



Returning Rejected Asylum Seekers: Challenges and good practices

Luxembourg

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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.

Preface

The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry for Family, Integration and the Greater Region or of the Ministry of Foreign and European Affairs.

The present report was drafted by Linda Dionisio, Adolfo Sommarribas and Noémie Marcus, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Marc Hayot (OLAI, Ministry for Family, Integration and the Greater Region), Catherine Stronck (Directorate of Immigration, Ministry of Foreign and European Affairs) and Germaine Thill (STATEC).

Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. As documentary sources legal texts, official documents (such as parliamentary documents), reports and press articles have been used for this study. Furthermore, semi-structured interviews were conducted with different stakeholders in the field of integration of refugees: the *Office luxembourgeois de l'accueil et de l'intégration* (OLAI) of the Ministry of Family, Integration and the Greater Region, ASTI asbl, CLAE asbl, the Solidarity and Integration Service of Caritas Luxembourg and the Migrants and Refugees Service of the Red Cross Luxembourg. The *Service de la formation des adultes* (SFA) of the Ministry of National Education, Childhood and Youth, the *Service de la scolarisation des enfants étrangers* (SECAM), Ministry of National Education, Childhood and Youth and the social office in Esch-sur-Alzette were consulted by telephone on specific points.

Executive summary

The issue of non-return of rejected international protection applicants does not enjoy a high political profile on its own, but has been discussed as part of a global debate on asylum.

Significant efforts are required when considering the wide spectrum of possible reasons of non-return, some reasons depending on the countries of destination, others on the returnee himself/herself. In this respect, reasons of non return range from the non-respect of deadlines, the issuance of travel documents, postponement of removal for external reasons to the returnee, for medical reasons, the resistance of the third-country national and the lack of diplomatic representation of Luxembourg, to name but a few.

In regards to the procedure, in Luxembourg the rejection of the international protection application includes the return decision. The Minister in charge of Immigration, through the Directorate of Immigration, issues this decision. The return decision only becomes enforceable when all appeals are exhausted and the final negative decision of rejection of the competent judicial authority enters into force, as appeals have suspensive effects. This decision also sets out the timeframe during which the rejected international protection applicant has to leave the country. In case the applicant does not opt for a voluntary return, the decision will also include the country to which s/he will be sent. In general, the decision provides for a period of 30 days during which the applicant has the option to leave voluntarily and to benefit from financial support in case of assisted voluntary return through the International Organization for Migration (IOM). There are two exceptions to this rule: the applicant who is considered a threat to national security, public safety or homeland security and the applicant who has already been issued a return decision before. The declaration and documentation provided during the procedure of international protection can be used to facilitate return. Subsequent applications are possible, in particular if new evidence of facts appears resulting in an increased likelihood of the applicant to qualify for international protection.

For rejected international protection applicants who did not opt for voluntary return and did not receive any postponement of removals, a certain (limited) support is available while waiting for the execution of the enforceable return decision. As such, they continue to stay in reception facilities and to receive certain social benefits unless they transgress any internal rules. If an urgent need exists, rejected applicants may be granted a humanitarian social aid. However, they are not entitled to access the labour market or to receive 'pocket money' or the free use of transport facilities. They benefit from an access to education and training, however this access cannot constitute a possible reason for non-return. These benefits are available to rejected applicants until the moment of their removal.

In order to enforce the return decision and prevent absconding, the Minister may place the rejected international applicant in the detention centre, especially if s/he is deemed to be obstructing their own return. Other possible measures include house arrest, regular reporting surrendering her/his passport or depositing a financial guarantee of 5000€. Most of these alternatives to detention were introduced with the Law of 18 December 2015 which entered into force on 1st January 2016. As a consequence, detention remains the main measure used to enforce return decisions.

A number of challenges to return and measures to curb them are detailed in this study. A part of these measures have been set up to minimize the resistance to return from the returnee. First and foremost is the advocacy of the AVRR programme and the dissemination of information relating to this programme but also the establishment of a specific return programme to West Balkan countries not subject to visa requirements. Other measures aim at facilitating the execution of forced returns, such as police escorts or the placement in the detention centre. Finally, significant efforts are directed towards increasing bilateral cooperation and a constant commitment to the conclusion of readmission agreements.

No special measures were introduced after 2014 in response to the exceptional flows of international protection applicants arriving in the EU. While the Return service within the Directorate of Immigration has continued to expand its participation to European Networks and in various transnational projects in matters of return, this participation was already set into motion prior to the exceptional flows of 2014.

As for effective measures curbing challenges to return, this study brings to light the AVRR programme but especially the separate return programme for returnees from West Balkan countries exempt of visa requirements. The dissemination of information on voluntary return is also considered an effective policy measure, the information being made available from the very start of the international protection application.

Among the cases where return is not immediately possible, a considerable distinction has to be made in regards to the reasons for the non-return. Indeed, in cases where the delay is due to the medical condition of the returnee or to material and technical reasons that are external to the returnee, a postponement of removal will be granted. This postponement allows for the rejected applicant to remain on the territory on a temporary basis, without being authorized to reside and may be accompanied by a measure of house arrest or other. In cases of postponement for medical reasons and of subsequent renewals bringing the total length of postponement over two years, the rejected applicant may apply for a residence permit for private reasons based on humanitarian grounds of exceptional seriousness. Nevertheless, apart from this exception, no official status is granted to individuals who cannot immediately be returned.

Several measures of support are available to beneficiaries of postponement to removal: they have access to accommodation in the reception centres they were housed in during their procedure, they may be attributed humanitarian aid, they continue to be affiliated at the National Health Fund, they continue to have access to education and professional training and they are allowed to work through a temporary work authorization. The temporary work authorization is only valid for a single profession and a single employer for the duration of the postponement to removal, although this is an extremely rare occurrence in practice. OLAI may allocate a humanitarian aid might be allocated if the individual was already assisted by OLAI during the procedure of her/his international protection application. All of these measures apply until the moment of return.

The study also puts forth a number of best practices such as the Croix-Rouge's involvement in police trainings, their offer of punctual support to vulnerable people through international networking or the socio-psychological support given to vulnerable people placed in the detention centre among others. A special regard has to be given to AVRR programmes and their pre-departure information and counselling, the dissemination of information and the post-arrival support and reintegration assistance. Indeed, stakeholders singled the AVRR programme out as a best practice

and the Luxembourgish government has made voluntary return a policy priority for a long time.

However, this increased interest in voluntary returns has to be put into perspective as research shows that sustainable success of voluntary return and reintegration measures is only achieved for a very restricted number of beneficiaries (namely for young, autonomous and dynamic returnees with sizeable social networks and who were granted substantial social capital upon return). Hence, returning women remains a sensitive issue, especially if they were fleeing abusive relationships. Another factor contributing to hardship set forth by research is the difficult reintegration of returnees that have lived outside of their country of return for a prolonged period of time and are therefore unable to rely on social networks for support or for a sense of belonging.

Based on these considerations, NGOs and academia cast doubts on the 'voluntary' nature of these return programmes, their criticism targeting the misleading labelling of these policy measures.

Section 1: Overview of the national situation

To what extent is the non-return of rejected asylum seekers considered a major issue or a national policy priority in your Member State?

The non-return of rejected asylum seekers has for long been a political issue. This is partly due to the fact that Luxembourg has witnessed a number of arrival waves of international protection applicants over the years, such as in 1998-1999, in 2003-2004 and in 2011-2012, the spike of 1999 remaining to this day the highest in applications of international protection in Luxembourg.¹

For the period of 2011-2013, West Balkan countries remain the foremost countries of origin of international protection applicants (78% in 2011, 80% in 2012 and just over half of the applications in 2013).² The most recent years have also experienced an increasing number of rejected international protection applicants from West Balkan states. In 2015 the top 5 countries of origin of rejected international protection applicants were (by decreasing order) Kosovo, Nigeria, Albania, Azerbaijan and Montenegro for the normal procedure³ and Bosnia and Herzegovina, Kosovo, Montenegro, Albania and Serbia for the fast track procedure.⁴ During 2014, Kosovo, Albania and Nigeria also appear in the top 5 of countries of origin for the normal procedure⁵, while Bosnia and Herzegovina, Montenegro, Kosovo, Albania and Serbia rank first for the fast track procedure.⁶ As a result, West Balkan states are also the main destination countries for returns.⁷ Delving further into the statistics for the year of 2015 the total number of international protection applicants was of 2447. During the same period the Directorate of Immigration issued 1243 decisions⁸ from which 200 granted international protection status and 525 refusal decisions (150 using the normal procedure and 375 using the fast track procedure).⁹ Therefore, 42,2% of the total of the decisions issued in 2015 were refusal decisions.¹⁰ Even though in 2015 there were 793 third-country nationals returned (617 voluntarily and 176 forced return) the main contingent of returnees is composed by rejected international protection applicants coming from the West Balkan states¹¹ which represented 75,3% (465) of all the voluntary returns and 68,2% (120) of the forced returns.¹² Nonetheless, it is important

¹ Ministry of Foreign and European Affairs, Directorate of Immigration, information collected by CEFIS asbl.

² Direction de l'immigration, Conférence de Presse 31 Janvier 2012 « Bilan 2011 », p. 2 ; Direction de l'immigration, *Conférence de presse de Nicolas Schmit 14 Mars 2013 « Bilan 2012 : Asile, libre circulation des personnes & immigration, rétention, retours »*, p. 2 ; Direction de l'immigration, *Conférence de Presse 13 Février 2014 « Bilan de l'année 2013 »*, p. 2.

³ Direction de l'Immigration, *Bilan de l'année 2015 en matière d'asile et d'immigration*, p. 8.

⁴ Ibidem, p. 9.

⁵ Ibidem, p. 7.

⁶ Ibidem, p. 8.

⁷ Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p.7.

⁸ In Luxembourg, the Directorate of Immigration includes in its statistics the decisions granting the international protection status as well as the decisions of refusal as well as decisions of implicit withdrawal, inadmissibility decisions or decisions of incompetence of examination of the application under 'Dublin III Regulation' (Information provided by Directorate of Immigration, 28 June 2016).

⁹ Bilan de l'année 2015, p. 1.

¹⁰ Bilan de l'année 2015, p. 6.

¹¹ Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia.

¹² Bilan de l'année 2015, p. 23.

to note that returning people to their country of origin, especially if they are unstable countries due to armed conflicts (i.e. Afghanistan, Congo (RDC), Sierra Leone, Somalia, Iraq and Syria) becomes a difficult task for the Luxembourgish authorities. In those cases the only possibility of returning an individual is through voluntary return.¹³ For more details on the relevant statistics, consult Q2-4a.

