



EMN Ad-Hoc Query on Ad-hoc Query regarding Member States' Regulations in the areas of Confiscation of Cash, Detention pending Removal and Exception of the Application of the Return Directive

Requested by Martin Stiller on 18th April 2018

Miscellaneous

Responses from Belgium, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, Norway (16 in total)

Disclaimer:

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

Background information:


The Austrian Federal Government aims at developing a more enforceable and consequent Asylum and Aliens Law and at making return procedures more efficient. Currently there are discussions and elaborations on the possibility to (if required) arrest criminal asylum seekers after the release from their penal sentence on grounds of public order and security in order to prevent absconding. Therefore, we would like to know from other Member States what regulations they have implemented concerning criminal asylum seekers after their release from penal sentence. Furthermore, we are interested in Member States' regulations concerning the Confiscation of Cash of asylum seekers.

Note: We kindly ask for your responses by 25 April, 2018, if possible.

Questions

1. 1. According to the national law of your Member State, is there an obligation for applicants for asylum to compensate for the expenses related to their care completely or partially (Art. 17 para. 3 and 4 Reception Directive)?
2. 2. If question 1 is to be answered in the affirmative: Does your national legislation permit the Confiscation of Cash of an applicant of asylum on the occasion of the application for international protection or at a later point during the asylum procedure in order to guarantee the compliance with the obligation to compensate?
3. 3. If question 2 is to be answered in the affirmative: Up to which maximum amount the applicant's cash can be confiscated? Does your national legislation allow to confiscate the entire amount of cash (up to a possible limit) or is the confiscation only applicable if the amount of cash exceeds a certain minimum amount or an allowance that must not be confiscated as it remains property of the applicant?
4. 4. Can asylum seekers be detained following release from penal sentence for reasons of public order and security or other reasons in order to prevent absconding? How have you implemented Art.8 para. 3 (e) of the Reception Directive into national legislation?
5. 5. Have you made changes in the field of Asylum and Aliens Law, in particular in the area of detention of asylum seekers, in the last 3 years or are you planning changes? If so, what are the specific measures?
6. 6. Do you apply Art.2 para. 2b of the Return Directive, under which Member States may decide not to apply this Directive 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? How was this exception implemented in national legislation?


Responses


	Country	Wider Dissemination	Response
	Belgium	Yes	<p>1. Yes, partially. Asylum seekers who have a professional income from an activity as an employee are obliged to contribute to the expenses related to their care Other asylum applicants don't have to contribute. This is foreseen in Article 35/1 of the Reception Act of 12 January 2007 and in the Royal Decree of 12 January 2011 on the granting of material aid to asylum seekers who have a professional income from an activity as an employee. It concerns a contribution for the material aid applicants for international protection receive in the reception centres. The amount of the contribution to the material aid is calculated in function of the amount of the monthly net pay of the applicant for international protection. The applicant for international protection contributes progressively to the material aid, regardless of the total amount of the monthly net pay, in the following manner: 1° No contribution is due for the income bracket between EUR 0 and 79.99; 2 ° For the income bracket of EUR 80 to 149.99, a contribution of 35% of the income bracket concerned is due, without prejudice to the amounts due for the previous installment. 3 ° For the income bracket between EUR 150 and 299.99, a contribution of 50% of the income bracket concerned is due, without prejudice to the amounts due for the previous installments. 4 ° For the income bracket between EUR 300 and 499.99, a contribution of 65% of the income bracket concerned is due, without prejudice to the amounts due for the previous installments. 5 ° A contribution of 75% of the relevant income bracket is due for the income bracket from EUR 500, without prejudice to the amounts due for the previous installments (Article 7 of the Royal Decree). Note that in Belgium another action can be taken towards applicants for international protection who have a professional income from an activity as an employee, but only if the applicant has a fixed-term employment contract with a duration of at least six months, or an employment contract for a specific job of which the duration can be estimated at a minimum of six months, or an employment contract of indefinite duration of which the trial period has expired AND if the net monthly wage that they receive is higher than the integration income (more info on the integration income http://ec.europa.eu/social/main.jsp?catId=1102&intPageId=4423&langId=en). If both conditions (salary is higher than the integration income + durable employment contract) are met, the Federal Agency for the Reception of Asylum Seekers (Fedasil) may cancel the mandatory place of registration (reception structure) (Article 9 of the Royal Decree) and the applicant will have to find housing on the regular housing market (private or social). The Agency can only cancel the mandatory place of registration if the applicant has actually received the salary for the second time, and takes</p>


