



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

Luxembourg

Second Focussed Study 2017



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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 David Petry and Adolfo Sommaribas, 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), Christiane Martin (Directorate of Immigration, Ministry of Foreign and European Affairs), François Peltier (STATEC) and Marc Hayot (OLAI, Ministry for Family, Integration and the Greater Region).

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 the Return Department of the Directorate of Immigration of the Ministry of Foreign and European Affairs, the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs as well as the Country Office for Belgium and Luxembourg of the International Organisation for Migration (IOM).

EMN FOCUSSED STUDY 2017

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Executive Summary

The impact of EU rules on Luxembourg's return policies and practices is substantial. This is not least a result of the transposition of Directive 2008/115/EC on return into national law by the Law of 1 July 2011, which was then further developed through amendments in 2014 following the conclusions of the European Commission that Luxembourg was not fully in line with the directive.

With regards to the European Commission Recommendation of 7th March 2017 'on making returns more effective when implementing the Directive 2008/115/EC', Luxembourg did not introduce any specific legal or policy change. Most of the referenced provisions already form part of the national legal and/or policy framework.

The government's efforts to conclude and apply readmission agreements with third-countries to better organise returns have continued throughout 2016. The Benelux Member States concluded a readmission agreement and a protocol of implementation with the Republic of Kazakhstan on 2 March 2015, which was approved by Law of 31 August 2016.

As a result of the relatively high influx of asylum-seekers in 2015/2016, a backlog in the processing of applications for international protection occurred and could only be properly addressed by the Refugees and Return Department of the Directorate of Immigration through an increase and a reorganisation of its administrative staff.

On the other side, the impact of the migration situation 2015/2016 did not significantly affect the functioning of the Detention Centre nor its maximum occupation limits. However, the Detention Centre took over the management of the SHUK (*Structure d'hébergement d'urgence Kirchberg*) a new semi-open facility established for Dublin cases (single men) with a view of transferring them to the responsible Member State.

Although vulnerable groups are generally not detained in Luxembourg, the permitted period of detention of families with children was recently (March 2017) extended from 72 hours to 7 days with a view to enhancing the organisation of their return. The controversial extension through law amendment was largely criticised by civil society organisations and hence debated in parliament.

The definition of guarantees to avoid the risk of absconding remains a major challenge in the field of return and (alternatives to) detention. In most cases, the applicant fails to provide evidence enabling the reversal of the legal presumption of the existence of a risk of absconding, allowing the Minister to use a detention measure instead of another less coercive measure. As long as the concerned third-country national is unable to indicate a fixed address of stay (reception facilities are not taken into account), the competent authorities cannot rule out the existence of a risk of absconding. The practical implementation of 'home custody' as an alternative to detention is therefore considered problematic, with most potential candidates not having a fixed address in Luxembourg. The substantial amount of the financial guarantee, 5.000€, make it also difficult to practically implement release on bail as an alternative. Although the Law foresees the possibility of combining home custody with electronic surveillance, the electronic tag has not yet been implemented.

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

Q1. Please provide an overview of the national measures implementing the Return Directive (including judicial practices, interpretations and changes related to case law concerning the Return Directive) or equivalent standards (for Member States which are not covered by the Directive) in your Member State.

The Return Directive was transposed by the Law of 1 July 2011.¹ With the transposition, the Grand Ducal regulation of 5 September 2008 establishing the criteria of financial resources and housing² as well as the Grand Ducal regulation of 26 September 2008 establishing the rules of good administrative conduct that apply to the agents in charge of carrying out a removal decision³ were also amended.

Following the conclusions of the European Commission that Luxembourgish legislation was not in line with the Return Directive, the parliament approved the Law of 26 June 2014 amending the amended Law of 29 August 2008 on free movement of persons and immigration (hereafter Immigration Law).⁴ Thus, three amendments concerning return were introduced:

1. The law introduced the circumstances foreseen in the Directive whereby the deadline for voluntary return can be extended by taking into account the specific circumstances of the individual case such as the length of stay, the existence of children attending school and the existence of family and social links.⁵
2. In case an entry ban has been issued against a third-country national, s/he must be informed of the fact that s/he has been registered in the Schengen Information System.⁶
3. The last amendment dealt with the fact that national legislation was not in line with the European Court of Justice Decision C-329/11 (Achughbabian) of 6 December 2011 on the criminalisation of illegal stay⁷. The Court of Justice concluded that the Directive does not preclude a Member State from classifying an illegal stay as an offence and laying down penal sanctions to deter and prevent such an infringement of the national rules on residence. On the other side, the Court concluded that European Law opposes to a national regulation allowing the imprisonment of a third-country national who, though staying irregularly and not willing to leave the territory, has not been subject to any of the coercive measures foreseen by the Directive and has not been placed in detention in order to execute a return decision. The amendment modified article 140 of the Immigration Law in this sense.⁸

Q2. [EC Recommendation (8)] Does your Member State make use of the derogation provided for under Article 2(2)(a) and (b) of the Return Directive?⁹ **Yes**

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

Article 2 (2) a) of the Return Directive was transposed in Articles 99, 104 and 105 of the Immigration Law, establishing that the principles of the Return Directive are not applicable to third-country nationals who are subject to a refusal of entry¹⁰, allowing the refusal of entry to be executed ex-officio.

Article 2 (2) b) of the Return Directive was transposed in Article 128 of the amended Law of 29 August 2008, which establishes that in case there is an extradition request, the foreigner who is subject to a return decision cannot be returned.

The Luxembourgish Criminal Code does not establish any sanction, which implies the return of a third-country national.¹¹ However, if a third-country national is being investigated because of a criminal offence, s/he cannot be returned during the duration of the investigation and of the trial. If s/he is condemned to serve a prison sentence, s/he cannot be returned during the duration of the criminal sanction. S/he may nevertheless be freed on parole if the s/he is a first offender and has served at least three months of the sentence in case the latter is less than 6 months or half of their sentence in case it is over 6 months.¹² In case the third-country national is a recidivist, s/he will have to serve at least 6 months if the sentence(s) is less than 9 months or two thirds in case the sentence(s) is over 9 months.¹³ This benefit is granted by the State Public Prosecutor,¹⁴ but can be subject to certain conditions and modalities.¹⁵ In cases dealing with third-country nationals who do not have any links or permanent residence in Luxembourg, the benefit is granted upon the condition that s/he leaves the country voluntarily. Nevertheless, in practice, this provision has very little impact as most concerned persons want to avoid any type of return (voluntary or forced) and revealing of their nationality, even if it means serving a full sentence and eventually being transferred to the Detention Centre in view of a forced

return.¹⁶

If Yes, please describe:

- a) The categories of third-country nationals to whom this derogation applies (third-country nationals who are subject to a refusal of entry AND/OR third-country nationals who are apprehended or intercepted while irregularly crossing the external border AND/OR third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures);
- b) How the return procedure applied in such cases differs from standard practice (*e.g., a period for voluntary departure is not granted, appeals have no suspensive effect, etc.*)

a) As mentioned above, the derogation only applies to a third-country national who is subject to a refusal of entry¹⁷ and to individuals who are subject to an extradition procedure.¹⁸

b) In the first case, the decision of refusal of entry can be executed ex-officio by the agents of the Airport Police Control Unit (UCPA).¹⁹ The agents will draw a written report on the notification of the decision and its execution and will send it to the Minister in charge of Immigration.²⁰ Against the refusal decision, an annulment appeal can be filed before the First Instance Administrative Court within a deadline of 30 days after the notification of the decision.²¹ However, the filing of the appeal does not have suspensive effect.²²

In the case of extradition, the Return Department of the Directorate of Immigration cannot execute the return decision, as the extradition is a competence of the Minister of Justice.²³

Q3. Please indicate any recent changes in the legal and/or policy framework (i.e., as a result of the migration situation in 2015-2016 or the European Commission Recommendation issued in March 2017).

There are several changes that were recently introduced in the legal and policy framework, some of which took place within the context of the migration situation in 2015-2017, but not necessarily as a direct response to it.

- The new Asylum Law²⁴, for which the law-making process already begun before the aforementioned migration situation 2015-2017, introduced several amendments in the fields of return and detention. Thus, the transposition of Article 8 ° 4 of the Reception Conditions Directive²⁵ extends the alternatives to detention in the framework of the execution of a return decision²⁶ (i.e. house arrest²⁷, electronic surveillance²⁸, provision of a financial guarantee²⁹ and the obligation to present regularly to the authorities³⁰). Detention is used as a last resort when the alternatives cannot be applied with a reasonable certainty of efficiency.³¹
- The Law of 8 March 2017 amending the Law on the Detention Centre³² extended the permitted period of detention of adults/families with children from 72 hours to 7 days in order to enhance the organisation of their return.
- In February 2017, a new "ultra-accelerated" procedure was introduced for applicants of international protection from safe countries of origin, i.e. mainly from Western Balkans countries. The new procedure did not require legislative changes. It was only decided to expedite the already existing accelerated procedure in practice, without however affecting the mandatory deadlines laid down by law. When submitting his/her application for international protection, the applicant is informed that s/he has a period of two days to prepare for the interview with the official of the Ministry of Foreign and European Affairs with a view to determine the grounds for their application. These interviews take place in specially equipped offices at the reception facility "Logopédie", where the applicants are accommodated. A location for lawyers to consult has also been set up within this reception facility. For applications processed under this procedure, a decision will be taken on the 6th or the 9th day (if there are still documents to be translated) after

the applicant has submitted his application. In the case of appeals, the time limit is 15 days from the notification of the decision. Appeals against decisions resulting from accelerated procedures are dealt with by a single judge. The latter has a period of one month to render a judgment, which is not subject to appeal. If, on the other hand, the judge considers that the appeal is not manifestly unfounded, he shall refer the matter to the Administrative Tribunal and its collegial composition for a ruling. Against the decisions of the Administrative Tribunal, an appeal may be lodged with the Administrative Court.³³

- Also, in order to facilitate the transfer to another state of third-country nationals falling under the Dublin Regulation,³⁴ the Return Department of the Directorate of Immigration established in April 2017 the Emergency Housing Structure of Kirchberg (*Structures d'hébergement d'urgence Kirchberg* – SHUK³⁵).
- Finally, since 1st December 2016, nationals from Kosovo³⁶ are excluded from the reintegration programme managed by International Organization for Migration (AVRR-Luxembourg).

The Government's general policy on return is to promote voluntary return in collaboration with the International Organization for Migration and to use forced return as a measure of last resort.³⁷

With regards to the European Commission Recommendation of 7th March 2017 'on making returns more effective when implementing the Directive 2008/115/EC', Luxembourg did not introduce any specific legal or policy change. Most of the provisions included already form part of the national legal and/or policy framework.³⁸

Q4. Is the return of irregularly staying third-country nationals a priority in your Member State? *Yes.*

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

The issue of return has mostly been dealt with as part of a global policy on asylum and international protection and arose already in the early '90s during the ratification of the Schengen accords on 27 May 1992.³⁹ The concern of non-return of rejected international protection applicants resurfaced on several occasions in the following years, mostly under the impulse of discussions on regularisation measures or on draft legislation.⁴⁰ When such concerns resurfaced, a special consideration was often given to families with children.⁴¹

Discussion on the regularisation measure of 2001 kept the topic relevant in the early 2000s as the issue was 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.⁴² In this context, protests also arose concerning returns to countries of origin. Rejected asylum seekers from Montenegro feared the return to their country and the Luxembourgish Refugee Council expressed concerns on the unstable political situation.⁴³

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 during the school year or the coercion used in forced returns.⁴⁴

The same year, the Government furthered the priority given to return by increasing the advocacy of consensual return and signing a Convention with the International Organisation for Migration (IOM) on 5th August 2008. The aim was to establish a programme of assistance to voluntary return and to reintegration in the country of origin of Kosovar nationals.⁴⁵

The detention component in the framework of the forced return procedure was also publicly criticised by national and international organisations who were opposed to the detention of individuals with no residence permits in a penitentiary centre.⁴⁶ 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 2009.⁴⁷

The coalition agreement of the Government resulting from the 2009 elections reaffirmed the Government's position of making voluntary return a priority.⁴⁸

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 national whose application is ongoing or has been rejected, as long as third-country nationals are subjected to visa obligation.⁴⁹ This priority can also be witnessed in the increase in budget allocated to voluntary return through the years⁵⁰ 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.⁵¹

While Luxembourg has also experienced an increase of international protection applicants during the 'refugee crisis' in 2015, the issue of non-return did not experience a significant rise in profile in the context of national migration and asylum debates.