In Luxembourg, this sensitive political issue has mostly been dealt with as part of a global policy on asylum and international protection. General debates on the global policy of asylum arose already in the early '90s during the ratification of the Schengen accords on 27 May 1992.¹⁴

The concern of non-return of rejected international protection applicants resurfaces on several occasions in the following years, mostly under the impulse of discussions on regularization measures or on draft legislation.¹⁵ Among the expressed concerns for rejected international protection applicants we find the special consideration given to families with children.¹⁶

The discussion on the regularization measure of 2001 keeps the topic relevant in the early 2000s as the issue is widely discussed before and after setting the criteria to benefit from this measure. The public debate focussed on the conditions and the procedure of removal and the prerequisites of a return procedure to respect security and human dignity.¹⁷

During the year preceding the establishment of the regularisation criteria, protests arise concerning returns to countries of origin. Rejected asylum seekers from Montenegro fear the return to their country and the Luxembourgish Refugee Council expresses concerns on the unstable political situation.¹⁸

In 2008, when discussing the draft legislation of the new Law on Immigration, but also prior to its entering into force, the contention points on non-return included the removal of individuals who had been living in Luxembourg for several years and had shown efforts of integration as well as the removal of families with children in school during the school year or the coercion used in forced returns.¹⁹

The same year, the Government furthers the priority given to this issue by increasing its advocacy of consensual return and signing a Convention with the International Organisation for Migration (IOM) on 5 August 2008 with the aim to establish a programme of assistance to voluntary return and to reintegration in the country of origin of Kosovar Nationals.²⁰ Unlike other EU countries, Luxembourg started relatively late to cooperate with IOM in order to organize assisted voluntary returns for returns in Kosovo and from 2009 onwards it was extended to other countries of destination.²¹ The support granted by IOM is not the only resource open to Kosovar nationals, as a financial aid may be offered by the Ministry of Family and Integration. The coalition

¹³ Bilan de l'année 2015, p. 22.

¹⁴ Besch, Sylvain, 2010. « Les réfugiés entre le droit et la politique (1990 – 2009) », in : ASTI (éd), *30+. 30 ans de migrations, 30 ans de recherches, 30 ans d'engagement*. Luxembourg, p. 108.

¹⁵ Ibidem, pp. 109-110.

¹⁶ Ibidem.

¹⁷ Ibidem, p.115.

¹⁸ Ibidem.

¹⁹ Ibidem, p.117.

²⁰ Ibidem.

²¹ Phone interview with a Researcher, 23 May 2016.

agreement of the Government resulting from the 2009 elections reaffirms the Government's position of making voluntary return a priority.²²

The detention component of the forced return procedure did not escape criticism either. Indeed, national and international organizations advocating for human rights highly opposed the detention of individuals with no residence permits in a penitentiary center.²³ Following the death of a detainee in the penitentiary centre in 2006 the Government concluded to the construction of a separate structure and to a renewed legal definition of rights and obligations of detainees with the Law of 28 May 2009.²⁴

The Government resulting from the 2009 elections wanted to promote as a priority the voluntary return of rejected international protection applicants and individuals in an irregular situation.²⁵

Based on the content of the return programme, we can deduce an increased importance allocated to the issue of return, as the programme was exclusively aimed at rejected international protection applicants from Kosovo in an initial phase from 2008 – 2009 and was consequently extended to all third-country nationals whose application is ongoing or has been rejected, as long as third-country nationals are subjected to visa obligation.²⁶ This priority can also be witnessed in the increase in budget allocated to voluntary return through the years²⁷ and to the priority given to both the financial aid provided for voluntary return and to the financial aid for reintegration, a priority that was expressed as soon as 2011 in the annual programme.²⁸

Other focus areas present in the Government's annual programmes concern the establishment and improvement of cooperation with third countries to facilitate identification of third-country nationals and the issuance of travel documents (*laisser-passer*).²⁹ This focus is in response to a significant challenge to return, namely the determination of the real identity and nationality of certain returnees, obtaining the required travel documents to be returned to their country of origin and the lack of cooperation of the diplomatic representations of some countries of origin.³⁰ In this regard the Luxembourg authorities also set up consular days with the diplomatic missions of third countries³¹ and have also continued fostering good informal relationships with the consular authorities of third countries principally located in Brussels.

In order to address these type of problems and to better organise the returns, Luxembourg continues its efforts to conclude and implement readmission agreements of third-country nationals in the framework of the Benelux.³² Already in the 2004- 2009

²² Besch, S., « Les réfugiés entre le droit et la politique (1990 – 2009) », p. 117 ; Ministère de l'Immigration et de l'Asile, 2015. *Ex-Post Evaluations of Actions co-financed by the European Return Fund under the 2011-2013 Annual Programmes for Luxembourg*, p. 6.

²³ Besch, S., « Les réfugiés entre le droit et la politique (1990 – 2009) », p. 118.

²⁴ Besch, S., « Les réfugiés entre le droit et la politique (1990 – 2009) », p. 118.

²⁵ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 6.

²⁶ Ibidem.

²⁷ Ibidem, p. 45.

²⁸ Ibidem, p. 19.

²⁹ Ibidem.

³⁰ LU EMN NCP, 2012. *Establishing Identity for International Protection: Challenges and Practices*, Luxembourg, pp. 13-19.

³¹ Bilan de l'année 2015, p. 21.

³² In April 2015, Luxembourg ratified the protocols signed between the Benelux and Bosnia-Herzegovina, Georgia, Former Yugoslav Republic of Macedonia, Moldova and Serbia on the implementation of the EU agreements and those countries in regards the readmission of persons in

legislature, several readmission agreements had been concluded by Benelux states with countries of origin of individuals in an administrative irregular situation.³³ The negotiation of readmission agreements remained an important tool in return policy in the following years³⁴ and to this day³⁵. The Government's longstanding reliance on readmission agreements to curb difficulties in implementation of return decisions demonstrates the constant weight given to this issue at the national level.

More importantly, the creation of a detention centre in 2011 spawned a further priority area: the training of the employees of the centre to improve the quality of psychosocial assistance.³⁶

While Luxembourg has also experienced an increase of international protection applicants, the issue of non-return did not experience a rise in profile in the Luxembourg public due to the 'crisis' of 2014, generally speaking.

The AMIF programme for the period 2014-2020 renews the same priorities in the area of return by extending the policy on voluntary returns through reintegration projects and specifying that forced returns and its procedure should be continuously monitored to ensure efficacy and efficiency.³⁷ As a support for these two strands of policy, cooperation with third-countries' authorities will be maintained and extended.³⁸

The programme references the Government's 'determination' to continue and further develop its advocacy of voluntary return and indicates the possibility of complementing its action with extra programmes, should the need arise. Another factor singled out for further development is the communication strategy towards the potential beneficiaries of voluntary returns.

A second operational objective of the programme is dedicated to forced returns, more specifically to the optimization of the existing system of forced returns. Indeed, the lower priority of forced returns when compared to the aforementioned emphasis put on voluntary returns, is further exemplified by the choice of words included in the programme, which introduces the second objective with 'if there has to be recourse to forced returns' and continues to put forth the importance of a smooth and efficient execution of forced returns that gives a particular regard to respect the returnees' rights and dignity.³⁹

As a third and final objective, attention is given to improve conditions of detention and to train agents operating in the execution of forced returns.⁴⁰

The text of the programme puts an increased emphasis in the efficacy, efficiency and sustainability of returns.

irregular situation. Also the readmission agreement between the Benelux and the Republic of Kazakhstan and its implementation protocol was signed on 2 March 2015 and the negotiation of the implementing protocol of the readmission agreements between Cape Verde and the EU and between Cape Verde and the Benelux was still ongoing during 2015 (Bilan de l'année 2015, p. 21).

³³ Besch, S., « Les réfugiés entre le droit et la politique (1990 – 2009) », p. 118.

³⁴ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 8.

³⁵ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

³⁶ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 17.

³⁷ OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 11/12/2015, p. 20.

³⁸ Ibidem.

³⁹ Ibidem, p. 21.

⁴⁰ Ibidem.

Advocacy of voluntary returns should be ‘reinforced’, while a reflection on the execution of removal decisions should be launched. For voluntary returns the onus is placed on the delivery of information and the assistance given to individuals to be potentially returned with the specific and express aim to discourage irregular migration and encourage potential returnees to opt for voluntary return.⁴¹ For this reason, the programme foresees an increase in number of voluntary returns.⁴² For forced returns, the programme aims to improve the execution of removal by accelerating the implementation of return decisions through identification and the issuance of travel documents.⁴³

The financial allocation of funds within the AMIF programme testifies of the relative importance given to returns, as it has the second highest budget, behind Integration and Legal Migration, but surpassing Asylum.⁴⁴

Please provide evidence of the main reasons in your Member State for the non-return of rejected asylum seekers.

The identification of the returnee constitutes one of the major reasons for not returning rejected applicants of international protection in Luxembourg. When trying to return a third country national, the Directorate of Immigration contacts the diplomatic authorities of the presumed country of origin of the person. Here, cooperation on behalf of the diplomatic authorities of the country of origin is necessary in order to identify the person and also to obtain the required travel documents, i.e. a “laissez-passer”. However, this process can be long and tedious given that most of the diplomatic missions are located in Brussels. In many cases, the necessary arrangements cannot be made or the diplomatic authorities are unwilling to cooperate with the Luxembourgish authorities.⁴⁵ According to IOM, while this factor does not exactly qualify as a reason for non-return, the fact that the returnees have to travel to Brussels to sort out the document requirements can slow down the process.

Further, non-respect of deadlines on behalf of the diplomatic authorities of third countries to identify the returnees may force the Luxembourgish authorities to release the returnees if they are in detention.⁴⁶

The issuance of travel documents can sometimes hamper return because the diplomatic missions issue documents to their nationals but make it almost impossible for the accompanying personnel to receive travel documents.⁴⁷

Postponement of removal might further be due to external reasons to the returnee⁴⁸ as well as to medical reasons⁴⁹ or to private reasons based on humanitarian reasons. In case there is an authorisation to stay based on private reasons, the Immigration Law provides that an authorisation to stay has to be requested before entering the country. There are a few exceptions, which can apply to third country nationals in an irregular

⁴¹ Ibidem.

⁴² Ibidem, p. 22.

⁴³ Ibidem.

⁴⁴ Ibidem, p. 32.

⁴⁵ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

⁴⁶ See for example, Administrative Court n° 28790C of 24 June 2011.

⁴⁷ See First instance Administrative Court, 1st chamber, n° 37964 of 6 June 2016 and n° 35439 of 19 November 2014.