place at the latest within a period of one month from the collection of this second wage. Pending the effective cancellation of the mandatory place of registration, the applicant must pay the contribution to the material aid as described above (Article 10 of the Royal Decree). The Agency may decide not to terminate the mandatory place of registration, even if the applicant complies with the two conditions above, in particular when the medical or family situation justifies this (Article 11 of the Royal Decree). If the applicant loses his/her job or receives a final negative decision in the application for international protection (and thus losing the right to work) before leaving the reception structure, the cancellation can be reversed by submitting a new application for a reception structure to Fedasil. When the applicant loses his/her job after his/her departure from the reception facility, in principle no return to a reception structure is possible. Even if the application for international protection is still ongoing and the applicant is still entitled to material aid. If the applicant has worked a sufficient number of days and still qualifies for a work permit C, s/he is entitled to unemployment benefit. If s/he has worked an insufficient number of days and / or no longer qualifies for a work permit C (and is therefore not available for the labour market), s/he is not entitled to unemployment benefit. In that case, the applicant can submit a request for help to the competent Public Social Welfare Centre. For the sake of completeness, the Reception Act also has an article 35/2 that relates to income or capital, other than professional income. In the event that these are higher than the integration income, the material aid for the applicant for international protection is terminated and s/he is only entitled to medical assistance. The applicant, who had sufficient resources to meet the basic needs when material aid was provided, must also compensate the Agency for the material aid, with the exception of medical assistance, provided. The use of this article of the Reception Act is virtually non-existent as there is no Royal Decree that implements the article.


2. No. But if the asylum applicant doesn't inform the reception structure that he has a professional income from an activity as an employee, the amounts that the applicant should have paid can be recovered. The Royal Decree states that the applicant who is working must inform the reception structure in writing of the employment and of any change in his/her professional situation. The reception structure must then inform Fedasil. The following data must be passed on: - the obtaining of a work permit C; - the conclusion of every employment contract (copy must be given); - any change to that employment contract (s); - the (evolution of the) employment duration; - the (evolution of) the salary; - the data concerning the working hours. If the asylum seeker fails to comply with this obligation, either intentionally or through negligence, or provides misleading information, Fedasil may


			<p>recover the amounts that the applicant should have paid if the obligation to provide information had been properly complied with (Article 3 of the Royal Decree). So, any failure to communicate information about employment gives the Agency the right to recover the amounts due (possibly with interest), but this is not done in practice. It turns out to be too difficult given the lack of data, etc. so no enforcement of repayment is realised yet.</p> <p>3. See above. At the moment a new contribution scheme is discussed and the current Royal Decree will be changed in the future (no date available yet).</p> <p>4. Yes. According to article 74/6 °4, a TCN who has a pending asylum application can be detained if it's necessary for national security or public order (if no other less coercive measures are possible). Since 2017, criminal detainees can be released and returned directly from prison to their country of origin or country of residence. Condemned TCNs in prison do no longer have to be brought to a detention centres prior to removal. Two legislative innovations, enacted in 2017, have important repercussions with regard to returns in terms of revoking residency rights of foreign nationals and pre-removal detention. The law of 24.02.2017 and 15.03.2017 modified the Immigration Act in order to reinforce the protection of public order and national security. The provisions of these amendments aim at facilitating the procedure to end a foreign national's residence right and to organize his/her removal for reasons of public order or national security. The law of 24.02.2017 and 15.03.2017 has refined the reasons for which TCNs can be removed from Belgium. While before an alien could be removed for Damage to public order and national security, as from 02.05.2017 (when the laws became effective) this was changed to Reasons of public order and national security. The explanatory note clarifies the scope of the new law by rendering eligible to removal not only aliens convicted or caught red-handed, but also the ones who have not been convicted yet or who are merely suspected of having committed a crime.</p> <p>5. Yes. A lot of legal changes came into force on 22.03.2018. They transposed these stipulations of the Return Directive which challenged the detention policy. The "risk of absconding" is now concretely set out in legislative norms. This risk has to be actual (up-to-date) and effective and has to be investigated on a case by case basis and based on one of the following criteria: 1. an undocumented alien who violated the reporting obligations or only applied for international protection after the set deadlines; 2. the person has given false statements or used forged documents in the asylum or aliens law procedure;</p>
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	Croatia	Yes	<p>1. No, according to the Croatia Act on the International and Temporary Protection (2015) there is no obligation for the applicants to compensate for the expenses occurred during the application procedure.</p> <p>2. N/A</p> <p>3. N/A</p>

			<p>4. Art 8 para. 3(e) of the Reception Directive has been transposed as it is in the national legislation. A foreigner shall have his/her freedom of movement restricted by accommodation in the Reception Centre for Foreigners in order to ensure his/her presence in the procedure of issuing a decision on expulsion, if a foreigner is considered to pose a threat to national security or if he/she was convicted for a criminal offence prosecuted in the line of duty. Accommodation in the Centre shall be determined for a time period of three months.</p> <p>5. According to the recently amended the Act on Foreigners (2017) Article 133 regulates the reasons for the third country nationals' accommodation in the Reception Centre for Foreigners. A third-country national may be placed in the centre for up to six months if there is a risk of avoidance of leaving the EGP or the Republic of Croatia pursuant to a third-country national is preventing forcible departure. Circumstances indicating the existence of a risk of avoidance of the obligation to leave the EEA or the Republic of Croatia: - a third-country national refused to provide personal or other data and documents or provided false information, - a third-country national has used a counterfeit or other document, - the third-country national has rejected or destroyed the identity document, - a third-country national refused to give fingerprints, - a third-country national has not complied with the obligation referred to in Article 132, paragraph 1 of this Act, - the third-country national entered the EGP or the Republic of Croatia before the expiry of the ban on entry and stay, - a third-country national has illegally entered the Republic of Croatia and has previously resided in a Member State of the EEA, - a third-country national has stated that he will not make a commitment to leave the EGP or the Republic of Croatia, - the third-country national has not left the EEA or the Republic of Croatia within the time limit set by the decision, - is a third-country national of a Member State of the EEA legally convicted of a serious criminal offence.</p> <p>6. In the Act on Foreigners (2017) under the Article 100 there are exceptions mentioned as which third country nationals are subjected to return as a consequence of a criminal law sanctions and international agreements.</p>
	Cyprus	Yes	<p>1. There is no such obligation</p> <p>2. N/A</p>