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.⁵² As a support for these two strands of policy, cooperation with third-country authorities will be maintained and extended.⁵³

The programme puts an increased emphasis in the efficacy, efficiency and sustainability of returns. For voluntary returns, the emphasis 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.⁵⁴ Thus, the programme foresees an increase in number of voluntary returns.⁵⁵ 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.⁵⁶

The financial allocation of funds within the AMIF programme testifies to the relative importance given to returns, as it has the second highest budget, behind Integration and Legal Migration, but surpassing Asylum.⁵⁷

Most recently, the extension of the period of detention for families with children prompted public debate and controversy. In order to enhance the organisation of the return and to ensure that it is carried out successfully,⁵⁸ the permitted period of detention for families with children was extended from the current 72 hours to 7 days.⁵⁹ In the opinion of the Luxembourgish Refugee Council (LFR), the extension undermines the fundamental rights of the concerned persons, especially of children. The LFR further recalled the provisions relating to the detention of minors as a measure of last resort enshrined within several international texts⁶⁰, while referring to recent jurisprudence of the European Court of Human Rights⁶¹ relating to the issue of minors' detention.

During 2016, the Government has continued its efforts to conclude and apply readmission agreements with third-countries to better organise returns. The Benelux Member States concluded a readmission agreement and a protocol of implementation with the Republic of Kazakhstan on 2 March 2015⁶², which was approved by Law of 31 August 2016.⁶³ This agreement entered into force on 27 September 2016.⁶⁴

Section 2: Systematic issuance of return decisions

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

The competent authority to issue a return decision is the Minister in charge of Immigration.⁶⁵ The duly motivated refusal of entry decision can be issued, as mentioned above, by an agent of the UCPA⁶⁶, who can notify and execute it ex-officio.⁶⁷

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

- a) The whereabouts of the third-country national concerned are unknown; **No**⁶⁸
- b) The third-country national concerned lacks an identity or travel document; **No**⁶⁹

- a) No. In this case, even though the return decision is issued it cannot be notified in person. However, if the authorities locate the person the decision will be notified and the decision will be executed.
- b) No. When confronted with this case, the return decision will be issued but it will not be executed until the identity of the individual is established. If the identity is established the decision can be executed.

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

If Yes, please elaborate on the type of measures

As Luxembourg is a small country (2.586 km²) with no visible external borders (except for the Luxembourg International Airport), it is difficult to implement measures to effectively locate and apprehend those irregularly staying third-country nationals whose whereabouts are unknown.

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

Yes⁷⁰

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

N/A.

Q7. [EC Recommendation (5) (c)] In your Member State, is the return decision issued together with the decision to end the legal stay of a third-country national? **Yes**⁷¹

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

N/A.

Q8. Does the legislation in your Member State foresee the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on their territory? **Yes**

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

The Immigration Law establishes that provided his/her presence does not constitute a threat to public policy, public health or public security, the Minister in charge of Immigration may grant to an irregular staying third-country national an authorisation to stay on humanitarian grounds of exceptional seriousness.⁷² The application shall be considered inadmissible if it is founded on grounds invoked in the course of a previous application, which has been rejected by the Minister. Where this authorisation to stay on humanitarian grounds of exceptional seriousness is granted, any return decision shall be annulled.⁷³

Q9a. [EC Recommendation (6)] In your Member State, do return decisions have unlimited duration?
Yes

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

The Immigration Law does not foresee the duration of validity of a return decision. The principles of the Administrative Law apply in this case, thus providing different possibilities for the extinction of effects of the return decision: withdrawal of the decision by the administration, expiry of the duration established by the administrative act itself or by annulment of a judge.⁷⁴ In principle, a return decision is an administrative act and must produce its effects since it is issued. However, the decision will only produce its effects in regards with the third-country national since its personal notification⁷⁵. In case the person is not in the territory, it can be notified through the intervention of the competent diplomatic or consular authority.⁷⁶

Q10. Does your Member State have any mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of *refoulement* before enforcing a removal? **Yes**

If Yes, please describe such mechanism:

The Immigration Law establishes that forced returns, as coercive measures to remove from the territory. A foreigner who resists removal must be proportionate and should not go beyond the use of reasonable force. Such measures shall be applied in accordance with fundamental rights and with respect for the dignity of the person concerned. During the enforcement of a return decision, the best interests of the child, family life, the state of health of the third-country national and the principle of non-refoulement are taken into due account.⁷⁷

Q11. [EC Recommendation (7)] Does your Member State systematically introduce in return decisions the information that third-country nationals must leave the territory of the Member State to reach a third country? **Yes.**⁷⁸

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

Rejected applicants for international protection are invited for an interview in which the actual circumstances and the proceedings that will follow are explained to them.⁷⁹ However, irregular staying third-country nationals (who did not apply for international protection) are informed of their obligation to leave the territory by the Grand-Ducal Police.⁸⁰

A return decision can be accompanied by an entry ban for a maximum period of 5 years. This decision is taken either at the same time as the return decision or subsequently by a separate decision.⁸¹ The third-country national subject to an entry ban is informed of being subject to an alert in the Schengen Information System for refusal of entry.⁸² The entry ban will be entered into the SIS as soon as the decision is taken and after it has been notified to the third country national by the Grand Ducal police. It can also be introduced in the SIS when the person leaves the country. This will depend upon when the Directorate of Immigration decides to transfer the information to the Grand Ducal police.⁸³

Section 3: Risk of absconding

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

Table 1 Assessment of the risk of absconding

Elements/ behaviours	Yes/No	Comments
Refusal to cooperate in the identification process, e.g. by using false or forged documents, destroying or otherwise disposing of existing documents, and/or refusing to provide fingerprints	Yes. ⁸⁴	
Violent or fraudulent opposition to the enforcement of return	Yes (fraudulent opposition ⁸⁵).	The violent opposition to the enforcement of the return decision is not foreseen as a presumed risk of absconding as such but it can be considered in accordance with article 111 (3) a) with regards to article 120 (1) of the amended law of 29 August 2008.
Explicit expression of the intention of non-compliance with a return decision	Yes. ⁸⁶	
Non-compliance with a period for voluntary departure	No.	The third-country national can be subject to a forced return, ⁸⁷ but the non-compliance with a period for voluntary decision is not considered as a rebuttable presumption that a risk of absconding exists. ⁸⁸
Conviction for a serious criminal offence in the Member States	No.	In this case, the authorities can consider that the behaviour of the individual constitutes a threat to public order, public safety or national security. Thus, the return decision can be carried out immediately. ⁸⁹ However, the answer is 'Yes' if the individual is reported under article 96 of the Schengen Convention and an alert has been included in the SIS. ⁹⁰
Evidence of previous absconding	Yes. ⁹¹	
Provision of misleading information	Yes. ⁹²	
Non-compliance with a measure aimed at preventing absconding	No.	
Non-compliance with an existing entry ban	Yes. ⁹³	
Lack of financial resources	Yes. ⁹⁴	
Unauthorised secondary movements to another Member State	No.	

<p>If the alien remains on the territory after the expiry of the period of validity of his/her visa, or, where he/she is not subject to the obligation to possess a visa, after three months have elapsed from the date on which he/she entered the territory;</p>	<p>Yes.⁹⁵</p>	
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Q13. What measures are in place in your Member State to avoid the risk of absconding for the duration of the period for voluntary departure?

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

In principle, the Immigration Law foresees that the third-country national will be granted a 30-day voluntary period to leave the country without having to fulfil any of the conditions mentioned above. This voluntary period is not subject to a presumption of absconding with the exceptions mentioned in the answer to Q.12. In case there is a risk of absconding the third-country national can be placed in detention.⁹⁶ As alternatives of detention the following provisions can be applied: a) Regular reporting to the authorities⁹⁷; b) submission of documents⁹⁸; c) house arrest up to six months with the possibility of combining it with an electronic surveillance⁹⁹ and d) provision of a financial guarantee of 5.000€.¹⁰⁰

Q14. Please indicate any challenges associated with the determination of the existence of a risk of absconding in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

A major challenge is to define guarantees to avoid the risk of the concerned person absconding, especially, that the burden of proof for reverting the presumption lays on the third-country national.¹⁰¹ In most cases, the applicant fails to provide the evidence enabling the reverse the legal presumption of the existence of a risk of absconding, allowing the Minister to use a detention measure instead of another less coercive measure.¹⁰²

If the concerned third-country national is unable to indicate a fixed address of stay (reception facilities are not taken into account), the competent authorities cannot rule out the existence of a risk of absconding.¹⁰³

Q15. Please describe any examples of good practice in your Member State's determination of the existence of a risk of absconding, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

In the frame of the present study, no specific good practice could be identified. The LU EMN NCP study entitled "The use of detention and alternatives to detention in the context of immigration policies" of 2014¹⁰⁴ could also not determine any good practice for the assessment of a risk of absconding, not least because the law defines it as a legal presumption.¹⁰⁵

Section 4: Effective enforcement of return decisions

Q16. [EC Recommendation (11)] Does national legislation in your Member State foresee any sanctions for third-country nationals who fail to comply with a return decision and/or intentionally obstruct return processes? Yes.

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

The Immigration Law establishes that a third-country national can be subject to imprisonment from 8 days up to 1 year and a fine of 251 up to 1.250 € or only one of the sanctions, if without a justified ground for non-returning, s/he resides irregularly on the territory after her/his detention or house arrest period has expired without a removal having been carried out.¹⁰⁶

SECTION 4.1. MUTUAL RECOGNITION

Q17. [EC Recommendation (9) (d)] Does your Member State systematically recognise return decisions issued by another Member State to third-country nationals present in the territory?

No.

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

The Minister in charge of Immigration¹⁰⁷ may recognise an expulsion decision taken in accordance with Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals, by a competent administrative authority of a Member State bound by that Directive where the third-country national concerned is present on the territory of the Grand Duchy of Luxembourg without having been authorised to stay there and where the following conditions are fulfilled:

1) The expulsion decision ("*décision éloignement*") is duly motivated:

a) either on a serious and present threat to public policy or national security, and arises from the third-country national having been convicted in the State which took the decision for an offence punishable by a penalty involving deprivation of liberty of at least one year, or the existence of serious grounds for believing that the person concerned has committed serious criminal offences, or the existence of solid evidence of his/her intention to commit such offences within the territory of a State bound by the Directive in question¹⁰⁸, or

b) on failure to comply with national rules on the entry or stay of foreigners in that State.¹⁰⁹

2) The expulsion decision ("*décision éloignement*") has not been suspended or rescinded by the State by which it was taken.¹¹⁰

In practice, the decision is only recognised if, in addition to one of the above-mentioned cases, there is a real prospect of return. There may, for instance, be a real prospect for return to the country of origin in the other (Member) State. In this case the third-country national will be transferred back to this (Member) State.¹¹¹

If Yes, does your Member State:

- a) Initiate proceedings to return the third-country national concerned to a third country;
- b) Initiate proceedings to return the third-country national concerned to the Member State which issued the return decision;

N/A.

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

As mentioned above, the decision is only recognised if, in addition to one of the above-mentioned cases, there is a real prospect of return.