⁴⁸ See article 125bis of the amended Law of 29 August 2008.

⁴⁹ See article 130 of the amended Law of 29 August 2008.

situation in general (including rejected international protection applicants). The Immigration Law) establishes the possibility that a third-country national can apply for an authorisation of stay for private reasons based on humanitarian grounds of exceptional seriousness, provided that his/her presence does not constitute a threat to public policy, public health or national security. The application is not valid if it is based on grounds already used in the context of a former application (such as an application for international protection).⁵⁰

Another factor slowing down return decisions to be carried out is the lack of diplomatic representation in third countries: In many countries Luxembourg does not have an embassy and is represented by another Member State (i.e. Belgium, France, Germany, Hungary, the Netherlands, Portugal, Slovenia, and Spain). Cooperation largely depends on the diplomatic relations and the government in place in the country of origin.⁵¹ The added difficulty here is that procedures vary greatly from embassy to embassy, a few requesting only original documents for documentation while others accept copies. In certain cases, embassies require the returnee himself/herself to pick up their laissez-passer, in other cases they agree for IOM staff to pick the travel documents up.⁵²

Removal might as well be hampered because travel documents issued are only valid for a very short period, which makes the return from an organisational point of view impossible⁵³ or because the third country recognizes the returnee as his/her national and later refuses to issue a travel document⁵⁴.

Other factors influencing the feasibility of return is the resistance of the third-country national to return. This can result from the personal and family situation of the returnees, their aspirations, their migratory project at the moment of departure from the country of origin and the evolution of the project during their stay in the host country.⁵⁵ It can depend from regularization possibilities, access to welfare in the host country or the political, social and economic situation in the country of origin or transit, especially when considering the sustainability of carried out returns.⁵⁶

In this regard IOM noticed different trends according to nationality. Indeed, in cases involving Kosovar nationals opting for assisted voluntary return, their motivation to return is a direct consequence of their negative decision to their international protection application and the fear of a forced return. On the other hand, for Iraqi nationals opting for an assisted return, generally they take the decision while still in procedure of their application because they cannot stand to be far from their family and when they realize that the procedure for family reunification is complicated. In this case, the motivating factor is the refusal to leave their families behind in their country of origin, be it spouse or parents.⁵⁷ Nonetheless, an important factor influencing the choice of Iraqi nationals to opt for voluntary return while still in procedure of their application is the protracted treatment of their applications, which, as a consequence, heightens their likelihood to

⁵⁰ LU EMN NCP answer to GR EMN NCP Ad-hoc query on the right of residence provided for TCNs to whom international protection application has been rejected, launched on 30 December 2015.

⁵¹ See Administrative Court, n° 37612C of 10 March 2016 and 37575C of 1 March 2016. First instance Administrative Court, 1st chamber, n° 37964 of 6 June 2016, n°37641 of 18 March 2016 and n° 37566 of 3 March 2016.

⁵² Interview with IOM, 11 May 2016.

⁵³ See Administrative Court n° 35298C of 23 October 2014.

⁵⁴ See First instance Administrative Court, 2nd Chamber, n°28621 of 16 May 2011.

⁵⁵ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 36-37.

⁵⁶ *Ibidem*.

⁵⁷ Interview with IOM, 11 May 2016.

elect to return before receiving a decision on their application, even more so if they have been separated from their families over a prolonged period of time.⁵⁸

Among other external factors that will influence the decision of return we may find disaster or emergency situations, health problems in the family or kidnappings. The same reasons may be found in other nationalities, although no clear trend appears for other categories, in that the reasons for wanting to leave through assisted voluntary return are miscellaneous.

Among important external considerations for the sustainability of returns is the missing network of potential returnees in their country of origin. This is especially the case for third-country nationals having left their country of origin since a few years who experience difficulties to build their lives from scratch without any real social support. It is a common misconception, in relation to cases of voluntary returns in Kosovo, that family values and family support will help the returnees through the transition. Indeed, research points to the fact that family values are not as central in Kosovar culture as they used to be and that not all Kosovar returning home will be able to rely on family ties to bridge the reintegration gap.⁵⁹

Although, the reintegration aid to set up a business is only an important factor to opt for voluntary return when the amount granted is substantial enough to lead to a relative success. There are also cases of rejected international protection applicants wishing to return home with IOM, but anxious to do so with no financial support (if they have come to the decision of returning after several years, they are no longer eligible for the reintegration financial aid). In this case, IOM points out that the deadline restrictions regulating the amount the potential returnees are eligible for can be a deciding factor for third-country nationals to decide against assisted voluntary return.⁶⁰

This resistance to return is also expressed through absconding before being returned which obviously makes the return impossible to be carried out or through lack of cooperation to establish identity.⁶¹

Finally then, in some cases, lack of cooperation can extend to the returnee resisting through physical force or by drawing attention to the situation. This can lead to the captain of commercial flights to refuse to take the returnee on board. In these cases, other travel arrangements, such as charter flights, will be arranged when possible.⁶² This can become a considerable obstacle for returns to North African countries as they do not accept charter flights from Luxembourg.⁶³

Section 2: Member States' policies and measures vis-à-vis rejected asylum seekers at the point of rejection

Section 2.1: How Asylum decisions trigger the issuance of the return decision

At what stage in the asylum decision-making procedure can an enforceable return decision (i.e. one that can lead to the return of the asylum seeker) be issued?

⁵⁸ Gouvernement.lu, 9 June 2016, <https://www.gouvernement.lu/6065272/08-asselborn-refugies> [last accessed on 01.07.2016].

⁵⁹ Phone interview with a Researcher, 23 May 2016.

⁶⁰ Interview with IOM, 11 May 2016.

⁶¹ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

⁶² Ibidem; Phone interview with Judicial Police, 3 June 2016.

⁶³ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

In Luxembourg the rejection of the international protection application comprehends a return decision.⁶⁴ In Luxembourg only after all asylum appeals have been exhausted the return decision can be executed. In the normal procedure the Ministry in charge of Immigration takes the decision, which rejects the international protection application. Once that the decision is notified to the applicant, the applicant can file an appeal against the decision before the First instance Administrative Court. The delay for filing the appeal is of one month after the notification of the decision to the applicant.⁶⁵ Against the decision of the First instance Administrative Court the applicant in case the decision is negative the international protection applicant can file an appeal before the Administrative Court in a deadline of one month after the notification of the decision.⁶⁶

In the case of the fast track procedure the Ministry in charge of Immigration takes the decision rejecting the international protection application and notifies it to the applicant. The applicant can file an appeal against the refusal decision, the merits of the application of the fast-track procedure and the order to leave the country. The three appeals must be filed together before the First instance Administrative Court in a deadline of 15 days from the notification of the decision. The First instance Administrative Court will decide in a deadline of one month.⁶⁷ Against the decision of the First instance Administrative Court there is no further appeal possible.

When a decision on an asylum application triggers a return decision, how soon after the rejection is the return decision issued?

The return decision is included in the decision rejecting the international protection application.⁶⁸ The return decision establishes the timeframe during which the applicant must leave the country as well as the destination country to which s/he will be sent in case s/he does not leave the country voluntarily. Normally the return decision provides a deadline of 30 days so that the applicant can leave the territory voluntarily allowing him/her to benefit of a financial aid for the return (voluntary return programme). However, this deadline does not apply to the applicants who are considered a threat to national security, public safety or homeland security⁶⁹, as well as to the applicant who already had a return decision issued against him/her.⁷⁰

In your Member State, is it possible to use the information that is obtained from the applicant in the course of the asylum procedure for the purposes of facilitating return? If yes, is such information regularly used?

Yes, it is possible to use the information that is obtained from the applicant in the course of the asylum procedure.

Yes, all the documentation and declarations made by the international protection applicant during the international protection procedure can be used for the purposes of

⁶⁴ Article 34 (2) of the Law of 18 December 2015 on international protection and temporary protection.

⁶⁵ Article 35 (1) of the Law of 18 December 2015 on international protection and temporary protection.

⁶⁶ Article 35 (1) paragraph 1 of the Law of 18 December 2015 on international protection and temporary protection.

⁶⁷ This deadline is suspended between 16 July and 15 September of each year.

⁶⁸ Article 34 (2) of the law of 18 December 2015 on international protection and temporary protection.

⁶⁹ Article 34 (2) of the law of 18 December 2015 on international protection and temporary protection.

⁷⁰ Article 34 (2) paragraph 4 of the law of 18 December 2015 on international protection and temporary protection.

facilitating return in order to establish identity⁷¹ and to obtain travel documents from the consular authorities of the third-country.

Section 2.2: Immediate consequences for rejected asylum seeker required to return

What are the immediate consequences for the rejected asylum seeker of the return decision entering into force?

In Luxembourg the rejection of the international protection application comprehends a return decision. The return decision enters into force only after all international protection appeals have been exhausted, in cases where the individual was not granted postponement of removal due to material, technical or medical reasons and s/he has not been granted any other residence permit.

In this sense, the answers as provided below apply for rejected applicants of international protection waiting for the execution, hence the entering into force, of the return decision, namely those who are not eligible for AVRR programmes for various reasons or who did not appeal the return decision. The provided answers hence do not apply for the individuals who applied for AVRR, as well as for those who cannot be removed through no fault of their own, be it medical ones (*sursis à l'éloignement*)⁷² or material/technical ones (*report à l'éloignement*)⁷³. The information concerning the latter will be given in footnotes.

⁷¹ Article 6 (3) paragraph 2, 12 (1) paragraphs 1 and 2 and 37 (1) and (2) of the law of 18 December 2015 on international protection and temporary protection.

⁷² Article 131 of the Law of the amended Law 29 August 2008.

⁷³ Article 125*bis* of the Law of the amended Law 29 August 2008.

Table 1: The immediate consequences for the rejected asylum seeker of the return decision entering into force

Questions	... according to law	... as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
Accommodation			
<i>Can the applicant stay in reception centres once rejected? Yes/no</i>	No. ⁷⁴	Yes. ⁷⁵ Rejected applicants of international protection, who did not apply for AVRR-Luxembourg programs and who are subsequently subject to forced return continue to stay in reception facilities upon execution of their return, unless transgressing internal regulations. ⁷⁶	N/A
<i>If you stated yes above, please indicate for how long after receiving the return decision they can stay in the reception centre (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	N/A	Until the return decision is enforced and the individual returns. ⁷⁷	N/A
<i>If you stated no above, are they accommodated elsewhere (e.g. special open return centres) or elsewhere? Yes/no and – for yes, briefly describe accommodation service provided</i>	They can also be placed in the detention center if there is a risk of absconding ⁷⁸ or in order to execute the forced return decision.	See according to law.	N/A
Employment			

⁷⁴ Article 1 (1) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

⁷⁵ International protection applicants whose application has been rejected and who accept to return voluntarily through the AVRR-L can stay in reception centers until AVRR is executed. International protection applicants from the West Balkan countries (with exception of Kosovo), falling outside of the scope of the AVRR-Luxembourg as set up by IOM, but who can benefit from a return system via bus managed by the Directorate of Immigration, can similarly stay in the reception centers until their return is taking place.