			<p>3. N/A</p> <p>4. Art 8 para. 3(e) of the Reception Directive has been transposed as it is in the national legislation</p> <p>5. Persons who are detained for violating the penal code and then apply for asylum, are now detained under the Cyprus Refugee Law and not under the Aliens and Immigration Law. Furthermore, there is an amendment Bill pending before the House of Parliament, which sets out the criteria for detention for persons under the Dublin Procedure (as provided in the Dublin Regulation).</p> <p>6. The national legislation which transposed Directive 115/2008 does not include in its scope those third-country nationals who have become irregular migrants as a result of a criminal conviction and therefore the provisions regarding detention and return do not apply. These persons are subject to return under provisions of the national legislation, which are aligned to a large degree to the provisions of the Return Directive, including review of the detention period and maximum detention time.</p>
	Czech Republic	Yes	<p>1. Yes, partially. Applicants are required to compensate for the expenses related to accommodation and food if he/she has certain amount (if he has more than a living minimum according to social security acts) of financial means.</p> <p>2. No.</p> <p>3. See above</p> <p>4. No, the law does not relate detention to those released from prisons. Yes, CZ has transposed art.8 para 3 let. e), but it is not used for those released from prisons.</p> <p>5. The biggest issue was the transposition of RCD (2013/33/EU). The amendment of the Asylum Act entered in to force in December 2015. Since that time we face troubles due to national case law concerning the relation between detention under Return Directive and detention under Reception Conditions Directive. Last amendment introduced the possibility for courts to stop the review of the actions lodged against detention decision in case the applicants was released in the meantime. This change is however subject to preliminary ruling at CJEU and there is also a constitutional complaint</p>

			<p>lodged against this.</p> <p>6. Yes, CZ uses both exceptions allowed (borders, criminal law). We did this implicitly, i.e. we did not introduce any standards arising from return directive into these provisions. This method was subject to review of the Commission when assessing the compliance of the Czech law with the Return Directive but finally this method was found as compatible.</p>
	Estonia	Yes	<p>1. In Estonia the national law does not provide for an obligation for applicants to compensate for the expenses. In some cases provided by law the applicants are not entitled to all the services. An applicant of international protection may reside outside the accommodation centre based on the written permission of the Police and Border Guard Board if: 1) the accommodation and support of the applicant is ensured by a person legally residing in Estonia; 2) the applicant has sufficient financial resources to ensure his or her accommodation and support. 3) when the living outside of the reception center is needed for the purposes of security of the applicant. In above mentioned two first cases the applicant will not be paid monetary benefits or provided with accommodation, supply of foodstuffs or provision of meals, supply of essential clothing and other necessities and toiletries, and supply of money for urgent small expenses, translation services or transportation. Same restrictions apply when an applicant residing in the accommodation centre is employed in Estonia.</p> <p>2. No.</p> <p>3. N/A</p> <p>4. In principle it is possible to detain an asylum applicant following a release from penal sentence for reasons of public order and security or other reasons in order to prevent absconding. According to the Act on Granting International Protection to Alien (AGIPA) an applicant for international protection may be detained on grounds enacted in AGIPA only if it is unavoidably necessary and only if the efficient application of the surveillance measures is impossible. The detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the applicant for international protection shall be taken account of in every single case. The specific provision in AGIPA states that an applicant for international protection may be detained if it is</p>


			<p>unavoidably necessary on the following bases: 6) protection of the security of state or public order.</p> <p>5. There have been a few legislative changes in the field of detention of asylum seekers in the last 3 years. In 01.05.2016 a new provision came into force according to which the administrative court may extend the term of detention up to four months at a time if the preconditions for detention are met. Previously it was possible to extend the detention time for up to two months at a time.</p> <p>6. Estonia applies the Return Directive to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction. However, the provisions on issuing return decision are not applied.</p>
	Germany	Yes	<p>1. Yes there is. Asylum seekers are obliged to use their own income and assets to cover their expenses with the exception of €200 worth of assets before they become eligible to draw state benefits as per Section 7 of the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz (AsylbLG)). According to § 66, subsection 1 and §67 Residence Act the costs of applying a territorial restriction, rejection, removal or deportation should be beared by the applicant. The costs include the costs of transportation or other travel expenses inside the federal territory as well as the costs to the destination outside the federal territory. They comprise the administrative expenses including the costs for custody prior to deportation, costs for translation and interpreter, costs for accomodation and food supply as well as the costs of accompanied deportation including payroll costs.</p> <p>2. Yes it does. Asylum seekers can be asked to make a security payment which can be seized in accordance with § 7 (a) of the Asylum Seekers Benefits Act.</p> <p>3. There is an allowance of €200 per person. In addition, asylum seekers are required to use up to 75 percent of their net income to cover their living costs, however, limited to 50 percent of the standard basic benefits to which they are eligible according to Section 7 subsections 3 and 5 of the Asylum Seekers Benefits Act. As a rule, the alien will be left with a certain amount to secure the subsistence level after arrival in the country of destination. The amount of the left over is determined by the responsible federal states.</p> <p>4. Yes, asylum seekers who have been released from prison can be detained if there is evidence that</p>


