MANUAL ON READMISSION

For Experts and Practitioners

SELECTED FOREIGN READMISSION AND RETURN PRACTICES
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International Organization for Migration
Moscow
2010
The International Organization for Migration (IOM) is a leading intergovernmental organization for migration-related cooperation with representative offices in more than 120 countries. IOM is committed to the principle that humane and orderly migration benefits migrants and society. IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental body, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

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Finally, thanks are also given to the European Commission, the Government of Finland and the Government of Germany, without whose support the Manual would not have been possible.
This Manual is the result of close and fruitful cooperation between the International Organization for Migration (IOM) and the Federal Migration Service (FMS of Russia). The idea to develop it emerged when Russia concluded a Readmission Agreement with the European Community (EC), as a consequence of which an entirely new legal instrument had to be created in the country within a short period of time.

The idea found its realization within the IOM-FMS of Russia’s jointly-implemented Programme “Assistance to the Government of the Russian Federation in Establishing an Administrative and Legislative Framework for Developing and Implementing Readmission Agreements”. An integral component of this aimed at the development of relevant methodological recommendations of a practical character.

When Russia started to implement the Readmission Agreement in June 2007, the need for a user-friendly, comprehensive and simple manual further intensified. Such a manual would aim to acquaint the user with the key concepts related to readmission. It would also have to be designed to guide practical application of readmission agreements.

In the interim, Russia has gathered considerable experience in implementing its Readmission Agreement with the EC. Thus, while preparing the Manual, the authors relied not only on the international experience and the resources available in IOM, but also on Russian realities. As a result the Manual is unique in character, with its focus on elements of particular relevance in Russia.

The contribution of IOM and the FMS of Russia to the development of the Manual can hardly be overestimated. Every effort has been taken to ensure that the reader receives a quality tool providing the most up-to-date knowledge in this relatively new field of migration management. Russian and European experts and practitioners were invited to contribute to the development of the Manual, and both the content and the structure of the Report have profited as a result. They all deserve special gratitude for the devotion and time they spent while actively working on its preparation.

Readmission is a novelty for the Russian Federation, and the Manual could be used as an introductory course. The successful combination of international practice and national experience makes this Manual particularly attractive. On the one hand it explores some theoretical issues of readmission, and on the other examines how readmission and related procedures are applied in practice. As a result, it can be used to train Russian readmission specialists of all levels, as well as to train those involved in more general migration management. Further, given historical and linguistic links, as well as common approaches to the development of legal and regulatory frameworks and the similarity of migration challenges, it is anticipated that the Manual will also be of use in Eastern Europe and Central Asia.

During the development of the Manual particular attention was paid to the need to promote humane and orderly migration, a key element being that migration management should ensure respect for the human rights of migrants. From this point of view, in cases of imminent return of migrants in an irregular situation, the best solution for the migrant, and indeed the State, would be through creating conditions and possibilities for voluntarily return to his/her country of origin. However, for various reasons it is not always possible for a migrant to return voluntarily. In such cases, other – non-voluntary – forms of return are then applied, and they too must respect the human rights of migrants. Readmission provides one such mechanism.

The Manual consists of two Volumes. The analysis of legislative and law enforcement practice forming the basis of the Manual was carried out jointly by specialists of the IOM office in Moscow, the International Migration Law and Legal Affairs Department in Geneva and the FMS of Russia. The sources relied on included national legislation from several European countries and the Russian Federation, as well as texts of various readmission agreements and their implementing protocols.
Volume One of the Manual is divided into two Parts. The first Part covers theoretical, historical and conceptual aspects of the readmission process, as well as relevant international documents. The second Part presents practical information on foreign legal and administrative procedures related to readmission, as well as the related issues of apprehension, detention and return. The main country studies were conducted in Bulgaria, Hungary and Poland, based on their experience before entry into the European Union when, as transit countries, they faced similar challenges to Russia, preparing themselves to implement newly-signed readmission agreements with the countries of “Old Europe”. Importantly, the three selected countries possess a rich experience as a “Requested party” readmitting migrants – including third country nationals – to their territories. To cover other selected aspects of readmission, legislative acts of other European States were also taken into consideration.

Finally, Volume Two of the Manual presents an analysis of the Russian legislation and national procedures pertaining to readmission. It provides recommendations on how to improve the regulatory and institutional framework for activities in this field in order to guarantee, on the one hand the effective implementation of readmission agreements concluded by the Russian Federation, and on the other hand to ensure that the human rights of migrants are safeguarded.

The readmission process is undergoing constant and gradual development in Russia and beyond. New agreements are being concluded, innovative methods of work are being formed, and novel challenges are emerging. Therefore, the Manual should be considered as a “living” tool which may require further refinement and update.

Director General of the International Organization for Migration
William Lacy Swing

Director of the Federal Migration Service
Konstantin Romodanovsky
Вступительное слово

Руководство, которое Вы держите в руках, – это результат тесного и плодотворного сотрудничества Международной организации по миграции и Федеральной миграционной службы. Возникновение идеи подобного издания связано с заключением Российской Соглашения о реадмиссии с Европейским сообществом и необходимостью скорейшего и качественного освоения совершенно нового для страны правового института.

Эта идея получила развитие в рамках совместно реализуемой МОМ и ФМС России Программы «Содействие Правительству Российской Федерации в укреплении административного потенциала и законодательной базы в рамках реализации соглашений о реадмиссии», одним из неотъемлемых компонентов которой и стало написание соответствующих методических рекомендаций практического характера.

После того, как в июне 2007 года Россия приступила к непосредственному выполнению взятых на себя международных обязательств, резко усилилась потребность в подготовке удобного, понятного и доступного методического пособия, которое не только знакомило бы пользователя с основными понятиями института реадмиссии, но и давало бы возможность сразу применять полученные знания на практике.

К настоящему моменту у России уже накоплен обширный опыт реализации соглашений о реадмиссии с ЕС, что дало возможность при подготовке пособия использовать не только международную практику и потенциал МОМ, но и российские реалии. В совокупности это позволило придать Руководству уникальность за счет фокусирования на тех аспектах реадмиссии, которые характеризуются национальной спецификой и учитывают особенности российской правоприменительной практики.

Вклад МОМ и ФМС России в создание книги трудно переоценить. Был приложен максимум усилий для того, чтобы читатель получил качественный инструмент для получения знаний. К участию в создании пособия были подключены лучшие европейские и российские эксперты и практики, чьи знания и практический опыт легли в основу Руководства. Все они заслуживают особой благодарности за то, что приняли активное участие в его подготовке.

Понятие реадмиссии сравнительно ново для Российской Федерации, и в этой связи Руководство может использоваться в качестве вводного курса. Удачное сочетание международной практики и национального опыта, а также теоретических аспектов реадмиссии и их применения на практике, делает пособие особенно привлекательным и позволяет его использовать в целях подготовки и повышения квалификации российских специалистов в области реадмиссии, а в широком плане – и в области миграции в целом.

Кроме того, учитывая исторические и языковые связи, общность подходов к формированию нормативной правовой базы, а также схожесть проблем в миграционной сфере, пособие, как представляется, найдет своего читателя и в целом ряде стран Восточной Европы и Центральной Азии.

При работе над материалом пособия особое внимание уделялось базовому принципу гуманной миграции, что предполагает управление миграцией, в первую очередь, с позиций защиты прав человека. С этой точки зрения наиболее прогрессивным способом возвращения мигранта с неурегулированным правовым статусом, как для самого мигранта, так и для государства, является создание условий для принятия им осмысленного и мотивированного решения о добровольном выезде в государство своего гражданства.

Однако хорошо известно, что в силу разных причин такой процесс происходит не всегда. И тогда применяются иные – недобровольные – механизмы возвращения, которые, тем не менее, должны соответствовать тому же базовому принципу гуманной миграции и уважения прав человека. Реадмиссия как раз и представляет собой современный механизм возвращения мигрантов, отвечающий названным принципам.
Руководство структурно состоит из двух томов. Анализ законодательства и правоприменительной практики, результаты которого положены в основу Руководства, был проведен совместно специалистами Бюро МОМ в Москве, отдела международного миграционного права Бюро МОМ в Женеве и ФМС России. Используемые в Руководстве источники включают национальные законодательные акты ряда европейских стран и Российской Федерации, тексты различных соглашений о реадмиссии и исполнительных протоколов.

Первый том Руководства включает в себя две части. В первой освещаются теоретические, исторические и концептуальные аспекты института реадмиссии и соответствующих международных соглашений. Во второй части в систематизированном виде представлена практическая информация по зарубежным правовым и исполнительным процедурам в области реадмиссии и таким смежным вопросам, как возвращение, задержание, арест и прочее. Основные исследования проводились в Болгарии, Венгрии и Польше, которые были выбраны с учетом имевшегося у них опыта до вступления в ЕС. Будучи транзитными странами для мигрантов, они сталкивались с теми же проблемами, что и Россия при подготовке к выполнению соглашений о реадмиссии. В отличие от стран «Старой Европы», которые для нерегулярных мигрантов играют в основном роль конечных пунктов назначения и, таким образом, обычно оказываются запрашивающей стороной в процессе реадмиссии, три выбранные страны обладают богатым опытом в качестве запрашиваемых сторон, которые принимают граждан третьих стран. По отдельным темам, изучалось законодательство целого ряда других европейских государств.

Наконец, во втором томе предпринят анализ российского законодательства и процедур, относящихся к реадмиссии, предложены рекомендации по дальнейшему совершенствованию нормативной правовой и организационной основы деятельности в данной области, дабы гарантировать эффективное выполнение заключенных Российской Федерацией соглашений о реадмиссии и обеспечить при этом соблюдение прав человека.

Институт реадмиссии находится в постоянном постепенном развитии, как в России, так и в мире в целом: заключаются новые соглашения, формируются новые методы работы, выявляются новые сложности в правоприменительной практике. В связи с этим данное Руководство следует рассматривать как живой инструмент, который может требовать периодического обновления и дополнения.

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### Abbreviations used in the Manual

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACP</td>
<td>The African, Caribbean and Pacific Group of States</td>
</tr>
<tr>
<td>AFIS</td>
<td>Automated Fingerprint (Dactyloscopic) Identification System</td>
</tr>
<tr>
<td>AVR</td>
<td>Assisted Voluntary Return</td>
</tr>
<tr>
<td>Benelux</td>
<td>Belgium, Netherlands and Luxembourg</td>
</tr>
<tr>
<td>CPT</td>
<td>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>Eurodac</td>
<td>European Dactyloscopic System for comparison of fingerprints of asylum seekers</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>IGC</td>
<td>Intergovernmental Consultations on Migration, Asylum and Refugees</td>
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<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
</tr>
<tr>
<td>MIA&amp;A</td>
<td>Ministry of Internal Affairs and Administration of Poland</td>
</tr>
<tr>
<td>MLSP</td>
<td>Ministry of Labour and Social Policy of Bulgaria</td>
</tr>
<tr>
<td>MoI</td>
<td>Ministry of the Interior</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
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<tr>
<td>OIN</td>
<td>Office of Immigration and Nationality</td>
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<tr>
<td>SIS</td>
<td>Schengen Information System</td>
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<tr>
<td>VIS</td>
<td>Visa Information System</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
</tbody>
</table>
Part 1.
General Concept of Readmission
1.1. Readmission in the European Union acquis

In the EU acquis in the area of Justice, Freedom and Security¹, readmission is defined as an “act by a state accepting the re-entry of an individual (own nationals, foreign nationals or stateless persons), who has been found illegally entering to, being present in or residing in another state”. A readmission agreement is an “agreement setting out reciprocal obligations on the Contracting Parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the Requesting State”. These definitions are based on those proposed in the European Commission Green Paper on a Community Return Policy on Illegal Residents².

These definitions, as well as the texts of the abovementioned documents, indicate that readmission and return are not interchangeable notions, but two elements of one process (that is, the return process) where, on the basis of an agreement, one State is returning a person and another State readmits this person. Following the terminology used in the EU acquis, the admission by the Requested State of its own or foreign nationals is covered by the term readmission, while the repatriation of a person by the Requesting State is covered by the term return throughout this Manual.

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¹ The EU acquis can be found at http://ec.europa.eu/justice_home/doc_centre/intro/docs/jha_acquis_1107_en.pdf; last accessed in April 2009.
³ COM(2002) 175 final, 10 April 2002. Readmission agreement is referred to as an “agreement setting out the practical procedures and modes of transportation for the return and readmission by the Contracting Parties of persons illegally residing in the territory of one of the Contracting Parties. Readmission itself is defined as a “decision by a receiving state on the re-entry of an individual".
1.2. Aims and objectives of readmission agreements

In the preambles of various readmission agreements, the aim of readmission agreements can be defined as follows:

- to establish... rapid and effective procedures for the identification and return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of [the Parties].
- to establish mutually agreed provisions governing the return and readmission of [nationals of the Parties] residing illegally in the territory of the other Contracting Party... for use by the competent authorities on the basis of their respective domestic laws and existing bilateral international obligations.
- to facilitate readmission of persons in irregular situations in the spirit of cooperation on the basis of reciprocity.
- establish the basis which permits ordinary and safe return of the migrants apprehended in the territory [of the Contracting Party].
- giving effect to principles and norms agreed by the Parties, which regulate the transfer, admission and return of the persons who stay in the territories of the Parties in a breach of the acting rules of entry, exit and stay of the foreigners and stateless persons.

To summarize the above definitions, the aim of a readmission agreement is to facilitate the return of non-nationals who do not have legal grounds to stay in the territory of a State, to the State they originated from or transited through, by addressing the procedures of return, and to formalize the effective return process and to prevent the occurrence of difficulties in this field.

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5 Germany and Bulgaria: Agreement concerning the re admission of German and Bulgarian nationals of 9 September 1994.
6 Agreement between Spain and Romania related to the readmission of persons in irregular situations of 29 April 1996; Agreement between the Contracting Parties of the Schengen Agreement and Poland related to the readmission of persons in an irregular situation of 29 March 1991.
7 Acuerdo entre el Ministerio de Gobernación de la Republica de El Salvador y la Secretaria de Gobernación de los Estados Unidos mexicanos para la repatriación ordenada, ágil y segura de migrantes salvadoreños vía terrestre desde México de 17 Mayo 2005.
Normal removal procedures may be hampered by a lack of cooperation from the country of origin of the person to be removed. When there is a readmission agreement, the country of return works under the obligations accepted in that agreement, within defined time limits for the procedure, through the institutions/authorities/agencies responsible for its implementation and with all the technical aspects regulated. In doing so, it contributes to a quicker, and often more humane, implementation of the removal. This means that the competent authorities of the Requested State (which are not only the consular offices, but also and especially the specifically appointed national agency) have an obligation to provide the person in question with the necessary documents to enable his/her readmission within a relatively short timeframe. This is not the case in forced removal procedures between States that are not party to a readmission agreement, where consular authorities do not have time limits for issuing the documents. Moreover, in the case of the readmission of third-country nationals, the Requesting State does not have to identify the person to be readmitted. It is sufficient to prove that the person has come from the territory of the Requested State (that is, the person transited through the territory) and that the return complies with the preconditions for readmission. The duty to identify a person and remove him/her to the country of origin (if possible) rests with the Requested State.
1.3. Readmission and international law

The individual right to leave any country and return to one’s country of origin can be found, inter alia, in the following international instruments:

- Article 13 (2) of the Universal Declaration of Human Rights of 1948 provides for the following: “Everyone has the right to leave any country, including his own, and to return to his country.”
- Article 12(4) of the International Covenant on Civil and Political Rights of 1966 states: “No one shall arbitrarily be deprived of the right to enter his own country.”
- Article 5 (d) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 states: “States Parties undertake... to guarantee the right of everyone... to leave any country, including one’s own, and to return to one's country.”

The state of nationality cannot put any limitation on return of its nationals under international law. The human right to return to the country of nationality should therefore be seen as an absolute right.\(^9\)

A difference however exists between a) admission and b) readmission of a state’s own nationals. By admitting a national a state responds to the person’s individual claim to meet the human right to return to one’s own country by an obligation to accept this person. In case of readmission, i.e. under an instrument of forced return, the will of the person is lacking and a state instead is facing an international right of another state to expel a non-national. The right to remove non-nationals from a territory (subject to limitations set by international human rights law, such as the principle of non-refoulment) is a sovereign power of the state in the management of migration and, indeed, constitutes a principle of customary international law with the states’ practice on this matter being extensive and uniform. In order for the right of a state to expel non-nationals to be effective, there must be another state which has an obligation to accept the expelled person. The obligation to accept the return of a person is linked to the issue of nationality: therefore, only the State whose nationality the person possesses is obliged to receive him/her.

The question of whether the state has an obligation to readmit its national is not addressed explicitly in international law. It is, hence, a corollary of the right of a State to remove non-nationals. The obligation of a state to readmit its nationals on the ground of the claim from another state is provided for mostly in bilateral readmission agreements; however, an obligation to readmit is not dependent on the existence of a readmission agreement.

\(^9\) Human Rights Committee, CCPR/C/21/Rev.1/Add.9, CCPR General comment 27, 2 November 1999, para 21: In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.
1.4. Evolution of readmission agreements

The first bilateral readmission agreements were concluded between Western European countries after the Second World War.

It is interesting to note that these were predominantly between bordering States, such as the bilateral agreements between the Benelux (Belgium, Netherlands and Luxembourg) countries (acting as one entity), Germany and France.

In 1957, the first multilateral agreements on border controls, which included readmission provisions, were concluded. For example, the Convention on the Waiver of Passport Control at the Intra-Nordic Borders. In 1960, the same type of agreements were concluded between the Benelux countries.

In the 1970s, no readmission agreements were concluded. In the 1980s, the process intensified, and the “second generation” of readmission agreements appeared. These agreements introduced more flexible provisions compared with those of earlier agreements; for example, the presumption of nationality and not only formal proof thereof, readmission obligations arising through irregular stay and not just irregular entry, and time limits for readmission requests beginning on the “discovery” and not on the “entry” of a person.

In the 1990s the EC model has been developed for Member States to follow when negotiating bilateral readmission agreements. Here the concept of readmitting foreign nationals (who transited through the Requested State) found its way into the readmission agreements.

There were 12 readmission agreements concluded between 1950 and 1970; no readmission agreements were concluded between 1970 and 1980; two readmission agreements were concluded between 1980 and 1990; 124 were concluded between 1990 and 2000; and 79 readmission agreements were concluded between 2000 and 2006 (see figure). The greatest number of agreements were signed by Switzerland (63), Germany (51) and the Netherlands (47).

Figure 1. Evolution of readmission agreements

1.5. Evolution of the concept of readmission in the European Union

Since 1999, when the Amsterdam Treaty took effect\textsuperscript{11}, the European Union is acting on behalf of its Member States in signing readmission agreements with the third countries. The EU involvement into readmission issues, however, began before 1999. On 30 November 1994, the Council of the European Union adopted the Recommendation concerning a specimen bilateral readmission agreement between a Member State and a third country\textsuperscript{12}. This specimen readmission agreement – in effect since 1 January 1995 – is used flexibly by Member States and can be adapted to the particular needs of the Contracting Parties.

This document serves as a basis for negotiations with third countries on the conclusion of readmission agreements for the readmission of persons (own and third-country nationals) in an irregular situation in the territories of the Contracting States, such as persons who do not, or no longer, fulfil the conditions for entry or residence. It also serves to facilitate the transit of persons in a spirit of cooperation and on the basis of reciprocity.

Following the adoption of the Recommendation concerning a specimen bilateral agreement of 30 November 1994, as a second step, the Council adopted the Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements\textsuperscript{13}. The guiding principles aim to serve as a basis for negotiations with third countries when drawing up protocols that accompany readmission agreements and lay down technical details for their implementation\textsuperscript{14}.


\textsuperscript{12} Official Journal of the European Union C 274, 19/09/1996, p.20-24. This was a legally non-binding measure adopted under the intergovernmental cooperation provisions on immigration and asylum of the Maastricht Treaty (i.e. before the EU gained competence to adopt legally binding measures in this field by way of the amendments introduced by the Amsterdam Treaty).

\textsuperscript{13} Official Journal C 274 , 19/09/1996 P. 25-33

\textsuperscript{14} A readmission agreement draws up the general framework, principles and obligations. An implementation protocol deals with the pragmatic and practical side of the agreement; it is the “operators’ manual” of a readmission agreement.
With the entry into force of the Amsterdam Treaty on 1 May 1999, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen Convention\textsuperscript{15} that had been adopted earlier, immediately applied to the EU Member States, according to the provisions of Art. 2.1 of the Protocol integrating the Schengen acquis into the framework of the European Union\textsuperscript{16}. From that date onwards, the Council itself replaced the Executive Committee. As a result, the Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence\textsuperscript{17} within the framework of readmission agreements between Schengen States\textsuperscript{18} also became applicable at the EC level. This Decision approves the guiding principles for means of proof and indicative evidence in readmission agreements and recommends the application of such principles to address the problems that appeared when readmission agreements were applied in practice.

On 2 December 1999 the Council Decision to include standard readmission clauses in all Community agreements and in agreements between the European Community, its Member States and third countries has been adopted\textsuperscript{19}.