⁷⁶ Interview with Office luxembourgeois de l'accueil et de l'intégration, 1 June 2016 and 17 May 2016.

⁷⁷ Interview with OLAI, 1 June 2016 and 17 May 2016.

⁷⁸ Article 120 of the amended Law of 29 August 2008.

<i>Are rejected applicants entitled to access / continue accessing the labour market? Yes/No</i>	No. ⁷⁹	No.	N/A
<i>If yes, please indicate for how long after receiving the return decision they can continue to work (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	N/A	N/A	N/A
<i>If yes, please describe any specific conditions attached to their employment</i>	N/A	N/A	N/A
Welfare			
<i>Are rejected applicants entitled to receive any social benefits?</i>	No. ⁸⁰	Yes. ⁸¹ Rejected applicants of international protection who continue to stay in reception facilities might benefit from certain social benefits, unless transgressing internal regulations of the reception facility. ⁸² Rejected applicants of international protection may further be attributed humanitarian social aid in case of an urgent need. ⁸³ During the procedure of their international protection application, applicants are granted "pocket money" ⁸⁴ . Rejected applicants of international protection are no longer eligible for this financial support. They can also no longer profit from transport facilities for free. ⁸⁵	

⁷⁹ *Contrario sensu* Article 1(1) in accordance with article 6 (2) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection. Only international protection applicants who have not been rejected and have been granted a temporary occupation authorization (AOT) have access to the labour market.

⁸⁰ Article 1 (1) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

⁸¹ Individuals who accept to return voluntarily through the AVRR-L as well as those whose removal is postponed by the Minister in charge of Immigration continue to benefit from the same social benefits as during their procedure.

⁸² Interview with OLAI, 1 June 2016 and 17 May 2016.

⁸³ Information provided by Croix-Rouge Luxembourg, 2 June 2016; no information available concerning ASTI asbl and Caritas.

⁸⁴ Article 13 of the Law of 15 December 2015 on reception of applicants for international protection and temporary protection.

⁸⁵ Interview with OLAI, 17 May 2016; Information provided by Croix-Rouge Luxembourg, 2 June 2016.

<i>If yes, please briefly describe what these benefits are</i>	N/A	Adult rejected applicants of international protection who continue to stay in reception facilities may benefit from 80% of the social benefits attributed to applicants of international protection staying in reception facilities (food). Children may continue to receive 100% of the aforementioned benefits. However, in the reception centers without cooking facilities, rejected applicants of international protection continue to receive the same daily food ration as applicants. They further no longer receive sanitary vouchers, but may get sanitary articles in-kind from the competent authorities. ⁸⁶ The nature of the humanitarian social aid depends on the nature of the needs of the person. Humanitarian social aid may be handed out in the form of vouchers or financial advance for example for medical reasons. ⁸⁷	
<i>If yes, please indicate for how long after receiving the return decision they can continue to receive the benefits (e.g. X days or ‘until the return decision is enforced and the individual returns’)</i>		Until return decision is enforced and the individual returns.	
Healthcare			
<i>Are rejected applicants still entitled to healthcare? Yes /no</i>	No. ⁸⁸	Yes. If the rejected applicant continues to present himself on a monthly basis to the authorities (OLAI), s/he will continue to be affiliated at the National Health Fund (CNS). ⁸⁹	
<i>Does it include all healthcare or only emergency healthcare?</i>	N/A	The same conditions apply for rejected applicants as for any other person affiliated to the National Health	

⁸⁶ Interview with OLAI, 1 June 2016.

⁸⁷ Information provided by Croix-Rouge Luxembourg, 2 June 2016.

⁸⁸ Article 1 (1) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

⁸⁹ Interview with OLAI, 1 June 2016.

		Fund: the individual need to cover the portion of the expenses not refunded by the NHF. ⁹⁰ However, OLAI as well as humanitarian organisations or associations may give further assistance to cover medical needs, this is decided on a case-by-case basis. ⁹¹	
Education			
<i>Are rejected applicants still entitled to participate in educational programmes and/or training? Yes / no</i>	Yes, for minors subject to compulsory schooling. In Luxembourg, school attendance is compulsory for all children from 4 to 16 years residing in Luxembourg and regardless of their status. ⁹²	In practice, rejected applicants of international protection have access to education (school enrolment and contract of apprenticeship) and professional training until the day of their removal. The participation in such programs does not constitute a possible reason for non-return. ⁹³	
<i>If yes, please indicate for how long after receiving the return decision they can continue to participate in educational activities (e.g. X days or 'until the return decision is enforced and the individual returns')</i>	See above.	Until the individual returns.	N/A
Other?			
<i>Are any other measures taken which are relevant to mention here? Please describe</i>	N/A	N/A	N/A

⁹⁰ Ibidem.

⁹¹ Interview with OLAI, 17 May 2016 and Information provided by Croix-Rouge Luxembourg, 1 June 2016; no information available concerning ASTI asbl and Caritas.

⁹² Article 7 of the Law of 6 February 2009 on compulsory schooling.

⁹³ Telephone interview with Ministry of National Education, Childhood and Youth, 7 June 201 and 28 June 2016.

When a rejected asylum seeker receives an enforceable return decision, what measures does the Member State take to enforce the return decision and prevent absconding?

The Immigration Law⁹⁴ foresees that the Ministry in charge of immigration can order that the rejected international protection applicant should be placed in the detention center to enforce the return decision. This is systematically applied in order to prevent absconding and when the returnee is deemed to be obstructing the preparation of his/her return. Other measures can be applied such as house arrest⁹⁵ and regular reporting. The returnee will have to report before the competent services or authorities designated by the Minister in charge of Immigration after surrendering his/her passport and any other identity papers.⁹⁶ A further possible measure is the option for the third-country national to deposit a financial guarantee. This alternative measure to detention is a mere theoretical possibility as the greater majority of international protection applicants are not in an economic situation for depositing 5000€ Indeed, the placement in the detention centre remains the main measure used by Luxembourg authorities to prevent absconding.⁹⁷ It is important to note, however, that most of the aforementioned alternative measures (with the exception of house arrest) were introduced in national legislation by the Law of 18 December 2015, which entered into force on 1 January 2016 and as a consequence the return Service of the Directorate of Immigration has a less extensive experience with these new alternative measures.⁹⁸

Section 2.3: Possibilities for appealing the return decision

Applicants for international protection in Luxembourg who received an enforceable return decision can lodge an appeal against that decision before the First instance Administrative Court in a deadline of 30 days after the notification of the decision.

An appeal on the return decisions prevents the return of a rejected asylum seeker in all cases. The appeal of a rejection of an international protection application and a return decision must be filed together to avoid inadmissibility.⁹⁹ The appeals before the First instance Administrative Court and Administrative Court have suspensive effects.¹⁰⁰ The result of the appeal will depend on the merits of the case.

Section 2.4: Possibilities for lodging subsequent asylum applications

Applicants for international protection who have recently received an enforceable return decision can lodge a subsequent application in Luxembourg, before being returned.

In Luxembourg, the Law of 18 December 2015 on international protection and temporary protection foresees the case of a subsequent application.¹⁰¹ The law also

⁹⁴ Article 120 (1) of the amended law of 29 August 2008 on free movement of persons and immigration.

⁹⁵ Article 120 (1) in accordance with article 125 (1) of the amended law of 29 August 2008.

⁹⁶ Article 125 (1) of the amended law of 29 August 2008.

⁹⁷ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

⁹⁸ Ibidem.

⁹⁹ Article 35 (1) of the law of 18 December 2015 on international protection and temporary protection.

¹⁰⁰ Article 36 (1) of the law of 18 December 2015 on international protection and temporary protection.

¹⁰¹ Article 32 (1) of the law of 18 December 2015 on international protection and temporary protection.

establishes that the Ministry in charge of Immigration shall consider inadmissible an application for international protection made by a person who has been definitely refused international protection¹⁰², unless new evidence of facts emerges or are presented by the applicant which significantly add to the likelihood of the applicant qualifying for international protection.¹⁰³ In this case the applicant can file an appeal before the First instance Administrative Court in a deadline of 15 days and the Court has a two months to decide.¹⁰⁴ If the First instance Administrative Court upholds the decision there is no other possible appeal. If the Minister in charge of Immigration declares the application inadmissible the deadline for appealing and the appeal itself do not have a suspensive effect.¹⁰⁵

Is the fact that the application was lodged after a return decision was issued taken into account in assessing the credibility of the subsequent application?

In Luxembourg the rejection of the international protection application includes a return decision as mentioned above. However, if there are new elements brought up by the applicant that can grant international protection to the applicant the Minister in charge of Immigration will analyze the new elements in the context of the previous application.¹⁰⁶

¹⁰² Article 28 (2) d) of the law of 18 December 2015 on international protection and temporary protection.

¹⁰³ Article 32 (1) to (5) of the law of 18 December 2015 on international protection and temporary protection.

¹⁰⁴ Article 35 (3) of the law of 18 December 2015 on international protection and temporary protection. This deadline can be reduced to one month if the applicant is placed in detention.

¹⁰⁵ Article 36 (2) of the law of 18 December 2015 on international protection and temporary protection.

¹⁰⁶ Article 32 (2) of the law of 18 December 2015 on international protection and temporary protection.

Section 3: Challenges to return of rejected asylum seekers and Member States' policies to manage these

National responses to Ad-Hoc Queries requesting information on the issue of return indicated a number of common challenges to both voluntary and forced return. Main challenges occurred, according to these queries, in the form of resistance to return (physical resistance and restraint, self-injury or absconding) or refusal by the authorities in countries of return to readmit their citizens, to issue travel or identity documents. Problems also arise when trying to acquire travel documents, especially when no copies of the originals are available, and when identification can only be verified through fingerprints, or when citizenship is complex, hence when it involves married couples from different countries or citizens who were born in another country. Further did national responses appoint to administrative and organisational challenges, notably due to a lack of Member State diplomatic representation in the country of return, slowing down procedures and rendering negotiations more lengthy. Members of the Advisory Group, as they prepared the common template for the study, added medical reasons rendering travel difficult, see impossible, to the list of the main challenges.