			<p>they are planning to abscond. According to §62 subsection 3 Residence Act by judicial order a foreigner must be arrested securing the removal. This can also be done following a criminal detention. Reasons for ordering detention may include that an order according to § 58a Residence Act was issued because of a special danger for the Federal Republic of Germany or a terrorist danger and the deportation can not be carried out directly. In addition, a judicial order for detention may take place if the alien has escaped from deportation or if there is a reasonable suspicion that he wishes to evade deportation by escaping. Article 8 para. 3 of Directive 2013/33/EU has not been implemented.</p> <p>5. Regulations have been issued for the geographical restriction of asylum seekers' residence but not in the area of detention. No such regulations are in the pipeline either.</p> <p>6. The application of the Return Directive, under which Member States may decide not to apply this Directive to third-country nationals who are subject to return as a criminal law sanction is generally not ruled out. However, the applicability in connection with the individual regulations is limited. The regular five-year maximum ban on entry and residence can be surpassed for third-country nationals who have received a criminal conviction. The already existing regulation on the extradition of third-country nationals in detention or in public custody who are subject to return as a criminal law sanction or because they pose a threat to public order and security without any grace period has been maintained as the application of the Return Directive may be limited.</p>
	Greece	Yes	<p>1. answer pending</p> <p>2. answer pending</p> <p>3. answer pending</p> <p>4. According to our national legislation, the migrants who are released from penal sentence and they are applied for asylum, can not be detained (nat. law 4375/2016 - article 46 – parag. 1). We implemented all the relevant obligations of the directive 2013/33/EU of the European Parliament and of the Council in our national law 4375/2016 (article 46). Specifically, our national law 4375/2016 (article 46 – paragraphs 1, 2, 3 and 4) refers: 1. An alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an</p>

		<p>application for international protection, and that he/she entered irregularly and/or stays in the country without a legal residence permit. 2. An alien or a stateless person who submits an application for international protection while in detention according to the relevant provisions of Laws 3386/2005 (O.G. A' 212) and 3907/2011 (O.G. A' 7) as in force shall remain in detention, exceptionally and if this is considered necessary after an individual assessment under the condition that no alternative measures, such as those referred to in article 22 paragraph 3 of Law 3907/2011 can be applied, for one of the following reasons: a. in order to determine his /her identity or nationality, or b. in order to determine those elements on which the application for international protection is based which could not be obtained otherwise, in particular when there is a risk of absconding of the applicant, as defined in article 18 point (f) of Law 3907/2011, or c. when it is ascertained on the basis of objective criteria, including that he/she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of a return decision, if it is probable that the enforcement of such a measure can be effected; d. when he/she constitutes a danger for national security or public order, according to the reasoned judgment of the competent authority of point 3 of this Article, or e. when there is a serious risk of absconding of the applicant, pursuant to Article 2 point (n) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 according to the criteria of Article 18 point (f) of law 3907/2011 which apply respectively and in order to ensure the enforcement of a transfer decision according to the above Regulation. 3. The detention order shall be taken by the respective Police Director and, in the cases of the General Police Directorates of Attica and Thessaloniki, by the competent Police Director for Aliens matters and shall include a complete and comprehensive reasoning. In cases (a), (b) (c) and (e) of paragraph 2 of this Article the detention order is taken upon a recommendation of the Head of the competent Receiving Authority. 4.a. The detention of applicants for international protection shall be imposed for the minimum necessary period of time. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention. b. The detention of applicants on the grounds mentioned in points (a), (b) and (c) shall, initially, not exceed 45 days and can later be prolonged by a further 45 days, as long as the recommendation of paragraph 3 is not recalled. c. The detention of applicants for international protection on the grounds of points (d) and (e) shall not exceed three (3) months. d. In any case, and independently of whether the time limits for points (d) and (e) above have been completed or not, the total detention period may not exceed in any case the maximum time limits</p>
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			<p>for detention, as they are foreseen in Article 30 of Law 3907/2011.</p> <p>5. In the past, for the asylum cases we had the presidential decree (113/2013) which was abolished by the new national law (4375/2016 article 81) which includes the directives 2013/32/EU (article 26) and 2013/33/EU (articles 8 up to 11).</p> <p>6. Greece incorporated the article 2 parag. 2b of the Directive 2008/115/EC of the European Parliament and of the Council, in our national legislation with the law 3907/2011 (article 17 parag. 2b) in which our Country has the prerogative not issuing a return decision to the third-country nationals who are subject to return as a consequence of a criminal law sanction. We also have the article 74 of our criminal code in which it is predicted this exception. During this procedure and according to our national law, five months before the release of every migrant, the prosecutor investigate the feasibility of deportation. At that time and only, the responsible Authority (Aliens Directorate of Attica) takes the necessary actions (send their applications or transfer them to the Embassy of their country in Athens) in order to issue travel documents. After their release for the criminal offense, they are transferred in Detention Centers and the Aliens Directorate of Attica is responsible to arrange through National or Joint Return Operations either through commercial flights, the return to their country of origin within one (1) month. After that period, and in case their return is impossible, then the prosecutor issue a command to release them following with restrictive measures, to present to the nearest police station of their residence. Of course during this time, there is a potential if the Aliens Directorate of Attica has some of their travel documents or can arrange a return operation, then the prosecutor is informed about the new developments and a new command is issued in order to revoke the restrictive measures, to arrest and deliver them to Aliens Directorate of Attica which is responsible for the implementation of their return.</p>
	Ireland	No	
	Latvia	Yes	1. No. In Latvia the existing regulation does not provide an obligation for applicants to compensate for the expenses.