\textbf{A Cotonou Agreement of 2000 between the EC and the African, Caribbean and Pacific group of states (ACP), in Art. 13(5)(c) provides an example of such clause\textsuperscript{20}.}

\begin{flushright}
\textsuperscript{15} The Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990, Official Journal of the European Union L 239, 22/09/2000, p.19-62. The five states named in the title of the Convention were its initial signatories. Later on most of the Member States of the European Union joined the Schengen Convention. Today Schengen cooperation includes 26 countries, namely 22 EU Member States: Austria, Belgium, the Czech Republic, Denmark, Estonia, Germany, Greece, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Finland, Slovakia, Slovenia, Spain and Sweden, and 3 non-EU countries: Iceland, Norway, and Switzerland. Out of 5 remaining EU Member States Ireland and the United Kingdom opted out from most areas of Schengen cooperation while Bulgaria, Cyprus and Romania are not yet fully included into the Schengen area and checks are still carried out at their borders.
\end{flushright}

\begin{flushright}
\textsuperscript{16} Official Journal of the European Union C 340, 10/11/1997, p. 93
\end{flushright}

\begin{flushright}
\textsuperscript{17} Also known as “prima facie evidence” in the texts of readmission agreements and implementation protocols.
\end{flushright}

\begin{flushright}
\textsuperscript{18} SCH/Com-ex (97) 39 rev.
\end{flushright}

\begin{flushright}
\textsuperscript{19} The text of the decision can be found here: \url{http://register.consilium.eu.int/pdf/en/99/st13/13409en9.pdf}. The link last accessed on August 2009.
\end{flushright}

\begin{flushright}
\textsuperscript{20} Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part, signed in Cotonou, Benin on 23 June 2000. The revised Cotonou Agreement can be found at \url{http://ec.europa.eu/development/icenter/repository/Cotonou_EN_2006_en.pdf} last accessed on August 2009. Art. 13(5)(c) of the Cotonou Agreement reads as follows:
\end{flushright}

\begin{itemize}
  
  \item[i)] each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State’s request and without further formalities;
  
  \item[ii)] each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State’s request and without further formalities.

The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes.

at the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return. Adequate assistance to implement these agreements will be provided to the ACP States.
After the Treaty of Amsterdam came into force, EC objectives relating to immigration policy, including the return of irregular residents\textsuperscript{21}, also fell within the competence of the EC and authorized the Community to conclude readmission agreements with third countries\textsuperscript{22}.

On 16 December 2008, the Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying foreign nationals (Returns Directive) was adopted\textsuperscript{23}. In the preamble, the need to conclude EC and bilateral agreements of EU Member States with third countries is underlined (paragraph 7). In Article 3.3, a definition of return includes “a foreign national going back...to a country of transit in accordance with Community or bilateral readmission agreements”. This means that, in the EU, readmission is perceived as one of the ways to implement the return decision, as mentioned above.

The Returns Directive contains important provisions on return and on the detention of persons awaiting removal from the territory of a country, which in most of the EU Member States would also apply to readmission procedures.

\textsuperscript{21} Article 63(3)(a) of the Consolidated Version of the Treaty Establishing the European Community.

\textsuperscript{22} As of August 2009, 11 EC readmission agreements with the following third countries have entered into force: Hong Kong SAR, Macao SAR, Sri Lanka, Albania, Russia, Ukraine, Serbia, Montenegro, FYROM, Bosnia, and Moldova. Agreement with Pakistan has been agreed but not yet entered into force. Negotiations are under way with 6 countries: Algeria, Morocco, Turkey, China, Georgia, and Cape Verde.

1.6. Types of readmission agreements

There are some readmission agreements that concern only nationals of the Contracting States, and some that also include foreign nationals and stateless persons.

Most readmission agreements are bilateral. Bilateral readmission agreements and their implementing protocols usually define the conditions for the readmission of persons who fall under the readmission agreement, the responsible/competent agencies, the time limits for applying for readmission and for the response to it, the border crossing points for the transfer of readmitted persons, the rules governing escort, the payment of resulting costs and the rules for transit through the territory of the Contracting Parties.

Multilateral readmission agreements are much less common than bilateral agreements. The main difference between them is that multilateral readmission agreements are usually less detailed than bilateral ones, taking into account the complex nature of negotiation processes when numerous parties are involved. For multilateral agreements, the details are specified in bilateral implementing protocols.

An example of a multilateral readmission agreement is the agreement between Poland and the Schengen States of 29 March 1991. Readmission agreements of the EC with third countries can also be partly viewed as multilateral. Despite the presence of only two signing parties (the EC and a third country), the implementation is carried out by each Member State individually, and the implementing protocols are signed between the third State and each of the Member States.

There are so-called “agreements on the transfer-reception of persons”, which are sometimes regarded as readmission agreements, but have some important differences. The agreements on the transfer-reception of persons are generally concluded between bordering States and regulate the transfer of persons who do not or no longer fulfil the conditions necessary for entry or stay in the territory of the Contracting Parties. What differs from the standard readmission agreements are the time limits for the transfer. A foreign national who crossed the border of the Requesting State without authorization, can be transferred within 48 hours to the border authorities of the Requested State without any preliminary application or formalities (known as a ‘form-less transfer’). In cases when it is not possible to transfer the person within 48 hours, there should be an application directed by the Requesting State to the Requested State normally no later than 90 days (this delay can differ from one agreement to another) after the irregular crossing of the border by the person in question. The standard readmission agreement provides for longer or even unlimited (usually concerning nationals of the Contracting Parties) timeframes for submission of the application for readmission.

As immigration is an important issue for the EC, it introduced the practice of inserting readmission clauses into agreements on cooperation or economic relations, which by themselves do not deal with migration. An example of such a clause is Article 13(5)(c), of the Cotonou Agreement described above. Such clause however does not provide for any detailed regulation of its implementation, its practical impact therefore is questionable.
1.7. Advantages and disadvantages of readmission agreements

<table>
<thead>
<tr>
<th>General advantages of readmission agreements</th>
<th>General disadvantages of readmission agreements</th>
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</thead>
<tbody>
<tr>
<td>• set out legally binding obligations and rights of the Contracting Parties, which contributes to the effectiveness of the readmission procedure and process</td>
<td>• country of transit should have readmission agreements with the countries of origin of readmitted foreign nationals to be ready to return them</td>
</tr>
<tr>
<td>• accelerate the process of return by determining procedures and documents needed for the entry of a person to the territory of the Requested State</td>
<td>• can be more difficult to identify the readmitted person in the Requested State than in the Requesting State, where the person was apprehended</td>
</tr>
<tr>
<td>• set out time limits/delays</td>
<td>• wide introduction of readmission agreements can diminish the will of the countries of origin to accept and identify their nationals without a formal agreement</td>
</tr>
<tr>
<td>• set out details of the readmission procedure/process</td>
<td>• some newly introduced provisions in readmission agreements can be less efficient than previously set practices between the States</td>
</tr>
<tr>
<td>• set out institutions/agencies/competent authorities responsible for carrying out the readmission agreement between the Parties</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Advantages of bilateral readmission agreements</th>
<th>Disadvantages of bilateral readmission agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>• easier and faster negotiation process (compared with multilateral agreements)</td>
<td>• individual countries may find themselves in a weaker negotiating position than would several States acting as a group</td>
</tr>
<tr>
<td>• easier to implement as the authorities of only two countries are involved</td>
<td>• considerable resources need to be allocated each time for each bilateral negotiation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Advantages of multilateral readmission agreements</th>
<th>Disadvantages of multilateral readmission agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>• negotiating position can be improved when more countries join together and are represented as one</td>
<td>• may be conflicts of interest between the countries involved, which can extend the negotiation process</td>
</tr>
<tr>
<td>• risk of being met with cross demands, such as visa exemption or financial aid, can be reduced</td>
<td>• detailed rules for implementation should be set separately between the countries, which means many more bilateral negotiations</td>
</tr>
<tr>
<td>• fewer, more unified rules instead of many different provisions for many bilateral agreements</td>
<td>• negotiations on the conclusion of multilateral agreements involve the risk that decisions of return cannot be initiated for a transitional period</td>
</tr>
</tbody>
</table>

Source: Information is based on Intergovernmental Consultations on Migration, Asylum and Refugees, "IGC report on readmission agreements, intergovernmental consultations on asylum, refugee and migration policies in Europe, North America and Australia", December 2006 (unpublished).
1.8. Contents of readmission agreements

1.8.1. Persons subject to readmission

Most readmission agreements concern persons (the nationals of Contracting Parties, foreign nationals and stateless persons) who do not or no longer fulfil the conditions for entry to, presence or residence in, the territory of the Requesting State. Such a provision creates three categories of persons who can potentially be subject to readmission:

- persons who entered the territory without authorization;
- persons who entered the territory legally and remained there without authorization (for example, entered on a short-term visa and overstayed);
- persons who entered and stayed legally but who do not have legal grounds to remain in the country on long-term basis (for example, possessed a residence permit which was not renewed or was withdrawn).

It should be stressed that persons falling into the second and third categories can by returned to the Requested State only if they have a legal status there at the time of the request. This means that the nationals of a Requested State can always be returned while, foreign nationals and stateless persons can be returned to the Requested State only if they still have a valid visa or residence permit issued by the Requested State. If a person entered the Requesting State with a valid visa or residence permit issued by the Requested State but this visa/permit has expired at the time of the readmission request, the readmission requirement would no longer be applicable according to most readmission agreements. Also, readmission cannot be applied to persons who enjoyed a visa-free regime in the Requesting State.

Some readmission agreements have special provisions for the readmission of persons with disabilities, unaccompanied minors and persons who belong to vulnerable groups, and have safeguards regarding the preservation of family unity during readmission.\(^\text{25}\)

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\(^{25}\) See, for example, Acuerdo entre el Ministerio de Gobernación de la Republica de El Salvador y la Secretaria de Gobernación de los Estados Unidos mexicanos para la repatriación ordenada, ágil y segura de migrantes salvadoreños vía terrestre desde México de 17 Mayo 2005.
There are several exceptions to the obligation to readmit by the Requested Party. EC readmission agreements provide for three such exceptions:

- the person did not leave the transit zone of the Requested State;
- the person was issued a visa or residence authorization by the Requesting State (this exception does not apply if the person possesses a visa or residence permit of the Requested State that has a longer period of validity than the one issued by the Requesting State, and remains valid at the time of submission of application for readmission);
- the person did not need a visa to enter the territory of the Requesting State.

It should be noted that the EC readmission agreements exclude the possibility of using fraudulent documents as proof for grounds for readmission.

Some readmission agreements provide additional exceptions. For instance, the agreement between Austria and Poland has five exceptions. In addition to the second and third grounds listed above, it excludes the possibility of the readmission of persons who:
- obtained a visa for a third State after having left the territory of the Requested State and before entering the territory of the Requesting State; or were smuggled to the territory of the Requesting State or, who received a visa of the Requesting State by submitting fraudulent documents;
- were granted refugee status in the Requesting State according to the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees;
- are a foreign national or stateless person and possess a residence permit or can otherwise be returned to the territory of a third State bordering the Requesting State or located between the territories of the contracting States.

The readmission agreement between Chile and France also excludes the possibility of readmission if the foreign national can be returned to his/her country of origin bordering either of the Contracting States. This agreement adds other excluding grounds: a person cannot be readmitted after having resided more than six months in the territory of the Requesting State, or if s/he had previously been sent back to their country of origin or another third country by the Requested State.

Although readmission agreements do not specifically address the status of asylum seekers or persons otherwise in need of international protection, the national law of each country should have provisions regulating their status. These persons should not be removed within the framework of the readmission process until their claims are processed by the relevant national authorities in the Requesting State and their status is determined. The EC readmission agreements with third countries contain the following clause in the preamble:

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26 The term *fraudulent document* covers every possible kind of document fraud: forgery, using stolen blank documents and so forth.
27 Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Federalnym Republiki Austrii o przyjmowaniu osób przebywających bez zezwolenia, podpisana w Wiedniu dnia 10 czerwca 2002 r.
28 Accord entre le Gouvernement de la République du Chili et le Gouvernement de la République Français relatif a la réadmission des personnes en situation irrégulière de 23 June 1995
29 It is an obligation of a State to grant asylum seekers permission to enter and temporary permission to remain for the duration of the examination of their request. Refused asylum seekers (whatever the grounds for refusal may be) are no longer considered to be asylum seekers, but irregular migrants who do not have legal grounds to remain in the territory of the State.
...Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States of the European Union and [the third country in question] arising from International Law and, in particular, from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, the International Covenant on Civil and Political Rights of 19 January 1966, and international instruments on extradition.

The documents to which the agreement refers may vary from agreement to agreement.

For example, the readmission agreement between the EC and the Russian Federation\(^3\) mentions the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but does not refer to any international instruments on extradition.

It should also be noted that, when considering the removal of aliens from its territory, including by means of readmission procedures, the EU Member States should take into account the provisions of the EU acquis, including inter alia, the Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion\(^3\). This Recommendation states that, without prejudice to Community law, the policies and practice of Member States with regard to removal should be fully consistent with their obligations under the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, as well as other relevant international instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. It also states that the general rule should be that, unless there are compelling reasons, normally of a humanitarian nature, for allowing them to remain, persons should be expelled if they are found: a) to have entered or remained unlawfully in Member States (where their stay has not been regularized); b) to be liable to removal on grounds of public policy\(^3\) or national security; or c) to have failed definitively in an application for asylum and to have no other claim to remain.

The above exceptions concern only foreign nationals and stateless persons, and not nationals of the Contracting Parties. Some readmission agreements do not provide for any exceptions.

\(^{30}\) Agreement between the European Community and the Russian Federation on readmission of 25 May 2006
\(^{31}\) SN 4678/92, WG I 1266) Chapter I, Articles 1 and 2
\(^{32}\) This wording is the translation of the French "Ordre Public", essentially meaning public safety and tranquility. There is no legal definition of this important notion.
1.8.3. Evidence regarding nationality or entry

Readmission agreements usually contain provisions on the proof of the nationality of persons subject to readmission or, in the case of foreign nationals and stateless persons, proof of their entry/travel from the territory of the Requested State and the existence of grounds for readmission.

The number of grounds sufficient to prove the nationality of a person varies, for example there are three in the readmission agreement between Chile and France; five in EC agreements with third countries, the Ukraine-Poland agreement, and the Spain-Romania agreement; seven in the agreement between Germany and Bulgaria; and eight in the implementing protocol between Germany and Poland.

The following are the most common grounds for proof of nationality:

- passports (ordinary, diplomatic or official duty, passport substitutes);
- personal identity cards/documents;
- provisional identity cards/papers;
- military passes and certificates;
- certificates of nationality;
- documents that give the right to cross the State border between the Contracting Parties by the nationals of the Parties, resident foreign nationals or stateless persons;
- children’s identity documents in lieu of a passport;
- documents of consular registration.

Table 1 provides further grounds for proof of nationality as set in different readmission agreements. Those grounds which are not listed above are only found in individual readmission agreements and are not a common practice.

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33 Acuerdo entre España y Rumania relativo a la readmisión de personas en situación irregular de 29 de abril 1996
34 Спогодба между Правителството на Република България и Правителството на Федерална Република Германия за обратно приемане и транзитиране на лица (спогодба за реадмисия), 1 февруари 2006 г.
### Table 1

**Evidence considered proof of nationality**

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<tr>
<td><strong>Passports</strong></td>
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<td><strong>Personal identity cards/documents</strong></td>
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<td><strong>Provisional identity cards/papers</strong></td>
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<td><strong>Military passes and certificates</strong></td>
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<td><strong>Certificates of a sailor or captain, passport of a sailor</strong></td>
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<td><strong>Certificates of nationality</strong></td>
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<td><strong>Documents on civil status</strong></td>
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<td><strong>Statements by official authorities</strong></td>
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<tr>
<td><strong>Documents that certify nationality and other official documents that mention nationality</strong></td>
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<td><strong>Any documents that give the right to cross the State border between the Contracting Parties by the nationals of the Parties, resident foreign nationals or stateless persons</strong></td>
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<td><strong>Any documents issued by the competent national authorities that contain elements for identification of the person</strong></td>
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<td><strong>Factual data that prove nationality or fact of residence of a person</strong></td>
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<tr>
<td><strong>Children’s identity documents in lieu of a passport</strong></td>
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<tr>
<td><strong>Unambiguous information from official sources</strong></td>
<td>+</td>
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</tr>
</tbody>
</table>

36 In practice, however, a person does not need to be a national of the country to receive a passport of a sailor, which signifies only that the passport holder is a crew member of a vessel bearing the flag of a certain State. Such a person might not ever have been in the country issuing this kind of passport.
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<tbody>
<tr>
<td>Bulgaria</td>
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<td>Germany</td>
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<tr>
<td>Ireland</td>
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<td>Italy</td>
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<td>Poland</td>
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<tr>
<td>Portugal</td>
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<tr>
<td>Romania</td>
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<tr>
<td>Russian Federation</td>
<td></td>
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<tr>
<td>Switzerland</td>
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<td>+</td>
</tr>
</tbody>
</table>

37 These are documents in lieu of national passports or identity cards, usually given to nationals whose documents had been stolen or lost abroad, to enable them to return to their national territory (for example, a laissez-passer, emergency passport, replacement passport, emergency travel document or one-way travel document). These documents specifically state the nationality/citizenship of the person to whom they are issued, as they can also be granted to foreign nationals (if residing legally in the country to which they wish to return to).
In some readmission agreements, some of the grounds for proof of nationality listed above can be treated as grounds for presumption of nationality.

For example, in the Germany-Poland implementing protocol, a statement by the official of the Requested State is regarded as proof of nationality, but in the Spain-Romania agreement, it is viewed as grounds for presumption and not as proof. The same is the case for the certificate of a sailor.

If any of the documents that are defined in the applicable agreement as proof of a person’s nationality are available, the Requested Party is obliged to admit that person without further investigation. Nationality will be considered proven unless the Requested Party proves the opposite.

If proof of nationality is not available, nationality can be presumed (Table 2) on certain grounds. The number of such grounds also varies in the different readmission agreements, but, most commonly, nationality can be presumed from the following:

- expired documents listed as proof of nationality;
- copies of documents listed as proof of nationality;
- driving licenses or copies thereof;
- birth certificates or copies thereof;
- company employee identity cards or copies thereof;
- testimonies of witnesses;
- language tests;
- social insurance certificates;
- any other document that can be useful in establishing nationality of a person;
- particulars supplied by the person concerned;
- documents issued by authorities of the Requested State that show the identity of the person concerned;
- official statements by the person concerned in judicial or administrative proceedings;
- expired authorization documents of residency;
- military cards/documents;
- official statements made for the purpose of an accelerated procedure, in particular, by border authority staff and witnesses who can testify to the person concerned crossing the border;
- any other official document issued by the authorities of the Requested State.

More detailed list of the grounds for presumption of nationality, including those which are only referred to in one agreement are listed in Table 2.

---

38 The term ‘presumption of nationality’ is used as a general term. In some Readmission Agreements (e.g. in EU-RF Readmission Agreement) it can be referred to as – ‘indirect evidence of nationality’.
Table 2

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Expired documents listed as proof of nationality</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<td></td>
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</tr>
<tr>
<td>Copies of the documents listed as proof of nationality</td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving licenses or copies thereof</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
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<tr>
<td>Birth certificates or copies thereof</td>
<td>+</td>
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<td>+</td>
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<tr>
<td>Certificates of civil status</td>
<td></td>
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<td>+</td>
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<tr>
<td>Company employee identity cards</td>
<td>+</td>
<td>+</td>
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<td></td>
<td>+</td>
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<td>+</td>
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<tr>
<td>Testimonies of witnesses</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Language tests</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social insurance certificates</td>
<td>+</td>
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</tr>
<tr>
<td>Extracts from the register of office records</td>
<td></td>
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<td>+</td>
</tr>
<tr>
<td>Any other document that can be useful in establishing nationality of a person</td>
<td></td>
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<td>+</td>
</tr>
<tr>
<td>Documents other than military passes or military identity papers that establish membership in national armed forces</td>
<td>+</td>
<td></td>
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<tr>
<td>Seamen’s registration cards</td>
<td>+</td>
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</tr>
<tr>
<td>Particulars supplied by the person concerned</td>
<td>+</td>
<td>+</td>
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<tr>
<td>Documents issued by State authorities of the Requested State that show the identity of the person concerned</td>
<td></td>
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<tr>
<td>Official statements by the person concerned in judicial or administrative proceedings</td>
<td></td>
<td></td>
<td></td>
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<td>+</td>
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<tr>
<td>Expired authorization documents of residency</td>
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<tr>
<td>Military cards/documents</td>
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</tr>
<tr>
<td>Bulgaria-Germany</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
<td></td>
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<tr>
<td>Germany-Poland</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
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<tr>
<td>Chile-France</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>Spain-Romania</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
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<tr>
<td>El Salvador-France</td>
<td>✔️</td>
<td>✔️</td>
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<tr>
<td>EC-Russia-Ukraine</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td></td>
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</tr>
</tbody>
</table>

Official statements made for the purpose of the accelerated procedure, in particular, by border authority staff and witnesses who can testify to the person concerned crossing the border

Any other official document issued by the authorities of the Requested State

Some agreements do not have an exhaustive list, providing that other proof of nationality may also be used.

In the case of a presumption of nationality, the Requested State may carry out an investigation, for which there may be a time limit. If, within the time limit, no proof to the contrary is provided, the nationality is considered to be proven.