In Luxembourg, travel documents that are only valid for a short period of time further hamper the organisation of return.

In general, Member States undertake a broad range of measures to manage challenges to implementing return.

The Luxembourgish authorities launched various measures to manage challenges to implementing return.

Hence, when it comes to resistance of the returnee, assisted voluntary return programmes, including reintegration assistance and the necessary dissemination of information in this regard by IOM and NGOs as well as special voluntary return programmes for West Balkan nationals via bus are set up. These target both irregular migrants as well as rejected international protection applicants (and international protection applicants who withdrew their applications). Besides AVR(R) programmes, detention of rejected asylum seekers, if not the use of physical force by police officers escorting forced returns (bodycuffs to limit arm movements for instance)¹⁰⁷, are also commonly used to manage return challenges. Police escorts are especially trained on the procedure and on how to behave/react during forced returns.¹⁰⁸ Surprise raids are not an option for the Luxembourgish authorities to enforce removal. As a matter of fact, most returnees are placed in the detention centre if there is a risk of absconding, in which case there are no surprise raids as the personnel of the detention centre has to take administrative steps to prepare for them for the return and helps returnees getting ready to depart.¹⁰⁹ However, in some cases, the police may proceed to family reunification with the help of the respective teachers in order to allow the removal of families who are in an irregular administrative situation.¹¹⁰

With regards to the refusal of authorities in countries of origin of return to readmit citizens, to issue travel documents or identity documents, the Luxembourg authorities

¹⁰⁷ Phone interview with Judicial Police, 3 June 2016.

¹⁰⁸ Ibidem.

¹⁰⁹ Ibidem.

¹¹⁰ Ibidem.

might proceed to readmission agreements, both on the national and on the EU level or engage in bilateral cooperation and diplomatic relations with third countries, which is primarily done under BENELUX cooperation. The authorities further organise consular days in this regard as well as they entertain informal diplomatic relationships with third country diplomatic missions mainly located in Brussels.

If problems occur when trying to acquire travel documents, fingerprint capture attempts can be repeated, using a special software to capture damaged fingerprints and interpreters can be consulted to detect cases of assumed nationalities. Detention of the returnee as well as the delay or the cancellation of the procedure might as well be options.

Moreover, regarding administrative or organisational challenges, the Luxembourgish authorities prove to be highly flexible when it comes to the allocated budget. They further coordinate arrangements between the authorities and, in the framework of AVRR-L, allocate the logistic organisation in third countries to IOM.

Finally, in connection with medical reasons, Luxembourg might organize medical transfers and medical supervision during the travel and facilitate medical support in the country of destination through their partners.

In all cases, return procedures might be delayed, see cancelled, if needed.

From your experience, can you indicate if there are any challenges which affect the return of rejected asylum seekers more greatly than third-country nationals in general?

The main challenge that exists is that from a legal point of view the fact that the individual had applied for international protection makes that the contact with the authorities of the country of origin cannot be established before that the application was refused and that the appeals have been evacuated. This issue does not exist in the case of irregular migrants.

Has your Member State recently introduced any new measures/policies to ensure the return of third-country nationals (e.g. following the exceptional flows of asylum seekers arriving in the EU since 2014)?

No.

Even though that the Law of 5 May 2006 (old Asylum Law) was abrogated by law of 18 December 2015 on international protection and temporary protection there have not been any significant measures to ensure the return of third-country nationals since the law of 19 June 2013.¹¹¹

However, in April 2015, Luxembourg ratified the protocols signed between the Benelux and Bosnia-Herzegovina, Georgia, Former Yugoslav Republic of Macedonia, Moldova and Serbia on the implementation of the EU agreements and those countries in regards the readmission of persons in irregular situation. Also the readmission agreement between the Benelux and the Republic of Kazakhstan and its implementation protocol was signed on 2 March 2015 and the negotiation of the implementing protocol

¹¹¹ Amendment of the amended law of 29 August 2008 to the correct interpretation of the Return Directive (2008/115/EC).

of the readmission agreements between Cape Verde and the EU and between Cape Verde and the Benelux was still ongoing during 2015.¹¹²

The Government's efforts to ensure the return of third-country national extend beyond the negotiation of readmission agreements as an increased emphasis is being allocated to the participation to European Networks in matters of return¹¹³. One example is the European Reintegration Network (ERIN). Indeed, since 1st June 2016, Luxembourg became a full member of this Network. The current initiative (ERIN 2.0) is the 3rd Phase of the Network. Luxembourg had observer status during the 2nd Phase (ERIN) during two years before becoming a full member in June 2016. Currently ERIN 2.0 deals is dedicated to voluntary returns, however it might be extended to forced return as well.¹¹⁴ Another example is the EURINT Initiative for forced returns where working groups are divided by countries of origin for returns. Luxembourg takes part in working groups including Morocco, Algeria, Afghanistan, Malia, Iran, Iraq etc. This platform aims at showing a commitment to act as EU and to learn from other countries' practices.¹¹⁵

Luxembourg is also part in another pilot-project: "VIC: Videoconferencing for Identification". In cases where the individual has to be identified by a Third-country that does not have a representation in Luxembourg, employees from the return service have to travel to consulates in Brussels (or other) to carry out this identification. The VIC project aims at facilitating the identification process in these cases through the issue of Video conferencing.¹¹⁶ Poland and Belgium (project leading country) also participate in this project.

In 2014, the Directorate of Immigration has furthermore introduced a new procedure in case a return decision is issued, according to which the concerned person automatically gets an appointment for an individual return interview. The individual is then informed on the AVR(R) programme offered, depending on his/her nationality and s/he is handed out the corresponding leaflet recapitulating the information received during the interview as well as the contact details of the IOM and the Directorate of Immigration representative.¹¹⁷

Nonetheless, it is important to note that none of these developments were in response to the exceptional flows of international protection applicants arriving in the EU since 2014.¹¹⁸

The impact of the exceptional flows since 2014 translated mostly into an intensification of work within meetings and groups and fuller agendas with a higher priority given to short-term results.¹¹⁹ Pre-existing effective measures were renewed and further developed.

¹¹² Bilan 2015, p. 2.

¹¹³ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

¹¹⁴ Ibidem.

¹¹⁵ Ibidem.

¹¹⁶ Ibidem.

¹¹⁷ EMN NCP Luxembourg, 2015. *Dissemination of Information on voluntary return: How to reach irregular migrants not in contact with the authorities*. Luxembourg, p. 5.

¹¹⁸ Interview with Return Service within the Directorate of Immigration, 13 May 2016; Interview with IOM, 11 May 2016.

¹¹⁹ Interview with Return Service within the Directorate of Immigration, 13 May 2016.

Table 2: Good practices, i.e. measures, that have proven effective in overcoming challenges

Measure	Evidence of effectiveness / why the measure can be considered a ‘good practice’	State whether the measure is effective in supporting the return of rejected asylum seekers
AVR Luxembourg	Assisted voluntary return proves efficient in regards to returning rejected applicants of international protection in the sense that the latter generally prefer to return on a voluntary basis, taking into account that their sole alternative is forced removal and the ensuing re-entry ban. ¹²⁰	In 2015, 468 person were returned on a voluntary basis, whereas 136 were removed through forced return. ¹²¹
Reintegration Aid	Reintegration aid, in the case of assisted voluntary return as organized by IOM, might encourage certain individuals to return. IOM however underlined that reintegration aid does not usually constitute the sole reason to opt for assisted voluntary return. However, if an individual is not eligible for reintegration aid, s/he might decide not to return because no financial, material or social support is available to him/her. ¹²²	N/A
Separate return programme for Western Balkans, exempt of visa requirements¹²³	A separate assisted voluntary return programme is available for nationals of Western Balkans (except Kosovo) where the return bus ticket is offered by the Directorate of Immigration.	This programme proved particularly effective in terms of the total number of the persons being returned originally coming from the Western Balkans: 995 persons have henceforth returned on a voluntary basis between 2012 and 2013. ¹²⁴
Dissemination of information on voluntary return (IOM)	The pre-departure counselling and the dissemination of information regarding AVR(R)L programmes in reception facilities during the procedure by IOM, the Direction of Immigration, NGOs in the field of migration and asylum, religious institutions, humanitarian organisations/associations running reception facilities, and partly also by civil society likely to be in touch with potential returnees are considered good practices in the sense that they promote the willingness of rejected applicants to make use of the programme. ¹²⁵	N/A

¹²⁰ Interview with IOM, 11 May 2016.

¹²¹ Bilan 2015, p. 23-24.

¹²² Interview with IOM, 11 May 2016.

¹²³ Albania, Bosnia-Herzegovina, Serbia, Montenegro and Macedonia.

¹²⁴ Ministère de l’Immigration et de l’Asile, *Ex-Post Evaluations*, p. 24.

¹²⁵ See: EMN NCP LU, 2015. *Dissemination of Information on voluntary return: how to reach irregular migrants not in contact with the authorities.*

Section 4: What happens when return is not immediately possible?

If it becomes clear that a rejected asylum seeker cannot return/be returned, does a national authority official acknowledge this?

For a third-country national who is subject to a return decision, such as a rejected applicant for international protection in Luxembourg, and who cannot be returned to his/her country of origin for reasons that are not of his/her making, the Minister in charge of Immigration may postpone the removal of the person.¹²⁶ The third-country national may remain on the territory on a temporary basis, without being authorised to reside. The decision to postpone the removal may be accompanied by an order for house arrest or an alternative measure.¹²⁷ The duration of the postponement is for a period determined in accordance with the circumstances particular to each case and until such time as there exists a reasonable prospect of performance of his/her removal.¹²⁸ There is also the postponement of removal for medical reasons.¹²⁹ The rejected international protection applicant as well as any other third-country national in an irregular situation who fulfil the criteria and conditions can apply for the residence permit for private reasons based on humanitarian grounds¹³⁰ The residence permit for private reasons based on humanitarian grounds of exceptional seriousness is valid for a period not exceeding three years, which shall, upon application, be renewable if, following a re-examination of his/her circumstances, it is apparent that he/she continues to meet the conditions. The beneficiaries may apply for the issue of a “salaried worker” residence permit if they devote themselves principally to a salaried activity.¹³¹

Is an official status granted to individuals who cannot be (immediately) returned?

No status is granted. The third-country national may remain on the territory on a temporary basis, without being authorised to reside. The decision to postpone the removal may be accompanied by an order for house arrest or an alternative measure.¹³² There is the exception of the postponement to removal for medical reasons in which after two years the beneficiary can be granted a temporary resident permit for private reasons.¹³³

¹²⁶ Article 125bis (1) of the amended law of 29 August 2008.