SECTION 4.2 TRAVEL DOCUMENTS

Q18. [EC Recommendation (9) (c)] Does your Member State issue European travel documents for return in accordance with Regulation 2016/1953? **Yes**¹¹²

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

Although the Regulation came into force on 8 April 2017, the Directorate of Immigration and IOM, which is in charge of the Assisted Voluntary Return and Reintegration programme for Luxembourg (AVRR-L), have not used it in practice so far, as they are in the process of implementing the new tool with all security features that this requires.¹¹³ The Directorate of Immigration welcomes the new travel document which is of higher security standard.¹¹⁴

Luxembourg has issued the older version of the EU laissez-passer to third-country nationals from Kosovo and Montenegro¹¹⁵ and they were recognised by the authorities of both countries.¹¹⁶

If Yes, are these documents generally accepted by third countries?

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

The new EU laissez-passer has not yet been used in practice.

Q19. In your Member State, what is the procedure followed to request the third country of return to deliver a valid travel document/ to accept a European travel document? Please briefly describe the authorities responsible for carrying out such requests (where relevant, for each type of document, e.g. laissez-passer, EU travel documents...) and the timeframe within which these are lodged before third countries.

The procedure for obtaining valid travel documents in the AVRR-L programme is as follows:

The person comes to the IOM offices in Luxembourg and asks for an appointment to apply to participate in the AVRR-L programme, for which s/he has to sign the necessary papers. Once the Return Department of the Directorate of Immigration approves the application there are two possibilities:

- 1) IOM organises the issuing of documents directly with the diplomatic authorities (i.e. Kosovo).
- 2) The applicant initiates the proceedings in person at the embassy or consulate of his/her country of origin. In these cases, IOM provides the applicant with the money to cover the travel expenses (as embassies are often outside of Luxembourg) and the costs of the travel document. In most cases, the authorities issue a laissez-passer (i.e. Iraq and Russia), but in other cases they may issue a passport (i.e. Lebanon and Brazil).

The applicant must submit a copy of the travel document issued by the diplomatic authorities of the country of origin to IOM, which provides a copy of the document to the Return Department of the Directorate of Immigration.¹¹⁷

For certain countries of origin, Luxembourg has established direct contact with competent local authorities, which assists in identifying the person without having to engage with embassies/consulates who might not be willing to cooperate for the identification of their nationals.¹¹⁸

The timeframe always depends upon a number of factors: namely whether the file is complete, whether the police has to undergo further investigation, but also the relation with the consular services of the

third country concerned. In any case, the aim is to request and to receive them as fast as possible.¹¹⁹

SECTION 4.3. USE OF DETENTION IN RETURN PROCEDURES

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

Q20a. [EC Recommendation (10) (a)] In your Member State, is it possible to detain a third-country national within the context of the return procedure?

Yes.

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

In case there are no real prospects to return the third-country national to its country of origin, s/he will not be held in detention, even if the criteria are fulfilled.¹²⁰ Also, in practice, the third-country national is solely held in detention if there is a prospect of identification, both for security reasons and in order to be able to ensure the enforcement of the removal.¹²¹

Unaccompanied minors may only be detained if it is in their best interests.¹²²

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

- a) If there is a risk of absconding; **Yes**¹²³
- b) If the third-country national avoids or hampers the preparation of a return or removal process; **Yes**¹²⁴
- c) Other (*please specify*).

If a third-country national, held in detention in the context of a return procedure in order to prepare the removal, introduces an international protection application, it will be considered whether there are reasonable grounds to believe that the applicant introduced the application in order to delay or obstruct the execution of the return decision considering s/he had the possibility of introducing the application earlier.¹²⁵ In these cases, the duration of the detention will be counted from the day that the application was filed.¹²⁶

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

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

	2012	2013	2014	2015	2016	Comments
Total number of third-country nationals placed in detention	322	284	392	394	391	
Number of third-country nationals placed in detention (men)	203	213	264	261	288	
Number of third-country nationals placed in detention (women)	11	16	17	16	23	

Number of families in detention	27 families (108 pers.)	14 families (55 pers.)	27 families (111 pers.)	33 families (117 pers.)	20 families (80 pers.)	
Number of UAMs in detention	/	/	/	/	/	

Source: Directorate of the Detention Centre, Ministry of Foreign and European Affairs, 2017

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

The maximum authorised length of detention for a return procedure is of 6 months.¹²⁷ This maximum duration is calculated as follows:

The Minister in charge of Immigration will order the third-country national to be placed in detention. The period of detention shall be fixed at one month. The detention may be extended only for as long as the removal arrangements are in progress, and shall be executed with due diligence. It may be renewed by the Minister three times, each time for one month, provided it is necessary to ensure that the removal can be carried out successfully. Where it is probable, despite the efforts made, that the removal operation will take longer, owing to a lack of cooperation by the person to be returned or delays in obtaining the necessary documentation from third countries, the detention period may be extended twice, each time for a further month.¹²⁸

Nevertheless, in the case of international protection applicants the maximum duration of detention is of 12 months (including extensions).¹²⁹

This maximum duration may also be applied if a third-country national, held in detention in the return framework in order to prepare his/her removal, introduces an international protection application in order to delay or obstruct the execution of the return decision. See also answer to Q20b. c)

As of 19th July 2017, the average duration of stay in the Detention Centre was 59 days.¹³⁰

As regards the detention period of UAM and other vulnerable groups, please see answer to Q.49a.

Q22b. Does your national legislation foresee exceptions where this maximum authorised length of detention can be exceeded? No.¹³¹

Please elaborate under which circumstances:

N/A. For the extensions see Q22a.

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

a) Judicial authorities; *please specify*

No.

b) Administrative authorities; *please specify*

Yes. It is ordered by the Minister in charge of Immigration¹³², through the Directorate of Immigration, Return Department.

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

No. Judicial review is only triggered by an appeal against the decision of detention and the decision of extension of the detention of the third-country national.¹³³

Q23b. If detention is ordered by administrative authorities, please provide more detailed information on the procedure for reviewing the lawfulness of the detention and the timeframe applicable to such a review:

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

If Yes, how long after the start of detention?

N/A.

b) The lawfulness of detention is reviewed by a judge if the third-country national takes proceedings to challenge the lawfulness of detention; **Yes**

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

As soon as the third-country national has been notified of the decision of detention, its lawfulness can be reviewed by a judge if the third-country national engages proceedings to challenge it.¹³⁴ The third-country national can file an appeal against the decision of detention¹³⁵, which must be introduced during the month following the notification of the decision.¹³⁶

Q24a. In your Member State, is the duration of the stay of a third-country national in detention reviewed upon application by the third-country national concerned or ex officio? *Please note that whereas Q23b above refers to the review of the lawfulness of the decision to detain, t Q24a and Q24b and 24c below refer to the review of the duration of the stay of the third-country national in detention.*

As mentioned in answer to Q.22a, the Minister in charge orders the detention of the third-country national for a month. The detention can only be maintained as long as removal arrangements are in progress and executed with due diligence.¹³⁷ It can be renewed three times, each time for a month if the conditions for maintaining the detention remain and if it's necessary to ensure successful removal.¹³⁸ If despite all the efforts, it is probable that the removal takes more time than foreseen, due to the lack of cooperation of the third-country national or because of delays in obtaining the necessary documents required for the removal, the duration of detention can be extended twice, each time for a month.¹³⁹

In the case of applicants for international protection, the decision of detention is taken for a maximum of 3 months, extendable to a maximum of 12 months.¹⁴⁰ Each extension will be made for a duration of three months.¹⁴¹ See also answer to Q.22a.

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

The detention is reviewed every month on the basis of Article 120 of the Immigration Law¹⁴² or every three months on the basis of Article 22 (4) of the Asylum Law.¹⁴³ (See answers to Q.22a and Q.24a).

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

a) Judicial authorities; *please specify*

No. See answer to Q.23b

b) Administrative authorities; *please specify*

Yes. The Minister in charge of Immigration has to review the extension of the detention of the third-country national and whether the conditions¹⁴⁴ are still being fulfilled.¹⁴⁵

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

No. However, if the extension of the detention is appealed by the third-country national, the appeal will not be examined by the Minister in charge of Immigration, but by the First Instance Administrative Court.¹⁴⁶

Q25. [EC Recommendation (10) (c)] How many detention centres were open and what was the total detention capacity (number of places available in detention centres) as of 31st December 2016? Please complete the table below, indicating if possible the number of places available for men, women, families and unaccompanied minors. If such disaggregation is not possible, please simply state the total number of detention places available in your Member State

Table 3 Detention capacity as of 31st December 2016

		Situation as of 31 st December 2016	Comments
Number of detention centres		1 Detention Centre SHUK (from 1 st April 2017 onwards)	The SHUK (Emergency housing structure of Kirchberg) is used to accommodate international protection applicants (IPAs) falling under the provisions of the Dublin III Regulation and, in view of a transfer to the responsible Member State for processing their applications ¹⁴⁷ . It also lodges individuals who are Eurodac positive. ¹⁴⁸ The maximum capacity of the SHUK is of 216. ¹⁴⁹ Its administration was taken over by the Administration of the Detention Center as from 1 April 2017, which had to post part of its staff and hired additional staff. ¹⁵⁰ The transfer of a third-country national to the SHUK constitutes a home custody measure (<i>assignation à résidence</i>). ¹⁵¹
Number of places available in detention centres per category of third-country nationals	Men	44	From a theoretical standpoint, two single men units with a maximum capacity of 16 for the first unit and 28 for the second (14x2 – double cells), but used actually as single rooms.
	Women	16	From a theoretical standpoint, for single women with a maximum capacity of 16 persons but used actually for men.
	Families	28	Family unit with a maximum capacity of 28 persons (2x14 double cells) used actually as single rooms for women (capacity : 14) or double rooms for families. ¹⁵²

	Unaccompanied minors	N/A	<p>Unaccompanied minors may be held in detention, in an appropriate place adapted to the needs of their age. Consideration is given to the best interests of the child.¹⁵³ Under the current legislation, it is therefore possible to hold unaccompanied minors in the Detention Centre.</p> <p>However, both, the Directorate of Immigration as well as the Directorate of the Detention Centre do not consider a detention centre as an appropriate place for minors.¹⁵⁴ In practice, they are therefore usually accommodated within open reception facilities.¹⁵⁵</p>
	Total (theoretical maximum capacity)	88	<p>Theoretical maximum capacity of the Detention Centre.¹⁵⁶ However, in practical terms, because of the circumstances mentioned above, the maximum capacity depends on the type of population detained.¹⁵⁷</p>

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

The theoretical maximum capacity of the Detention Centre is of 88 persons. In practice, the Centre is divided into 4 units: Unit A consisting of 16 single rooms for men (8m² including sanitary facilities); Unit B consisting of 14 double rooms used as single rooms for men (9m² including sanitary facilities); a unit for women consisting of 16 double rooms but used for the moment as single rooms for men and a unit for families consisting of 14 double rooms used either as single rooms for women or as double rooms for families. There are also two isolation rooms, used for disciplinary¹⁵⁸, security or health reasons¹⁵⁹, with an available surface of around 10m² each.¹⁶⁰

So, in practice, double rooms are generally used as single rooms. In addition, the women's unit was more recently reallocated to men in order to increase capacity for men.

Thus, in terms of real capacity, there are three units for men with a total capacity of 46¹⁶¹ (16+14+16) and one unit for women/families with a total capacity of 14, which may nevertheless increase up to 28 (14 x 2) in case the double rooms for women are occupied by families. Therefore, the real maximum capacity always depends on the population detained.¹⁶²

Q27 [EC Recommendation (21) (c)]. In your Member State, are third-country nationals subject to return procedures detained in specialised detention facilities (i.e. a facility to keep in detention third-country nationals who are the subject of a return procedure)? **Yes.**

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

Rejected international protection applicants and irregular migrants may be detained in the Detention Centre.