Entry, as in the case of nationality, can be proven or presumed. The following may be considered proof of entry (Table 3):

- visa and/or residence authorization issued by the Requested State;
- entry/departure stamps made by the border control authorities of the Requested State, previous entries made in the person’s passport by the authorities of the State, or other evidence of entry/departure (for example, photographic, electronic or biometric evidence);
- statements by border guard officials who can prove the border crossing of the person in question from the Requested State to the Requesting State;
- air or any other transport tickets (such as boarding cards) with the name of the passenger and the route (some treaties view this only as a presumption of entry, not proof);
- passenger lists of the carriers proving the travel/itinerary of the person from the Requested State to the Requesting State (some treaties view this only as a presumption of entry, not proof);
- documents of an official nature, such as hospital in-patient and/or out-patient documents, that clearly show that the person was present in the Requested State;
- documents, certificates or bills of any kind (for example, hotel bills, appointment cards for doctors/dentists, entry or membership cards for public/private institutions) that clearly show that the person concerned was in the Requested State;
- information showing that the person concerned used the services of a carrier or travel agency;
- official statements made, in particular by border authority staff or witnesses who can testify that the person crossed the border;
- official statement by the person concerned in judicial or administrative proceedings.
### Proof of entry

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</thead>
<tbody>
<tr>
<td>Valid visa and/or residence authorization issued by the Requested State</td>
<td></td>
<td>+</td>
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<td></td>
<td>+</td>
<td>+</td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Entry/departure stamps made by the border control authorities of the Requested State, or other entries made earlier in the person’s passport by the authorities of the State, other evidence of entry/departure (e.g., photographic, electronic or biometric evidence)</td>
<td>+</td>
<td>+</td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>-</td>
</tr>
<tr>
<td>Statements of border guard officials who can prove the border crossing by the person in question from the Requested State to the Requesting State</td>
<td>+</td>
<td></td>
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<td></td>
<td>+</td>
</tr>
<tr>
<td>Air or other transport tickets with the name of the passenger and the route (some treaties view this only as grounds for presumption)</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Passenger lists of the airline or other carrier that prove travel from the territory of the Requested State to the territory of the Requesting State (some treaties view this only as grounds for presumption)</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Documents, certificates and bills of any kind (e.g., hotel bills, appointment cards for doctors/dentists, entry or membership cards for public/private institutions) that clearly show that the person concerned stayed in the territory of the Requested State</td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documents of an official nature, such as hospital in-patient and outpatient documents, that clearly show the person concerned stayed in the territory of the Requested State</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Information showing that the person concerned used the services of a courier or travel agency</td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official statements made, in particular by border authority staff or witnesses who can testify that the person concerned crossed the border</td>
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</tr>
</tbody>
</table>
The following can serve as indirect evidence of entry, justifying presumption of entry (*Table 4*):

- official statements made for the purpose of the accelerated procedure, in particular by border authority staff and witnesses who can testify that the person crossed the border (in this case, the entry is deemed to be established unless proven otherwise by the Requested State);  
- air, train, coach or boat tickets that name the person and show the presence and the itinerary of the person concerned from the territory of the Requested State to the territory of the Requesting State;  
- passenger lists of air, train, coach or boat passages that show the presence and the itinerary of the person concerned from the territory of the Requested State to the territory of the Requesting State;  
- documents of an unofficial nature, certificates and bills of any kind (for example, hotel bills, appointment cards for doctors/dentists, entry or membership cards for public/private institutions) that clearly show the person concerned stayed in the territory of the Requested State;  
- official statements made, in particular by border authority staff and witnesses who can testify to the person concerned crossing the border;  
- official statement by the person concerned in judicial or administrative proceedings;  
- description of the place where and circumstances under which the person was intercepted in the territory of the Requesting State;  
- information showing that the person concerned used the services of a carrier or travel agency;  
- information related to the identity and/or stay of the person provided by an international organization;  
- reports/confirmation of information by persons such as family members or travelling companions;  
- statement by the person concerned.

Provided one or several of these grounds exist, the Requested Party may begin an appropriate investigation to verify the evidence.
Table 4

Indirect evidence of entry

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</tr>
</thead>
<tbody>
<tr>
<td>Official statements made for the purpose of the accelerated procedure, in particular by border authority staff and witnesses who can testify to the person concerned crossing the border</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air, train, coach or boat tickets with the name of the person that show the presence and itinerary of the person concerned from the territory of the Requested State to the territory of the Requesting State</td>
<td></td>
<td></td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passenger lists of air, train, coach or boat passages that show the presence and itinerary of the person concerned from the territory of the Requested State to the territory of the Requesting State</td>
<td></td>
<td></td>
<td></td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Documents, certificates and bills of any kind (e.g., hotel bills, appointment cards for doctors/dentists, entry or membership cards for public/private institutions) that clearly show the person concerned stayed in the territory of the Requested State</td>
<td>+</td>
<td></td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td>+</td>
</tr>
<tr>
<td>Official statements made, in particular by border authority staff and witnesses who can testify the person crossed the border</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official statement by the person concerned in judicial or administrative proceedings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>+</td>
<td>+</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of place where and circumstances under which the person concerned was intercepted in the territory of the Requesting State</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Information showing that the person concerned used the services of a courier or travel agency</td>
<td></td>
<td></td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Information related to the identity and/or stay of a person provided by an international organization</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>Reports/confirmation of information by persons such as family members or travelling companions</td>
<td></td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
<td>+</td>
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<td>+</td>
</tr>
</tbody>
</table>
### 1.8.4. Time limits for application for readmission and response to application for readmission

It should be noted that, according to EC readmission agreements, if the person subject to readmission has a valid travel or identification document (in the case of nationals of the Requested State) or a valid visa or residence permit (in the case of foreign nationals or stateless persons), such a person can be returned without an application for readmission to the competent authorities of the Requested State. According to some readmission agreements (e.g. between Albania and the EC\(^{39}\)) in such cases the readmission application may be replaced by a written communication.

The readmission agreements which set the time-limit for submission of readmission application within accelerated readmission procedure usually provide for a 48-hour period. Some agreements request notifying the respective authorities of the Requested State about the planned transfer of the person (e.g. implementing protocol between Germany and Poland); some readmission agreements do not provide for preliminary application before the transfer (e.g. agreement between Poland and Ukraine of 1993).

The time limit for replying to the application for readmission in an accelerated procedure is usually two days.

There is also no unified approach concerning the period allowed between finding the fact of irregularity of entry/stay of the person and the application for readmission by the Requesting State or regarding the period between the application for readmission by the Requesting State and the response by the Requested State. These delays vary from several days or weeks to a year or more.

---

\(^{39}\) Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorization of 14 April 2005
For instance, in the readmission agreement between the Russian Federation and Ukraine, the application for readmission should be submitted within ten days from discovering irregularity of entry/stay of a person, in the EC-Russian Federation agreement, this period extends to 180 calendar days, while in the EC-Ukraine readmission agreement, the maximum period is one year. The agreement between Germany and Bulgaria, does not set a maximum period for the submission of the application.

The Polish-Ukrainian agreement is a good example of an essential difference in provisions regarding the time limits for submission of the readmission application between two States and the EC and a third country. While in the agreement between Poland and Ukraine the conditions are easier for the Requested State, that is, if the person is not detected within 90 days the obligation to readmit him/her ceases to exist, in the provisions of the EC agreements, this time limit is either longer (up to one year) or is not specified, which is more advantageous to the Requesting State.

The time-frame for Requested State’s reply to the application for readmission varies from 72 hours (e.g. in the agreement between Poland and Ukraine) to 30 days (in most EC readmission agreements). Some agreements allow, in well-justified cases, the extension of this period to a maximum of 90 days.

If the reply is not provided, the approval for transfer is considered granted and the readmission process can begin.

After the reply has been received, the transfer is to begin within three days to three months, depending on the agreement. If there are obstacles that make it impossible to carry out the transfer, the initial period can be extended. Parties usually should agree to the place and time of transfer a few days in advance (usually three days).
<table>
<thead>
<tr>
<th>Country</th>
<th>Request for readmission</th>
<th>Possible extension for request for readmission</th>
<th>Response to request for readmission</th>
<th>Possible extension for response to request for readmission</th>
<th>Transfer of the person</th>
<th>Possible extension for transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland-Schengen countries 1991</td>
<td>8 days</td>
<td></td>
<td>1 month</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Poland-Ukraine 1993</td>
<td>72 hours</td>
<td></td>
<td>-</td>
<td>On mutual agreement</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Germany-Poland 1994</td>
<td>24 hours</td>
<td>8 days</td>
<td>1 month</td>
<td>48 hours after notification</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Germany-Bulgaria 1994</td>
<td>10 days</td>
<td></td>
<td>-</td>
<td>3 working days</td>
<td>1 month</td>
<td>-</td>
</tr>
<tr>
<td>Spain-Romania 1996</td>
<td>8 days</td>
<td></td>
<td>-</td>
<td>-</td>
<td>30 days</td>
<td>-</td>
</tr>
<tr>
<td>EC-Hong Kong SAR 2004</td>
<td>1 year (after finding irregularity of entry/stay)</td>
<td>Until the obstacles to timely submission cease to exist</td>
<td>- 1 month</td>
<td>-</td>
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<td>Until the obstacles cease to exist</td>
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<td>EC-Macao SAR 2004</td>
<td>1 year (after finding irregularity of entry/stay)</td>
<td>Until the obstacles to timely submission cease to exist</td>
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### Part 1. General Concept of Readmission

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<th>Request for readmission</th>
<th>Possible extension for request for readmission</th>
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<td>EC/the former Yugoslav Republic of Macedonia 2007</td>
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1.8.5. **Transit provisions**

Many of the more recent readmission agreements, including those of the EC with third countries, contain provisions on transit through the territory of the Contracting Party in case of removal of persons who cannot be returned to their countries of origin directly. The transit referred to in readmission agreements usually takes place by air. However, there are agreements (for example, the EC-Russian Federation agreement) that refer also to transit by sea and land.

According to these transit provisions, Contracting Parties are required to notify in advance in writing the details of the transit operation, which should contain the following information:

- type of transit (by air, land or sea)
- intended final destination
- route of transit
- particulars of the person concerned (for example, given name, surname, date of birth, nationality, number and type of travel documents)
- envisaged border crossing points, time of transfer and possible use of escort.

The agreement between EC and the Russian Federation also prescribes that the Requesting State should provide a declaration that a person does not face the risk of being subject to torture, inhuman treatment, punishment, the death penalty, or persecution because of his/her race, religion, nationality, membership of a particular social group or political conviction in the State of destination (the State to which the person is to be removed) or another State of transit (if there are several States through which the transit takes place), as well as assure the onward journey through other States of transit and admission by the country of destination.

The country of transit can refuse the transit on the following grounds:

- if the foreign national or stateless person runs the risk of being subject to torture, inhuman treatment, punishment, the death penalty or of persecution because of his/her race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit;
- if the foreign national or the stateless person shall be subject to criminal prosecution or sanctions in the Requested State or in another State of transit;
- grounds of public health, public security, public order or other national interest of the Requested State.

The request for transit should be answered in writing with confirmation of the details of the transfer or refusal thereof.

If the person in transit cannot for some reason travel further, the Requesting State is obliged to take him/her back without any formalities.

In the case of transit by air, the person and the escort (if any) are visa exempt on condition that they do not leave the airport transit zone (“airside” zone). If an escort is required, the Requested State can consider the possibility of providing the escort itself or in cooperation with the Requesting State.
1.8.6. **Provisions on data protection**

Most readmission agreements contain provisions on the protection of the personal data of the persons returned.

The main principles of data protection usually include:

- personal data may be collected only if necessary for the purposes of the readmission agreement and its operation;
- personal data must be used strictly for the purposes of implementing the objectives of the readmission agreement;
- personal data should be kept no longer than necessary for the purpose for which they were collected;
- personal data can be communicated to a third Party (for a transit operation this means the country of final destination) only with the written consent of the authority communicating these data.

1.8.7. **Provisions on financial matters**

The general rule in readmission agreements is that usually the Requesting Party pays the expenses for readmission up to the border, where the person is transferred to the Requested Party. After the transfer at the border point, i.e. within the territory of the Requested State the expenses are covered by the Requested State.

In case of transit all the expenses are born by the Requesting State.
1.9. Rights and obligations of the Contracting Parties under readmission agreements

Under readmission agreements, the Requesting State usually has the following obligations:

- to prove that there are grounds for readmission (such as the nationality of the person or the fact that the person entered directly from the Requested State);
- to liaise with the competent authorities of the Requested State in order to obtain the necessary travel documents;
- to submit the formal application for readmission and supporting documents/evidence to the Requested State’s competent authorities;
- to notify the Requested State within the timeframe permitted about the transfer of the person and the details of the transfer;
- to transfer the person to the competent authorities of the Requested State;
- to cover the expenses related to the transfer up to the border of the Requested State and to cover all the expenses related to the transit through the territory of the transit country (this depends on the respective agreements);
- to take the person back if the grounds for readmission were found to be non-existent after the transfer of the person to the Requested State;
- to respect the confidentiality of personal data of the transferred person.

The rights of the Requesting State derived from the readmission agreement mean that it can avail itself of the facilitated procedure for returning persons who do not have legal grounds to stay in its territory and obtain cooperation from the Requested State regarding the implementation of the readmission process.

Readmission agreements can impose the following duties on the Requested State:

- to accept to its territory its own nationals, foreign nationals or stateless persons transferred by the Requesting State in accordance to the conditions set in the readmission agreements;
- to issue travel documents to persons returned or transferred by the Requesting State;
- to identify foreign nationals or stateless persons in order to return them to their countries of origin. It should again be noted that the Requesting State is not required to identify the foreign national before the transfer\(^{41}\). It is sufficient to prove that this person is a national of the Requested State or arrived from the territory of the Requested State;
- to reply to the application for readmission within the defined time limits;
- to respect the confidentiality of personal data of the transferred person;
- to allow the transit of the person returned by the Requesting State through its territory.

\(^{41}\) The Requesting State – especially if it is an EU Member State – will grant absolute priority to remove an identified and documented third-country national to his/her country of origin.
Readmission agreements generally confer more obligations than rights to the Requested State. Among it rights, the following should be noted:

- the right to return readmitted persons to the Requesting State when it appears that the grounds for readmission were found to be erroneous after transfer to the Requested State;
- the right to refuse the transit of the persons returned by the Requesting State on the grounds clearly defined in the agreement (see for examples point 9.5 Transit provisions).
Part 2. Foreign Practices on Readmission and Related Areas

Part 2 of this *Manual* provides overview of legislation and practices of three countries, namely Bulgaria, Hungary and Poland, in the area of readmission and some related areas, among others return and detention of foreign nationals and stateless persons in irregular situation.
Part 2. Foreign Practices on Readmission and Related Areas
2.1. Notion of readmission of irregular migrants in national legislation

As a rule, readmission is not defined as a separate concept in the national legislation of European countries.

There are few exceptions from this general rule. For example Portuguese legislation on foreigners. Section V of the Act 23/2007 of 4 July 2007, Legal framework of entry, permanence, exit and removal of foreigners into and out of national territory is dedicated to readmission. Under this Act there is active readmission which means Portugal is the Requesting State, and passive readmission which means Portugal is the Requested State. Article 165, paragraph 4 specifies that, if a readmission request is not accepted by the Requested State, the person is removed according to the standard removal procedure. An entry ban of three years is imposed on the individual removed through the readmission procedure (Article 167).

According to Article 166, a decision on removal can be appealed to the Ministry of the Interior (MoI) by the alien in question within 30 days. The appeal procedure suspends the decision pending the outcome of the appeal.

In passive readmission, Article 168 applies. The action taken against the readmitted persons depends on their legal (immigration) status in Portugal. This means that a readmitted foreign national who does not fulfill the legal conditions to remain is subject to removal. The situation differs for foreign nationals with resident status, who retain their right of residence and free circulation in the EU.

Nevertheless, readmission procedures are similar to ordinary removal procedures and are implemented by the same agency, the Immigration and Border Service.

In Law No. 326 of November 30th, 1999 on the Residence of Aliens in the territory of the Czech Republic and Amendment to Some Acts, 1 January 2000, removal and readmission are also discussed separately. Similar to Portuguese legislation, readmission is treated as a transfer under an international agreement. Also as in Portugal, there are no separate procedures or institutions specifically designated for the purposes of readmission. Police authorities deal with both removal and readmission.
Under Bulgarian legislation, there is also no definition of the readmission mechanism. The law reiterates only the readmission principles – intensive cooperation with the countries of origin or transit and all responsible authorities involved – in order to guarantee a successful return policy regarding irregular migrants. This cooperation concerns various stages and levels of the removal process, such as the selection of the appropriate procedure, assistance from government authorities in obtaining travel documents or receiving medical care. There are a number of legal mechanisms for the removal and extradition of persons wherever strictly defined legal conditions exist. Under Bulgarian law, removal of a foreign national who has infringed the law or lacks grounds to remain in the territory is an executive decision.

In principle, there is no difference between the removal procedures for irregular migrants apprehended in Bulgaria and those for persons readmitted by Bulgaria from a Contracting Party. In both cases, an individual executive decision for the removal is issued. The only difference between removal and readmission is that the arrangements between the Contracting Parties are to be followed in the latter.

In Hungary, Act II of 2007 on the Admission and Right of Residence of Foreign nationals contains the concept of readmission agreements within the Chapter of General Rules Section 2 point i): “Readmission agreement’ shall mean an international convention relating to the procedure for the transfer of persons at state borders and for the transportation or transit of such persons under official escort.” Section 48 suggests that: “Removals shall be carried out primarily in accordance with a readmission agreement.”

Under Hungarian law, foreign nationals can be removed either according to immigration regulations or according to readmission agreements. Both must be regarded, however, as individual legal instruments serving the same purpose: to remove a person through simple, quick and cost-effective procedures. As in other countries, both removal and readmission are carried out by the same authorities, entail the same pre-removal measures (detention) and the same sanctions (re-entry ban)⁴². Only the implementation procedures of the two measures differ.

In Poland, readmission is viewed as a mechanism of the transfer of a foreign national, or the facilitated removal of a foreign national from Poland⁴³. Legislative provisions define the reasons for the removal of foreign nationals (such as crossing the Polish border without authorization or irregular stay), but they do not provide grounds for removing or transferring them according to readmission procedures. The readmission of a foreign national by Poland from another country is not by itself grounds to remove him/her from Poland. What matters is whether s/he has breached Polish law. An irregular border crossing that resulted in readmission to Poland is regarded, for example as a ground for removal.

⁴² It must be clear that not every removal decision or operation automatically entails a re-entry ban. For example, in Belgium and in the Netherlands, 8,000 to 15,000 people are subject to some kind of removal decision every year, but only a few hundred are actually banned from re-entry.

⁴³ This is why, for example, the term readmission does not appear in the Polish Act on Aliens.
The agreement between Poland and Vietnam of 22 April 2004 is a good example of a readmission agreement that facilitates removal. This agreement concerns only nationals of Vietnam and applies only to persons who came to Poland after the agreement took effect on 14 May 2005. When apprehended, many persons claim to have arrived in Poland before 14 May 2005, which means that the readmission agreement does not apply. Instead, the standard removal procedure applies. In this case, the Polish police would need to work with the Embassy of Vietnam to identify the person and acquire the necessary travel documents. This procedure does not have specified time limits, which theoretically means that it could last indefinitely. If a person falls under the readmission procedure, Vietnamese authorities are obliged to identify/issue documents within a strictly defined time limit. Thus, in some cases, the effectiveness of a removal procedure depends on whether it falls under the scope of the readmission agreement or not.

An analysis of the legislation of the aforementioned countries indicates that, even if national legislation provides a definition of the notion of readmission, there is usually no difference in the procedures and legal consequences that follow readmission (such as a re-entry ban or who the competent authorities are). Readmission is perceived by all as a way to facilitate the removal of a person in an irregular situation by means of cooperation between the Contracting States.
2.2. Institutional system of readmission management

Following the logic that readmission is not separated in a legislative or procedural manner in European countries, in most cases the agencies involved in the process of readmission are the same as those involved in other fields of migration management. In some countries, however, the officers of the particular agency that generally deals with return are trained in readmission. Also, there are examples of institutional cooperation (in the form of consultations or ad hoc working groups, for example) related specifically to readmission. The present section addresses the question of institutional support for the readmission process in Bulgaria, Hungary and Poland.

In **Bulgaria**, the main agencies dealing with migration, including readmission, are the following:

- **Migration Directorate at the Ministry of Interior** (central and regional units): monitoring the status of foreign nationals in Bulgaria; analysing and processing data on migration processes; issuing, extending and revoking of permits for long-term residence; coordinating of issuance of travel documents by the diplomatic and consular missions abroad; accommodation of foreign nationals who are subject to removal in special centres for temporary detention and detecting irregular migrants;

- **Border police**: meeting the foreign nationals at the border; their transportation to the detention centres or to another border point if they are in transit through the territory of Bulgaria;

- **The State Agency for Refugees**: involved in readmission by providing information about rejected asylum applications;

- **The Ministry of Labour and Social Policy**: provides the Migration Directorate with information on irregular residents whose work permits have expired or those who were employed illegally; is involved in the process of reintegrating returned Bulgarian nationals;

- **The Ministry of Health**: providing returnees with medical care, if necessary;

- Depending on the provisions of an individual readmission agreement, different national authorities can be involved in its implementation, e.g. diplomatic or consular officers: receiving and transmitting and forwarding to the Ministry of Interior the requests for readmission.
In Hungary, Act II on the Admission and Right of Residence of Foreign nationals defines the immigration authorities and their jurisdiction. The immigration authorities include:

- Ministry of Justice and Law Enforcement;
- Ministry of Foreign Affairs;
- Office of Immigration and Nationality (OIN) and its regional directorates;
- consular officials authorized to issue visas;
- Police.

The principal authorities to decide on foreign nationals and to implement readmission agreements are the Office of Immigration and Nationality and the Police. Both organizations are subordinated to the Ministry of Justice and Law Enforcement.

The Office of Immigration and Nationality and the Police are authorized to order removals and detentions pending removal. This sharing of jurisdiction means that the Police are authorized to control persons; may apprehend unidentified foreign nationals or individuals who cannot prove their legal presence to the competent authority; order detention pending removal or instigate removal procedures against unidentified foreign nationals.

