Member) States ranges between 60 and 100% for those (Member) States that provided statistics. However, national evaluations have been limited; those conducted on the use of EURAs show that **the extent to which such agreements can be judged effective depends on the agreement and the cooperation with a given third country**.

Overall, no **systematic problems** in cooperating with third countries have been identified in the Study. Certain **practical challenges** may inhibit their effectiveness however, mainly linked to the inconsistent application of EURAs by (Member) States, the uneven use of certain clauses and procedures, and other practical challenges such as failure to respect deadlines foreseen in EURAs. Some Member States have highlighted that the time taken to negotiate EU Readmission Agreements can be protracted.

Although EURAs are typically linked to **forced return** as they are applicable regardless of an individual's willingness to return, the review of data provided in the context of this Study indicates that some (Member) States also use EURAs to carry out **voluntary returns**. However, the share of voluntary returns on the total number of readmission applications under EURAs is generally limited.

National bilateral readmission agreements

Next to EURAs, the **majority of (Member) States** have **also signed national bilateral readmission agreements** as well as certain **non-standard agreements**. The latter allow for **flexibility** and **operability, capable of adapting to the specificities of each case**. Similar to the use of EURAs, statistics indicate that most of the national readmission agreements are used to carry out forced return, although some (Member) States also carry out voluntary returns under national bilateral agreements, but to a limited extent.

Evidence shows that, in practice, **both EURAs as well as national bilateral agreements are used by (Member) States in parallel**. The main benefits of bilateral agreements reported in the Study include:

- Good cooperation with authorities in third countries; and
- Efficient practical cooperation following clear provisions and procedures included in the bilateral agreements

The **practical obstacles** identified in relation to the implementation of national bilateral agreements are broadly similar to those experienced under EURAs and mainly relate to **insufficient cooperation from third countries** and **delays in receiving replies on readmission requests**. Evaluations of national readmission agreements were conducted by only a minority of (Member) States, which indicate, similar to EURAs, that **the extent to which bilateral agreements can be considered effective strongly depends on the agreement and the cooperation with a given third country**.

Are there synergies between entry bans/readmission agreements and return / reintegration assistance that can support more effective return policies?

Some Member States have developed **synergies** amongst the various tools at their disposal to bring about better outcomes for sustainable return. However, these appear to be at the **early stages of development** and are not applied in all Member States. Such synergies exist in more Member States between the implementation of readmission agreements and reintegration assistance than in relation to entry-bans. Whilst limited evaluation evidence prevents the possibility of linking such synergies to efficiencies or effectiveness, there is scope for learning between Member States on the different practices in place.

5. FURTHER INFORMATION

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