As of 1st April 2017, a new semi-open facility "*Structure d'hébergement d'urgence Kirchberg* –SHUK) was established for Dublin cases (single men).¹⁶³ Occupants of the SHUK may not leave the facility during the night (8 p.m. until 8 a.m.), although there is no legal basis to prevent them doing so. However, should they abscond and eventually be traced by police, they will be sent to the Detention Centre. Also, if judged necessary in view of the organisation of their transfer, they may be sent to the Detention Centre a few weeks before their transfer.¹⁶⁴

The SHUK has a maximum capacity of 216 persons and is managed by the Direction of the Detention Centre (which depends of the Ministry of Foreign and European Affairs). On 19th July the occupancy rate was of 58 persons with the vast majority of the population being Dublin cases.¹⁶⁵ The new structure was established as a temporary facility in response to the high number of Dublin cases and rejected applicants for international protection accommodated within regular reception facilities. In this context, a joint parliamentary delegation together with the Luxembourgish government administration carried out a study visit of Dutch reception, detention and return practices on 18 and 19 May 2017 in The Hague, Netherlands.¹⁶⁶

Current discussions are being held on the possibility of establishing a new '*Maison retour*' (Return house)¹⁶⁷ for rejected applicants for international protection, as well as a new facility for vulnerable persons subject to a return procedure.

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

N/A.

Q28a. Has your Member State faced an emergency situation where an exceptionally large number of third-country nationals to be returned placed an unforeseen heavy burden on the capacity of the detention facilities or on the administrative or judicial staff? **Yes.**

Please elaborate on the circumstances in which this happened:

Since 2015, the numbers of rejected applicants for international protection have significantly increased (even though the recognition rate has also increased during that period of time), creating a backlog that could not be properly absorbed with the administrative staff of the Refugees and Return Department. In order to better handle the inflow, the administrative staff of the Directorate of Immigration was increased and the Refugees Department was reorganised.¹⁶⁸

In the case of the Detention Centre, the migration situation of 2015/2016 has not significantly affected its operation, not least because of the maximum occupation limits explained in answer to Q.25.¹⁶⁹

However, as the Detention Centre also took over the management of the SHUK, some of their staff were posted to the new structure and they hired additional staff.¹⁷⁰

Q28b. Has your Member State's capacity to guarantee the standards for detention conditions, as defined in Article 16 of the Return Directive, been affected due to an exceptionally large number of other categories of third-country nationals (e.g. Dublin cases) being placed in detention facilities? **No.**

During the migration situation of 2015/2016, standards for detention conditions have not been affected.¹⁷¹ There also has been an administrative practice - established by the Directorate of Immigration (Returns Department) - of not systematically placing in detention all individuals who are

subject to a return decision and who are in the return phase.

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

No derogations have been applied.

SECTION 4.4. USE OF ALTERNATIVES TO DETENTION IN RETURN PROCEDURES

Q29. Please indicate whether any alternatives to detention for third-country nationals are available in your Member State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 4 Alternatives to detention

Alternatives to detention	Yes/ No (If yes, please provide a short description)
<p>Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)</p>	<p>Yes. This alternative to detention is defined in the Immigration Law as an obligation upon the foreigner to regularly report, at intervals to be fixed by the Minister in charge of Immigration, before the services of the Minister or any other authority designated by the latter. In this case, the foreigner has to hand over his/her original passport and any other supporting document proving his/her identity in exchange for a receipt justifying the identity.¹⁷²</p> <p>Their implementation in practice remains very rare. According to the Directorate of immigration its added value would be limited and the administrative burden difficult to manage.¹⁷³</p>
<p>Obligation to surrender a passport or a travel document</p>	<p>Yes.¹⁷⁴ See below.</p> <p>Their implementation in practice remains very rare.¹⁷⁵</p>
<p>Residence requirements (e.g. residing at a particular address)</p>	<p>Yes. Article 125 (1) and 125(1) b) of the amended Law of 29 August 2008 lays down the possibility for home custody. With regard to Article 120, the Minister can take the decision to place a person under home custody if the execution of the obligation to leave the territory was postponed because of technical reasons and if the person can present the necessary guarantees to prevent the risk of absconding. The decision can be taken for a maximum duration of 6 months and is notified. The person receives a copy of the notification. Also, Article 125b allows the possibility of home custody in case there are technical obstacles to carry out the return decision and the third country national can prove his/her inability to leave the territory for reasons beyond his/her control. The measure of house arrest can be combined with other alternatives of detention (reporting, electronic bracelet, financial guarantee).¹⁷⁶</p> <p>Home custody carries the obligation for the person to reside in a specific place established by the Minister.¹⁷⁷</p> <p>The decision for home custody is revoked if the person does not fulfil the conditions fixed by the Minister or if there is a risk of absconding.¹⁷⁸</p> <p>The person in home custody is not obliged to stay at home 24 hours a day, 7 days a week, but during set hours in which inspections can be carried out.¹⁷⁹</p>

	<p>The legal framework for this alternative exists, but there is no Grand-Ducal Regulation yet that defines the exact procedure.¹⁸⁰</p> <p>Their implementation in practice remains very rare, unless one takes into account "residence requirements" granted in the frame of a SHUK transfer.¹⁸¹</p>
<p>Release on bail (with or without sureties)</p> <p><i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>Yes.¹⁸² In this case, the amount of the financial guarantee is of 5.000€. The money can be deposited by the concerned individual or a third party. In any case, if the third-country national absconds, the money will not be refunded.</p> <p>This alternative has been used very few times in order to release someone from detention.¹⁸³</p>
<p>Electronic monitoring (e.g. tagging)</p>	<p>Yes.¹⁸⁴ It should be noted that the electronic monitoring is only foreseen in relation with home custody (see above).</p> <p>To date, electronic monitoring has not been applied in practice, although a system already implemented for prisoners could be used by the competent authority. However, the Directorate of Immigration is not entirely convinced of its implementation due to logistical reasons.¹⁸⁵ As most persons to whom such an alternative may apply do not have a fixed address (N.B: a reception facility is not regarded as fixed address), the practical implementation is proving difficult.</p>
<p>Guarantor requirements</p> <p><i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>No. However, to be granted home custody, a person has to present the necessary guarantees to prevent the risk of absconding.¹⁸⁶</p>
<p>Release to care worker or under a care plan</p>	<p>No.</p>
<p>Community management programme</p>	<p>No.</p>
<p>Other alternative measure available in your (Member) State. Please specify.</p>	<p>No. However, the Immigration Law foresees that the alternative measures can be applied individually or cumulatively.¹⁸⁷</p>

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

In replying to this question please note for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

Detention

Taking into account the parliamentary debate surrounding the adoption of Bill N°6992 amending the Law of 28 May 2009 concerning the Detention Centre, the detention of vulnerable groups as well as the extension of the detention period can be identified as a major challenge.

As already mentioned above, the permitted period of detention for families with children was extended from the 72 hours to 7 days.¹⁸⁸ Besides criticism from the Refugee Council¹⁸⁹ with regard to this extension, the State Council¹⁹⁰ made their approval on the amendment conditional on compelling reasons outside of public authorities' constraints. The amendment was eventually adopted and a motion was adopted in parliament which invited the Government to ensure that in practice, as it had been done in the past, unaccompanied minors as well as families with minors are only held in detention as a measure of last resort and for the shortest period possible, exceeding the maximum period of detention only in exceptional cases.¹⁹¹ The Ombudsman for the rights of the child further noted with concern the adoption of the extension of the detention period.¹⁹²

Alternatives to detention

Alternatives to detention face the most challenges with their practical implementation. Home custody is considered problematic because most potential candidates do not have a fixed address in Luxembourg.¹⁹³ A major challenge of its implementation is also to define guarantees to avoid the risk of the concerned person absconding. The scope under which the benefit can be granted is indeed very limited as the evaluation to determine whether there is a risk of absconding or not is based in most cases on situations specified in the legislation.

Furthermore, if a person absconds, the small size of the country makes it very unlikely to locate the person. As soon as the person crosses a border, the Police is not able to search for the person anymore.¹⁹⁴

The law foresees the possibility of combining home custody with electronic surveillance.¹⁹⁵ However, so far, the electronic surveillance (electronic bracelet) has not been implemented, whereas the use of the financial guarantee has only been seldom used.¹⁹⁶

Release on bail is also difficult to implement practically as the financial guarantee of 5.000€ is substantial.¹⁹⁷

Q31. Please describe any examples of good practice in your Member State's implementation of detention and alternatives to detention, identifying as far as possible by whom the practice in question is considered successful, its relevance, since when the practice has been in place and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

Most alternatives to detention were introduced by the Law of 18 December 2015 (Asylum Law) and they entered into force on 1 January 2016 so they are very recent for determining good practices.

However, home custody, as an alternative to detention, for Dublin returnees and the international protection applicants who are Eurodac positive can be considered as a good practice.¹⁹⁸

Also, the commitment¹⁹⁹ to detain unaccompanied minors as well as families with minors solely as a measure of last resort and for the shortest period possible, can be considered a good practice (see answer to Q.30).

Section 5: Procedural safeguards and remedies

Q32. [EC Recommendation (12) (d)] Is the application of the principle of *non-refoulement* and/or of Article 3 European Convention on Human Rights systematically assessed as part of the procedure to take a return decision? **Yes.**²⁰⁰

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

N/A.

If No, under which circumstances is it assessed?

- It is never assessed as part of the return procedure; **N/A.**
- It is only assessed once (e.g. during the asylum procedure) and does not need to be repeated during the return procedure; **N/A.**
- Other (*please specify*)

N/A.

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

- a) Judicial authority; **Yes**²⁰¹ An annulment appeal can be filed before the First Instance Administrative Court.²⁰² The decisions of the First Instance Administrative Court are susceptible to be appealed before the Administrative Court.
- b) Administrative authority; **No**²⁰³
- c) Competent body composed of members who are impartial and who enjoy safeguards of independence. **No**

If Yes to c), please specify

N/A.

Q34. [EC Recommendation (12) (b)] Is there a deadline for the third-country national concerned to appeal the return decision? **Yes**.²⁰⁴

If Yes, please specify whether the deadline is:

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

The third-country national can file his/her appeal in a delay of one month after the notification of the decision (option c).²⁰⁵ Against the decision of the First instance administrative Court the third-country national can file an appeal before the Administrative Court 40 days after the notification of the decision.²⁰⁶

Q35. [EC Recommendation (12) (c)] In your Member State, does the appeal against a return decision have a suspensive effect? **No**.²⁰⁷

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

However, the appeal can be filed together with an injunction request in order to suspend the execution of the return decision.²⁰⁸ The execution of the return decision cannot be carried out until the injunction request has been decided upon,²⁰⁹ except if the return decision is based on serious grounds of public security.²¹⁰

Q36. Does national legislation in your Member State provide for an administrative/judicial hearing for the purposes of return? **Yes**.²¹¹

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

N/A.

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

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

N/A.

Q38. Is there an obligation for the third-country national concerned to attend the hearing in person?

No.

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

The third-country national can attend the hearing, but it is not mandatory as s/he is represented by his/her lawyer.²¹²

Section 6: Family life, children and state of health

Q39. In your Member State, which categories of persons are considered vulnerable in relation to return/ detention (e.g. minors, families with children, pregnant women or persons with special needs)?

Please differentiate between return and detention if applicable

The following categories of persons are considered 'vulnerable': minors, unaccompanied minors, disabled persons, pregnant persons, single parents accompanied by under-age children, elderly persons and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence. Particular attention is paid to their situation.²¹³

Detention

In principle, vulnerable persons are not held in detention unless there are charter flights that include families.²¹⁴

The Law provides for the possibility to detain UAMs in a suitable centre adapted to the needs of their age.²¹⁵ For doing so, the authorities must consider the best interests of the child.²¹⁶ In practice, it is very rare that UAMs are held in detention.²¹⁷ The UAM will be lodged, in a first phase, in a first-arrival reception facility of the Luxembourgish Red Cross, before being transferred to a reception facility adapted to their age and needs.²¹⁸

Families with children can be held in detention for a duration of up to 7 days in order to organise the removal from the territory.²¹⁹ However, since the entering into force of the amendment introduced by Law of 8 March 2017, it has not been applied in practice.²²⁰

Return

No return decision can be taken against a minor who is not accompanied by a legal representative, with the exception of decisions based on serious public security grounds, unless return is in the best interests of the minor concerned.²²¹ In any case, during the execution of the return decision the Minister in charge of Immigration must take into consideration the best interests of the child (see also answer to Q.40).²²²

Q40. [EC Recommendation (13)] In order to ensure that the best interest of the child is taken into account, how and by whom is it assessed before issuing a return decision? **Yes**

The Minister in charge of Immigration will assess the case, taking into consideration the best interest of the child. The Minister can request an expert opinion to take the decision.