For other infringements committed by foreign nationals detected in-country (such as irregular labour, overstay), the person must be handed over to the regional directorate of the Office of Immigration and Nationality so removal procedures can begin (see Annex 1).

The Police may exercise its complete immigration authority in the Schengen external borders area. A government decree defines what is to be considered the “border area” (a 15-30 kilometre-wide area from the borderline at the Schengen external border)\(^44\). The basic mission of the Police is to remove the irregular migrants apprehended as soon as possible. In order to realize this, the persons crossing Hungarian border without authorization are apprehended and their removal and, if necessary, detention is ordered. To do this, the alien policing units of the county Police headquarters contact the neighbouring countries and remove the foreign national within the framework of a normal or an accelerated procedure.

Within the central body of Office of Immigration and Nationality, the applications for transportation based on readmission agreements are forwarded to the Schengen Cooperation Unit within the Department of International Affairs (see Annex 2).

The central body of Office of Immigration and Nationality is defined to authorize transportation for the execution of the readmission agreements. The Schengen Cooperation Unit informs the Alien Policing Division of the National Police Headquarters of the date and time of the administrative transport. The Alien Policing Division, after arranging it with the regional bodies, confirms whether the Police can effect the transport at the given date and time. According to this arrangement, the Schengen Cooperation Unit responds to the request for transport and authorizes the transport.

The Forced Measures and Return Unit of the Office of Immigration and Nationality Managed and Illegal Migration Directorate (see Annex 2) organizes the removals by air. These are carried out by a special unit within the Airport Police Directorate of the National Police. The Office of Immigration and Nationality procures the travel documents of the person to be removed, and the tickets and the necessary visas for the Police officials; organizes the transit; arranges the transportation with the foreign authorities; and if necessary – if there is no direct flight for instance – books accommodation for the escorting Police officials.

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\(^44\) This is an example of adapting the Schengen definition of border area to local circumstances.
Within the Police, the Alien Policing Division of the National Police Headquarters carries out the coordination tasks related to readmission agreements (see annexes 3 and 4). This Division is authorized to conduct the normal procedures of most readmission agreements. It arranges matters with the Office of Immigration and Nationality for executing administrative transport. On the request of the county Police headquarters, the Division procures the travel documents of returnees through diplomatic/consular representations according to their nationality or through the Ministry of Foreign Affairs.

Every county Police headquarters responsible for State borders is competent in matters of readmission agreements (see annex 6). This competence pertains to transferring and receiving a person and is defined in the implementation protocols to the readmission agreements.

During an accelerated procedure (which, in general, happens if the person is apprehended within 48 hours of his/her irregular border crossing), decentralization is the rule. This means that the competent county police headquarters has jurisdiction over State borders, while under the normal procedure the central body decides on readmissions. This is necessary because under normal procedures there is more time to decide on and arrange the readmission. The only exceptions are the readmission agreements with Slovenia and Ukraine, of which both the accelerated and normal procedures are the competence of the county police headquarters.

In Hungary students qualifying as border police officials are given complete training on readmission agreements. The Alien Policing Division of the National Police Headquarters puts special emphasis on the staff concerned with escorts. Removal by land is executed by the staff of the immigration detention centres. These officials are regularly trained to prevent incidents during the removal process. During the training, police mediators and psychiatrists from social services are involved; special attention focus is on general human rights and the principle of non-refoulement; NGOs make regular presentations for the police on these subjects. Representatives from the United Nations High Commissioner for Refugees and the Hungarian Helsinki Committee pay frequent visits to the detention centres to observe the treatment of the detainees on site so they can make recommendations on the training necessary. Meetings are organized twice a year so that the knowledge and skills related to readmission agreements may be expanded and past individual readmission cases are discussed and evaluated.

In Poland readmission agreements or their implementing protocols always define the national agencies of the Contracting Parties with overall competence for the procedures (that is, the competent authorities). In the Polish-German readmission agreement, the competent authorities are the commanders of the Border Guard Service units. In the Polish-Czech Republic readmission agreement, the chief commanders of the Border Guard Service are responsible for the normal procedures, and the commanders of the subdivisions of the Border Guard Service deal with the accelerated procedures. In the Polish-Ukrainian agreement, the commanders of the subdivisions of the Border Guard Service are the competent authorities.

In general the competent authorities for removal and readmission in Poland are as follows:

- submitting an application for removal: relevant agencies of the Border Guard Service (chief commander of the Border Guard Service, commanders of the subdivisions of the Border Guard Service, commanders of the units of the Border Guard Service), relevant police authorities (Provincial Police Command), Ministry of Defense, Head of the Internal Security Agency, Head of the Intelligence Agency, Head of the Customs Service;
- issuing a removal decision: relevant voivods, Head of the Foreigners’ Affairs Department;

45 The regional Governor in Poland.
The examples of the three countries indicate that the fact that readmission is not seen as a process separate from general removal means that there is an absence of specialized agencies to deal with it. Although usually readmission agreements identify one national authority to be responsible for general coordination of implementation of the agreement, the functions related to implementing of the readmission agreements are distributed among different central and regional agencies, depending on the specific responsibilities allocated to them by national legislation.

However, the readmission agreements of some countries identify two competent authorities at the same time. For example, in the implementing protocol to the readmission agreement between Ukraine and Georgia, it is stated that both the State Border Guard Service of Ukraine and Ministry of Interior are the competent authorities. In some cases their competences differ: the State Border Guard Service is responsible for admitting the persons transferred from Georgia at the border points, while escorts are dealt with by Ministry of Interior. However, there are competences they share, as in the case of sending and receiving applications for readmission.

Depending on the type of readmission agreement and on the individual case, there can be national agencies involved at the central or local level. In many countries, the competences in implementing readmission agreements as well as in implementing removals are the jurisdiction of various structural agencies of one national authority, such as the Border Guard Service or migration services, which can be either independent agencies or a part of the MoI or the Ministry of Justice. In countries where these agencies exist separately, the responsibility is usually shared between them.

Neither in Poland nor in Bulgaria are the agencies that carry out or participate in readmission processes specially trained in readmission matters. The training sessions or courses for the staff usually include general professional courses, training programmes with other EU countries, and general administrative and legal courses on national, European and international standards of migration management. It should be noted however that at the Law Enforcement College in Hungary, students qualifying as border police officials are given complete training on readmission agreements.
2.3. Procedures for submitting an application for readmission and replying to it

As noted in Section 9.1 “Time limits for application for readmission and response to application for readmission” of part 1 of the Manual, there is no definitive standard regarding the contents of and time limits for submitting readmission applications.

Each agreement contains provisions regarding both the contents of the application and the time limits for submission, and the forms to be filled out by the States when they request readmission. Implementing protocols to the readmission agreements indicate the competent national authorities who send or receive the readmission application.

The main principle of the readmission agreements to which Bulgaria is a Contracting Party is that every Party shall readmit, upon request by another Party, without any formalities, any person who does not, or no longer fulfils, the conditions for entry to, presence in or residence in the territory of the Requesting Party, on condition that the person concerned is a citizen of the Requested Party. The same rule is applied when a person, after entering the Requesting State, has either lost or renounced the nationality of the Requested State, and there is no procedure pending to obtain the nationality of the Requesting State.

The application shall be submitted only when the identity and nationality of the person are proven or validly presumed in the case of nationals of the contracting State, or if the entry is proven or there is indirect evidence of entry from the territory of the Requested State in the case of third-country nationals.

Before the person can be readmitted, Bulgarian authorities decide on the removal and then issue a removal order, which is an individual executive decision that contains the personal data of the foreign national. The information is sent by fax or by post to the competent authorities of the Requested State. The readmission application should be submitted with all the available documents and records of the returnee and must include the following: the particulars of the person to be readmitted (for example, given name, surname, date and place of birth, and the last place of residence in the territory of the Requested State); indication of the evidence or valid presumption of nationality; evidence of entry; the date, time and place of the transfer of the person; and any indications that the person to be transferred may need assistance, medical care or escort due to his/her health condition or age. If there is a minor accompanying the returnee, the given name and surname of the relation to the bearer of the travel document, and the date and place of birth are to be stated in the application. In order to harmonize the procedure, standard application forms are agreed upon in the implementing protocols. According to the agreements and protocols, the Contracting Parties guarantee personal data protection. Personal data will be used only for readmission purposes.

The deadlines to respond to the requests vary from 5 to 20 days depending on the individual agreement. According to most agreements, the implementation of the readmission decision begins 30 days after the acceptance of the readmission request. As indicated by the provision in the agreements, the Party must indicate the date and place of the transfer. The time limit for this notification is no less than 3 days before the date of the person’s transfer.
The experience of **Hungary** in implementing the normal readmission procedure can be demonstrated through its readmission agreement with Serbia and Montenegro and its implementation protocol of 7 November 2001.

The alien policing divisions of the county police headquarters along the Serbian border implement the accelerated procedure, while the implementation of normal procedures is the competence of the National Police Headquarters.

According to paragraph 6(1) of the agreement, the Requesting Party must provide evidence that the foreign national entered its territory without authorization and does not fulfil the legal criteria of entry and stay.

If the person cannot be readmitted through an accelerated procedure (s/he was not apprehended in the border area within 48 hours of the border crossing), the readmission follows the normal procedure. The readmission may be requested within nine months of the irregular border crossing, provided that the person left the territory of the Requested Party not more than one year before.

The Requested Party must respond within 7 working days of receipt of the readmission application. After the readmission application is answered positively, the Requesting Party is bound to transfer the foreign national within a maximum of 20 working days.

The Requesting Party is obliged to readmit the foreign national if the Requested Party finds that the readmission criteria are not fulfilled within 30 days of the readmission.

The implementing protocol includes the names of the competent authorities, the border crossing points designated for transfer, the rules of the procedure for transfer, the rules of bearing the costs, the list of documents proving or presuming nationality, the documents proving or presuming the irregular border crossing, and all the necessary standard forms.

In **Poland**, when a request is submitted by the Border Guard Service, as much proof as possible is provided to the Requested State. The information provided may include questionnaires filled out by the persons to be readmitted, statements from the persons to be readmitted regarding their personal data, and protocols establishing proof of the irregular border crossing in the case of an accelerated procedure.

When the application is accepted by the Requested State, the Requesting State contacts the consulate of the Requested State to receive the travel document for the returnee (if s/he is a citizen of the Requested State).

Once the application is accepted, both States proceed to coordinate the date, place, time and the border checkpoint of the transfer and the details of a possible escort for the returnee.

| Regarding the time limits for submission of application and reply for it in an accelerated readmission procedure, the implementing protocol between Poland and Germany, for example (as well as most other readmission agreements and protocols), provides that the readmission application can be sent without any formalities. This means that the application can be made by telephone, fax or directly at the border. The reply should be given within 24 hours. In the general readmission procedure the application should be submitted through post, fax or other officially agreed means, for example by Polish diplomatic representations in the Requesting States who forward the application to the competent authorities in Poland. According to the Polish-Ukrainian readmission agreement, persons apprehended within 48 hours of the irregular border crossing should be readmitted without prior notification. Otherwise, the application should be sent within 90 days from the date of the crossing. Such a provision does not exist in the EC readmission agreements, which set the beginning of the time for submission of application not from the moment of border crossing but from the moment of finding the irregularity of entry/stay by the authorities of the Requesting State. |
Examples of the three countries regarding the procedures for submitting the readmission application and reply to it indicate that there are no unified requirements in the readmission agreements regarding the contents or time limits.

Under the EC readmission agreements, the information which should be provided in the application is similar to all countries and includes the following:

- the particulars of the person concerned (for example, given name, surname, date of birth, and, when possible, place of birth and the last place of residence);
- evidence regarding nationality, unlawful entry and residence, and the grounds for readmission;
- a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;
- any other protection or security measure that may be necessary in the individual transfer case.

In bilateral agreements between the countries the requirements for readmission applications as well as time limits vary from one agreement to another and from one country to another.
2.4. Proof of nationality and identity of a person subject to readmission or removal

A foreign national subject to a removal decision must be removed from the territory. Often, a person does not have the necessary documents and thus has to be "identified" and must acquire the documents, on the basis of which s/he can cross the border and enter his/her country of origin. One of the most important features of readmission, which distinguishes it from the normal removal procedure, is that the Requesting State does not have to identify a foreign national whom it transfers to the Requested State.\(^{46}\)

It suffices to prove that the person has entered the territory of the Requesting State from the territory of the Requested State. In such case, the application for readmission will contain information about the absence of identification documents, as well as evidence and proof for readmission. In this case, the burden of identification rests with the Requested State. This is why it is very important for the Requested State to have readmission agreements with the countries of origin of migrants, which will create a legal obligation for these countries to cooperate and respond promptly when there is a need to identify their nationals and issue travel documents to them. The problem of identification (that is, the acquisition of travel documents) and cooperation with the countries of origin is considered to be the most difficult for the return of irregular migrants.

Taking into account the importance of the matter for most of the EU countries, whole sections of a competent agency or even the entire agency itself usually deals with identification.

For example, the Repatriation and Departure Service in the Netherlands usually deals with identification and is an agency independent from the Immigration and Naturalization Service. Different units of the agency are specialized in each region of the world, which results in greater knowledge and thus effectiveness of the officers.

\(^{46}\) Article 5 of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on readmission is an exception as it imposes on the Requesting State the obligation to identify the person to be returned.
In **Bulgaria**, identification is performed by police officers from the Migration Directorate at the Ministry of the Interior and is carried out both for nationals of Bulgaria admitted from another country and for foreign nationals to be removed. The police may use biometric data. The procedure and the conditions for using the Automated Fingerprint (Dactyloscopic) Identification System (AFIS) are set out in the Ministry of the Interior regulations 47. Information on Bulgarian citizens residing in the EU can also be found in Eurostat 48, a database common to all the EU Member States.

When the Ministry of the Interior is requested to share personal data on foreign nationals with any other agency or State, it is requested by the law to receive an explicit consent of the individual concerned 49. Any operation involving personal data should comply with the regulations and EU standards on personal data protection.

According to Article 46a of the Act on Foreigners in the Republic of Bulgaria, the authorities dealing with the entry, stay and departure of foreigners shall interact with the competent authorities of other countries. Therefore, Bulgaria’s competent authorities cooperate in identifying foreign nationals with the relevant authorities of the countries of origin of persons concerned.

In **Hungary**, the Office of Immigration and Nationality and the Police have immigration and removal competences. Subsequent to their apprehension, foreign nationals are questioned and their personal data registered. To identify the person, all documents found on the person, as well as detailed information on the characteristics of the country of origin, are used to check the credibility of the person.

Fingerprints are checked with AFIS in Eurodac and in national databases. Depending on information provided by the person, national and international warrant lists and administrative records are also checked.

The identification of foreign nationals through diplomatic/consular representations is carried out by the Alien Policing Division of the National Police Headquarters and the Coercive Measures and Repatriation Division of the Office of Immigration and Nationality Alien Policing Directorate. To execute readmission agreements or to organize removal by air, the regional the Office of Immigration and Nationality directorates and the county police headquarters submit the documents for identification and readmission to the Coercive Measures and Repatriation Division and to the Alien Policing Division. The data form containing scanned photos and personal data is forwarded to these central bodies electronically. After being printed by the central bodies, they are sent to the relevant diplomatic representation of the countries of origin of the persons in question.

In cases where the foreign national has no diplomatic/consular representation in Hungary, the central body sends its request to the official (usually the nearest) representation with the assistance of the Ministry of Foreign Affairs. However, due to a large number of countries having representation in Hungary, this rarely occurs.

Hungary has concluded readmission agreements with all of its neighboring countries, enabling accelerated procedures to take place. These agreements allow Hungary to immediately remove the majority of irregular migrants to these countries.

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47 Instruction № I-21/29 of February on the working methods referring to the Automatic Dactyloscopic Identification System (AFIS)
48 Data in Eurostat are largely depersonalized.
49 Personal Data Protection Act of 2002
50 The fingerprints accessed through Eurodac are only those of persons who have requested asylum since 2003. Eurodac does not access fingerprints of persons who had requested asylum before 2003 or those who have never requested asylum. Eurodac is essentially a link (in real time) to the national AFIS databases on asylum seekers. Certain categories are erased from the system, including persons who acquired refugee status, persons who acquired the citizenship of an EU Member State and persons who acquired the status of an “assimilated” EU citizen (by marriage, for instance).
If the authorities fail to identify the foreign national within the time allocated by the legislation for detention prior to expulsion\textsuperscript{51}, s/he will be placed under immigration detention for a maximum duration of six months. Immigration detention is ordered by an administrative resolution of the Police or of the Office of Immigration and Nationality. Justification for the detention must be verified every 30 days by a court. During this time, the authority processing the case must do everything in its power to remove the person in question. S/he is interviewed several times and any new information is forwarded to the diplomatic/consular representations of the country of origin of the person.

Cooperation of Hungary with Serbia is particularly significant because in the past the identification and removal of citizens of the former Yugoslavia did not work smoothly. The situation after the conflicts in the area and the difficulties in the drawing up of the borders resulted in poor records of their nationals. To solve this problem, a meeting took place in May 2005 with the heads of the Travel Document Division and the Removal Execution Division of MoI of Serbia and Montenegro. Their delegation offered to carry out general checks and stated that, if the places of registry of its nationals outside Serbia and Montenegro were found, they would provide Hungary with the name of the authority the latter should contact to identify the persons. To accelerate the readmission procedures, both Parties agreed to send the data of foreign nationals directly via e-mail to the Travel Document Division. As a result, the efficiency of the readmission agreement improved considerably.

In Hungary, there is as yet no satisfactory solution for cases in which a person to be removed does not cooperate and the authorities cannot locate his/her fingerprints in any database. However, identification is not perceived as a serious problem in Hungary. One possible reason for this may be the fact that, as mentioned previously, Hungary has readmission agreements with all its neighbouring countries and can use accelerated procedures effectively. When an immediate removal appears to be impossible, the returnees tend to apply for asylum, in which case the asylum authorities are responsible for their identification\textsuperscript{52}.

In Poland, the Border Guard Service is the agency responsible for the identification of foreign nationals subject to removal. The main method of receiving the necessary identification documents is through the diplomatic or consular representations of the countries of origin of migrants. The chief commander of the Border Guard Service usually deals with the consulates regarding identification. However, if there is more than one consulate of the country of origin in Poland, the responsibility is divided among the territorial agencies of the Border Guard Service, that is, the commanders of the units of the Border Guard Service apply to the respective consulates.

If there is no diplomatic representation of the country of origin, in Poland, applications for identification and the issuance of travel documents are sent by the Polish consulates in other countries to the respective diplomatic or consular missions of the person’s country of origin. The chief commander of the Border Guard Service is responsible for such correspondence. Most often, Polish consulates in Moscow, Berlin and Brussels are used for this procedure.

In Poland, it is possible to identify a person first by the identification number given to every Polish citizen in the central population register. With this number, it is possible to find his/her personal particulars, address, identity card and passport numbers, and the identities of his/her parents. With a passport number, it is possible to find a photograph of the person in the archives. Polish citizens who are suspected, accused or convicted of criminal activity have their fingerprints taken during the investigation procedure, which means that they can, thereafter, be identified by their fingerprints.

In Poland, as well as in other EU countries, innovative methods of personal identification have been introduced, such as bringing experts on the identification of nationality from the countries of origin of foreign nationals.

\textsuperscript{51} Detention prior to expulsion is ordered by the decision of the Police or the Office of Immigration and Nationality and initially can last 72 hours. It can be extended by the court until the person’s identity or the legal grounds of his/her residence is conclusively established or up to maximum 30 days.

\textsuperscript{52} This may simply mean that the identification problem is “postponed” and will appear later.
In 2007, the Polish Border Guard Service started to use this method in the framework of the implementation of the readmission agreement with Vietnam. Also that year, the protocol was signed, wherein the Vietnamese side agreed to regularly send Vietnamese experts to Poland to carry out the identification and documentation of irregular migrants who had been apprehended and were suspected of being Vietnamese nationals.

The experts hold interviews with persons staying at the detention centres and whose identity could not be established by means of correspondence, with those who are no longer kept at the detention centres but have applied for “tolerated stay” status, and those who have this status due to the impossibility of being identified previously.

Poland also participates in the German project “Return 2006”, which is aimed at developing new identification methods with African partners. The project involves six African countries, namely Côte d’Ivoire, Egypt, Gambia, Ghana, Liberia and Sierra Leone. The project has four steps. The first step involves officials from partnering EU countries visiting these countries to establish contacts with the representatives of the respective immigration services. The second step involves visits by the representatives of the immigration services of these countries to the partnering EU countries for coordination purposes. The third step consists of visits to the EU countries by African experts, who conduct interviews with persons deemed to be nationals of the respective African country and who could not be identified through the embassy/consulate of that country. The last step involves organizing joint charter flights by the EU countries to return those persons who were identified and documented through this process.

Usually, the better the relations are between the national agencies of the country of destination and those of the country of origin, the faster the identification procedure. Polish experience indicates that the establishment of direct contacts between the countries’ migration services and the organization of expert visits to identify the returnees are the most effective ways of identification and of developing closer contacts between the relevant agencies.

Taking into account that identification of foreign nationals can often be a challenge for national authorities, sharing international experience can play an important role in finding new solutions to the problem. For this reason some more generic examples of the EU Member States, besides those of Bulgaria, Hungary and Poland are added here.

With regard to identifying and documenting returnees, the two main problems faced by the authorities in various countries are the lack of cooperation of the returnees and the insufficient or absence of cooperation of the countries of origin or their representations. These may lead to the person’s removal being impossible.