		<p>2. N/A</p> <p>3. N/A</p> <p>4. According to the New Asylum Law of Latvia (into force since January 16, 2016) an official of the State Border Guard has the right to detain an asylum seeker, if the competent State authorities (including the State Border Guard) have a reason to believe that the asylum seeker presents a threat to national security or public order and safety. The official of the State Border Guard may detain an asylum seeker for up to six days and, if necessary, not later than 48 hours before expiry of the time for detention, submit a justified proposal to the district (city) court (according to the actual location of the detained asylum seeker) to detain the asylum seeker for more than six days. The time of detention may not exceed two months and may not exceed the time of the asylum procedure. In order to prevent absconding an asylum seeker may be detained, if it is necessary to ascertain the facts, on which the application is based and which may be ascertained only by detention, particularly if absconding is possible (the person crossed the State border without an obvious reason evading border controls, previously evaded removal, hid his or her identity, provided false or conflicting information, there are other facts pointing to the likelihood of escape). Article 8 paragraph 3 requirements of the Reception Directive are fully implemented into the Asylum Law.</p> <p>5. To implement the requirements of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection on 16th of January 2016 the New Asylum Law was accepted. As necessary and in conformity with the principle of proportionality, an asylum seeker may be applied the following restrictive measures in the asylum procedure: regular registration at the unit of the State Border Guard or detention. The necessity for application of a restrictive measure shall be assessed, considering the individual situation and circumstances of the asylum seeker. As to detention, it is defined as the last measure in specifically stipulated situations: • it is necessary to ascertain or verify the identity or nationality of the asylum seeker; • it is necessary to ascertain the facts, on which the application is based and which may be ascertained only by detention, particularly if escaping is possible (the person crossed the State border without an obvious reason evading border controls, previously evaded removal, hid his or her identity,</p>
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			<p>provided false or conflicting information, there are other facts pointing to the likelihood of escape); • it is necessary to decide on the rights of the asylum seeker to enter the Republic of Latvia; • there are grounds for assuming that within the scope of the removal procedure the detained person submitted an application to hinder execution of a voluntary return decision or a removal order or to make it impossible, and it is detected that the relevant person did not have any obstacles for submitting such application earlier; • the competent State authorities (including the State Border Guard) have a reason to believe that the asylum seeker presents a threat to national security or public order and safety; • the necessity for transfer procedure in accordance with the provisions of Article 28 of Regulation No 604/2013 has been detected. If any of the conditions for detention above-mentioned exists, an official of the State Border Guard may detain an asylum seeker for up to six days, immediately drawing up detention minutes at the place of detaining the asylum seeker or after delivery of the asylum seeker to the detention premises. The asylum seeker has the right to contest detention to the district (city) court within 48 hours after he or she has been made acquainted with the detention minutes. The contesting shall not suspend detention. An asylum seeker may be detained for more than six days only on the basis of a decision of the district (city) court. The time of detention may not exceed two months and may not exceed the time of the asylum procedure. An asylum seeker or his or her representative may, at any time, submit a claim to the district (city) court (according to the actual location of the detained asylum seeker) regarding assessment of the necessity to continue application of detention.</p> <p>6. Yes. The mentioned exception is implemented in the Immigration Law (Section 42) as follows: A removal order shall not be issued or a voluntary return decision shall not be taken, if: - the foreigner has been imposed an additional punishment by a court judgment - removal from the Republic of Latvia; - the foreigner is subject to a return or an extradition process in accordance with international co-operation in the field of criminal law.</p>
	Lithuania	Yes	<p>1. Yes. State funds of the Republic of Lithuania shall be allocated for the implementation of the rights of asylum applicants <...> to the extent an asylum applicant is unable to guarantee them by the funds and assets subject to declaration. (Article 71 (4) Republic of Lithuania Law on the Legal Status of Aliens). If it transpires that an asylum applicant had sufficient funds for the implementation of the rights free of charge or had funds and received cash allowance, it transpires that the financial situation of the asylum applicant has improved considerably or he/she, while declaring funds, provided false</p>