In accordance with the "Return" Directive, the Immigration Law provides that a return decision for an unaccompanied minor can only be taken if it is in the best interest of the minor. However, the Law does

not specify how the interests of the child are determined. Therefore, on 7th July 2017, the Council of government²²³ adopted the creation of a commission with the function of assessing the best interest of the child in the context of return of unaccompanied minors. This commission, composed of the representative of the child as well as the representatives of the ministries and departments concerned, will be responsible for conducting an individual assessment of the best interest of the child with the aim of both, issuing return decisions and their implementation situation in accordance with Article 10 of Directive 2008/115/ EC, as well as issuing them a residence permit.²²⁴

Since the creation of this commission is relatively recent and in the process of being set up, it is premature to report on the modalities of its operation. However, according to the Directorate of Immigration, it is envisaged that it will take into account all factors relating to the situation of the minor in the event of his/her return, including the grounds on which his/her application for international protection is based as well as the family environment of the minor. In order to do so, the Directorate of Immigration is exploring the possibility of concluding an agreement with an international organisation in order to carry out a family assessment of the family members of the minor in his/her country of origin.²²⁵

Q41. In your Member State, what elements are taken into account to determine the best interest of the child when determining whether a return decision should be issued against an irregularly staying minor (aside from the assessment of the *non-refoulement* principle)?

Table 5 Elements considered in determining the best interest of the child

Elements considered	Yes/No	Comments
Child's identity	Yes.	
Parents' (or current caregiver's) views	Yes.	IOM does systematically perform a socio-economic evaluation of the family or current caregiver's in the country of origin to determine if the child will be taken care upon return. If the evaluation considers that the parents or caregiver in the country of origin are not fit to receive the UAM they will not proceed with the return. ²²⁶ The main interest is to be sure there is someone who is going to take care of the child in his/her country of origin. ²²⁷ In case that the evaluation is positive both parents must sign the required paperwork (and provide copies of the identification documents). ²²⁸
Child's views	Yes. ²²⁹	As the child is appointed an ad-hoc administrator ²³⁰ and a guardian, the voluntary return has to be taken with their consent as they are the legal representatives of the child.
Preservation of the family environment, and maintaining or restoring relationships	Yes.	See above (Parents' view).
Care, protection and safety of the child	Yes.	See above (Parent's view).
Situation of vulnerability	Yes.	Both the Immigration ²³¹ and Asylum ²³² law consider the UAM as a vulnerable group.

Child's right to health	Yes.	
Access to education	Yes.	

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

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

Where the ad-hoc administrator shows that the unaccompanied minor is unable to leave the territory for reasons not of his/her own making, or if he/she is unable either to return to his/her country of origin or to travel to any other country, the Minister may postpone the removal of the unaccompanied minor for a period determined in accordance with the circumstances peculiar to each case and until there exists a reasonable prospect of return. In this case, the unaccompanied minor may remain on the territory on a provisional basis, without being authorised to reside. The decision to postpone the removal may be accompanied by an order for home custody.²³³ During the period of postponement of the removal, the minor shall be given humanitarian aid²³⁴ and, depending on the length of their stay, access to the basic education system.²³⁵ The specific needs of unaccompanied minors shall in any case be taken into consideration.²³⁶

Q43. [EC Recommendation (13) (c)] Does your Member State have in place any reintegration policies specifically targeted to unaccompanied minors? **Yes.**

If Yes, please describe such policies

Unaccompanied minors are entitled to register for the AVRR-L programme, under which they will only receive in-kind assistance on post-arrival.²³⁷

Full aid (assistance to reintegration) applies to applicants for international protection who register with IOM at the latest one month after their application has been rejected or if the international protection procedure has lasted over 6 months and although willing to return, they had not received any decision on their claim by the ministry.²³⁸

In addition, unaccompanied minors are entitled to a post-arrival financial aid of 700€ as they are considered a vulnerable group.²³⁹ Also, the unaccompanied minor will benefit from the following:

1. Airport assistance and onward transportation;
2. Temporary lodging and housing;
3. Assistance to find a school or a job;
4. Material and legal assistance;
5. Investment in training and learning;
6. Medical assistance/medicines; orientation and information on the health system in the country of origin.²⁴⁰

Q44. In your Member State, can the enforcement of the return decision be postponed on the grounds of health issues? **Yes**²⁴¹

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

The return can be postponed provided he/she does not constitute a threat to public policy or public security, and if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot, in practice, receive appropriate treatment in the country to which he/she may be returned.²⁴²

The third-country national may obtain a suspension of his/her removal for a period not exceeding six months. Such a suspension shall be renewable, but may not exceed a period of two years.²⁴³ After the two years if the person cannot be removed, s/he can apply for an authorisation of stay for medical reasons with an initial duration up to one year, renewable.²⁴⁴ However, this is not a permanent residence permit, but a temporary residence permit.

In practice and as a general rule, the opinions issued by the doctor delegated under Article 130 et seq. of the amended Law of 29 August 2008 on the free movement of persons and immigration are followed.²⁴⁵

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

- a) The third-country national brings his/her own medical certificate; **Yes.**²⁴⁶
- b) The third-country national must consult with a doctor appointed by the competent national authority; **Yes.**²⁴⁷
- c) Other (*please describe*) **Yes**²⁴⁸

- a) In cases of voluntary return and where the person has a health problem s/he must present a medical certificate which allows them to receive additional help for reintegration (700€). In addition, a medical certificate is compulsory in case the returnee has mobility or mental problems and s/he requires social or medical assistance. This medical certificate will be attached to the medical report that IOM has to submit with the medical department of the airline.
- b) The Immigration Law establishes that the assessment of the state of health of the third-country national concerned is to be conducted by the medical officer, which will determine the need of a medical supervision, the seriousness of the medical condition and the possibility of obtaining the required medical treatment in the country of origin.²⁴⁹ See answer to Q44.

Q46. When returnees suffer from health problems does your Member State take into account the accessibility of medical treatment in the country of return? **Yes.**

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

The Return Department of the Directorate of Immigration will determine the accessibility of medical treatment in the country of return. The Return Department previously requested a medical opinion from the medical officer²⁵⁰ which it follows. It is also the doctor who gives his/her opinion on whether the concerned third-country national needs treatment in Luxembourg, thus a suspension of removal, or if s/he may access the necessary treatment in their country of origin.²⁵¹

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

If Yes, for how long is the medication provided?

N/A.

Q48. Does your Member State postpone return if the third-country national concerned is pregnant? Please specify (*e.g. pregnancy as such is not a cause for postponement, but can be if pregnancy is already advanced, e.g. after eight months*)

Pregnant women were already detained in Luxembourg. Decisions on when to return pregnant women are taken on a case-by-case basis. Depending on the stage of the pregnancy, a woman is allowed to give birth in Luxembourg, however, the removal decision can be executed afterwards and the fact that she gave birth on the territory does not mean that she will be granted an authorisation for stay.²⁵² Normally, if the woman is less than 7 ½ months pregnant she can be removed from the territory, except if the medical officer determines otherwise.²⁵³

Q49a. [EC Recommendation (14)] In your Member State, is it possible to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

In principle, the Law does not forbid the detention of (unaccompanied) minors, disabled persons, pregnant women, single parents with children, elderly people and persons who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence against whom a removal decision was issued.

Vulnerable persons are usually not held in detention, unless there are specific charter flights for families.²⁵⁴

a) An unaccompanied minor can be held in detention in an appropriate place adapted to the needs of his/her age and where the best interest of the child is respected.²⁵⁵ Although it is very rare in practice (only one case has been reported), unaccompanied minors can therefore be detained in case that they represent a risk of public safety. They can be placed in a unit for families/women.²⁵⁶ Nonetheless, the Luxembourgish government is not in favour of detaining unaccompanied minors.²⁵⁷

b) Families with under-age children cannot be detained for more than 7 days.²⁵⁸

c) Pregnant women: See answer to Q48.

d) There were no cases of victims of torture, rape or other serious forms of psychological, physical or sexual violence who were detained.²⁵⁹ They can be detained. In that case, the special needs and conditions of these detainees will be taken into consideration.²⁶⁰

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

See answer to Q.39 and Q.49a

In principle, unaccompanied minors are not held in detention even though the Immigration Law foresees the possibility. In this case the Minister in charge of Immigration must place the unaccompanied minor in an adequate facility.²⁶¹

Families accompanied with minors can be held in detention in order to organise and carry out the return decision.

Q50. Please indicate any challenges associated with the implementation of the return of vulnerable persons in your Member State. In replying to this question please specify for whom the issue identified constitutes a challenge and specify the sources of the information provided (e.g. existing studies/evaluations, information received from competent authorities or case law)

A challenge associated with return of vulnerable persons is to ensure adequate means of transportation for the implementation of the return. Also, the availability of medical treatment was identified as a challenge by the Directorate of Immigration.²⁶²

According to IOM, it is important to ensure that, in the frame of voluntary return, the concerned persons are also willing to return.²⁶³

Q51. Please describe any examples of good practice in your Member State concerning the return of vulnerable persons, identifying as far as possible by whom the practice in question is considered successful, since when has the practice been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

The fact that persons with difficulties will be accompanied to travel is considered a good practice by IOM.²⁶⁴ A specific post-arrival financial aid of 700€ is also granted to vulnerable groups in the frame of voluntary return (see answer to Q.43).²⁶⁵ They may also get information ahead of their return (or in some cases from IOM colleagues working in the country of return) on where/how to get necessary medical treatment or aid.²⁶⁶

Section 7: Voluntary departure

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

a) Automatically with the return decision? **Yes.**

OR

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

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

The Immigration Law grants a 30-day period for the third-country national to leave the country voluntarily except if there is a duly motivated urgency (i.e. public policy, public safety or national security). The third-country national can ask to benefit from an assisted return scheme (*dispositif d'aide au retour*). Where necessary, having regard to the foreigner's personal circumstances, the Minister in charge of Immigration may exceptionally allow a time for voluntary departure exceeding 30 days taking into account the specific circumstances of the individual case, such as the duration of stay, the existence of children attending school as well as other family and social links.²⁶⁷

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

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

N/A.

Q53. In your Member State is there a possibility to refrain from granting a period of voluntary departure/ grant a period for voluntary departure shorter than seven days in specific circumstances in accordance with Article 7(4) of the Return Directive?²⁶⁸

- a) Yes, to refrain from granting a period of voluntary departure;

- b) Yes, to grant a period for voluntary departure shorter than seven days;
- c) No.

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

- a) When there is a risk of absconding;
- b) When an application for a legal stay has been dismissed as manifestly unfounded or fraudulent;
- c) When the person concerned poses a risk to public policy, public security or national security;
- d) Other (*please specify*)

- a) Yes.²⁶⁹
- b) Yes.²⁷⁰
- c) Yes.²⁷¹

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

The period granted for voluntary departure is 30days.²⁷² However, it can be extended taking into consideration the duration of stay, the existence of children attending school and the existence of other family and social links.²⁷³ In practice, the third-country national may apply for voluntary return as long as a forced return has not yet been organised. However, if the 30days period has expired, their return and reintegration assistance will be reduced, meaning they will only receive the basic assistance (*aide de base*).²⁷⁴

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

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

- a) The prospects of return; **N/A**²⁷⁵
- b) The willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return; **N/A**²⁷⁶
- c) Other (*please specify*)

N/A.