In cases in which the returnee is reluctant to reveal his/her identity, the authorities of different countries use several approaches. In the EU Member States, most irregular migrants apply for asylum on arrival (or when apprehended). If their application is denied, and in the absence of any other grounds for granting them regular status they are obliged to leave the territory of the country in question. Files and fingerprints of such persons are saved in Eurodac, which, through the cooperation of the EU Member States, may on rare occasions facilitate the identification of at least failed asylum seekers. The EU Member States also have their own national electronic databases of fingerprints. Discussions are ongoing concerning the broader use of biometric data, which, among other things, includes gathering more biometric data during the visa issuing process.

Experience in other countries also indicates that this has to be a continuing, ongoing effort and process.
The question of collecting data in relation to readmission is crucial, especially for the Requested State. Concrete data on persons readmitted and their further fate (for example, whether it was possible to identify them and to return them to their countries of origin) allow the Requested State to unconditionally prove to the Contracting Party/Parties in the agreement the success or failure of the readmission procedure and the consequences the readmission agreement entails for the Requested State.

One of the methods used in most of the EU countries to establish the nationality of a returnee is a language test, where experts interview a person and, on the basis of his/her regional dialect and use of language, are able to pinpoint the country of origin. On the other hand, some countries (for example, Belgium, Estonia and Ireland) do not systematically use such tests, stating that the results are not always reliable and are often not accepted by some countries of origin.

As mentioned previously in this section, all of the EU Member States work with the officers of foreign embassies/consulates or even invite representatives directly from the countries of origin to interview foreign nationals who are assumed to have the nationality of the respective country of origin.

The problem of ineffective cooperation with the diplomatic representations of some countries of origin is usually addressed through a) meetings between high-level State officials and the ambassadors of the respective countries, b) direct contact between the State agencies, c) the conclusion of memoranda of understanding between the countries and d) the signing of readmission agreements, which create the obligation of effective cooperation in return procedures.

If the problem is not readily solved or if the country of origin does not refuse to cooperate but requires a lot of time to identify its national, the practice in the EU Member States is to issue the person an EU one-way travel document. The United Kingdom has the highest success rate in returning foreign nationals with this travel document, as well as with the Chicago Convention travel document54. However, prior to the return, an agreement should be made with the country of origin to ensure that the person holding the Chicago Convention travel document will be accepted (or readmitted).

EC readmission agreements provide the possibility to issue the EU travel document, which enables the returnee to exit the territory of the EU and to enter the territory of the requested third country. The EU travel document is issued on the basis of the Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the removal of third-country nationals55. However, the consent of the third country to accept such a document should be enshrined in the agreement, which is the case, for example, in the EC-Ukraine and EC-Russian Federation readmission agreements (Article 3.4 and Article 3.3, respectively).

To summarize the above, it should be noted that, while establishing the identity of a foreign national often depends mostly on the resources available to the State for this purpose and the availability of technology to create and maintain electronic databases, establishing a person’s nationality and providing identity documents depends on the level of cooperation between the State carrying out identification procedures and the country of origin of a foreign national. In this context, readmission agreements can be one of the most efficient tools for building a legal framework for cooperation between these States.

54 In principle the Chicago Convention document can only be used if the individual to be removed is apprehended at border control while entering illegally by air. It can not be used when the individual is apprehended in-country.
55 Official Journal C 274 , 19/09/1996 P. 0020 - 0024
2.5. Admission of persons by the Requested State within a readmission procedure

Persons subject to readmission can be divided into two major groups: nationals of the Requested State and foreign nationals. The admission and post-admission measures taken by the Requested State differ, depending on which group the person belongs to.

2.5.1. Admission of country’s own nationals

As every State has an obligation to admit its own nationals, as a rule, there should be no problems in transferring a national to his/her own State within a readmission procedure. Readmission agreements usually provide a clause according to which nationals should be admitted by the Requested State on request and “without any other formalities”. This primarily means the issuance of travel documents by the diplomatic/consular representatives of the Requested State without delay. The obligation of the Requesting State is to provide direct or indirect evidence of the nationality of the person in question.

In Bulgaria where a national is to be readmitted, Bulgaria requires that the Requesting Party specify how nationality had been established, in accordance with the articles concerning grounds of proof, or presumption of nationality, defined in the readmission agreement. There are no reintegration facilities for readmitted nationals. Only victims of trafficking are provided with reintegration assistance, and this is carried out by the Ministry of Labour and Social Policy in cooperation with NGOs.

Under Hungarian legislation nationals may return at any time. This right cannot be denied or restrained and is unconditional. Readmission agreements and implementing protocols pertaining only to a country’s own nationals are simpler in context given their individuals status as a national, allowing for simpler and faster transfer procedures. The range of documents confirming nationality is wider and the conditions for readmission are simpler when Hungary is readmitting its own nationals. Several Hungarian agreements provide that a declaration by the person concerned or by a bonafide witness recorded in a protocol is enough to form the basis of a readmission. At the same time, the deadlines for readmitting the country’s own nationals are shorter than those for readmitting third-country nationals.

For example, in the readmission agreement between Hungary and Albania, the maximum time for response to the readmission request is ten days with an additional four days for the transfer.

In the national contexts studied, in Poland when a national is transferred from another country through a readmission procedure, the Border Guard Service is checking database to determine whether the person is on the wanted list. If the person is on the list, s/he is transferred to the agency which initiated the search of this person. If there are no such concerns, the person is released. If it is discovered that a readmitted national had previously crossed the Polish border without authorization (for example, from Poland to Ukraine), which is an infringement under the Polish law, the case is submitted to the court. After that the person is released.
2.5.2. Admission of foreign nationals

Generally conditions for the application of readmission procedures to foreign nationals are irregular entry to the territory of the Requesting State, and the absence or non-validity of a visa or permit to stay. Further actions of the Requested State towards the foreign national depend on the person’s legal status in the Requested State, either current or before the border crossing into the Requesting State. On the basis of these criteria, the following groups of foreign nationals may be accepted for readmission:

- foreign nationals whose visa or residence permit issued by the Requested State is still valid;
- foreign nationals who do not need an entry visa for the Requested State;
- foreign nationals who no longer have legal grounds to enter and stay in the territory of the Requested State but who initially entered and exited the Requested State legally;
- foreign nationals who do not have legal grounds to enter and stay in the territory of the Requested State and who initially entered and exited the Requested State without authorization (i.e. never had legal grounds to enter and stay in the Requested State)

Stateless persons can be regarded as a separate category, which in some cases requires a special approach.56

The response of Poland, Bulgaria and Hungary towards these groups of readmitted foreign nationals are outlined below.

2.5.2.1. Foreign nationals whose visa or residence permit issued by the Requested State is still valid

In Bulgaria, a foreign national with a valid Bulgarian visa or residence permit whose readmission is requested will be admitted. The procedures that take place once the person is readmitted depend on the reason for readmission from the Requesting State (such as an unauthorized entry, forged documents or illegal employment) and on whether s/he has violated any law. If the person has not infringed any law (for example, exited the Requested State legally and overstayed the allowed period in the Requested State) and at the time of readmission has a valid visa or residence permit, s/he can stay in Bulgaria until the visa or residence permit expires. If a violation of a law took place, the visa has to be cancelled or the residence permit revoked. According to the Law on Foreigners, the Border Control agencies and the Services for Administrative Control of Foreign Nationals have the power to cancel an issued visa and to reduce the number of permitted entries or the term of stay if a foreign national is not fulfilling the requirements of this law. In such cases, the Ministry of Foreign Affairs is notified immediately. A removal order is issued to the person in question and s/he is transferred to the Migration Directorate to be detained until implementation of the order.

56 If it is not possible to transfer the stateless person to a third country, that person cannot be removed and must be granted some kind of leave to remain in the Requested State. This is one of the situations in which certain countries allow a “tolerated” stay.
A valid visa issued by Hungary is evidence of a previous stay and is grounds for readmission.

The following are restrictions on the readmission of a person:

- readmission was not requested within nine months of establishing the person’s irregular stay, or if the person left Hungary more than one year earlier (the time-limits permitted may differ in the individual readmission agreements);
- at the time of his/her entry, the person held a valid entry visa issued by the authorities of the Requesting State, or received such a visa after entry, or received permission to stay from the competent authorities of the Requesting State and, in the event that both Contracting Parties had issued entry visas or permission to stay, the persons concerned shall be readmitted by the Contracting Party whose entry visa or permission to stay had a later date of expiry;
- the person’s refugee status was recognized by the Requesting State;
- the person applied for refugee status in the Requesting State, this State is in the process of considering the application and has not yet made a final decision on it;
- the person’s country of origin and the Requesting State have a joint border;
- the Requested State has previously implemented removal of the person in question, and the sanctions entailed by removal order are still in force (e.g. re-entry ban);
- the person left the territory of the Requested State and entered the territory of the Requesting State from the territory of a third country to which the Requesting State can return him/her pursuant to a readmission agreement.

Prior to readmission, the police check the person’s information in the administrative records (see Annex 7). The manner of the crossing of the Hungarian border and the result of the check (legal basis for previous stay in Hungary) determine the procedure that follows.

If the person possesses a valid visa or residence permit and has not committed any infringements in Hungary, s/he can stay in the territory of Hungary after readmission according to the rules of general stay.

If the person crossed the Hungarian border without authorization, but didn’t commit any infringements, the immigration authority in whose jurisdiction the person was readmitted takes into consideration all the conditions and circumstances and may choose to comply with either of the following two regulations:

1. Act LIX of 1999 on Contravention: the competent authority may give the person notice for an irregular crossing of the Hungarian border, impose a fine (amount of fine is EUR 12-80) or submit him/her to a contravention procedure (amount of fine is EUR 12-200).

2. Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals: if the official chooses to apply this Act, the legal basis for removal is 43.§ (2) a) crossing the Hungarian border without authorization or b) the person’s presence is a threat to national security, public security or public policy.
Before imposing this decision, the authority considers:

- the threat to national security, public security or public policy;
- the duration of stay;
- the age and family status of the foreign national, possible consequences of the removal on his/her family;
- links of the foreign national with Hungary, or the absence of links with the country of origin.

The following groups of foreign nationals may be removed only if their continued residence represents a serious threat to national security, public security or public policy: foreign nationals who reside in Hungary, are married to or are a family member of a foreign national and have a residence permit; foreign nationals who have applied for refugee status and the application is still pending, as well as their immediate family members; and foreign nationals who are victims of trafficking during the criminal procedure.

Subsequent to the removal decision, the detention and physical removal of the person concerned may be ordered.

A valid visa or residence permit issued by Poland is sufficient grounds for a foreign national to be admitted through the readmission procedure. If a foreign national has crossed the border from Poland to another State legally and has overstayed there, that person can be readmitted by Poland. Taking into account that the foreign national’s visa/residence permit remains valid and s/he did not break any law, s/he has the right to remain in Poland after being readmitted.

If a foreign national was in Poland with a valid visa or temporary residence permit (permit to stay in Poland for up to two years) and crossed the border from Poland to another State without authorization, on their readmission to Poland the authorities, can pursue the person’s removal from Poland on the basis of a border crossing without authorization and/or a possible threat to security and public order. According to Article 90(3) of the Act on Aliens, a removal order results in the cancellation of the person’s visa and the withdrawal of his/her temporary residence permit and work permit.

If the foreign national who crossed the border from Poland without authorization has a valid permanent residence permit or is married to a Polish national, according to Article 89(1) and (2) of the Act on Aliens, this person cannot be removed. Article 68(1) and Article 69(2) identify grounds that allow the permanent residence permit to be withdrawn if the foreign national poses a threat to national defence or security, public order or the interests of Poland. Thus, if a foreign national who holds a permanent residence permit is readmitted by Poland on the grounds of crossing the border into another country without authorization, the receiving agency evaluates the circumstances of the case and makes a decision on whether to apply to the voivod requesting the withdrawal of the residence permit accompanied by a removal order. The voivod then makes the decision. In general a foreign national with temporary visa/permit has less protection than a foreign national who possesses a long term/permanent permit to live in Poland.
2.5.2.2. Foreign nationals who do not require an entry visa for the Requested State

In Bulgaria, if a foreign national who does not need a visa to enter Bulgaria has entered the territory of the Requesting State irregularly or with fraudulent documents, s/he can be readmitted by Bulgaria. If this foreign national did not infringe Bulgarian legislation, s/he would be allowed to stay in the country for the time permitted for foreign nationals who do not need entry visa. If the person has infringed Bulgarian legislation or is a threat to public security, order or health according to Article 10 of the Law for the Foreigners, an obligation to leave Bulgaria is imposed. If the person does not comply, an executive removal decision is made and s/he will be detained until the execution of the removal decision.

In Hungary, the authorities are bound to readmit foreign nationals who are presented on the basis of a readmission agreement if they were visa exempt in Hungary or entered the territory of Hungary and possess a residence permit or other valid document entitling them to stay. In this case, the procedure described above for foreign nationals whose visa/permit is still valid may be applied. The readmission restrictions listed above must also be applied in this case.

If a foreign national arrived in Poland under a visa-free regime, the manner in which s/he entered the territory of another State from Poland is important for his/her further status in the case of readmission. If the person in question crossed the Polish border irregularly, this by itself is grounds for readmission by Poland. There are also grounds to request the voivod to issue a removal order on the basis of that irregular crossing and, eventually, on the grounds of a threat to security and public order. The foreign national would thus be detained pending removal from Poland.

If the border crossing was legal, there would be no grounds for readmission.

2.5.2.3. Foreign nationals who no longer have legal grounds to enter and stay in the territory of the Requested State but who initially entered and exited the Requested State legally

In Bulgaria, foreign nationals who entered and exited legally can only be readmitted if they entered the requesting state on the basis of a transit visa (e.g. readmission agreement between Bulgaria and France). Otherwise, if the person exited Bulgaria legally, it would mean that the other state authorized this person to enter. Provided that grounds for legal entry/residence of the person in Bulgaria have expired by the time of application for readmission, Bulgaria is no more under obligation to admit such person. If in an exceptional case, mentioned above, such person is admitted by Bulgaria, without having legal grounds to remain s/he must leave the territory of Bulgaria. Such persons are informed by the Migration Directorate about this obligation within seven days of notice (Article 41 of the Law for the Foreigners). If the foreign national fails to leave the territory within the allocated period, s/he is subject to forced removal.

If a foreign national entered, then exited Hungary legally and no longer has legal grounds to stay in Hungary, there is no possibility of readmitting him/her according to the readmission agreements of Hungary. In this case, the competent authorities refuse the request.

57 Article 10.8 of the Law for the Foreigners in the Republic of Bulgaria reads as follows: “if it could be supposed that he [a foreigner] will disseminate grave infectious disease, suffers from a disease which according to the criteria of the Ministry of Health or the World Health Organization represents a threat to public health or when he does not have a vaccination certificate, or comes from a region with a complicated epidemic or epizootic situation”.
The readmission agreements apply only if the foreign national crosses the Hungarian border without authorization.

The only exception is the readmission agreement between Hungary and Moldova. According to this agreement, the Requested State is obliged to readmit foreign nationals who entered the territory of the Requested State legally, except if this person had only a transit visa (Article, (3) and (4) of the Readmission Agreement between Hungary and Moldova).

If a foreign national came to **Poland** legally, then legally entered another State and no longer has legal grounds to enter and stay in Poland, there are no grounds for readmission to Poland 58. Once the validity of the document authorizing a person to stay in Poland expires, there are no longer grounds for readmission. In this case, the country that has apprehended the person must send him/her directly back to the country of origin.

### 2.5.2.4. Foreign nationals who do not have legal grounds to enter and stay in the territory of the Requested State and who initially entered and exited the Requested State irregularly

In **Bulgaria**, readmitted persons who do not have legal grounds to enter and stay and who initially entered and left Bulgaria irregularly are, on readmission, generally subject to removal for the infringement of immigration law. They are detained until travel documents are obtained and their removal is arranged. Such foreign nationals have no possibility of leaving the territory of Bulgaria voluntarily. A removal order is issued immediately.

In **Hungary**, readmitted persons who do not have legal grounds to enter and stay and who had initially entered and exited the territory of Hungary without authorization can be removed.

If the foreign national crossed the Hungarian border without authorization, Act II of 2007 applies and the legal basis for removal is 43(2): a) border crossing without authorization, or b) the person’s entry and residence represents a threat to national security, public security or public policy. On these grounds the person can be detained and removed from the territory of Hungary.

If a foreign national came to **Poland** without authorization and then entered the Requesting State irregularly and subsequently was readmitted by Poland, the following are grounds to issue a removal decision, from Poland:

- irregular stay in Poland;
- irregular crossing of the Polish border;
- possible threat to security and public order.

The person will be apprehended and, if there is insufficient documentation to return to his/her country of origin, s/he will be detained pending removal. The identification procedure to obtain travel documents is then begun. When documents are obtained, the person is removed or sent to the country of origin (in accordance with the readmission agreement if a readmission agreement exists between Poland and the country of origin there are grounds for readmission under that agreement).

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58 Some readmission agreements provide for the possibility of transferring a person within a readmission procedure only if the person crossed the border without authorization. Other readmission agreements (for example, the EC-Russian Federation agreement) also list among the grounds for readmission the existence of a valid visa or residence permit of the Requested State.
2.5.3. Stateless persons

In **Bulgaria**, the procedures applied to readmitted stateless persons are the same as those applied to third-country nationals. Stateless persons should be returned to their countries of habitual residence unless they face a risk to their health or life in those countries. In such a case, a permit to remain is issued or, if the person has connections with a third country, his/her removal to the third country is sought.

More than half of the readmission agreements concluded by **Hungary** contain stipulations about stateless persons. Of the 26 agreements, 16 apply the rules for foreign nationals to stateless persons. Two agreements regulate their readmission according to the rules pertaining to their own nationals, and eight do not contain any rules concerning stateless persons.

In cases in which Hungary has recognized a person as being stateless, the person must be readmitted according to the readmission agreement. As long as the stateless status continues, the person cannot be removed, and being stateless authorizes a person to return to Hungary. An irregular border crossing by such a person is not considered a breach sufficient for removal.

If a person was recognized as being stateless by another country (not being a party to the readmission agreement), that person can be handed over to that State. Naturally, human rights and the principle of non-refoulement must be considered carefully in every case.

Readmission rules for stateless persons in **Poland** are the same as those for third-country nationals, difference being that a stateless person often cannot be removed. In such case there is a possibility under Polish law for that person to be granted tolerated stay. The responsibility remains with the voivod, who acts according to the Act on Granting Protection to Aliens within the Territory of the Republic of Poland. If the possibility of removing such a person arises, the tolerated stay status is withdrawn.

Several general conclusions can be made from this detailed section.

1. The readmission and further actions of State towards foreign nationals depends on their legal status in the Requested State at the time of readmission, on the manner in which they crossed the border to the Requesting State and on their record of offences committed in the Requested State. While persons with long-term residence status are better protected, even in the case of minor violations (if the individual is reconsidered a serious threat, s/he can still be removed), foreign nationals with only a visa or short residence permit may be removed more easily. An irregular border crossing out of the Requested State is of itself not always grounds for removal. The same rule usually applies to persons who benefit from a visa-free regime in the Requested State (unless the person came to the territory of the Requesting State legally, in which case there are no grounds for readmission).

2. As for foreigner nationals who crossed the border of the Requested State without authorization and never had legal grounds to enter/stay in the Requested State, they are subject to removal once they are readmitted.

3. Most readmission agreements do not apply if the foreign national entered the territory of the Requesting State legally as this means that the foreign national received an authorization for entry.

4. In case of stateless persons, some readmission agreements treat them as nationals, some as foreign nationals and others as a separate category, and their removal is not always possible. Even if it is possible to send such persons to the country of habitual residence or the country that first recognized them as being stateless, the principle of non-refoulement should always be carefully considered.

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59 The State that grants the status of stateless person has certain responsibilities, such as always allowing that person to return to its territory. Granting this status too lightly creates abuse.
Before a foreign national is to be removed, the grounds for removal should be established by the competent national authorities; that is, there should be an absence of legal grounds to stay. Several State agencies have powers to determine the legality of stay.

In Bulgaria the authority to check the legality of status of foreign nationals is assigned to the Migration Directorate at Ministry of Interior. When necessary, the agencies of the Migration Directorate cooperate and exchange information with other State agencies (for example, with the Ministry of Labour and Social Policy, the Ministry of Foreign Affairs and the Ministry of Justice) as well as NGOs and intergovernmental organizations working in the field of migration.

A violation of immigration rules by foreign nationals can be established as follows:

- interviews with the foreign nationals;
- statements from third parties;
- document checks or checks made by public authorities and investigative agencies.

The violations are stated in an official report by the competent authority, which reiterates the findings (facts), qualifies the violation under the relevant legislation, clearly indicates the authority from which the report emanated and mentions the right to appeal. The decisions imposing any compulsory measures are based on the facts and legal provisions cited in the report.

Within the border area (15 kilometer-wide area from the border), the border control agencies also have authority to exercise control by carrying out checks on persons and vehicles. Foreign nationals who do not meet the requirements for entry are handed over to the Migration Directorate with competence over that part of the territory.

The powers of the police authorities are similar. When they detect violations of the rules of entry and/or residence, they transfer the person to the Migration Directorate.

Ministry of Interior maintains a central registry for foreign nationals, which contains data on long-term foreign residents.