			<p>information or did not notify the received funds <...> he must refund the expenses incurred by the State. (71 (5) Republic of Lithuania Law on the Legal Status of Aliens).</p> <p>2. No. An applicant has an obligation to declare the funds and assets held in the Republic of Lithuania (71 (3 p.5 Republic of Lithuania Law on the Legal Status of Aliens), but the funds are not confiscated or somehow taken to ensure the rights.</p> <p>3. N/A</p> <p>4. Yes. The ground for detention of an alien are established in the Article 113 of Republic of Lithuania Law on the Legal Status of Aliens, including when he/she represents a threat to national security or public order (113 (4 p. 5)).</p> <p>5. Yes. On January 11, 2015, the law (transferring the directive) sets out the grounds for detention applicable to the asylum seeker; the same law adds to the circumstances that are assessed in determining whether there is a risk of absconding: during the examination of an asylum application asylum seeker do not cooperate with the competent authorities employees. No new changes are currently planned regarding detention of asylum seekers.</p> <p>6. Lithuania applied the Art. 2 para. 2b of the Return Directive. The Criminal Code of the Republic of Lithuania does not contain return as a sanction or part of a sanction. The extradition in Lithuania is carried out in accordance with international agreements (Article 144 of the Law on the Legal Status of Aliens stipulates that if the international treaties to which the Republic of Lithuania is a party provide otherwise than this Law, the provisions of the international treaties shall apply.)</p>
	Luxembourg	Yes	<p>1. Article 8 (3) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection establishes that for benefiting of the material reception conditions the international protection applicant must not be deprived of sufficient resources to ensure his/her livelihood. So in case that the applicant has the necessary resources s/he is excluded from benefiting of the material reception conditions.</p>

		<p>2. No.</p> <p>3. N/A.</p> <p>4. Yes. An international protection applicant can be detained following release from penal sentence for reasons of public order and security in accordance with article 22 (2) c) of the Law of 18 December 2015 on international protection and temporary protection. In addition, article 22 (2) b) establishes the possibility of placing the international protection applicant in detention in order to determine the elements on which the application is based, especially if there is a risk of absconding. Article 8 para. 3 e) of the Reception Directive was transposed in national law in article 22 2 c) of the Law of 18 December 2015 on international protection and temporary protection.</p> <p>5. Yes. Directives 2013/32/EU and 2013/33/EU were transposed into national law by the Law of 18 December 2015 on international protection and temporary protection and Law of 18 December 2015 on reception of applicants for international protection and temporary protection. The first of these two laws regulates detention in article 22. Also in the law of 8 March 2017 amending the amended law of 29 August 2008 on free movement of persons and immigration, article II also amended article 6 of the amended law of 28 May 2009 on the Detention Centre allowing the detention of family with children for up to seven days in order to organize the return.</p> <p>6. Article 128 of the amended law of 29 August 2008 on free movement of persons and immigration establishes that if there are extradition procedures against a returnee the return cannot be executed. Also, the third-country national condemned to a criminal sanction cannot be returned until s/he complied with the criminal law sanction or obtain parole. The Luxembourgish Criminal Code does not establish any sanction, which implies the return of a third-country national (article 7 of the Criminal Code). However, if a third-country national is being investigated because of a criminal offence, s/he cannot be returned during the duration of the investigation and of the trial. If s/he is condemned to serve a prison sentence, s/he cannot be returned during the duration of the criminal sanction. S/he may nevertheless be freed on parole if the s/he is a first offender and has served at least three months of the sentence in case the latter is less than 6 months or half of their sentence in case it is over 6 months (Article 100 1) of the Criminal Code). In case the third-country national is a recidivist, s/he will have to serve at least 6 months if the sentence(s) is less than 9 months or two thirds in case the sentence(s) is</p>
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			<p>over 9 months (Article 100 2) of the Criminal Code). This benefit is granted by the State Public Prosecutor (article 100 5) of the Criminal Code), but can be subject to certain conditions and modalities (article 100 6) of the Criminal Code). In cases dealing with third-country nationals who do not have any links or permanent residence in Luxembourg, the benefit is granted upon the condition that s/he leaves the country voluntarily. Nevertheless, in practice, this provision has very little impact as most concerned persons want to avoid any type of return (voluntary or forced) and revealing of their nationality, even if it means serving a full sentence and eventually being transferred to the Detention Centre in view of a forced return.</p>
	<p>Netherlands</p>	<p>Yes</p>	<p>1. The Asylum Seekers and Other Categories of Aliens (Provisions) Regulation (in Dutch: Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005, RvA) provides information about the obligation for asylum seekers to compensate for the expenses under some conditions. Article 20(2) provides that if the asylum seeker owns asset/capital that is above a certain level, he is obliged to pay a compensation to the Central Agency for the Reception of Asylum Seekers (COA). This asset/capital level is set at an annual amount of €6.020 for a single (wo)man, €12.040 for a single parent and €12.040 for a married couple (together), as provided in article 34 (2)(3) of the Participation Act. If an asylum seeker owns more than this level or either has an income other than the general child benefit and/or allowances as provided in the RvA Regulation, he is obliged to pay a compensation for his reception. This amount is calculated by taking into account the delivered provisions to the asylum seekers. However, this amount may not exceed the asylum seeker's income/asset/capital.</p> <p>2. As mentioned in Q1, asylum seekers are under some conditions obliged to contribute to the expenses related to their care. This can also be demanded via a reclaim. However, the confiscation of cash does not take place in the Netherlands. The (previous) State Secretary stated in 2016 that the Netherlands is not going to confiscate money or jewelry from asylum seekers in order to guarantee the financing of their reception.</p> <p>3. N/A</p> <p>4. Article 8(3) of the Reception Conditions Directive is implemented in article 59(b) of the Aliens Act. The categories that are mentioned in article 8(3) of the Reception Conditions Directive are transposed in the respective article of the Aliens Act. If an asylum seekers is released from a penal sentence, he</p>