¹²⁷ Article 125 (1) of the amended law of 29 August 2008.

¹²⁸ Article 125 (1) of the amended law of 29 August 2008.

¹²⁹ Article 130 of the amended law of 29 August 2008.

¹³⁰ Article 78 (3) and 79 of the amended law of 29 August 2008.

¹³¹ They must fulfill the conditions laid down in points (3) and (4) of article 42 (1) of the amended law of 29 August 2008; See: LU EMN NCP answer to GR EMN NCP Ad-hoc query on the right of residence provided for TCNs to whom international protection application has been rejected, launched on 30 December 2015.

¹³² Article 125 (1) of the amended law of 29 August 2008.

¹³³ Article 132 (3) of the amended law of 29 August 2008.

What rights are available to rejected asylum seekers who are not able to return immediately?

In Luxembourg, the category of rejected applicants of international protection who are not able to return immediately applies in four different contexts : the applicant might first have received a negative decision but cannot be removed through no fault of her/his own, either because for material/technical (*report à l'éloignement*)¹³⁴ or for medical reasons (*sursis à l'éloignement*)¹³⁵, in which case the Minister in charge of Immigration might postpone the removal; the applicant might as well have arbitrarily hampered the execution of the return decision (i.e. self-mutilation, destruction of identity papers); he might finally have disappeared, in which case he is no longer in contact with the authorities.

The following table will only consider the persons unable to be removed because of reasons external to their will, whereas Q24 will specify the rights available to rejected applicants of international protection who are not able to return because they arbitrarily hampered their removal.

¹³⁴ Article 125bis of amended Law of 29 August 2008.

¹³⁵ Article 131 of amended Law of 29 August 2008.

Table 3: Rights and services available to rejected asylum seekers who cannot be immediately returned

Questions	... according to law	... as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
Accommodation			
<i>Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/no</i>	No ¹³⁶ , with the exception of the rejected international protection applicants who benefit of a postponement of removal for material, technical and medical reasons. ¹³⁷	Yes. Rejected applicants of international protection who cannot be immediately returned may continue to be accommodated in the reception center where they were housed during their procedure. ¹³⁸	No information available.
<i>If you stated yes above, please describe the circumstances under which the accommodation can be provided</i>	N/A	Until the individual returns.	No information available.
Employment			
<i>Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No</i>	Yes, rejected applicants of international protection whose return is postponed for material, technical or medical reasons can obtain a temporary work authorization (AOT – <i>autorisation d'occupation temporaire</i>). This	In practice this is extremely rare. ¹⁴⁰	No information available.

¹³⁶ Article 1 (1) and 8 of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

¹³⁷ Article 125bis and 132 (2) of the amended Law of 29 August 2008.

¹³⁸ Interview with OLAI, 1 June 2016 and 17 May 2016.

¹⁴⁰ Interview OLAI, 17 May 2016.

	authorization is valid only for a single profession and a specified employer. ¹³⁹		
<i>If you stated yes above, please describe the circumstances under which they can access the labour market</i>	The Minister in charge of Immigration can grant to the beneficiary of a postponement of removal a temporary occupation authorisation for the duration of the postponement of removal for material, technical ¹⁴¹ or medical ¹⁴² reasons. This authorisation is valid for one employer and for one economic sector. If the beneficiary works for someone else the authorisation will be withdrawn. ¹⁴³	In practice it is very difficult to obtain an temporary occupation authorisation.	No information available
Welfare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes / no</i>	Yes. ¹⁴⁴	Yes.	No information available.
<i>If you stated yes above, please briefly describe what these benefits are</i>	The beneficiary of a postponement of removal may benefit of a humanitarian social aid. ¹⁴⁵	In case the individual was provided assistance by OLAI during the procedure of application of international protection, the office might continue to provide the same social support as during the procedure.	No information available

¹³⁹ Article 125bis (3) of amended Law 29 August 2008.

¹⁴¹ Article 125bis (3) in accordance with article 42 of the amended Law of 29 August 2008.

¹⁴² Article 132 (2) in accordance with article 42 of the amended Law of 29 August 2008.

¹⁴³ Article 125bis (3) of the amended Law of 29 August 2008.

¹⁴⁴ In case of postponement for material and technical reasons, see article 125bis of amended Law of 29 August 2008, referring to article 27 of the Law of 18 December 2009 on social welfare; in case of a postponement for medical reasons, see article 132 (2) of amended Law of 29 August 2008, referring to article 27 of the Law of 18 December 2009 on social welfare.

¹⁴⁵ Article 27 of the Law of 18 December 2009 organizing social welfare.

		Thus, in practice, the individual might continue to be accommodated by a reception center; to receive food, sanitary vouchers as well as pocket money and to benefit from transport facilities for free. ¹⁴⁶	
<i>If you stated yes above, please briefly describe under what conditions these benefits can be provided.</i>	Rejected applicants of international protection unable to be removed because of material and technical reasons receive these benefits until they return. ¹⁴⁷		No information available.
Healthcare			
<i>Are rejected asylum seekers who cannot be immediately returned entitled to healthcare? Yes /no</i>	Yes.	Yes. The rejected applicant of international protection who cannot be immediately returned continues to be affiliated at the National Health Fund (NHF). ¹⁴⁸	No information available.
<i>Does it include all healthcare or only emergency healthcare?</i>	All healthcare.	The same conditions apply for rejected applicants as for any other person affiliated to the National Health Fund: the individual need to cover the portion of the expenses not refunded by the NHF. However, in case of medical needs, OLAI might cover these expenses. ¹⁴⁹	No information available.
Education			

¹⁴⁶ Interview with OLAI, 1 June 2016.

¹⁴⁷ Article 125*bis* (2) of amended Law of 29 August 2008.

¹⁴⁸ Interview with OLAI, 1 June 2016.

¹⁴⁹ Interview with OLAI, 1 June 2016 and 17 May 2016.

<p><i>Are rejected asylum seekers who cannot be immediately returned still entitled to participate in educational programmes and/or training? Yes / no</i></p>	<p>Yes, for minors subject to compulsory schooling (from 4 to 16 years). In Luxembourg, school attendance is compulsory for all children from 4 to 16 years residing in Luxembourg, regardless of their status.¹⁵⁰</p> <p>Yes, in case of postponement for material and technical reasons, minors have access to basic schooling.¹⁵¹</p>	<p>In practice, rejected applicants of international protection have access to education (school enrolment and contract of apprenticeship) and professional training until the day of their removal. The participation in such programs does not constitute a possible reason for non-return.¹⁵²</p>	<p>No information available.</p>
<p><i>If you stated yes above, please briefly describe under what conditions they can participate in educational programmes and training</i></p>	<p>In case of a postponement of removal for material and technical reasons, minors have access to the education system and vocational training¹⁵³ until they return, taking into account the duration of the stay.</p>	<p>Until they return.</p>	<p>No information available.</p>

¹⁵⁰ Article 7 of the *Law* of 6 February 2009 on compulsory schooling.

¹⁵¹ Article 125*bis* (2) of amended Law of 29 August 2008.

¹⁵² Telephone interview with Ministry of National Education, Childhood and Youth, 7 June 2016 and 28 June 2016.

¹⁵³ Article 125*bis* (2) of the amended Law of 29 August 2008.

In terms of status and/or rights, does your Member State make a difference between those who cannot return/be returned through no fault of their own and those who are considered to have hampered their own return?

Yes, the rejected international protection applicant who cannot be returned through no fault of his/her own can benefit from a postponement of removal. In case the postponement of removal is granted because of material, technical or medical reasons by the Minister in charge of Immigration, the applicant could benefit from humanitarian social aid.¹⁵⁴ This humanitarian social aid is different from the social support provided to international protection applicants under the Law of 18 December 2015 on the reception of applicants for international protection and temporary protection. Not only do they differ in terms of the responsible authority which provides them (social aid to international protection applicants is handled by OLAI and the humanitarian social aid is handled by the social offices of the municipalities¹⁵⁵), but further in terms of their scope: as a matter of fact, the first is granted during the whole period of the international protection procedure, whereas the second one, punctual in its nature, is granted for the period of the postponement only.

In cases where a rejected international protection applicant cannot be returned and has not received a postponement of removal, whether s/he has arbitrarily hampered their own return or not, this individual is not legally entitled to benefit from humanitarian social aid.¹⁵⁶ In practice, this means that the individual who, during her/his procedure of application for international protection, was under the responsibility of OLAI, might continue to have access to accommodation, certain social benefits and medical assistance (as described under Q12). The issuance of this support by OLAI is decided upon case-by-case, to the appreciation of the social worker processing the case and depending on the individual's respect of internal rules and her/his willingness to show good faith.¹⁵⁷ In the case that a return decision has not yet been issued or is not definitive, the individual, in exceptional cases, can benefit from punctual support from OLAI, as defined by article 5 of the Law on the reception and integration of foreigners¹⁵⁸. The aforementioned article does however not specify the nature of the support.

As seen before the differentiation in terms of the support-modalities depends on the legal framework under the objective criteria under which the individual falls. It also depends on the individual analysis of each particular case made by the competent authorities as to emphasize and maintain the difference between those who cannot return/be returned through no fault of their own and those who are considered to have intentionally hampered their return.¹⁵⁹ Besides OLAI, in strict and legal terms¹⁶⁰, is no longer the competent authority for rejected international protection applicant, their task being specially the reception and integration of applicants of international protection.

¹⁵⁴ Article 125*bis* and article 132 (2) of the amended Law of 28 August 2008 and article 27 of the Law of 18 December 2009.

¹⁵⁵ Combined reading of articles 125*bis* (2) and 132 (2) of the amended Law of 28 August 2008 and articles 5 and 27 of the Law of 18 December 2009.

¹⁵⁶ Article 125*bis* of the amended Law of 28 August 2008.

¹⁵⁷ Interview with OLAI, 17 May 2016.

¹⁵⁸ Article 5 of the Law of 18 December 2008 concerning the reception and integration of foreigners in the Grand-Duchy of Luxembourg.

¹⁵⁹ Interview with OLAI, 17 May 2016.

¹⁶⁰ Article 3 of the 18 December 2008 concerning the reception and integration of foreigners in the Grand-Duchy of Luxembourg.

Can persons who are not immediately returnable also be eligible for regularisations?

In principle rejected international protection applicants cannot be eligible for regularisations except if in a future ad-hoc regularisation of irregular migrants the governmental decision expressly authorized that rejected international protection applicants can benefit from it.