In Hungary, the Police and the Immigration and Nationality Office are responsible for gathering information related to irregular migration. Both perform analyses and evaluations by using the acquired information and data. The prime objective is to learn about the migration routes and methods used by migrants and to use this information and data to assist in identifying foreign nationals. The county police headquarters prepare daily reports containing the apprehensions and measures taken during the previous day. These reports are submitted to the National Police Headquarters, where all heads of units receive them. Monthly, biannual and annual reports are prepared. The Analysis Division, reporting to the director general of law enforcement, prepares central analyses and evaluations based on the reports of the county police headquarters and information and data provided by diplomatic representations and the border services of the neighbouring countries. The heads and experts of the police participate regularly in international conferences and Frontex meetings (the EU agency for border cooperation, with its headquarters in Warsaw), where they are provided with relevant data and information. The reports and analysis containing this data are also forwarded to the county police headquarters, which use them to plan various operations in their jurisdiction.
In Hungary, the authorities and ministries concerned with the management of irregular migration have established close cooperation. The Police, the Immigration and Nationality Office, the Customs and Finance Guard and the Labour Inspectorate organize joint operations on national, regional and local levels to coordinate their activities. The executive units prepare reports on these joint operations and submit them to their central bodies. The reports contain the number of checked persons, the detected infringements, the names of the proceeding authorities and the experience of the operation. The joint actions based on these reports are regularly evaluated at meetings.

The immigration authorities process all data in connection with the procedures used for every infringement of Act II on the Admission and Right of Residence of Third-Country Nationals. Every measure taken is documented and stored by the executive for a defined period of time. All documents are entered into an electronic registry that enables the Alien Policing Division to read them within one to two minutes after they have been made.

The alien policing measures are noted in the central alien policing register, which is operated by the Immigration and Nationality Office. This register contains data related to the following measures, procedures and requests:

- data related to visa applications and data on the issued visas;
- personal data of the host and the invitee;
- data related to residence permits and certificates of temporary residence;
- data related to applications for immigration-related permits;
- data on foreign nationals whose travel documents were reported lost, stolen or destroyed;
- addresses and data on the location of foreign nationals;
- data on those who have been ordered to leave, or who are subject to compulsory confinement or to removal ordered under immigration laws, removal by court order, entry ban or detention under immigration laws;
- data on foreign nationals prohibited from leaving Hungary.

In conjunction with commitments by Hungary under international treaties, the immigration authority shall process certain data of foreign nationals who are detained, arrested or taken into custody in Hungary, or affected by some extraordinary event (such as a death or an accident resulting in serious injury).

The immigration authority shall process the data specified in Article 8(1) of the Council Regulation of 11 December 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention.

To check the duration of legal stay, the Police keep the personal data, nationality, and visa and travel document numbers of foreign nationals entering Hungary for six months from the date of the border crossing.

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60 (EC) 2725/2000
In Poland, oversight of the legality of stay is the responsibility of the Border Guard Service and the Police. However, the Customs Service, the head of the Foreigners’ Affairs Department and the voivods can also be involved within the limits of their powers.

During the check, the foreign national is obliged to present the documents and permission to stay in Poland, the financial means necessary to cover living expenses while in Poland or the documents proving the possibility to obtain such means (for example, credit cards, bank certificates and invitations) and a work permit.

After the control is carried out, the following documents are prepared:

- protocol of control if the stay was found to be without authorization;
- note if the stay is legal.

The checks on the legality of stay may be combined with the checks on the legality of employment (this includes self-employment). The competent agencies are the local labour inspectors, under the general management of the State Labour Inspectorate, as well as the Customs Service. This is why the control operations for the legality of employment are carried out by officers of the Border Guard Service and the police in coordination with the Customs Service and labour inspectors.

Coordination and cooperation are regulated by several agreements, including the Agreement between the head commander of the Border Guard Service and the head of State Labour Inspection on the rules of cooperation of the Border Guard Service and the State Labour Inspection. This agreement contains, inter alia, provisions on the respective competences and rules of cooperation (including the transfer of information on the violation of laws concerning foreign nationals, joint control operations and the exchange of experiences), as well as the level of cooperation, that is, central or local (between local labour inspectors and the commanders of the units of the Border Guard Service).

In Poland, legislation currently being developed would empower the Border Guard Service to carry out the checks on both the legality of stay and employment.

Data on the checks being carried out are collected by the local agencies and are transferred to the central bodies (for example, to the Border Guard Service Headquarters). The data contain the following information: the number of checks carried out; the number of participating officers (the number of staff of the respective agency and other participating agencies); the number of foreign nationals checked and the number of foreign nationals apprehended as a result of the operation (with a breakdown by nationality). This information is included in statistical catalogues and not in the database that contains personal data.
The apprehension of a person by State authorities, even for a short period, is viewed as a deprivation of liberty and, according to international law, in particular Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the European Convention on Human Rights, among others should not be arbitrary, but based on the procedure and provisions of the law. Thus, the grounds for and conditions of the apprehension of irregular migrants should be defined by national legislation, including the designation of the agencies authorized to make apprehensions or arrests, the possible duration of the custody prior to the court decision on further detention, the places where the person can be held and the legal rights of the person.

In Bulgaria, the Police is responsible for carrying out the checks with the purpose of detecting migrants who do not comply with the regulations for residence. The National Police Service agencies responsible for supervision of the legality of stay of the foreign nationals are the Chief Directorate Combating Crime, Protection of Public Order and Crime Prevention; the Chief Directorate Combating Organized Crime; the border police; the gendarmerie; the Migration Directorate and the Anti-terrorism Task Force. In practice, the Migration Directorate, after consultation with the regional police, may request assistance from the Border Police in conducting activities in responding to irregular migration.

Apprehensions are carried out by the police. If it is impossible to establish the identity of the person, s/he may be accommodated in special police premises. At this stage, every person has the right to a legal defence. The duration of police custody may not be longer than 24 hours, although it

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61 Provisions of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) relevant to migration read as follows:
1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and the charge against him.
3. Everyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

62 Article 5 of the European Convention on Human Rights:
1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Everyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
can be extended to 72 hours through a public prosecutor’s decision. The detention of the person is possible only through a court decision.

According to the Law on Foreigners, special centres for the temporary detention of foreign nationals are established to accommodate persons subject to an order to be taken to the border or to be removed. National centres are built in the territory of the Sofia Directorate of Police, and regional centres are built in the territory of the regional police directorates. A lack of identity or travel documents, and no valid reason to stay in Bulgaria are legal grounds for detention. The foreign nationals are housed in these centres pending their removal.

The immigration authorities in Hungary have the right to control compliance with and enforce the provisions of Act II on the Admission and Right of Residence of Foreign nationals across the country. Upon request, foreign nationals must present their travel documents, residence permit and other personal identification documents. Any foreign national who is unable to prove his/her lawful presence in Hungary or is unable to produce credible evidence of his/her identity, or who violates the provisions of this Act shall be apprehended and taken into custody for a maximum of 12 hours by the immigration authority. If the lawful presence of the person cannot be proven or his/her identity cannot be established while in custody, s/he may be kept in custody for an additional period of a maximum of 12 hours. This decision is open to appeal.

It is the exclusive right of the Hungarian police to apprehend and detain a foreign national for an infringement of immigration law. If another authority detects an infringement of immigration law, it is bound to notify the police.

There is a holding facility at every police station. When an apprehension of a foreign national takes place, a protocol must be written and include the exact time when the procedure started, the legal grounds for apprehension, the identity of the authority, the name of the police official initiating the procedure, the information on the apprehended person and the time when custody ended. It must also state whether the apprehended persons wished or wishes to lodge a complaint. The commanding officer of the proceeding official must supervise the legality of each apprehension. The data sheet is stored in the person’s file and in the electronic alien policing registry of the police.

In Poland, officers of the Border Guard Service or police can apprehend a foreign national for whom there exist grounds for a removal decision or who failed to comply with an existing decision on removal. Apprehensions are carried out by the Border Guard Service or the police or in cooperation with other services (such as the Customs Service or State Labour Inspection).

After the apprehension, the arresting officer informs the person of his/her following rights:

- the right to submit a complaint to the regional court within seven days of apprehension;
- the right to inform a relative or another person identified by the foreign national about the apprehension;
- the right to contact a lawyer;
- the right to contact a consular/diplomatic representative.

63 The difference between these two measures is explained in Section 10.1 Decisions on removal from Bulgaria.
The officer prepares the apprehension protocol and gives one copy to the foreign national. The public prosecutor is notified of the apprehension. Fingerprint are taken.

After the apprehension, depending on the circumstances, the apprehending authority may submit a request to the voivod for a removal, and to the court on placing the foreign national in the temporary detention centre or under arrest pending removal. If s/he is properly documented and there is a possibility of him/her being brought to the border, the removal is carried out immediately.

A foreign national can be held in police custody for no more than 48 hours, which can be extended for an extra 24 hours through a court decision. After this, the foreign national has to be released.

Before being transferred to a centre for temporary detention or being placed under arrest, the foreign national is kept in the facility for persons in police custody.

Data on foreign nationals in police custody are collected for statistical purposes only. Depersonalized digital data are sent for processing to the central office by the local agency that apprehended the person. The data include the number of apprehended persons, the grounds for apprehension, the place of apprehension (at the border with the neighbouring State or in-country) and the nationality of the apprehended persons.
2.8. Procedure for placing irregular migrants into special detention facilities and conditions of detention

According to international principles, the detention or custody of persons to be removed should be a measure of last resort, applied only when there is reason to believe that there is a risk of absconding or when the person concerned wants to avoid his/her removal. The decision to detain a person entails the deprivation of liberty and, as such, should be made by a judicial authority, or at least be subject to review by a judicial authority through an appeal process. If the initial decision on detention is made by an authority other than a judicial authority, the decision should be subject to confirmation or verification by a judicial authority within a short timeframe.

Unaccompanied minors and victims of trafficking should not be detained. Other vulnerable groups (such as families, single parents with children, persons with physical disabilities) should have access to special provisions appropriate to their needs when detained.

In most EU countries, there is a practice of alternatives to detention, which envisages the exertion of control through alternative measures, such as having the person regularly report to the respective authority or make a financial deposit, or the authority holding the person’s documents for the duration of the procedures (see Annex 12). However, for the effective functioning of such measures, each country needs to pay due attention to its migration trends and the level of efficiency of its migration management and controlling authorities.

If identification is impossible for the reasons not depending on the person, s/he should be allowed to leave the facility. Granting such a person tolerated stay status could be considered (see Annex 13).

The authorities responsible for maintaining and managing temporary detention facilities differ from country to country. It may be the police (Ukraine, Bulgaria), the State Border Guard Service (Poland) or a specialized agency at the Ministry of Justice (in many EU countries, such as the Czech Republic and the Netherlands, the Border Guard Service and migration services are part of the Ministry of Justice).

The duration of detention of foreign nationals differs among the Member States of the European Union, including the three target countries of this Manual (see Annex 11 for more details). While in Bulgaria and Hungary detention can last up to 6 months, in Poland it can be up to 12 months. The Directive 2008/115/ec of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying foreign nationals (the EU Returns Directive) contains provisions aimed at harmonization of these periods. Article 15(5) of the Directive sets 6 months as the maximum duration of detention in the Member States. Article 15(6) allows, in exceptional cases, the extension of this limit up to 18 months. By 24 December 2011 the Directive should be transposed into national legislations of the EU Member States.

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Below are examples of detention facilities and their procedures in Bulgaria, Hungary and Poland. As a general rule, the temporary detention facilities for persons who fall under the standard removal procedures and the facilities for those to be “readmitted” are not separate.

According to the Law for the Foreigners of Bulgaria, special detention facilities for those who have been issued a removal order are established. The official name of such facilities is “Specialized Home for Temporary Accommodation of Foreigners”. National detention facilities are established under the management of the Sofia Directorate of Police, and the regional centres are managed by the regional police directorates. A lack of identity/travel documents and the absence of grounds to stay are legal grounds for detention in these facilities. Individuals are held there until their removal is possible. Obstacles to immediate removal can include the ongoing proceedings for the granting of special protection under the Law for the Asylum and the Refugees, the poor health of the foreign national, a lack of travel documents or identification documents, a lack of financial means, the unavailability of transport to the destination or difficulties in obtaining a visa. If there are continuing obstacles, not depending on the will of the foreign national, a temporary tolerated stay document is issued.

The procedure for detention is regulated in the legislation on the functions of Ministry of Interior. When removal cannot be implemented immediately, the foreign national is accommodated in a special detention facility until the obstacles to removal are eliminated.

Persons to be detained are those who cannot be removed immediately or who were trying to abscond. The competent authorities are required to do everything possible to accelerate the removal.

Overall supervision of temporary detention is with the Director of the Migration Directorate, a facility is managed by its head.

In Hungary, detention for the infringement of immigration law may be ordered only by the police or the Office of Immigration and Nationality. Persons are detained in the detention centres operated by the Police (see Annex 15 for photos of these centres). At present, there is no difference between detaining persons to be returned under readmission agreements and detaining those to be removed in general. The same provisions apply to both, but there are two types of detention: a) detention pending removal and b) immigration (alien policing) detention.

Detention pending removal may be ordered concerning a foreigner who does not possess documents necessary for his/her identification or proving the legality of his/her stay. Initial maximum duration of this type of detention of 72 hours may be extended by a court decision until the foreign national’s identity or the legal grounds for his/her residence are conclusively determined or for a maximum of 30 days.

Immigration detention may be ordered after the order to leave Hungary is issued. It aims at preventing the foreigners from obstructing or delaying the deportation. This type of detention initially is ordered for a maximum duration of 72 hours, and may be extended by a court decision until the departure of the foreign national or for a maximum of 30 days. The maximum possible extension of immigration detention cannot exceed six months after the initial detention order was issued.

The legality of the detention is guaranteed by the possibility of appeal (as a form of remedy, on the grounds of an infringement of the law) of the decision ordering detention within 72 hours of the decision. After 72 hours, the detention may be extended by a court decision, but justification for the extension must be re-evaluated every 30 days.

A further guarantee is that the public prosecutor supervises the detention and the detainee’s rights. The Alien Policing Division of the National Police Headquarters evaluates the operation of detention centres and the implementation of detention, annually.
When it becomes clear that the person’s removal is impossible, the competent authority shall designate a compulsory place of confinement for the person for a maximum of 18 months.

According to Section 54 of Act II on the Admission and Right of Residence of Third-Country Nationals, the immigration authority can detain a person in order to ensure his/her removal if:

- s/he is hiding from the authorities or is obstructing the enforcement of the expulsion in some other way;
- s/he has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion;
- s/he has seriously or repeatedly violated the code of conduct of the place of compulsory confinement;
- s/he has failed to report as ordered, by means of which to forestall conclusion of the pending immigration proceeding;
- s/he is released from imprisonment as sentenced for a deliberate crime.

The detention of minors is not permitted.

The detention must end when the grounds for it no longer exist.

In **Poland**, the request to detain a foreign national in a detention centre is made by the apprehending authority – the Border Guard Service or the police. Decisions to place a migrant in a detention centre or impose custody for removal purposes are issued by district courts.

There are two types of detention facilities: **guarded detention centres** (see Table 7) and **expulsion arrest facilities** (see Tables 8 and 9). They are intended for both migrants subject to removal and those subject to readmission. The differences between the two types of facilities are described in Annex 8. Photos of detention facilities in Poland can be found in Annex 16.
### Table 7

**Guarded detention centres**

<table>
<thead>
<tr>
<th>Location of facility</th>
<th>Number of places available and date opened</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesznowola</td>
<td>131 (1998)</td>
</tr>
<tr>
<td>Przemyśl</td>
<td>138 (1 November 2007)</td>
</tr>
<tr>
<td>Biała Podlaska</td>
<td>152 (30 January 2008)</td>
</tr>
<tr>
<td>Białystok</td>
<td>142 (15 February 2008)</td>
</tr>
<tr>
<td>Kętrzyn</td>
<td>150 (summer 2008)</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>713</strong></td>
</tr>
</tbody>
</table>

### Table 8

**Police expulsion arrest facilities**

<table>
<thead>
<tr>
<th>Location of facility</th>
<th>Number of places available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wrocław</td>
<td>28</td>
</tr>
<tr>
<td>Włocławek</td>
<td>32</td>
</tr>
<tr>
<td>Katowice</td>
<td>30</td>
</tr>
<tr>
<td>Konin</td>
<td>30</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>120</strong></td>
</tr>
</tbody>
</table>

### Table 9

**Border Guard Service expulsion arrest facilities**

<table>
<thead>
<tr>
<th>Location of facility</th>
<th>Number of places available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nadwiślański Regional Unit in Warsaw</td>
<td>49</td>
</tr>
<tr>
<td>Łużycki Regional Unit in Lubań</td>
<td>9</td>
</tr>
<tr>
<td>Pomorski Regional Unit in Szczecin</td>
<td>33</td>
</tr>
<tr>
<td>Lubuski Regional Unit in Krosno Odrzańskie</td>
<td>56</td>
</tr>
<tr>
<td>Sudecki Regional Unit in Kłodzko</td>
<td>3</td>
</tr>
<tr>
<td>Karpacki Regional Unit in Nowy Sącz</td>
<td>6</td>
</tr>
<tr>
<td>Bieszczadzki Regional Unit in Przemyśl</td>
<td>38</td>
</tr>
<tr>
<td>Nabużański Regional Unit in Biała Podlaska</td>
<td>24</td>
</tr>
<tr>
<td>Podlaski Regional Unit in Białystok</td>
<td>15</td>
</tr>
<tr>
<td>Warmiński-Mazurski Regional Unit in Kętrzyn</td>
<td>30</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>263</strong></td>
</tr>
</tbody>
</table>
A person is placed into a guarded detention centre if:

- this is required under the removal procedures;
- there is reasonable concern that s/he will avoid the removal;
- s/he has crossed or attempted to cross the Polish border without authorization.

A foreign national is put into a removal arrest facility if the circumstances necessitate detention and if there is a concern that the migrant would not comply with the rules of the guarded detention centre.

A foreigner shall not be detained if this may threaten his/her life or health.

Detention orders issued by courts authorize detention for up to 90 days. The detention can be extended by consecutive 90-day periods if the foreign national cannot be removed because s/he refuses to cooperate in establishing his/her identity. No person can be detained longer than one year in total.

The legal basis for establishing detention centres for migrants is provided by Article 109/2 of the Act on Aliens, which stipulates that detention centres shall be established and closed down by decision of the Minister of Home Affairs. These decisions designate the Border Guard Service or police as the authority in charge of the centre. Detention centres are funded by the Ministry of Home Affairs. At present, there are five such centres. The detention centre of the Mazowiecki Province Police Department is the only one managed by the police, the four others being managed by the Border Guard Service.

The legal basis for designating removal arrest facilities is provided by Article 109/3 of the Act on Aliens, which stipulates that removal arrest facilities shall be designated by the Ministry of Internal Affairs and Administration orders. At present, one such order is in effect: Ministry of Internal Affairs and Administration Order No. 61 of 3 September 2007. The police authorities are currently responsible for four removal arrest facilities, and the Border Guard Service for nine.

A detention centre is a unit managed by a chief officer who reports directly to the commander of the border guard unit. If the detention centre accommodates a removal arrest facility, such a facility is also part of the detention centre, and security guards may serve at both the detention centre and the removal arrest facility.

Removal arrest facilities not part of the detention centres for migrants are part of the foreigners’ divisions of the border guard units. The head of the removal arrest facility reports to the head of the foreigners’ division, who reports to the commander of the border guard unit.

### 2.8.1. Conditions of detention in detention facilities

It should be noted that detention facilities for foreign nationals pending removal should be used only for administrative purposes and not for criminal ones. In their planning, design and construction, any impression of an environment of incarceration should be avoided. Prisons in principle should not be used for immigration detention. However, if there is no other option, the immigration detainees should be completely separated from the criminal population. All persons should be held with full respect for their human dignity. Respect for human dignity depends not only on actual treatment by the officers of the facility but also on the physical environment of the facility and the conditions of detention. According to recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

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Punishment (CPT), places designed for long periods of detention should be constructed and equipped to guarantee the proper conditions of detention\(^68\).

Although there is no comprehensive international document outlining detention conditions, many countries (such as Belgium, Sweden, United Kingdom and Ukraine) have developed their own legislation to regulate technical construction requirements and provisions concerning the rights and obligations of detainees and the officers who work there.

<table>
<thead>
<tr>
<th>The main rights to be guaranteed to detained foreign nationals include:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• the right to have access to an attorney(^69)</td>
</tr>
<tr>
<td>• the right to have access to medical care(^70)</td>
</tr>
<tr>
<td>• the right to appeal the decision on detention(^71)</td>
</tr>
<tr>
<td>• the right to seek asylum(^72).</td>
</tr>
</tbody>
</table>

In many EU countries, unaccompanied minors and families with minors are not detained at all (for example, Belgium, Hungary, Netherlands, Poland, Sweden) or detained only as a last resort and for the shortest possible period of time (Article 17 of the Returns Directive), and if they are, conditions should be created to respond to their special needs.

Concerning the maintenance of security and order in detention facilities the below examples are made.

In **Bulgaria**, the internal order on temporary detention facilities is approved by an order of the Migration Directorate. Temporary detention facilities are “open”, that is, persons who stay there can move freely within the limits of the facility.

The detained foreign nationals are transferred to the detention facility by MoI officers. A transfer protocol is signed by the MoI officer, the officer on duty at the facility who received the person, and the person him/herself. Three copies of the transfer protocol are made: one for the file of the foreign national, one for the escorting officers of MoI, and one for the foreign national. Before signing the protocol, the receiving officer checks the correctness (legality) of the documents. The personal data of the foreign national is entered into the register of the detention facility.

Staff of the detention facilities consist of administrative, security and technical personnel, who are directly subordinate to the head of the facility. Interviews for voluntary return are carried out by qualified personnel from the Migration Directorate at MoI. Psychologists also work with the detainees.