can be detained if one (or more) of the several grounds in the national legislation applies. The different grounds are set out in subordinate legislation and have their own additional requirements: a. Detention must be necessary to establish the identity or nationality of a foreign national + there should be at least two grounds to underpin the risk of absconding + particular circumstances with regard to the asylum application must be present (e.g. an asylum application during imprisonment as a consequence of a criminal offence) b. Detention must be necessary in order to obtain required information for the decision with regard to the application for an asylum residence permit. This is most importantly the case when there is a risk of absconding. Additional requirements for this detention are at least two grounds to underpin the risk of absconding + particular circumstances with regard to the asylum application must be present (e.g. an asylum application during imprisonment as a consequence of a criminal offence) NB: the grounds to accept a risk of absconding can be related to public order, for example if an entry ban is issued or if a pronouncement of undesirability is issued as a result of public order issues or if the foreign national used false documents during the procedure. c. The foreign national: 1. Is detained for the purpose of a return procedure, as set out in directive 2008/115 2. Already had access to the asylum procedure 3. There are substantial grounds to believe that the foreign national only applied for an asylum residence permit in order to postpone or frustrate the execution of the return decision. d. The foreign national poses a real risk for the national security or public order, as meant in article 8(3)(e) of the Directive 2013/33. A risk of absconding is not required for this condition. However, the public order conditions must meet the EU public order criteria (genuine, present and sufficiently serious threat to public order).

5. The Reception Conditions Directive is implemented into Dutch law in 2015 (see description in previous answer). Since 2015 there have not been any relevant changes concerning asylum seekers. Additionally, there are currently no foreseeable changes in the near future.

6. This article is implemented in Dutch legislation via a decree exemptions of the Return Directive. This decree does not include an exemption from the Return Directive for foreign nationals who are forced to return as a consequence of a criminal law sanction or as a consequence of a criminal law sanction. Dutch legislation does not make a distinction between forced returns of foreign nationals with a criminal history and foreign nationals without such a history. Article 2(2)(b) of the Return Directive is applied for foreign nationals of whom the extradition procedure is still ongoing (as meant in the

			Extradition Act); consequently, the Return Directive does not apply in these cases.
	Slovak Republic	Yes	<p>1. According to art. 23 para 5 of the Act on Asylum, the Ministry of Interior can decide that the asylum seeker is obliged to reimburse the costs of his/her stay in the reception facility or integration centre or the costs of the provided healthcare if his/her financial or property situation is such that at least a partial reimbursement of the costs related to the stay can be expected. In practice, however, this provision is not used.</p> <p>2. No.</p> <p>3. N/A</p> <p>4. This provision has been transposed to national legislation as follows: the police officer is entitled to detain the asylum seeker if the purpose of the detention cannot be achieved by less severe means, if this is necessary due to threat to the state security or public order. (Art.88 para 1) letter d).</p> <p>5. In the past three years only two minor changes were made to the Act on Asylum (one in 2015 regarding the transposition of the Directive 2013/32/EU of the European Parliament and of the Council and Directive 2013/33/EU of the European Parliament and of the Council and in 2016 in connection with adoption of the new Code of Administrative Procedure). Currently an amendment to the Act on Asylum is in the legislative process due to the transposition of the art. 31 para 3-5 of the Directive 2013/32/EU of the European Parliament and of the Council and also due to new findings and other reasons stemming from the application practice. The amendment suggests to widen the reasons for termination of asylum if the beneficiary acquires citizenship of another EU MS or if another MS grants him/her asylum due to reasons of persecution. Also reason for termination of the subsidiary protection are to be widened, if a beneficiary of subsidiary protection on the territory of the SR acquires citizenship of another EU MS and also if another MS grants him/her asylum due to reasons of persecution or subsidiary protection due to serious harm.</p> <p>6. As this provision is voluntary, the article was not transposed to the national legislation.</p>

	Spain	Yes	<p>1. No.</p> <p>2. -</p> <p>3. -</p> <p>4. No. Detention of asylum applicants is not foreseen in our national legislation.</p> <p>5. There are no recent changes.</p> <p>6. Spain applies art. 2.2 b) of the Return Directive. Still, these judicial return procedures are not radically different from what is established by the Directive.</p>
	Sweden	Yes	<p>1. They is an obligation for adult applicants to pay a patient fee (approx 5 euros) when they visit a doctor within the primary care. If the applicant is hospitalized, (s)he does not have to pay a patient fee.</p> <p>2. No</p> <p>3. NA</p> <p>4. Asylum applicants can be detained if there is a risk that they will commit crime, abscond or in other way hamper the return. Public order and security is not a reason to detain an asylum applicant.</p> <p>5. There has not been any major changes regarding detention, or the grounds of detention, for the last three years. The government is in the process of sending a referall to the Council on Registration regarding suggested changes in the Swedish Aliens Act concerning detention. One of the suggested changes is that the detention order shall be subject to supervision of a judicial authority in the case of prolonged detention periods and that the initial detention order also shall be subject to the supervision of judicial authority if the detention period exceeds two weeks. At the moment it is either the Swedish Police Authority or the Swedish Migration Agency that are responsible for the decision to prolong the detention period.</p>