Q56. Is it part of your Member State's policy on return to extend the period for voluntary departure where necessary taking into account the specific circumstances of the individual case? **Yes**.²⁷⁷

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

- a) The length of stay; **Yes**.²⁷⁸
- b) The existence of children attending school; **Yes**.²⁷⁹
- c) The existence of other family and social links; **Yes**.²⁸⁰
- d) Other (*please specify*)

Where necessary, having regard to the foreigner's personal circumstances, the Minister in charge of Immigration may exceptionally allow a time for voluntary departure exceeding 30 days.²⁸¹

Q57. [EC Recommendation (24)(b)] In your Member State, is there a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure? **Yes/No**

If Yes, please describe:

In accordance with the Immigration Law, the Minister in charge of Immigration can request the Grand Ducal police to proceed with the necessary controls and verifications in order to see if the third-country national has left the country.²⁸²

Q58. Please indicate whether your Member State has encountered any of the following challenges associated to the provision of a period for voluntary departure and briefly explain how they affect the ability of the period for voluntary departure to contribute to effective returns.

Table 6: Challenges associated with the period for voluntary departure

Challenges associated with the period for voluntary departure	Yes/No/In some cases	Reasons
Insufficient length of the period for voluntary departure	In some cases.	According to the Directorate of Immigration, the length of the period should, in principle, be sufficient if there is a willingness to cooperate. ²⁸³ IOM, which is in charge of implementing voluntary returns in Luxembourg, considers that the deadline of 30 days can be insufficient. ²⁸⁴ It regularly occurs that lawyers do not inform persons subject to a return decision of their current situation in due course, meaning they are only informed when the Directorate of Immigration summons them for leaving the country. Hence, the third-country national cannot file the application for voluntary return within the 30 days period and, in consequence, can only apply for the basic assistance for return and reintegration. ²⁸⁵
Absconding during the period for voluntary departure	Yes. ²⁸⁶	
Verification of the departure within the period of voluntary departure	In some cases.	The system implemented with IOM works quite well, as the Directorate of Immigration will be informed by IOM as soon as the third-country national left the territory. The same goes for bus departures, for which the bus company informs the Directorate of Immigration. However, if they leave on their own, the Directorate of Immigration is not necessarily aware of it. ²⁸⁷
Lack of documents	In some cases.	IOM experienced several cases in the past of third-country nationals (i.e. Palestinians) applying for voluntary return, but for whom the return could not be carried out, due to lack of documents.

Q59. Please describe any examples of good practice in your Member State in connection with the period of voluntary departure, identifying as far as possible by whom the practice in question is considered successful, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

No particular practice to report.

a)

Section 8: Entry bans

Q60. In your Member State, which scenario applies to the imposition of entry bans?

- a) Entry bans are automatically imposed in case the return obligation has not been complied with OR no period of voluntary departure has been granted; **No.**²⁸⁸
- b) Entry-bans are automatically imposed on all return decisions other than under a); **No.**²⁸⁹
- c) Entry bans are issued on a case by case basis on all return decisions other than a); **Yes.**²⁹⁰

Q61. What are according to national legislation in your Member State the grounds for imposing entry bans? Please answer this question by indicating whether the grounds defined in national law include the following listed in the table below.

Table 7: Grounds for imposing an entry ban

Grounds for imposing entry bans	Yes/No	Comments
Risk of absconding ²⁹¹	Yes	In this case, the entry ban is usually of 3 years.
The third-country national concerned poses a risk to public policy, public security or national security ²⁹² .	Yes.	In this case, the entry ban is usually of 5 years or more (see answer to Q.62a.)
The application for legal stay was dismissed as manifestly unfounded or fraudulent ²⁹³	Yes.	In this case the entry ban is usually of 3 years.
The obligation to return has not been complied with ²⁹⁴	Yes	In this case the entry ban is usually of 3 years.
Other (e.g. please indicate and add rows as appropriate)		

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

Return decisions may carry with them a ban on entering the territory for a maximum period of five years, declared either simultaneously with the return decision or by a separate subsequent decision. The Minister shall take into consideration the specific circumstances of each case. The period of prohibition of entry onto the territory may be longer than five years if the foreigner concerned constitutes a serious threat to public policy, public security or national security.²⁹⁵

Q62b. Does legislation in your Member State provide for different periods of validity for the entry bans?

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

Yes.

It can be issued up to a maximum duration of 5 years or more if the foreigner concerned constitutes a

serious threat to public policy, public security or national security.²⁹⁶

The most common period is 3 years.²⁹⁷ It is very rare that an entry ban of more than 5 years is imposed.

Q62c Does national legislation and case law in your Member State establish a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry? **Yes.**

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

The period of prohibition of entry onto the territory may be longer than five years if the foreigner concerned constitutes a serious threat to public policy, public security or national security.²⁹⁸

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

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

- a) No.
- b) Yes.
- c) As an administrative act, it produces its effects on the day it was issued. However, for the third-country nationals it only has effect on the day it was notified²⁹⁹. When a person is subject to an entry ban, s/he may submit an application for its lifting after a reasonable time, depending on the circumstances, but not before three years from his/her removal from the territory. In that case s/he must put forward arguments to establish that there has been a material change in the circumstances which justified the decision banning him/her from entering the territory. The Minister shall rule on that application within six months.³⁰⁰

Q64. [EC Recommendation (24)(c)] Does your Member State enter an alert into the Schengen Information System (SIS) when an entry ban has been imposed on a third-country national? (e.g. see Article 24 (3) of Regulation No 1987/2006 – SIS)? **Yes**

Please specify whether;

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

N/A

Q65. [EC Recommendation (24)(d)] If a return decision is issued when irregular stay is detected on exit (see Q4c above), does your Member State also issue an entry ban? **Yes.**³⁰¹

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

N/A

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

- a) Yes, a misdemeanour
- b) Yes, a criminal offence
- c) No

a) It is qualified as a criminal offence and punished with imprisonment from 6 months up to 3 years and a fine from 251€ up to 3.000 € or just one of them.³⁰²

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

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

Table 8 The effectiveness of entry bans

Aspects of the effectiveness of entry bans	Explored in national evaluations (Yes/No)	Main findings
Contribute to preventing re-entry	No.	The general effectiveness of entry bans is considered very low by the Directorate of Immigration. It may be effective for those persons who are required to travel with a visa when trying to re-enter, but even in such cases they may find ways to circumvent (i.e. travelling to other third countries before entering the Schengen area). ³⁰³
Contribute to ensuring compliance with voluntary return	No.	This may be effective with persons from the Western Balkans, who often do not want to get entry bans in order to re-enter the country without having to pay a smuggler. ³⁰⁴
Cost-effectiveness of entry bans	No.	
Other aspects of effectiveness (please specify)	No. ³⁰⁵	

Q68. Please indicate whether your Member State has encountered any of the following challenges in the implementation of entry bans and briefly explain how they affect the ability of entry bans to contribute to effective returns.

Table 9 Practical challenges for the implementation of entry bans

Challenges associated with entry bans	Yes/No/In some cases	Reasons
Compliance with entry bans on the part of the third-country national concerned	Yes	See Table 8.
Monitoring of the compliance with entry bans	Yes	It is very difficult to undertake any type of monitoring or produce statistics. Persons may have re-entered the territory without the

		authorities knowing. ³⁰⁶
Cooperation with other Member States in the implementation of entry bans	No	Cooperation in the implementation of entry bans with other Member States is good. ³⁰⁷
Cooperation with the country of origin in the implementation of entry bans	No	
Other challenges (please specify and add rows as necessary)	Yes	According to the Directorate of Immigration, compliance with entry bans may solely be improved through efficient control of external borders. ³⁰⁸

Q69. Please describe any examples of good practice in your Member State in relation to the implementation of entry bans, identifying as far as possible by whom the practice in question is considered successful, since when it has been in place, its relevance and whether its effectiveness has been proved through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, studies by NGOs and International Organisations, etc.)

No good practices have been identified.

Section 9 Conclusions

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

European Union rules on return as well as the decisions of the European Court of Justice have had a significant impact on national policy and legislation. In order to undertake and effect return more efficiently, Luxembourgish authorities have prioritised voluntary return over forced return. This prioritisation can be seen through the official figures which demonstrate a sharp increase in the number of assisted voluntary returns (there has been a 64,8% increase in persons using the AVRR-L programme year-on year between 2015 and 2016, from 142 to 234 individuals).

Regardless of the difficulty in evaluating the impact of return measures in regard to the effective returns carried out, it is certain that the possibility for a third-country national- subject to a return decision - to return to their country of origin in a dignified manner instead of being subject to the risk of a forced return, can influence their choice of voluntary return.

There is no data available regarding the different issues on return policy (i.e. the return procedure in regard with the identification of individuals, the effectiveness of the methods used to identify the returnees, the dissuasive effect of the entry bans etc.)

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

The rules of the European Union on return represent an important framework on which the Luxembourg Return Policy is based.

Within this framework, it is necessary to strengthen the exchange of information and overall mutual cooperation of Member States in order to overcome common challenges experienced in implemented that effective return of third-country nationals.

One example of good practice is the implementation of a video conference system for the identification of returnees which was initially developed as a pilot project between Belgium, Luxembourg and Poland before being rolled-out for use by other Member States.

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- ¹ Law of 1 July 2011 amending the amended law of 29 August 2008 on free movement of persons and immigration, in [Memorial A-151 of 25 July 2011](#).
- ² Grand-ducal regulation of 11 August 2011 amending the grand-ducal regulation of 5 September 2008 establishing the criteria of financial resources and housing foreseen by the law of 29 August 2008 on free movement of persons and immigration, [Memorial A-180 of 22 August 2011](#).
- ³ Grand-ducal regulation of 17 August 2011 amending the grand-ducal regulation of 26 September 2008 establishing the rules of good administrative conduct that apply to the agents in charge of carrying out a removal decision, [Memorial A-180 of 22 August 2011](#).
- ⁴ Law of 26 June 2014 amending the amended law of 29 August 2008 on free movement of persons and immigration, [Memorial A-113 of 1 July 2014](#).
- ⁵ Article 111 paragraph 2 of the amended law of 29 August 2008 as amended by article 1 of the Law of 26 June 2014.
- ⁶ Article 112 paragraph 1 of the amended law of 29 August 2008 as amended by article 2 of the Law of 26 June 2014.
- ⁷ [Alexandre Achughbabian v. Préfet du Val-de-Marne, C-329/11 of 6 December 2011](#), Court of Justice of the European Union, Judgement of the Court (Grand Chamber).
- ⁸ Article 140 of the amended law of 29 August 2008 as amended by article 3 of the Law of 26 June 2014.
- ⁹ Member States may decide not to apply the Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State (Article 2(2)(a) and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures (Article 2(2) (b)).
- ¹⁰ Article 105 (1) of the amended law of 29 August 2008.
- ¹¹ Article 7 of the [Criminal Code](#).
- ¹² Article 100 1) of the [Criminal Code](#).
- ¹³ Article 100 2) of the [Criminal Code](#).
- ¹⁴ Article 100 5) of the [Criminal Code](#).
- ¹⁵ Article 100 6) of the [Criminal Code](#).
- ¹⁶ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁷ Article 105 (1) of the amended law of 29 August 2008.
- ¹⁸ Article 128 of the amended law of 29 August 2008.
- ¹⁹ Article 105 (1) of the amended law of 29 August 2008.
- ²⁰ Article 105 (1) of the amended law of 29 August 2008.
- ²¹ Article 105 (2) in accordance with article 113 of the law of 29 August 2008.
- ²² Article 105 (2) of the amended law of 29 August 2008.
- ²³ Article 2 of the amended law of 20 June 2001 on extradition.
- ²⁴ Law of 18 December 2015 on international protection and temporary protection, [Memorial A-255 of 28 December 2015](#).
- ²⁵ Article 22 (3) b) of the law of 18 December 2015.
- ²⁶ Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, March 2017, p. 31.
- ²⁷ Article 22 (3) b) of the law of 18 December 2015. Article 125 (1) 3) b) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.