If required, an **administrative unit**, an **health centre**, an **accommodation unit**, a **food service unit**, an **entertainment centre**, **prayer rooms** and a **logistics unit** can be set up.

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\(^{72}\) Convention relating to the Status of Refugees, 1951.
In **Hungary**, the rules of immigration detention are stipulated by Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. Decree 27 of 2007 by the Minister of Justice and Law Enforcement on the execution of immigration detention stipulates that immigration detention is carried out in a police-operated detention centre, which is located within the jurisdiction of the immigration authority ordering the detention.

In Hungary, the detention centre is the only type of institution for immigration detention. Detention centres are operated by the police under their own budget. The number of detention centres is determined by the national chief commissioner of police. At present, there are four detention centres, which are located in the vicinity of the Austrian, Serbian and Ukrainian borders and at the airport in Budapest. The centres can accommodate a total of 279 persons (223 men and 56 women). Minors cannot be detained (see Annex 9).

Within the county police headquarters, the detention centres operate individually and are subordinate to the county police deputy chiefs in charge of law enforcement. The number of staff depends on the number of persons accommodated.

Each detention centre has an apprehension room, reception unit (room for the officer on duty, an investigation room, a surgery and a medical confinement room), an accommodation unit for detainees (living rooms, dining room, community room, washroom and toilet, and prayer room) and a yard for sports.

Only authorized persons may enter the detention centre, and entry can be gained only after thorough checks of their credentials. A specific external and internal security system is in place.

Hungarian Government Decree 114 of 2007 (V.24), 129. § (1) on the execution of Act II of 2007 stipulates that **detention centres must provide:**

- at least 15 m³ and 5 m² space per person;
- a community room (leisure and visits);
- a bathroom with cold and hot water and toilet facilities;
- a surgery room to general practitioners’ standards;
- rooms for medical check-ups and a medical confinement room;
- an outdoor area where detainees may spend time;
- necessary lighting;
- an uninterruptible power supply;
- rooms to receive visitors;
- use of telephone;
- ventilation.

In **Poland**, the standards to be met by detention centres and removal arrest facilities, as well as migrant accommodation, are established by the Ministry of Internal Affairs and Administration Order of 26 August 2004.

A **detention centre** has an **accommodation section, an administrative and services section, and a sports section.** The accommodation section has living rooms, rooms for unaccompanied minors, isolation cells for problematic detainees, a library, cultural and sports rooms, prayer rooms and washrooms. The minimum floor space requirements for living rooms are 3 m² for men and 4 m² for females and children.
The administrative and services section has the duty officer’s room, a medical station, a sickbay, a visiting room, a kitchen, storage rooms, a clothing and shoe disinfection and cleaning room, and possibly a laundry room. All spaces are built and furnished according to very specific safety, security, hygiene and health standards.

The duty officer’s room is directly connected with the nearest police or Border Guard Unit. A surveillance system is installed whenever possible, and the detention centre’s grounds have secure perimeters.

A removal arrest facility consists of a duty officer’s room, cells, a medical station, a visiting room, a kitchen, storage rooms, washrooms and toilets. There is a fenced outdoor area for walks. All entrances are secured.

The duty officer’s room is directly connected to the duty officer of the police station or of the Border Guard Unit. The removal arrest facility is equipped with all possible alarm systems and there are alarm buttons located throughout the facility. A surveillance system is installed wherever possible.

2.8.2. Admission to detention centres

In Bulgaria, detainees are separated in their accommodation on the basis of sex and religion. Unaccompanied minors, women and families are separated from the adult male population. Persons who violate the house rules are separated from other persons in the centre.

Upon arrival, the person is searched for forbidden objects. A protocol describing the detainee’s personal belongings, money and valuables is made in duplicate by the officer on duty and countersigned by the detainee. One copy goes into the file of the detainee and the other is given to him/her. During detention, the deposited objects are kept in a secure room.

In Hungary, a detention centre accepts detainees only when there is an official detention decision. The detainees receive a medical check-up before being accepted. If they have an illness, they are confined and treated.

On arrival, each detainee receives a basic toiletry kit and bed linen. Detainees may wear their own clothing in the centre. If they do not have sufficient clothing, it is provided.

The detainee’s possessions are verified on arrival. They cannot keep money, mobile telephones, perishables or dangerous objects. These are deposited by the officer on duty. Detainees have access to tobacco and sundries, which can be purchased with the money they deposited. On removal the goods and money deposited are returned.

When they arrive at the detention centre, the detainees are informed of their rights and obligations and of the regulations of the centre in a language they understand. This information is also posted in several languages in the rooms used by the detainees.

In Poland, migrants are housed in detention centres or removal arrest facilities 24 hours per day, but between 4 p.m. and 8 a.m. admission depends on the head of the facility. A migrant is placed in the facility according to an order of the court.

Migrants are taken to detention centres under escort of the detention centre officers or border guard officers. They travel in special vehicles escorted by at least two officers per migrant. If the special vehicles are not available, the migrants may be transported in other vehicles (but not by public
transport), in which case the number of escort officers must exceed the number of migrants being escorted.

In admission, the migrant is searched and signs a list of the items deposited for storage, such as documents, money, valuables and other items.

The migrant receives clothes, shoes and underwear. If his/her own belongings are inadequate, s/he is provided with personal hygiene items, bed linen and tableware.

The migrant must be informed of his/her rights and obligations and of the centre’s internal regulations in a language s/he understands.

Women are accommodated separately and, if possible, families are accommodated separately. Accommodation arrangements are motivated by security and order.

**2.8.3. Detention conditions**

In Bulgaria, detainees are entitled to:

- information on the house rules (given on arrival in a language understood by the detainee, and copies are available in various languages);
- a bed and personal space;
- appropriate clothing and personal hygiene items;
- nourishment;
- medical care;
- natural and artificial light;
- heating;
- personal hygiene (free access to washrooms and toilets);
- time outdoors;
- sports activities and exercise (sporting grounds and activity rooms are provided);
- meetings with legal counsel, relatives and persons from diplomatic/consular services;
- personal correspondence;
- receive parcels in accordance with safety requirements;
- have contact with representatives of human rights, religious and other organizations and communities registered in Bulgaria, if given permission from the head of the facility.

Visits of the detainees are entered in the visitor register of the facility. A request by the media to visit a detainee is addressed in writing to the Director of the Press and Public Relations Directorate at MoI. There are visiting rooms available. Visits are held during normal working hours.

The detainees are not permitted to work, and forced labour is prohibited.

In Hungary, Section 61 of Act II on the Admission and Right of Residence of Foreign nationals stipulates that detainees are entitled to:

- housing and nourishment, their personal clothing (clothing will be provided if necessary) and medical care;
The detainees may contact their consular officers, their legal representative, legal aid, representatives of human rights organizations, the United Nations, the European Council, or ministers of religion without supervision. These persons may meet the detainees without prior notice.

Detainees may meet their relatives and other persons under supervision during the leisure time defined in the internal regulations.

After arrival, the detainee is entitled to a telephone call free of charge. At other times s/he may use the public telephone. Detainees are entitled to send and receive packages and letters.

The police cooperate with the Helsinki Committee on whose behalf legal counselors visit the detention centres every week (see Annex 10). If the legal counselors find any infringement, they immediately notify the head of the centre, who then investigates. At the same time, they notify the head of the Alien Policing Division of the National Police Headquarters to ensure the problems detected are taken care of. The agreement between the police and the Committee regulates the conditions under which the representatives of the Helsinki Committee participate in monitoring, how and what kind of activities they can be involved in, and what kind of information they may share with the public. This is essential because it provides oversight from an outside organization. The cooperating parties evaluate their experiences annually and publish a joint report.

In Poland, detainees have the right to contact Polish government agencies, NGOs, international organizations, diplomatic missions and consular offices.

Foreign nationals placed in a removal arrest facility are entitled to one hour of outdoor activities per day. Foreign nationals placed in a guarded detention centre may be allowed to spend more time outdoors in accordance with the centre’s internal regulations.

Detainees can interact freely, although in removal arrest facilities this is limited to special hours subject to the permission of the duty officers.

Detainees are allowed to possess religious items. They may play games in the recreation rooms, but no gambling is permitted.

In accordance with the facility’s internal regulations, a variety of goods can be purchased with their own money, including newspapers, sundries, personal items, writing materials, books and tobacco (normally once a week).

Detainees can be engaged, if they wish so, in cleaning of the facility on a voluntary, unpaid basis. Forced labour is prohibited.

Detained persons have the right to send and receive post and parcels. Forbidden items will be deposited, but detainees will be notified about their arrival. There are telephones that can be used with cards in the common areas near the duty officer’s room, and the use of the duty officer’s telephone is allowed in emergencies.
Foreign nationals placed in a detention centre or removal arrest facility have the right to receive visitors in a designated room. Permission to receive visitors is granted by the facility’s chief officer with the concurrence of the detaining authority. No permission is required to meet Polish authorities, representatives from NGOs and international organizations, and diplomatic or consular officers. The contact details of NGOs and international organizations providing assistance to migrants is displayed in a common area. A person is normally allowed to have one meeting per day (lasting not longer than one hour) with no more than two adult visitors.

Migrants have the right to make requests, complaints and petitions, in writing or verbally.

2.8.4. Migrants’ obligations

In Bulgaria, persons in detention facilities have the following obligation, to:

- observe the internal regulations of the facility;
- follow the instructions of the facility officials;
- preserve hygiene;
- pay for damage caused to property. There are no further special sanctions if the detainee cannot pay for the damages. During the person’s next entry, s/he is obliged to pay for those damages. Otherwise, a refusal of entry can be imposed.

In Hungary, according to Section 61 of Act II on the Admission and Right of Residence of Third-Country Nationals, detainees have the obligation to:

- abide by the house rules of the detention facility, and to obey the instructions received in that respect;
- conduct themselves so as not to infringe upon the rights of other detainees, and not to disturb them;
- clean the areas used by them without any compensation;
- subject themselves to checks, to permit the searching of their clothing, and not to obstruct the confiscation of any contraband (see Annexes 10A/B/C).

A detainee in Poland shall:

- comply with the internal regulations of the detention centre or removal facility;
- obey the orders of the officers/employees on duty;
- remain quiet during night hours;
- comply with collective accommodation regulations;
- comply with sanitary requirements;
- use the centre’s equipment in a proper manner;
- immediately inform an official about any illness, self-inflicted injury or other such event.

Detainees can be searched when the action is justified for security and order.

73 The experience of other EU Member States shows that the tendency is to be “liberal” with visiting rights and not to discourage visitors.
Every detention centre or removal arrest facility has its own internal regulations, intended to maintain security, discipline and order and to provide adequate accommodation, medical care and sanitary conditions. These specify the meal times, wake-up time, lights-out time in the evening, nightly silence periods, cultural and educational events, sports activities and outdoor walks. They also contain rules for receiving visitors, sending and receiving letters, and submitting complaints and requests.

For infringements of the internal regulations, a detainee may be placed into solitary confinement, not only for breaching the order but also for endangering the health and life of others. As a follow-up, the authorities may request the court to change the order to transfer the migrant from a detention centre to a removal arrest facility.

Rooms, cells and other areas are checked at least once a week for order and security reasons.

2.8.5. Medical care

In **Bulgaria**, foreign nationals are subject to a medical examination on arrival at a detention centre, the results of which are entered into the facility’s register. The examination is carried out by a doctor. When necessary, newly arrived foreigners take shower and have their clothes washed. Regular medical care is provided by the medical teams on duty. Adequately equipped rooms are available, and special treatment is provided by local hospitals. There are no special agreements for cooperation between MoI and the hospitals as the latter are obliged by law to provide equal medical care to everyone.

In **Hungary**, as mentioned above, the detainee has a medical check-up before being accepted. If necessary, the person is confined and treated. Medical staff is present at all times, and the detainees can consult them daily. The surgery must be equipped to the same standards as any general practitioner’s. If the necessary care cannot be provided at the centre, the detainee is taken to a hospital. When required, the psychologist of the county police headquarters is involved in the detainee’s treatment.

In **Poland**, detainees are entitled to medical care. If an apprehended migrant is placed into a temporary holding facility, s/he undergoes a medical check to determine whether there are any grounds that preclude the possibility of custody.

When admitted to a centre, the migrant undergoes another medical check, and a health card with all the health information is issued. The medical station has basic medical equipment. Detainees receive medical checks at least once a month as well as before their departure from the centre. They receive health care if necessary. If hospitalization is required, the person is transferred to the local hospital based on the decision of a doctor. If the person’s health condition does not permit further detention, s/he is released.

Pregnant women can be accommodated at detention centres, and are taken to the local hospital for delivery. At removal arrest facilities, a pregnant woman can remain at the facility up to the seventh month of pregnancy; before the end of the sixth month, the police or the chief commander of the Border Guard Service must submit a petition to the court to have her transferred to a detention centre. If the court does not issue the order to transfer, she is released.

Persons with mental disorders, drug addictions and disabilities can be provided with special accommodation by the chief of a detention centre.

Basic medical care for detainees is funded by the Ministry of Internal Affairs and Administration.
2.8.6. Meals

In Bulgarian detention facilities there is a canteen, and the food is free of charge and prepared according to nationally approved standards. Meals are prepared in-house and served three times a day. There are special menus for people with particular needs.

In Hungarian detention facilities food must be provided three times a day. At least 40 minutes must be allocated for lunch and 30 minutes for other meals. Religious and cultural requirements are respected.

In Polish detention facilities, meals and nourishment for the detainees are regulated in detail by the Ministry of Internal Affairs and Administration Order of 11 December 2007. They receive three meals a day, including one hot meal. The religious and cultural requirements of the detainees are respected.

2.8.7. Use of special devices and firearms

In Bulgaria, security is provided by police officers of the Migration Directorate. Technical devices such as video cameras, searchlights, security alert systems and communication devices are used for security purposes. Police officers are subordinate to the head of the facility.

Police officers may apply physical force and use special devices only as a last resort for safeguarding the security of persons or of the facility. Special devices shall be applied only after a warning, except in cases of a sudden attack or to enable the release of hostages. Their application should be proportional to the situation, the nature of the violation and the person who breached the rules. When applying physical force, police officers are obliged to the maximum extent possible to protect the health, and take any measure to preserve the life, of the persons against whom the measures are taken. The application of physical force and auxiliary means is to be stopped immediately after the purpose has been achieved. The application of physical force and special devices against juvenile persons and pregnant women is prohibited. Such a ban shall not apply in cases of mass disorder if all other means have been exhausted. Police officers may use weapons as an extreme measure in cases of an armed attack or a threat by firearms. These rules are strictly established by legislation.

Regional police units can be involved to support detention officers in the facilities if detainees fail to respect the rules and attempt to destroy or damage the property.

Every detention centre in Hungary has specific operational plans with detailed instructions for the staff on behaviour, physical safety, health care, the rules of the centre and the measures to be taken in dangerous situations. These situations could include terrorist acts related to detention, crimes committed by detainees in the centre, escape, group rebellion against the staff, disturbance of the order in the centre, contagious disease, a death or suicide attempt, intentional health impairment, group hunger strike, food poisoning, quarantine, or an accident while transporting detainees.

These plans identify the police unit and the number of staff that is to give assistance to the detention centre staff in cases of emergency.

The detention centre staff must comply with section 54 of the Act XXXIV of 1994 on the Police stipulating the use of guns in the following cases:

- to avert a direct threat to, or attack against, life;
- to avert a direct attack gravely endangering bodily integrity;
- to prevent or to interrupt the perpetration of an offence of causing public danger, terrorist act or airplane hijacking;
- to prevent an offence to be perpetrated through the use of a gun, explosives or other means suitable to take life;
- to prevent an act aimed at the unlawful acquisition of a gun or explosives by violence;
- to avert an armed attack directed against a facility of outstanding importance for the functioning of the state or for the supply of the population;
- to apprehend, or to prevent the escape of, the perpetrator who took someone's life intentionally;
- against the person not complying with the Police instruction to put down the weapon or other dangerous object he has with him and whose behaviour indicates the direct use of the weapon or other dangerous object against human life;
- to prevent from escaping, from being freed by violence or to catch, a person apprehended, under arrest because of the perpetration of a criminal offence or kept captive under a
- to avert an attack directed against the Police Officer's own life, bodily integrity or personal freedom.

It is important to note that guards working inside the centre and among detainees are not permitted to carry guns. The detainees leaving the detention centre must be handcuffed during escort. They are transported in specially built and equipped vehicles with a sufficient number of escorts. The exact number of escorts is not defined by law; the decision lies with the head of the centre.

The use of special devices in Poland is governed by the Council of Ministers’ Order of 17, 1998 on the Conditions for and Methods of Using Special Devices and Firearms by Border Guard Officers and Bodyguard Personnel.

The border guards on duty at the detention centres or removal arrest facilities can use the following enforcement tools and techniques, each in specific situations:

- immobilizing techniques;
- handcuffs;
- paralyzing gas;
- police batons;
- electric stun guns.

Firearms are carried only in the security zone between the outer and inner fence. Firearms can be used only in exceptional situations being strictly defined by law. No weapons are used inside the detention centres or removal arrest facilities.

In cases of emergency, the nearest border guard or police unit can be called for assistance. The decision to send in reinforcements is made by the commander of the Border Guard Division.
2.9. Procedure for transfer of a foreign national to a Requested State

The last step of a readmission procedure is the transfer. As a rule, the general conditions of transfer are defined in the readmission agreement. Details regarding the responsible State authorities, the points of transfer and the timeframes are set out in the implementing protocols. The time and place of transfer should be coordinated between the respective agencies of the two countries. The readmission procedure can be either an accelerated or a normal procedure.

2.9.1. Accelerated readmission procedure

**Hungary** has concluded 23 bilateral readmission agreements (*see Annex 5*), 8 of which enable an accelerated procedure.

The implementation of the accelerated readmission procedure can be demonstrated by the readmission agreement between Hungary and Romania on readmitting their own and third-country nationals and its implementing protocol, signed on 10 December 2001.

The alien policing divisions of the county police headquarters with jurisdiction along the Romanian border are responsible for the implementation of the accelerated procedure.

Paragraph 4 (1) of the readmission agreement stipulates that each Contracting Party, upon request of the other and without specific formalities, will readmit a third-country national who entered the territory of the Requesting Party directly from the territory of the Requested Party and who does not or no longer meets the conditions of entry or stay.

According to Paragraph 4 (1), following prior notice, the Contracting Parties readmit the third-country national within a maximum of 24 hours, if it can be ascertained that the person concerned had previously entered from the territory of the Requested State without authorization and provided that the Requesting State requests their readmission within 48 hours of the irregular entry. If the accelerated procedure is not applicable, readmission proceeds according to the normal procedure.

Based on the implementing protocol, if the readmission conditions defined in the readmission agreement are met, the Requesting Party informs the Requested Party of the apprehension by telephone, then forwards the written readmission request by fax. The Requested Party is bound to readmit the person within 24 hours following the 48 hours from the time of the irregular entry. The Contracting Parties must record a protocol of the readmission. If, after readmission, the person concerned does not fulfil the requirements defined in the agreement, the Requesting Party readmits him/her immediately without any formalities.

A readmission protocol specimen is attached to the implementing protocol, which includes the date and time of the request; the telephone and fax numbers of the Requesting and Requested Parties; the venue of transfer; the identification data of the person concerned; the place, circumstances and evidence of the irregular border crossing; the list of valuables, documents and money the person has with him/her; the contact data of the representatives of the Requesting and Requested Parties; the certificate for transferring/receiving the person concerned and the deadline to delete the personal data.
In **Poland**, an accelerated readmission procedure is a specific type of agreement between States. In this type of agreement, the State accepts without formalities a person who has crossed the border without authorization and was apprehended (as a rule, within 48 hours of the border crossing, if it is possible to determine when it took place). The Requested State makes its decision to accept the person upon proof of the irregular border crossing. This can be regarded as a consequence of a failure to protect its border. This is also why (in the case of the readmission of a third-country national) the Requested State will have the responsibility of identifying and documenting the readmitted person and will bear the burden of returning the person to his/her country of origin.

The accelerated procedure is usually used at land borders, although there are cases when it is used in airports as well. One such case is if the person crosses the border by air with forged documents and the irregular crossing is proved within the term indicated for accelerated procedures in the readmission agreement (for example, as a result of the legality of stay control being carried out inside the country).

All the rules and processes should be clearly described in the readmission agreements and implementing protocols.

### 2.9.2. Normal readmission procedure

In **Bulgaria**, once the arrangements concerning the transfer procedure are set in writing, the type of transport necessary must be clarified. If the person is transferred to a neighboring country, travel by train is preferred to travel by air. Once the Requesting Party’s officers bring the person in question to the border transfer point, a team of the Requested State comprising, in the case of Bulgaria, the required number of police officers and, if necessary, a doctor receive the person.

After receiving the documents necessary for the removal of a returnee in detention, the head of the facility gives these documents to the head of the escort unit, which is present in the facility. Escorts are officers of the Migration Directorate at MoI. All escort officers have police authority to maintain security during the transfer. The head of the escort unit transfers the migrant and all relevant documents to the head of the shift unit of the border police at the border crossing point. A protocol for the transfer of the persons is to be written at the border crossing point.

In Bulgaria, where the rate of readmission is relatively high, special rooms are allocated at the border crossing point, in which the documents for the transfer procedures are accepted and checked.

Two copies of a protocol for the transfer of the returnee are made; the first copy is kept at the border crossing point and the second one is given to the head of the escort unit.

In **Hungary**, the police handle the transportation and escort of returnees during removal by air and land.

According to the readmission agreements of Hungary, the alien policing authority (the Police or the Office of Immigration and Nationality) coordinates the place and time of the handover with the other Contracting Party.