			<p>6. Yes, Sweden uses that exception. The exception is not mentioned as such in the Aliens Act, one has to read the relevant sections to understand that thirdcountry nationals subject to return as a consequence of a criminal law sanction is excepted.</p>
	<p>Norway</p>	<p>Yes</p>	<p>1. Yes, if an applicant is returned by force. Persons applying for asylum in Norway are not required to cover the expenses the Norwegian government has in terms of their actual stay in the realm. However, if an application results in a negative decision, and the foreigner does not leave the realm within the given time frame voluntarily, the police may remove the person(s) from the realm by force. In such cases, the returnee will then have to bear the expenses of the transportation (Immigration Act, § 91,1).</p> <p>2. Yes, in cases of forced returns, Norwegian authorities reserve the right to confiscate money or other means of payment to cover any expenses incurred during transportation (Immigration Act §104, 2).</p> <p>3. Although it is possible to confiscate enough assets in order to cover transportation/return, a reasonable amount is reserved for the foreigner. The reserved amount shall be equal to a month's worth of living expenses in the country of origin. Rates used to calculate the living expenses are set by UBS. ("Prices and earnings" https://www.ubs.com/no/en.html).</p> <p>4. Norwegian authorities reserve the right to arrest and/or incarcerate asylum seekers, given sufficient evidence that the foreign national has evaded or might attempt to evade implementation of an administrative decision requiring the foreign national to leave the realm (Immigration Act 106, 1B). Coercive measures to ensure the implementation of an administrative decision may also be applied during the actual processing of a case which may lead to an administrative decision requiring the foreign national to leave the realm. This also applies to the processing of an application that may lead to a negative decision (Immigration Act §99, 2). The risk of evasion shall be assessed on a case-by-case basis. To determine whether there is a risk of evasion, an overall assessment must be carried out. Relevant assessment in the Norwegian Immigration Act, that covers the Art.8 para. 3 (e) of the Reception Directive into national legislation, are §106, 1J: (j) the foreign national has been found to pose a threat to fundamental national interests. In assessing the risk of evasion under the first paragraph, weight may also be given to general experience relating to evasion by foreign nationals, such as prior history of evasion, history of expulsion or criminal acts or resisted/ refused return.</p>

Immigration Act § 130, 2 also states that "A foreign national may be arrested and remanded in custody under section 106 if he or she poses a threat to fundamental national interests and this has been established in an administrative decision in the immigration case and measures are taken in respect of the foreign national with a view to removal".

5. Yes, there have been changes in the field of Asylum and Aliens Law in Norway, in particular in the area of detention of asylum seekers, in the last 3 years. A new basis for arrest and incarceration of foreigners has been established, such as the possibility of arresting and incarcerating persons who probably will have their case refused (denied the right to stay) in Norway, because they have been granted granted asylum or other form of international protection in another European country or safe third country. (Immigration Act, §106, 1B). A new basis for arrest and incarceration of foreign citizens has also been established for foreigners who present an asylum application which is considered manifestly unfounded, and therefore is processed in the 48 hour accelerated procedure in accordance with the Immigration act, §106, 1H. From the 15th of May 2018, new grounds in terms of reasons for arrest and incarceration of minors and families (families with children) will be put into motion. New and stricter terms will then apply for this group when it comes to arrest and incarceration.

6. Yes. When it comes to transfer of sentenced persons, this is regulated by the Convention on the transfer of sentenced persons. The Norwegian Immigration Act does not regulate this when it comes to third country nationals, and therefore article 2, paragraph 2B of the Return Directive is applied and used in these cases. Other exemptions from the use of the Return Directive are when third country nationals are expelled from the realm on grounds of criminal offenses. In these cases the foreigner can be exempted from the Return Directive, and the Immigration Act's regulations are used to effectuate decisions as well as determine the length of maximum incarceration. An example of an exemption of the Return Directive linked to article 6, paragraph 2 is where a third country national who has been denied the right to stay (refused their application of asylum or permit to stay), and therefore is bound to return, can actually be returned to an other country. The Immigration Act §90, 7 states "Where warranted on particular grounds, the foreign national may be brought to a country other than the one from which he or she came." This implies that a third country national, with valid residence permit in another European country nevertheless can be returned to their country of origin, as long as the permission to stay is not based on protection (granted asylum) in another European country. The exemption is commonly used in those cases where third country nationals come to Norway with the

			<p>intention of conducting criminal activities, typically criminal activity connected to drugs (trafficking, selling and use of drugs). Other examples of cases which typically are exempted from the Return Directive are cases where third country nationals have been expelled from Norway because they received a sentence due to criminal activity.</p>
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