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- ²⁸ Article 22 (3) b) of the law of 18 December 2015. Article 125 (1) 3) b) paragraph 2 of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.
- ²⁹ Article 22 (3) c) of the law of 18 December 2015. Article 125 (1) 3) c) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.
- ³⁰ Article 22 (3) a) of the law of 18 December 2015 on international protection and temporary protection. Article 125 (1) 3) a) of the amended law of 29 August 2008 as amended by article 81 (3) of the Law of 18 December 2015.
- ³¹ Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, March 2017, p. 31.
- ³² Article 6 (2) of the amended law of 28 May 2009 regarding the Detention Centre as amended by article II of the Law of 8 March 2017, [Mémorial A-298 of 20 March 2017](#).
- ³³ Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.
- ³⁴ See First instance Administrative Court, 39452 of 27 April 2017, First instance Administrative Court, 2nd Chamber, 39449 of 27 April 2017 and First instance Administrative Court, 1st Chamber, n° 39413 of 24 April 2017.
- ³⁵ See answer to Q.25 and 27.
- ³⁶ LU EMN NCP answer to NO EMN NCP ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.
- ³⁷ Government of the Grand-Duchy of Luxembourg, [Communiqué en réponse au Commissaire aux droits de l'Homme du Conseil de l'Europe](#), on : [gouvernement.lu](#), 7 February 2017.
- ³⁸ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁹ 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.
- ⁴⁰ Besch, Sylvain, 2010, pp. 109-110.
- ⁴¹ Besch, Sylvain, 2010, pp. 109-110.
- ⁴² Besch, Sylvain, 2010, p.115.
- ⁴³ Besch, Sylvain, 2010, p.115.
- ⁴⁴ Besch, Sylvain, 2010, p.117.
- ⁴⁵ Besch, Sylvain, 2010.
- ⁴⁶ Besch, Sylvain, 2010, p. 118.
- ⁴⁷ Besch, Sylvain, 2010, p. 118.
- ⁴⁸ Besch, S., 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.
- ⁴⁹ 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.
- ⁵⁰ 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. 45.
- ⁵¹ 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. 19.
- ⁵² OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.
- ⁵³ OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.
- ⁵⁴ OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 20.

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- ⁵⁵ OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 22.
- ⁵⁶ OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 22.
- ⁵⁷ Thus, 2.310.000€ are planned for „Integration/Legal migration“, 2.057.548€ for „Return“ and 1.435.000€ for „Asylum“. OLAI, Fonds « Asile, Migration et Intégration » 2014-2020. Programme national du Luxembourg, Version du 12/12/2016, p. 32.
- ⁵⁸ Parliamentary document 6992/00 of 18 May 2016, Commentaire des articles, p.27.
- ⁵⁹ Law of 8 March 2017 modifying the law of 28 May 2009 on the Detention Centre, [Memorial A n°298 of 20 March 2017](#) Art. III.
- ⁶⁰ See Art. 37 b) of the Convention on the Rights of the Child; Resolution 1810 (2011) of the Council of Europe on unaccompanied minors in Europe: issues of arrival, stay and return; Recommendation n°1985 of 7 October 2011 on undocumented migrant children in an irregular situation: a real cause for concern; Art. 17 of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals.
- ⁶¹ A.B. and Others v. France - 11593/12; R.K. and Others v. France - 68264/14; R.C. and V.C. C. France - 76491/14; R.M. and Others v. France - 33201/11; A.M. and Others v. France - 24587/12
- ⁶² Directorate of Immigration, Bilan de l'année 2016 en matière d'asile et d'immigration, Mars, 2017, p. 31.
- ⁶³ Law of 31 August 2016 between the Benelux States and the Republic of Kazhakstan concerning the readmission of persons in an irregular situation and its application protocole signed in Brussels on 2 March 2015, [Memorial A-179 of 2 September 2016](#).
- ⁶⁴ Directorate of Immigration, Bilan de l'année 2016 en matière d'asile et d'immigration, Mars, 2017, p. 31.
- ⁶⁵ Article 109 (1) of the amended law of 29 August 2008.
- ⁶⁶ Article 104 (1) of the amended law of 29 August 2008.
- ⁶⁷ Article 105 (1) of the amended law of 29 August 2008.
- ⁶⁸ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ⁶⁹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ⁷⁰ Article 100 (1) of the amended law of 29 August 2008.
- ⁷¹ Article 100 (1) of the amended law of 29 August 2008.
- ⁷² Article 78 (3) of the amended law of 29 August 2008.
- ⁷³ Article 78 (3) of the amended law of 29 August 2008.
- ⁷⁴ Manuels Larcier, [Abrogation et retrait de l'acte administratif unilatéral](#), last accessed 13 September 2017.
- ⁷⁵ Article 110 of the amended law of 29 August 2008.
- ⁷⁶ Article 110 of the amended law of 29 August 2008.
- ⁷⁷ Article 112 (1) in accordance with article 124 (1) of the amended law of 29 August 2008.
- ⁷⁸ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ⁷⁹ This procedure was established as in the past several misunderstandings had occurred, with persons (or lawyers representing them) claiming they were not aware of the proceedings, in particular with regards to the 30 days delay for a voluntary return. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ⁸⁰ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ⁸¹ Article 112 (1) of the amended law of 29 August 2008.
- ⁸² Article 112 (1) of the amended law of 29 August 2008.

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- ⁸³ LU EMN NCP answer to FI EMN NCP ad-hoc query on registering entry bans in the SIS, launched on 10 November 2014.
- ⁸⁴ Article 111 (3) c) 5 and 6 of the amended law of 29 August 2008.
- ⁸⁵ Article 111 (3) c) 5 of the amended law of 29 August 2008.
- ⁸⁶ Article 111 (3) last paragraph of the amended law of 29 August 2008.
- ⁸⁷ Article 124 (1) in accordance with article 111 (2) of the amended law of 29 August 2008.
- ⁸⁸ Article 111 (3) c) of the amended law of 29 August 2008.
- ⁸⁹ Article 111 (3) a) of the amended law of 29 August 2008.
- ⁹⁰ Article 111 (3) c) 1 in accordance with article 34 (2) 2 of the amended law of 29 August 2008.
- ⁹¹ Article 111 (3) c) 3 of the amended law of 29 August 2008.
- ⁹² Article 111 (3) c) 5 and 6 of the amended law of 29 August 2008.
- ⁹³ Article 111 (3) c) 1 in accordance with article 34 (2) 3) of the amended law of 29 August 2008.
- ⁹⁴ Article 111 (3) c) 1 in accordance with article 34 (2) 5) of the amended law of 29 August 2008.
- ⁹⁵ Article 111 (3) c) 2 of the amended law of 29 August 2008.
- ⁹⁶ Article 120 (1) of the amended law of 29 August 2008.
- ⁹⁷ Article 125 (1) a) of the amended law of 29 August 2008.
- ⁹⁸ Article 125 (1) a) of the amended law of 29 August 2008.
- ⁹⁹ Article 125 (1) b) of the amended law of 29 August 2008.
- ¹⁰⁰ Article 125 (1) c) of the amended law of 29 August 2008.
- ¹⁰¹ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, National Report, Luxembourg, 2014, p. 31.
- ¹⁰² See First instance Administrative Court, 3rd Chamber, n°30713 of 29 June 2012.
- ¹⁰³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁰⁴ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, National Report, Luxembourg, 2014, p. 31.
- ¹⁰⁵ Article 111 (3) c) of the amended law of 29 August 2008.
- ¹⁰⁶ Article 140 of the amended law of 29 August 2008, as amended by law of 26 June 2014.
- ¹⁰⁷ Article 117 of the amended law of 29 August 2008.
- ¹⁰⁸ Article 117 (1) a) of the amended law of 29 August 2008.
- ¹⁰⁹ Article 117 (1) b) of the amended law of 29 August 2008.
- ¹¹⁰ Article 117 (2) of the amended law of 29 August 2008.
- ¹¹¹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹¹² In accordance with article 9 of the regulation 2016/1953, which entered into force on 8 April 2017.
- ¹¹³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹¹⁴ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹¹⁵ Only for Montenegrin children born in Luxembourg. LU EMN NCP answer to DE EMN NCP Ad-Hoc Query on EU Laissez-Passer for Repatriation of third-country nationals, launched on 10 November 2015.
- ¹¹⁶ LU EMN NCP answer to DE EMN NCP Ad-Hoc Query on EU Laissez-Passer for Repatriation of third-country nationals, launched on 10 November 2015.
- ¹¹⁷ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.

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- ¹¹⁸ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹¹⁹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹²⁰ Article 120 (1) and (3) of the amended law of 29 August 2008.
- ¹²¹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹²² Article 120 (1) of the amended Law of 29 August 2008.
- ¹²³ Article 120 (1) of the amended law of 29 August 2008.
- ¹²⁴ Article 120 (1) of the amended law of 29 August 2008.
- ¹²⁵ Article 22 (2) e) of the Law of 18 December 2015.
- ¹²⁶ Article 22 (2) e) of the Law of 18 December 2015.
- ¹²⁷ Article 120 (3) of the amended law of 29 August 2008.
- ¹²⁸ Article 120 (3) of the amended law of 29 August 2008.
- ¹²⁹ Article 22 (4) of the Law of 18 December 2015.
- ¹³⁰ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹³¹ Article 120 (3) of the amended law of 29 August 2008.
- ¹³² Article 120 (1) of the amended law of 29 August 2008.
- ¹³³ Article 123 (1) of the amended law of 29 August 2008.
- ¹³⁴ Article 121 (1) of the amended law of 29 August 2008.
- ¹³⁵ Article 123 (1) of the amended law of 29 August 2008.
- ¹³⁶ Article 123 (2) of the amended law of 29 August 2008.
- ¹³⁷ Article 120 (3) of the amended law of 29 August 2008.
- ¹³⁸ Article 120 (3) of the amended law of 29 August 2008.
- ¹³⁹ Article 120 (3) of the amended law of 29 August 2008.
- ¹⁴⁰ Article 22 (4) of the Law of 18 December 2015.
- ¹⁴¹ Article 22 (4) of the Law of 18 December 2015.
- ¹⁴² Article 120 (3) of the amended law of 29 August 2008.
- ¹⁴³ Article 22 (4) of the Law of 18 December 2015.
- ¹⁴⁴ Article 120 (1) of the amended law of 29 August 2008.
- ¹⁴⁵ Article 120 (3) of the amended law of 29 August 2008 and article 22 (6) of the Law of 18 December 2015.
- ¹⁴⁶ Article 123 (1) of the amended law of 29 August 2008.
- ¹⁴⁷ The persons concerned will be held under house arrest at the SHUK for a maximum period of 6 months. In practice, the stay should be relatively short, since the request for transfer of the persons concerned will have already been accepted by the responsible Member State before their assignment and it will therefore be a matter of proceeding to the actual transfer of the persons concerned.
- ¹⁴⁸ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁴⁹ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. On 19 July 2017, the total occupancy was 58 persons.
- ¹⁵⁰ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