Furthermore article 89(1) of the amended law of 29 August 2008 establishes more generally that an authorisation of stay can be granted to a third-country national who has resided in the territory for at least four years before filing the application of the authorisation of stay and who proves a real desire for integration, provided that his/her presence does not constitute a threat to public policy, public health or national security, and under the conditions that s/he has not used false information regarding his/her identity and s/he has not absconded a return decision and (a) if s/he has the parental authority of a minor who lives in his/her household and attended a Luxembourgish school for at least four years and that the applicant can provide for his/her needs and those of his/her family; (b) if the applicant had followed with success at least four years of school in a Luxembourgish educational institution and introduced his/her application before his/her 2nd birthday and proves that s/he has sufficient resources for covering his/her needs.

Does your Member State regularly assess the possibilities of return for rejected asylum seekers who could not immediately return/be returned?

Yes.¹⁶¹

However, no specific mechanisms of assessment are used in this case. The Country of origin unit within the Directorate of Immigration proceeds to case by case evaluation.¹⁶² The COI unit follows the developments in the country of origin continuously. It covers all the persons who cannot be returned.¹⁶³

In the past, General “ad hoc” regularisations covered also the persons who cannot be returned if they fulfilled the regularisation criteria. These regularisations were based on the employment of the persons who were going to be regularised. However, since the last regularisation which occurred between January and February 2013¹⁶⁴ after the transposition of the sanctions directive (2009/52/EC) by law of 21 December 2012 there has not been any other administrative regularisation. Article 89 of the Immigration law, which was amended in 2015¹⁶⁵, establishes that an authorisation of stay can be granted to a third-country national who has resided in the territory for at least 4 years before filing the application and who proves a real desire for integration, provided that his/her presence does not constitute a threat to public policy, public health or national security, and under the conditions that s/he has not used false information regarding his/her identity and s/he has not absconded a return decision and (a) if s/he has the parental authority of a minor who lives in his/her household and attended a Luxembourgish

¹⁶¹ Article 125bis of the amended law of 29 August 2008.

¹⁶² Answer provided by the Directorate of Immigration by email on 25 May 2016.

¹⁶³ Article 125bis of the amended law of 29 August 2008.

¹⁶⁴ See: LU EMN NCP, 2013. *Annual Policy Report on Migration and Asylum*.

¹⁶⁵ Article 89 of the amended law of 29 August 2008 amended by Law of 18 December 2015 on international protection and temporary protection.

school for at least 4 years and that the applicant can provide for his/her needs and those of his/her family; (b) if the applicant had followed with success at least 4 years of school in a Luxembourgish educational institution and introduced his/her application before his/her 21st birthday and proves that s/he has sufficient resources for covering his/her needs.¹⁶⁶

In the first case the Minister in charge of Immigration will issue a salaried worker residence permit if the applicant fulfils the conditions of article 42 (1) 3 and 4 of the Immigration Law or a residence permit for private reasons in case the applicant continues studying or doing vocational training.¹⁶⁷

Section 5: Linking return policy to the asylum procedure: Member States' policies and measures to ensure that unfounded claims lead to swift removal and to prepare asylum seekers to return

Section 5.1: Accelerated Procedures

According to recital 20 of the recast Asylum Procedures Directive (Directive 2013/32/EU), “in well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant’s effective access to basic principles and guarantees provided for in this Directive”. Accelerated procedures can help Member States to facilitate a swift return for asylum seekers whose applications are likely to be rejected.

Luxembourg makes use of accelerated asylum procedures, as stipulated in Article 31(8) of the recast Directive. As a matter of fact, the law of 18 December 2015 on international protection and temporary protection transposed the ten motives for accelerated asylum procedures.

More generally, the Luxembourgish authorities made use of such procedures notably when applicants only raised issues not relevant to the examination, in which cases the application of the accelerated procedure limited the possibility of appeals to an appeal before the First instance Administrative Court. If the applicant presents a further application the Minister in charge of Immigration can declare the inadmissible and against that decision the applicant can file an appeal that does not have suspensive effect.¹⁶⁸ The applicant must file a safeguard measure in order to suspend the enforcement of the return decision¹⁶⁹ and in this case the First instance Administrative Court analyses the case on the merits of success and the chances of being granted are very slim.

¹⁶⁶ See: LU EMN NCP answer to GR EMN NCP Ad-hoc query on the right of residence provided for TCNs to whom international protection application has been rejected, launched on 30 December 2015.

¹⁶⁷ See: LU EMN NCP answer to GR EMN NCP Ad-hoc query on the right of residence provided for TCNs to whom international protection application has been rejected, launched on 30 December 2015.

¹⁶⁸ Article 35 (3) of the law of 18 December 2015 on international protection and temporary protection.

¹⁶⁹ Article 36 (2) of the law of 18 December 2015 on international protection and temporary protection.

In cases where the applicant was from a safe country¹⁷⁰, where s/he misled the authorities by presenting false documents/information or withheld information¹⁷¹, where s/he destroyed documents intentionally to hamper assessment¹⁷², where the applicant made inconsistent, contradictory or false representations contradicting country of origin information¹⁷³, where s/he lodged an application to delay or frustrate enforcement of removal¹⁷⁴ or when s/he irregularly entered the territory and did not present him/herself¹⁷⁵, the authorities made use of accelerated procedures. Further, if the applicant, himself admissible, lodged an inadmissible subsequent application, asylum procedures are generally speeded up.¹⁷⁶

However, in cases where the applicant could return/be returned to a safe third country in line with Article 38 of the Asylum Procedures Directive, the authorities generally do not proceed to accelerated procedures, instead they generally take an inadmissible decision.

Finally, if the applicant further refuses to comply with the obligation to have her/his fingerprints taken¹⁷⁷ or when the applicant poses danger to national security or public order¹⁷⁸, it is possible to make use of quickened procedures.

Section 5.2: Preparing asylum seekers for return

Is it part of your Member State's policy on return to, early on and throughout different stages in the asylum procedure, prepare asylum seekers for return should their application be rejected?

This is a standard practice of the authorities. The Luxembourgish authorities inform international protection applicants of voluntary return opportunities from the beginning of the international protection procedure. Also the authorities make available the assured voluntary return and reintegration programme managed by the International Organisation of Migrations (IOM) to any international protection applicant with the exception of the West Balkan countries (excluding Kosovo) but facilitating the return of these people via bus to their countries of origin.¹⁷⁹

Section 6: Conclusions

Based on your answers provided, does your Member State tailor its return policies to rejected asylum seekers, and if so, how?

¹⁷⁰ Article 27 (1) b) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷¹ Article 27 (1) c) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷² Article 27 (1) d) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷³ Article 27 (1) e) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁴ Article 27 (1) g) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁵ Article 27 (1) h) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁶ Article 27 (1) f) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁷ Article 27 (1) i) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁸ Article 27 (1) j) of the law of 18 December 2015 on international protection and temporary protection.

¹⁷⁹ See LU EMN NCP answer to BE EMN NCP ad-hoc query on the dissemination of information (during the asylum procedure) on assisted voluntary programmes launched on 25 January 2012. Also LU EMN NCP answer to EMN Ad-Hoc Query: Assistance provided in kind to third-country nationals (TCNs) in the context of return and reintegration on 31 March 2014.

If the return policies are not officially tailored to rejected applicants of international protection specifically, a certain number of facts however suggest that the focus has so far been on rejected applicants more specifically than on persons in an irregular administrative situation:

It becomes clear from the statistics, as presented in this study that a large majority of those being returned are rejected applicants of international protection. Furthermore, as IOM pointed out, the entering into contact with any administration or organization, be it IOM themselves, the Direction of Immigration or any humanitarian organization, in order to be informed about return opportunities, generates considerable fears of risking of penalization. This explains why TCN in an irregular administrative situation might be more reluctant to consider AVR than rejected applicants of international protection are, as in they would have to chose to make themselves known to authorities in order to be able to benefit from the AVR programme.

That the category of rejected applicants of international protection is the most represented amidst the returnees becomes also clear from the fact that the main countries of destination where return was executed in the past coincide with the countries of origin where most applicants of international protection in Luxembourg originate from, namely countries of the Western Balkans. The massive increase of the number of AVR in 2012 results henceforth from sudden increase in 2011-12 of the number of application for international protection coming from the Western Balkan. In order to tackle this sudden increase of applications from the Western Balkans and to accelerate the return procedures in case of rejection, the authorities prompted to establish a specific AVR programme in order to return these rejected applicants for international protection from countries exempt of visa requirements.¹⁸⁰

The Government's priority to promote and enhance the assisted voluntary return mechanism through positive incentives (as well as sanctions) and close cooperation with countries of origin of applicants of international protection¹⁸¹ adds to the aforementioned assumptions. As a matter of fact, the Multiannual Programme of the Grand Duchy of Luxembourg for the European Return Fund 2008-2013 as well as the National Programme of Luxembourg for the Asylum, Migration and Integration Fund 2014-2020 define the increase of voluntary return as one of Luxembourg's priorities.¹⁸² A part of the financial support of AVR programmes are also tailored to rejected applicants of international protection. As a matter of fact, only applicants who have been in a procedure for international protection since at least six months prior to their decision to take part in AVR and applicants of international protection who received a return decision and who contact the competent authorities within the 30 days period following the return decision are eligible for the complete aid within AVRRL programmes.¹⁸³ Whereas TCN who have not submitted an application for international protection who find themselves in an irregular administrative situation are only eligible for basic aid.¹⁸⁴

¹⁸⁰ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 7.

¹⁸¹ EMN NCP, *Dissemination of information on voluntary return*, p. 24; Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 21.

¹⁸² Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 21; AMIF Programme, p. 6.

¹⁸³ IOM, internal document.

¹⁸⁴ *Ibidem*.

Based on the evidence provided, which practices or policies in your Member State can be described as good practice approaches to return rejected asylum seekers?