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- ¹⁵¹ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017. See also Article 125 (1) c) of the amended law of 29 August 2008.
- ¹⁵² Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁵³ Article 120 (1) of the amended Law of 29 August 2008.
- ¹⁵⁴ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 20. Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁵⁵ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. The law authorises detention of unaccompanied minors in the Detention Centre if the Minister in charge of Immigration considers the place as adequate.
- ¹⁵⁶ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁵⁷ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁵⁸ Article 20 of the Law of 28 May 2009 and Article 29 of the Grand-Ducal Regulation of 17 August 2011.
- ¹⁵⁹ Article 2 (2) and 3 (2) of the amended Law of 28 May 2009 and LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 19.
- ¹⁶⁰ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 19.
- ¹⁶¹ In practice, the maximum capacity for single men is 45 as one of the cells is used for technical and urgent situations.
- ¹⁶² Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁶³ At first, solely Dublin cases where a readmission agreement was reached were sent to SHUK. Meanwhile, all third-country nationals for whom a positive EURODAC result is established are assigned to SHUK. Also, Dublin cases for whom there is a real risk of absconding may still be detained within the Detention Centre. Information provided by the Directorate of the Detention Centre on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁶⁴ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁶⁵ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁶⁶ Embassy of Luxembourg in The Hague, Grand-Duchy of Luxembourg, [Visite d'étude luxembourgeoise d'un centre de rétention et d'une maison retour aux Pays-Bas](#), 18 and 19 May 2017.
- ¹⁶⁷ The establishment of the *Maison de retour* (Return House) for families subject to a return procedure was already foreseen by the [governmental programme 2013-2018](#), p.204.
- ¹⁶⁸ Ministry of Foreign and European Affairs, [Rapport d'activité 2016](#), Luxembourg, p. 77.
- ¹⁶⁹ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁷⁰ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁷¹ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017. There were no critics/recommendations referring to a deterioration of standards of detention in the Ombudsman Report of 2016. Ombudsman.lu, [Rapport d'activité 2016](#), Luxembourg, 2016.
- ¹⁷² Article 125 (1) a) of the amended Law of 29 August 2008.
- ¹⁷³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

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- ¹⁷⁴ Article 125 (1) a) of the amended Law of 29 August 2008.
- ¹⁷⁵ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁷⁶ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and Article 125 (1) of the amended Law of 29 August 2008.
- ¹⁷⁷ Article 125 (1) b) of the amended Law of 29 August 2008.
- ¹⁷⁸ Article 125 (1) of the amended Law of 29 August 2008.
- ¹⁷⁹ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 29.
- ¹⁸⁰ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 29.
- ¹⁸¹ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁸² Article 125 (1) c) of the amended law of 29 August 2008. When a third-country national has been placed in detention, s/he can be freed if s/he provides a financial guarantee of 5.000€ or is subject to an electronic bracelet.
- ¹⁸³ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁸⁴ Article 125 (1) b) of the amended law of 29 August 2008.
- ¹⁸⁵ Information provided by the Director of the Detention Centre on 19th July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁸⁶ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 30.
- ¹⁸⁷ Article 125 (1) last paragraph of the amended law of 29 August 2008.
- ¹⁸⁸ Law of 8 March 2017 modifying the law of 28 May 2009, Art. III.
- ¹⁸⁹ Opinion of the Refugee Council on the Bill modifying the law of 28 May 2009, Parliamentary Document n°6992/09.
- ¹⁹⁰ Opinion of the State Council on the Bill modifying the law of 28 May 2009, Parliamentary Document n°6992/05, p.9.
- ¹⁹¹ [Motion introduced by Deputy Marc Angel on 8 February 2017 and adopted in Parliament on the same day.](#)
- ¹⁹² Ombudsman for the right of the child (ORK), [Réflexions et témoignages des foyers pour mineurs non accompagnés au Luxembourg](#), 2017, p.4.
- ¹⁹³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁹⁴ Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 2 April 2014.
- ¹⁹⁵ Article 125 (1) b) of the amended law of 29 August 2008.
- ¹⁹⁶ The financial guarantee was applied in two cases. Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁹⁷ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ¹⁹⁸ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ¹⁹⁹ [Motion introduced by Deputy Marc Angel on 8 February 2017 and adopted in Parliament on the same day.](#)
- ²⁰⁰ Article 129 of the amended Law of 29 August 2008.
- ²⁰¹ Article 113 of the amended law of 29 August 2008.
- ²⁰² Article 113 of the amended Law of 29 August 2008.
- ²⁰³ Article 113 of the amended law of 29 August 2008.

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- ²⁰⁴ Article 113 of the amended Law of 29 August 2008.
- ²⁰⁵ Article 113 of the Law of 29 August 2008 in accordance with article 16 of the amended law of 21 June 1999.
- ²⁰⁶ Article 113 of the amended law of 29 August 2008 in accordance with article 38 of the amended law of 21 June 1999.
- ²⁰⁷ Article 113 of the Law of 29 August 2008.
- ²⁰⁸ Article 114 of the Law of 29 August 2008.
- ²⁰⁹ Article 114 of the Law of 29 August 2008.
- ²¹⁰ Article 114 of the amended law of 29 August 2008.
- ²¹¹ Article 113 of the Law of 29 August 2008 in accordance with article 11 (5) of the amended law of 21 June 1999, [Mémorial A-98 of 26 July 1999](#).
- ²¹² Article 1 of the amended law of 21 June 1999 required that for the validity of the appeal it has to be filed by a lawyer registered at the Bar Association.
- ²¹³ Article 125bis (2) of the amended law of 29 August 2008; Article 53 (2) of the Law of 18 December 2015 and Article 7 (2) of the Law of 28 May 2009 on the Detention Centre.
- ²¹⁴ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²¹⁵ Article 120 (1) of the Immigration Law.
- ²¹⁶ Article 119 (5) and article 120 (1) of the Immigration Law.
- ²¹⁷ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²¹⁸ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014
- ²¹⁹ Article 6 (3) of the amended law of 28 May 2009 on the Detention Centre as amended by article II of the Law of 8 March 2017.
- ²²⁰ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²²¹ Article 103 of the amended law of 29 August 2008.
- ²²² Article 124 (1) of the amended law of 29 August 2008.
- ²²³ Government of the Grand-Duchy of Luxembourg, Council of government, [Résumé des travaux du Conseil de Gouvernement](#), Press release of 7 July 2017.
- ²²⁴ Government of the Grand-Duchy of Luxembourg, Council of government, [Résumé des travaux du Conseil de Gouvernement](#), Press release of 7 July 2017.
- ²²⁵ Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.
- ²²⁶ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²²⁷ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²²⁸ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²²⁹ The representative of the child (guardian and/or ad-hoc administrator) shall represent the interest of the child and therefore also express his/her viewpoint.
- ²³⁰ Article 5 (3) and (4) in accordance with article 20 (1) and (2) of the Asylum Law of 18 December 2015 and article 103 of the amended Law of 29 August 2008.
- ²³¹ Articles 119 (5), 120 (1), 124 (1) and 125bis(2) of the amended law of 29 August 2008.
- ²³² Articles 20 and 21 of the Asylum Law and Article 15 of the Law on the reception of international protection applicants of 18 December 2015.
- ²³³ Article 125bis (1) of the amended law of 29 August 2008.

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- ²³⁴ Article 125bis (2) of the amended law of 29 August 2008 and Article 27 of the Law of 18 December 2009 organising social aid, [Mémorial A-260 of 29 December 2009](#).
- ²³⁵ Article 125bis (2) of the amended law of 29 August 2008.
- ²³⁶ Article 125bis (2) of the amended law of 29 August 2008.
- ²³⁷ LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.
- ²³⁸ LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017.
- ²³⁹ LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁴⁰ LU EMN NCP answer to NO EMN NCP Ad-hoc query on support to persons who have returned to the country of origin, launched on 31 May 2017. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁴¹ Article 130 of the amended law of 29 August 2008.
- ²⁴² Article 130 of the amended law of 29 August 2008.
- ²⁴³ Article 131 (1) of the amended law of 29 August 2008.
- ²⁴⁴ Article 131 (2) of the amended law of 29 August 2008.
- ²⁴⁵ Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.
- ²⁴⁶ Article 130 of the amended law of 29 August 2008.
- ²⁴⁷ Article 131 (3) of the amended law of 29 August 2008.
- ²⁴⁸ Article 131 (3) of the amended law of 29 August 2008.
- ²⁴⁹ Article 131 (3) of the amended law of 29 August 2008.
- ²⁵⁰ Article 131 (3) of the amended law of 29 August 2008.
- ²⁵¹ Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 4 August 2017.
- ²⁵² LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 9. Articles 124 (1) last phrase and 125bis (2) of the amended law of 29 August 2008.
- ²⁵³ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁵⁴ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁵⁵ Article 120 (1) of the amended law of 29 August 2008.
- ²⁵⁶ According to the Ombudsman for the right of the child, 48 minors were detained in 2016 (January to September 2016). At least one of them was an unaccompanied minor. Ombudsman for the right of the child (ORK), [Réflexions et témoignages des foyers pour mineurs non accompagnés au Luxembourg](#), 2017, p.4.
- According to the Directorate of Immigration, in principle, only so called "false minors" and for which the authorities assume they are not minor, can be detained. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁵⁷ Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ²⁵⁸ Article 6 (3) of the amended law of 28 May 2009 on the Detention Centre as amended by article II of the Law of 8 March 2017.
- ²⁵⁹ LU EMN NCP, The use of detention and alternatives to detention in the context of immigration policies, Luxembourg, 2014, p. 9.
- ²⁶⁰ Articles 124 (1) last phrase and 125bis (2) of the amended law of 29 August 2008 and Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.

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- ²⁶¹ Article 124 (1) of the amended law of 29 August 2008 and Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017.
- ²⁶² Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁶³ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁶⁴ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁶⁵ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁶⁶ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁶⁷ Article 111 (2) of the amended law of 29 August 2008.
- ²⁶⁸ Article 7(4) of the Return Directive reads: *'If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days'*.
- ²⁶⁹ Article 111 (3) c) of the amended law of 29 August 2008.
- ²⁷⁰ Article 111 (2) and (3) b) of the amended law of 29 August 2008.
- ²⁷¹ Article 111 (2) and (3) a) of the amended law of 29 August 2008.
- ²⁷² Article 111 (2) of the amended law of 29 August 2008.
- ²⁷³ Article 111 (2) of the amended law of 29 August 2008.
- ²⁷⁴ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017.
- ²⁷⁵ Article 111 (2) of the amended law of 29 August 2008.
- ²⁷⁶ Article 111 (2) of the amended law of 29 August 2008.
- ²⁷⁷ Article 111 (2) of the amended law of 29 August 2008.
- ²⁷⁸ Article 111 (2) of the amended law of 29 August 2008.
- ²⁷⁹ Article 111 (2) of the amended law of 29 August 2008.
- ²⁸⁰ Article 111 (2) of the amended law of 29 August 2008.
- ²⁸¹ Article 111 (2) of the amended law of 29 August 2008.
- ²⁸² Article 133 (1) in accordance with article 134 of the Law of 29 August 2008.
- ²⁸³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁸⁴ Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017. As already mentioned, in practice, third-country nationals may still apply for voluntary return if the 30 days have expired and as long as a forced return has not yet been organised, but they will only receive the basic assistance (*aide de base*).
- ²⁸⁵ IOM informed the Luxembourg Bar Association by letter, requesting the lawyers to notify immediately the return decision to their clients, but without any impact so far. Interview with IOM Country Office for Belgium and Luxembourg on 27 July 2017 and with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁸⁶ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁸⁷ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁸⁸ Although the law foresees the issuance of an entry-ban as a discretionary measure, in practice, they are imposed to all forced returnees. In some specific cases, an entry ban is also imposed for voluntary return. Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.
- ²⁸⁹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.

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- ²⁹⁰ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017 and Article 112 (1) of the amended law of 29 August 2008.
- ²⁹¹ As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
- ²⁹² As stipulated in the Return Directive Article 11 (1) (a) in combination with Article 7(4).
- ²⁹³ As stipulated in the Return Directive in Article 11(1)(a) in combination with Article 7(4).
- ²⁹⁴ As stipulated in the Return Directive Article 11(1)(b).
- ²⁹⁵ Article 112 (1) of the amended law of 29 August 2008.
- ²⁹⁶ Article 112 (1) of the amended law of 29 August 2008.
- ²⁹⁷ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ²⁹⁸ Article 112 (1) of the amended law of 29 August 2008.
- ²⁹⁹ Article 112 (1) in accordance with article 113 of the amended law of 29 August 2008.
- ³⁰⁰ Article 112 (2) of the amended law of 29 August 2008.
- ³⁰¹ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰² Article 142 of the amended law of 29 August 2008.
- ³⁰³ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰⁴ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰⁵ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰⁶ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰⁷ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.
- ³⁰⁸ Interview with the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.