Croix-Rouge Luxembourg, which takes on the role of observer for forced returns, identified first of all their recent involvement in police training (since 2015) as a good practice.¹⁸⁵ The implementation of the aforementioned police training was considered as a good practice by the judicial police as well, as it allows for more specialized training and hence more effective execution of forced returns.¹⁸⁶ CRL further highlighted the possibility that exists, through international networking, of offering punctual support to particularly vulnerable returnees in their country of origin and in case of an urgent need.¹⁸⁷

The director of the Luxembourgish detention centre identified socio-psychological support of the returnees placed in the detention centre as good practices in the sense that they contribute to harmonious living arrangements. Regular contact and communication between the staff and the detainees as well as the opening up of the communication channels, such as internet access, using of the telephone and external visits further help to maintain peaceful relations, rendering detention less disagreeable. The director further identified the continuous evaluation, the exchange of good practices with other countries (i.e. Belgium and Austria) as well as the optimisation on a daily basis as good practices. Recent procedures implemented for the Ramadan, like the supplying of special dishes or the opening up of the cells during night time, constitutes a good example.¹⁸⁸ Moreover, staff members participated in a seminar on “healing memories” and as well as on mental health of migrants, some received vocational training in conflict prevention while others took Arabic language classes, leading to general improvement of the living atmosphere in the detention centre.¹⁸⁹

The Minister in charge of Immigration, in a post-evaluation report concerning the funding of 2011-13 annual programmes for Luxembourg by the European Return Fund, identified the reinforcement of international cooperation and the Luxembourgish contribution to EU projects such as EURINT, ERIN, CSI, EURLO, FreM or VCI, as instances of good practice in matters of return.¹⁹⁰ The so-called Consular Days, as arranged since 2013, in order to familiarize consular and diplomatic authorities with the legislation and the procedures applicable in regards to international protection, to immigration and to return further constitute good habits in this regard worth mentioning.¹⁹¹ Lastly, due to the considerable increase of applicants for international protection from the Western Balkans in 2011-12, it was deemed necessary to set up specific AVR programs for this group of migrants, exempt from visa requirements (Albania, Bosnia-Herzegovina, Serbia, Montenegro and Former Yugoslav Republic of Macedonia). This programme, which consists in the financing of the travel expenses of the return journey (via bus) by the Directorate of Immigration, proved to be quantitatively speaking particularly effective in organizing their removal.¹⁹²

An important number of those interviewed during the course of the research emphasised AVR(R)L programs as good practice approaches to return rejected international

¹⁸⁵ Interview with Croix-Rouge Luxembourg, 30 May 2016.

¹⁸⁶ Phone interview with Judicial Police, 3 June 2016.

¹⁸⁷ Interview with Croix-Rouge Luxembourg, 30 May 2016.

¹⁸⁸ Interview with Director of the Luxembourgish Detention Center, 31 May 2016.

¹⁸⁹ Ministère de l'Immigration et de l'Asile, *Ex-Post Evaluations*, p. 15 and p. 17.

¹⁹⁰ *Ibidem*, p. 9.

¹⁹¹ *Ibidem*, p. 9 and p. 39.

¹⁹² Evaluation document FER, p. 20 and p. 24.

protection applicants.¹⁹³ Not only are they less expensive than forced return¹⁹⁴, they're also supposed to allow rejected international protection applicants to return in dignity, to reintegrate and to be more sustainable in terms of development, since they supposedly contribute to the socio-economic development of their country of origin.¹⁹⁵

The pre-departure information and counselling, the dissemination of information regarding AVR(R)L programmes in reception facilities during the procedure by IOM, the Direction of Immigration, NGOs in the field of migration and asylum, religious institutions, humanitarian organisations/associations running reception facilities, and partly also by civil society likely to be in touch with potential returnees, were further highlighted as good practices in order to promote the willingness and the ability of rejected applicants to make use of the programme. IOM as well as OLAI henceforth highlighted the importance of prior, trustworthy and comprehensive information about return, the reintegration assistance schemes and other legal options available to them.¹⁹⁶

Post-arrival support and reintegration assistance (cash-in-hand allowances, capacity building and business start-up, financial support, temporary accommodation, medical support) were identified by IOM as important tools, as they allow for an investment in returnee's social, cultural and economic embeddedness in their country of origin. The individual tailoring of assisted return programs, realized through intimate collaboration between the returnee and IOM, both prior to return and once removed to the country of origin, is further of general importance as it might, in case the whole amount of support is provided, encourage persons to consider returning.¹⁹⁷

Even though AVRL and AVRRL programs might constitute a welcoming option for migrants wishing to return home, and might hence be presented, at the discursive level, as a sort of "miracle solution"¹⁹⁸ in regards to the issue of return, their rate for successful and sustainable reintegration is far from guaranteed. In regards to AVRL and AVRRL programs from Austria, Sweden and Luxembourg to Kosovo, Dr Sacchetti found out that only a fragment of those actually returning had managed to build a successful and sustainable livelihood upon removal. It became clear from her study, which is of particular interest for Luxembourg, since Kosovars constitute the highest number of the returnees, that only young, autonomous and dynamic male returnees, who had only recently emigrated and who benefitted from a sizeable social network and substantial social capital upon return had met their goals, hence embodying the "returnee as entrepreneur" model.¹⁹⁹

¹⁹³ Interview IOM, 11 May 2016; Interview OLAI, 17 May 2016 and 1 June 2016.

¹⁹⁴ The claim that voluntary return programs are more cost efficient than forced return, even though regularly put forward, might not always be funded. As a matter of fact the numbers might considerably vary, due to the fact that a number of variables in return operations have to be taken into account (See: Sacchetti, S., 2016. *Assisted voluntary return in Kosovo – a field analysis*. PhD Dissertation, University of Luxembourg, p. 141-42).

¹⁹⁵ Sacchetti, S., unpublished. « Assisted voluntary return of women to Kosovo: Using life stories to compare rhetoric and reality within the framework of development », p. 1-2.

¹⁹⁶ Interview IOM, 11 May 2016 ; OLAI, 17 May 2016.

¹⁹⁷ Interview IOM, 11 May 2016.

¹⁹⁸ Sacchetti, « Assisted voluntary return of women to Kosovo », p. 1.

¹⁹⁹ Sacchetti, *Assisted voluntary return in Kosovo – a field analysis*; See also: Whyte, Z. & Hirslund, D., 2013. *International experiences with the sustainable assisted return of rejected asylum seekers*, DIIS Report 13. Copenhagen, DIIS, p. 21.

Dr Sacchetti's research²⁰⁰ also points to the sensitive issue of returning women, notably from Luxembourg, to Kosovo. This is especially the case when women were fleeing abusive relationships.²⁰¹ These women, instead of experiencing sustainable reintegration, experience a sense of double rejection²⁰², return being a deeply disempowering (and dangerous) act. Dr. Sacchetti's dissertation further points to the particular vulnerable and powerless living situation of minorities (i.e. RAE – Roma, Ashkali, Egyptians and Serbs) in Kosovo. RAE minorities are particularly affected by difficulties reintegrating into post-conflict Kosovar society upon return, as they are hit very hard by discriminating behavior, threatened by serious security incidents and hindered in their access to essential rights and services.²⁰³ The OSCE Mission in Kosovo (OMiK) thus collected evidence, in 2012, of the deteriorating situation of minorities who became victims of looting, arson, harassment and physical attacks upon return. These incidents seriously undermine the overall sustainability of return processes, be it from Luxembourg, Sweden or Austria, as Dr. Sacchetti's research showed, as they drastically reduce prospects of reintegration of these minorities.²⁰⁴

It is clear that AVR(R)L programs cannot address persistent patterns of structural and social discrimination against minorities. However, while some forms of vulnerability are common to return in general, many others are specific to minority and gender/sexuality contexts (reduced access to social and cultural capital, psychological issues, economic subsistence, discrimination, etc). It becomes also clear from these examples that the most positive effect of reintegration assistances lies in a conducive socio-economic and socio-political environment, rather than the program itself and that for those who suffer from insecurity, lack of land, shelter, job security and social networks or for those who are hampered in their access to basic services return, be it forced or 'voluntary' can create further vulnerability and marginalisation.²⁰⁵ This may hold especially true in those countries where return entails a social stigma, due to the allegations of "failed migration".

What further crystallizes out of the analysis of Dr. Sacchetti is that sustainable reintegration is particularly difficult for those who've been outside of their country of origin for considerable amount of time: not only can they no longer count on social networks, but further, with long time exposure to often radically different socio-cultural environments, migrant may feel that they no longer "belong" to the social environments of their former peers.²⁰⁶ Markowitz and Stefansson have similarly shown, in Bosnia, how expectations and representations of "home" have changed during their life in exile

²⁰⁰ The aforementioned fieldwork and research was part of Dr Sandra Sacchetti's PhD Dissertation, realized at the University of Luxembourg and entitled « Assisted voluntary return in Kosovo – a field analysis ». Her dissertation, for which she conducted empirical research in three stages between 2009 and 2011 in Kosovo and for which she conducted interviews both with staff working on return assistance for various organisations and with returnees themselves, aimed at analyzing the experience of return and the workings of return assistances as well as decrypting the underlying discursive ideology AVR policies in Kosovo.

²⁰¹ Phone interview with a Researcher, 23 May 2016.

²⁰² Sacchetti, « Assisted voluntary return of women to Kosovo », p. 18.

²⁰³ OSCE Mission in Kosovo (OMiK), 2011. *Municipal Responses to Security Incidents affecting Communities in Kosovo and the role of Municipal Community Safety Councils*, Prishtinë/Priština, p. 26.

²⁰⁴ OSCE Mission in Kosovo (OMiK), 2012. *An assessment of the voluntary returns process in Kosovo*, Prishtinë/Priština.

²⁰⁵ Phone interview with a Researcher, 23 May 2016.

²⁰⁶ Interview IOM, 15 May 2016.

during conflict and post-conflict reconciliation, and how this sense of alienation might pose challenges to return.²⁰⁷

While AVRR programmes seem in general preferable to forced returns, both in terms of budget and human costs, forced removal however remains both an essential aspect of and complement to voluntary return in the context of a coherent and credible return policy, in the sense that it particularly appeals to those rejected applicants who repudiate to return on a voluntary basis.²⁰⁸ However, albeit AVR(R) programmes do represent the better option in regards to return of rejected applicants of international protection, NGOs as well as academia have casted doubt on its voluntary foundation, criticizing them for lacking genuine voluntariness and for being hence misleadingly labelled.²⁰⁹ Are rejected applicants of international protection actually making free, well-informed and voluntary decisions regarding return, taking into account that their unique alternative is forced removal, or is the “voluntary” return rather based on a lack of viable alternatives? In regards to the reasons why rejected applicants opt for AVR(R) programmes, IOM underlined that assisted voluntary return and the reintegration aid cannot necessarily be viewed as a decisive push factor, encouraging migrants to opt for return: rejected applicants of international protection generally choose assisted voluntary return because they lack perspectives in Luxembourg, in order to avoid (the stigma of) forced return (and ensuing the re-entry ban) or in order to be reunited with family left behind.

²⁰⁷ Markowitz, F. & Stefansson, A.H., 2004. *Homecoming: Unsettling paths of return*. Lanham, Lexington Books.

²⁰⁸ Evaluation Document FER, p. 35.

²⁰⁹ Koch, Anne, 2013. « Assisted voluntary return schemes », *Forced migration Review* 44, p. 65.