The alien policing authority gives the following written information to the head of the detention centre or the head of the subdivision for removal by air before the removal takes place:

- personal data of the returnee;
- number of travel documents;
- place and time of departure and arrival;
Before transporting the returnee, the alien policing authority sends the necessary documents to the head of the detention centre or the head of the subdivision of removal by air, who determine the escort tasks.

The person being removed is transported in a special police vehicle with a police escort from the detention centre. The number of escorts depends on the number and the level of risk of the persons to be removed and the type of vehicle. The number of escorts is not defined by law; the decision lies with the head of the detention centre. The police can transport from 7 to 36 persons in one vehicle.

While transporting the returnee, the officers wear uniforms and have firearms, a radio, handcuffs, baton, pepper spray and a flashlight.

In every case, the commander of the escort collects the returnee at the designated border crossing point or at the detention centre. According to the prepared list, the escorts identify the returnees and perform a body search.

During the transport, the escorts are required to supply the returnees with food and drinks according to the nature of the operation and the specific regulations. During the journey, the commander of the escort stops the vehicle only at the designated rest areas, which are at the police stations close to the roads used.

The escort staff must comply with section 54 of the Policing Act XXXIV of 1994 on the use of firearms. According to this section the escort staff may use means of restraint and firearms against the returnees only in cases of assault or to protect the physical integrity of others. The detainees must be handcuffed during the escort. The police officer shall apply coercive measures only in the conditions determined by the Act. The application of these means shall stop if the resistance ends.

The means of coercion that may be used are:

- bodily coercion;
- handcuffs;
- chemical devices
- electric shock device (stun gun);
- police truncheon;
- dogs;
- firearms.

If the returnee escapes during the transport, the commander takes measures to recapture him/her. The nearest police stations assist the escorts in this.

The Airport Police Directorate deals with removals by air. Hungary uses only regular flights, not charter flights, for removals. During removal by air, the escorts wear civilian clothing. They are not permitted to carry firearms.

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74 Pepper spray and teargas.
For removal by air or on land, the commander is responsible for the transport and handover of the migrant. The commander of the escort records the handover and sends this to the alien policing authority.

The commander of the detention centre or the head of the subdivision for removal by air are responsible for training escorting officers, who receive eight hours of training per month. The commander of the unit decides on the topic of the training.

In Poland, all foreigners returned under accelerated readmission procedure or those placed in detention centres until their removal (under readmission agreements or through regular removal procedures) are taken to the border by police officers. At the border, they are transferred to the Border Guard Service, which takes them from the Polish border to the border of the State from where s/he came and hands him/her over to their authorities.

At present, legislation is being developed to transfer the task of escorting foreign nationals to the Border Guard Service.

Returnees are taken to the border in a special vehicle by at least two police officers. From the Polish border to the border of the other State, they are escorted on foot or in a border guard vehicle, depending on the terrain. The number of escorting officers must exceed the number of persons escorted.

If the persons are to be escorted by air, police officers take them to a designated border guard unit (normally the Warsaw-Okecie Border Guard Unit or the Vistula Border Guard Unit, to which the Warsaw-Okecie Unit is subordinated), where they are taken over by the border guard officers. Specially trained officers are sent on air escort duty. If regular flights are used, the number of escort officers must exceed the number of persons being removed.

Charter flights are also used for escorted removals. In such cases, the number of escorts depends on the risk evaluation of the individual operation. A doctor must be present during charter flight removals.

As a rule, escorts must be armed and properly equipped; they must have communication devices, firearms, enforcement tools, bulletproof vests, helmets, and devices to protect themselves from infectious diseases. Firearms are not, however, permitted on board the plane.

During an escorted removal operation, the escorts prevent the returnee from communicating with other passengers, do not disclose any information about the returnee, do not talk to the returnee, and do not leave him/her alone or in the care of others. If there are suspicions of a potential attack on the escort with the aim of releasing the returnee, at least one escort officer should carry an automatic gun (except on airplanes). If a returnee escapes, the head of the escort organizes a pursuit, informs the nearest border guard or police unit and requests assistance if necessary.
2.10. Decision on removal of a readmitted third-country national

In most cases, a foreign national who was readmitted by the Requested State and who does not have legal grounds to remain there should be removed. The procedures and grounds for removal and the consequences of removal depend on national settings.

The Law on Foreigners of Bulgaria provides the conditions and grounds for removal and defines which State agencies deal with removals.

Removal is regarded as the most drastic measure and is applied, according to Articles 33h, 42-43g, in cases when there is a serious threat to national security or public order. Removal decisions are made by the Ministry of Interior or the State Agency for National Security. In cases of removal, permission to remain (if a foreigner was in possession of such permission) is rescinded and re-entry into Bulgaria is prohibited. This prohibition is valid for ten years and may be combined with administrative fines.

It should be noted that most, if not all, EU Member States have two types of removals. The most commonly used type (essentially the physical operation of sending a person to his/her country of origin or to any other country), which has no continuing effect – the removal decision “extinguishes” the moment it is executed. The person can return to the removing State as long as s/he complies with the regulations on entry/stay (especially those that s/he did not comply with initially). The second type of removal is essentially a banishment from the country (re-entry is not permitted).

Article 33h.2 is very important for the rights of long-term residents. Conditions such as the person’s duration of residence in Bulgaria, age, health, family situation, and social integration, as well as the existence of a connection with Bulgaria or a lack of links with the country of origin, are all considered before the removal decision is made.

According to Article 41, if only a simple breach of the immigration rules is involved, a decision called “compulsory taking to the border” will be issued. This can be applied on three grounds:

- the foreign national cannot prove his/her legal entry;
- the foreign national is overstaying his/her permit to stay;
- the foreign national has entered and remained in Bulgaria with fraudulent documentation.

According to Hungarian procedures, persons accepted through readmission agreements are always checked through national and EU databases. If there is a warrant for a person, the police contact the authority who issued the warrant, and further procedures depend upon their decision. The authority who issued the warrant may request the police to hand over the person immediately after readmission. In this case, the police organize and are responsible for the detention, escort and transit of the person.
If the authority who issued the warrant does not request that the person be handed over, or if no such warrant exists the person will be charged with an irregular border crossing and may receive a reprimand or a fine. S/he may be removed if justified by Act II on the Admission and Right to Residence of Foreign Nationals.

The person readmitted to Hungary must be apprehended and the competent authority must make a decision within 12 hours on how to classify the infringement (for example, whether it warrants only a fine or it is of a more dangerous nature).

The competent authority to issue a reprimand or impose a fine is the authority at the border crossing point readmitting the persons concerned. The relevant county police headquarters deals with the infringement procedure and the alien policing division of the county police headquarters handles the alien policing procedure. The Office of Immigration and Nationality regional directorate handles the alien policing procedure for persons readmitted via Schengen internal borders.

The authority processing the case orders removals through an executive decision. The person to be removed is notified of the decision through an administrative resolution in a language s/he understands and is given a copy of the notification.

The resolution specifies the name of the authority processing the case, the data of the person to be removed, the identity of the authority, the possibility of legal remedy, the details of the infringement and the factual and legal motivation for it.

Section 46 of the Act II on the Admission and Right of Residence of Foreign nationals has further rules concerning the contents of the resolution, stating that removal orders shall specify:

- the criteria involving all circumstances of the person concerned;
- the duration of the re-entry ban;
- the country to which the person is removed;
- the deadline for leaving Hungary;
- the border crossing point for leaving Hungary;
- the obligation to be photographed and fingerprinted.

Removal orders may not be appealed (in substance, i.e. reconsideration by the court of facts of the case); a petition for a judicial review (in procedure, i.e. checking by the court of the correctness of application of legal provisions and powers of the administrative authority to issue the order) may be lodged within eight days of the notification of the decision. The court may overturn the resolution. The court's decision is final.

The enforcement of the removal decision may be suspended until it can be effectuated, that is, until the travel document, visa or ticket is obtained.

Removals shall be carried out preferably through the framework of readmission agreements. The proceeding authority has to verify if this is possible, and if it is, the readmission agreement will be implemented.

According to Act II on the Admission and Right to Residence of Third-Country Nationals, Section 43 (2), removal can be applied to a foreign national who:

- has crossed the Hungarian border without authorization, or has attempted to do so;
- fails to comply with the requirements to obtain the right of residence;
- fails to comply with the order to leave the territory within the prescribed time limit;
- was engaged in any gainful employment without the necessary permit;
The duration of an entry ban, ordered independently, without removal, shall be determined by the authority ordering removal. An entry ban may be for a maximum of three years, but it may be extended by a maximum of three additional years each time it is ordered. An entry ban shall be cancelled when the grounds for it no longer exist.

The immigration authority shall consider the following elements before deciding on a removal order:

- any threat to national security, public security, public policy or public health;
- the duration of stay;
- the age and family status of the person, and the consequences of the removal on his/her family;
- ties with Hungary or the absence of ties with the country of origin.

Any person who resides under temporary or permanent resident status, or is linked to a person under immigrant or permanent resident status by marriage or is a family member of such person, and has a residence permit, or has refugee status or his/her refugee procedure is pending, may be removed only if his/her continued presence represents a serious threat to national security, public security or public policy.

An unaccompanied minor may be removed only if adequate protection is ensured in the country to which s/he is returned.

The immigration authority may abstain from removal when the foreign national is ready to leave voluntarily. A deadline of a maximum of 30 days shall be prescribed to comply with the obligation to leave the territory.

Removal may be ordered by a court for cases defined by the Criminal Code of Hungary. When a removal is ordered by a court, the court immediately notifies the immigration authority, which carries out the removal and orders its enforcement.

If the foreign national was imprisoned, the penitentiary service notifies the immigration service in order to execute the removal. This notification takes place six months prior to the expected release date so as to ensure adequate preparation for the removal.

Importantly, if the court did not order the removal of a person serving a sentence, the immigration authority cannot remove him/her through an administrative decision.

According to Act IV of 1978 (the Criminal Code), Section 61, a removal decision by a court is accompanied by either permanent or limited prohibition of re-entry. Permanent prohibition of re-entry may be imposed against any person who has been sentenced to imprisonment for ten years or more.

Upon request of the person, the court may suspend a permanent prohibition of re-entry if the person is deemed worthy and if ten years has passed since the decision.
The duration of prohibition of re-entry for a specific term is between one year and ten years. The prohibition of re-entry shall take effect upon the decision on removal becoming definitive. The duration of the imprisonment served shall not be included in the term of prohibition of re-entry.

Refugees or EU citizens can be removed only if they committed a crime that is punishable by an imprisonment of five years or more.

A return or removal measure ordered by an immigration authority or a court shall be enforced by way of transporting the person under police escort.

<table>
<thead>
<tr>
<th>There are two methods for removal:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• If the person has valid travel documents and all the conditions of entry into the neighboring country exist, transport ends at the State border and the person exits the country himself/herself without escort. This procedure is also applied when the return is carried out with the assistance of IOM.</td>
</tr>
<tr>
<td>• When not all the conditions of entry are met (the person does not possess the necessary travel document, a visa or financial means) and there exists a readmission agreement applicable in the situation, the person is removed from Hungary as per the agreement. In this case, the removal takes place under escort, but the person is handed over to the authorities of the neighboring country.</td>
</tr>
</tbody>
</table>

When there is no applicable readmission agreement, the person is removed directly to his/her country of origin.

If a foreign national is transferred to Poland through a readmission agreement, the border guard authority can request the voivod to make a decision on removing him/her. The request depends on the person’s immigration status.

If a removal order already exists but the person was not notified during his/her previous stay in Poland, no new decision will be made; the person will be removed on the basis of the existing decision.

Article 88 of the Act on Aliens decrees that a removal order can be issued if the person:

- is in the territory without a visa or any other necessary permit;
- is illegally exercising a gainful activity;
- does not have sufficient financial means to cover his/her expenses and cannot prove a source of income;
- is listed as undesirable;

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75 As a general principle, the return to the country of origin is preferable. Sending a person to a third country on the basis of a readmission agreement often results in the obligation of the Requested State to try to return the person to his/her country of origin, which may be more difficult than it would be for the Requesting State.
is registered in the Schengen Information System (except when the person already
holds a long-term visa)76;

- is a threat to the national defense or security, law and order, or the national
interests of Poland;
- has crossed or attempted to cross the Polish border without authorization;
- fails to leave the territory by the deadline stated in the order to do so, after denial of
leave to remain or the decision to revoke such leave;
- fails to comply with his/her tax obligations;
- has served a prison term for committing a crime or is liable to be extradited to
another State to serve a sentence.

There are two categories of removal decisions: order on removal from Poland and order to
leave Poland.

The first is the removal of a foreign national through a removal order issued by a voivod on the
request of the competent authorities. In this case, the person must leave, either alone or with an
escort, within 14 days. The personal data of a foreign national removed under such an order are
recorded in the register of persons not to be admitted into Poland for three years (if the removal costs
were paid by the person) or for five years (if the costs were covered by the State). The data are also
inserted into the Schengen Information System.

A removal order is also issued if the foreign national is being readmitted to another country
through a readmission agreement. A request for such an order is submitted as soon as the person is
apprehended. If an accelerated readmission procedure can be applied, a request for a removal order
is not normally submitted because it could necessitate an extension of the foreign national's presence
in Poland and would make the accelerated procedure inapplicable.

Grounds for issuing a removal order to readmitted foreign nationals are set forth above in
Section 2.5.2. on the readmission of third-country nationals.

An order to leave the territory is issued by the border guard or police authorities only if there are
clear indications that the person will leave voluntarily within seven days.

A decision to leave the territory can be issued under the same circumstances described in the
first three bullet points of Article 88 of the Act on Aliens, which can also serve as a basis for decision
on removal.

The personal data of a foreign national leaving the territory under such a decision are recorded
in the register of persons not to be admitted for one year. The data is also inserted into the Schengen
Information System.

76 An EU Member State should not grant visas (even long-term visas) to individuals who are listed in the
Schengen Information System (the reason for listing a person in the System is to prevent him/her from being
granted visas or from accessing the territory and to apprehend and remove him/her if his/her presence is
noted). If a Schengen State is bound to admit a person listed in the System, or is obliged through its national
regulations to grant any kind of permission to remain in the territory, it should seek the “de-listing” of that
person from the partnering State that initially listed the individual.
2.11. Non-refoulement

When taking any kind of return/expulsion decision state authorities are obliged, under international instruments and customary law to respect the principle of non-refoulement. This principle was laid down in the Geneva Convention Relating to the Status of Refugees, 1951 according to which “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” While Geneva Convention addresses only refugees, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment extends this principle to every person under the jurisdiction of a State. Article 3(1) of this Convention provides that ‘no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture’. The European Convention on Human Rights is one more instrument related to non-refoulement. Although the Convention does not explicitly mention the non-refoulement principle, the European Court of Human Rights has firmly established a connection between prohibition of torture (Article 3 of the Convention) and non-refoulement. The Court ruled in several cases that the protection against the treatment prohibited by Article 3 is absolute and non-derogable, and that provision imposes an obligation not to extradite or expel any person who, in the receiving country, would run the real risk of being subjected to such treatment.

In Bulgaria administrative measures on removal must be postponed if there are grounds for non-refoulement under the Law on Asylum and Refugees or for reasons of health or of a humanitarian nature. Compulsory administrative decisions can be appealed before the Supreme Administrative Court, whose decision is final.

In Hungary the prohibition of returning a person to his/her country of origin, and of ordering and carrying out removal measures is stipulated in sections 51-52 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. According to these sections of the Act, persons may not be returned or removed to the territory of a country that fails to satisfy the criteria of a safe country of origin or a safe third country in relation to the person involved, in particular where s/he is likely to be subjected to persecution on the grounds of race, religion, nationality, social affiliation or political conviction, nor to the territory or the border of a country where there is substantial reason to believe that s/he is likely to be subjected to capital punishment, torture or any other form of cruel, inhuman or degrading treatment or punishment.

Any person who has applied for refugee status may be returned or expelled only if his/her application is refused by a final and executable decision of the refugee authority.

A ban to enforce removal measures may be imposed by the sentencing judge.
**Poland** is a party to the Convention relating to the Status of Refugees and applies the non-refoulement rule. This means that a foreign national seeking protection shall not be sent back to the country where his/her life or health would be endangered.

Following the apprehension of a foreign national, a request is submitted to the voivod to issue a removal order, and the voivod then issues the order. When the person applies for refugee status, however, the execution of the order issued is suspended until a final decision on the application is rendered.

If a foreign national who is present without authorization or apprehended at the border applies for refugee status, no removal order is issued. If a refugee status application is denied, the removal order is issued by the head of the Foreigners' Affairs Department.
2.12. Assisted Voluntary Return (AVR)

Assisted Voluntary Return (AVR) is a voluntary return, supported financially by a State/organization to assist foreigners willing to return to their countries of origin but who do not have financial means to do so. AVR is usually implemented by non-governmental or international organizations (often by International Organization for Migration) and aims at dignified and secure return of foreign nationals. Usually AVR includes, among other, purchase of one-way tickets to the country of origin of the returnee, pre-flight consultation and medical examination, medical escort and transit assistance is needed. Often there is a reintegration package (monetary or in-kind) provided to the returnees, which can be used to cover living expenses immediately after the return or even to start a small enterprise.

In Bulgaria assisted Voluntary Return can be provided with financial support from the State budget, international organizations or in the framework of the European Commission funded programmes. Supporting returnees out of the national budget has to be planned in advance by the relevant authorities. Most of the State budget for AVR is provided by the Migration Directorate. The support by the State is also apparent in the preparation of the necessary travel documents with diplomatic and consular services. If necessary, medical care and transport are also provided.

NGOs and international organizations play a specific and very important role in AVR. A set of tailored programmes and projects are designed and implemented in most cases in cooperation with IOM.

The practical application of the principle of “shared responsibility” led to a number of programmes funded by the European Commission. The Commission presented initiatives for cooperation between Member States in the field of migration control and voluntary return. Through a Decision of the European Parliament and of the Council and under the programme “Solidarity and Management of Migration Flows”, the External Borders Fund, the European Integration Fund, the European Return Fund and the European Refugee Fund III were created. These four funds run from 2007 to 2013. Each Member State is required to develop annual and multi-annual programmes to finance activities that support the residence or return of third-country nationals.

On 16 October 2000, IOM and the Ministry of Interior of Hungary concluded a Memorandum of Understanding on cooperation in the field of Assisted Voluntary Return, which allows returnees to participate in an AVR programme. Before the programme was initiated, the border guards were in charge of cases involving voluntary return.

At present, the police and the Office of Immigration and Nationality cooperate with IOM Budapest regarding the AVR programme, which provides effective assistance in returning migrants to their home countries.

The Police assist IOM in providing migrants mainly in detention centres with verbal and written information. On reception at the detention centre, every detained person is given written and verbal information, including information on the AVR programme, in his/her native language or another language s/he understands on his/her rights and obligations. The handouts and information sheets issued by IOM are always available. Almost 5,000 migrants have returned to their home countries through the AVR programme.
In *Poland* assisted voluntary return is an alternative to forced return. AVR are organized by IOM in cooperation with the Border Guard Service and the Foreigners’ Affairs Department. This cooperation is based on the Agreement between the Ministry of Home Affairs and the International Organization for Migration for Cooperation in Assisted Voluntary Return of Foreign Nationals Leaving Polish Territory, which came into effect on 7 November 2005. Assistance can be given to persons whose refugee applications have been denied or for whom removal orders have been issued. Assistance is not available to persons subject to immediate removal decisions (those who were a threat to public security and order).

Pursuant to the agreement, the migrant receives assistance including the least expensive ticket to the country of origin and payment for the visa, other permit or travel document, and other incidental expenses during the trip. The returnee is also provided with reintegration assistance, which may include funds to cover immediate needs or to start a business. The reintegration assistance is paid in the country of origin.

AVR is offered only to those who apply to IOM and express their intention to return to their country of origin. Information leaflets on AVR are available from IOM, as well as at detention centres and removal arrest facilities.

The AVR programme is also supported by additional funds under the EU projects. Under this programme, an allowance of EUR 200 is guaranteed to each returnee. The returnee may receive an additional EUR 1,500 to start a business on return if IOM accepts and supports his/her business plan.

Interest in AVR is growing; it is expected that, within a few years, the number of voluntary returns may equal the number of involuntary returns\(^7\).  

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\(^{77}\) It is widely viewed that AVR should be preferred to forced return for a multitude of reasons: it is less expensive in the long run; the return more dignified, and it provides the possibility of a new life in the country of origin.
Conclusions

Since making their first appeared after the Second World War, readmission agreements have became one of the most widely used tools in migration management all over the world. Although readmission agreements are not usually defined in national legislation, the aim of a readmission agreement is the same everywhere, namely to facilitate the return of irregular migrants by creating an obligation between the Contracting Parties to readmit their own nationals and third-country nationals and by setting a framework for cooperation for such returns. While the obligation of a State to accept their own nationals can be justified by international law, there is no such obligation regarding foreign nationals. This is why readmission agreements are so important: they formalize and facilitate cooperation among States with regard to return.

Readmission agreements are usually bilateral or multilateral. The EU has the practice of including readmission clauses in agreements of an economic and cooperation nature. There are also agreements on the transfer/reception of persons that are sometimes regarded as readmission agreements.

Standard European readmission agreements include provisions dealing with the following:

- persons subject to readmission;
- exceptions from the obligation to readmit;
- evidence regarding nationality and entry;
- time limits;
- transit;
- provisions on data protection;
- costs.

In the countries studied for the Manual, readmission is viewed as a method of return, but not as a separate institute of migration law and practice. This is why there are usually no specialized agencies dealing only with readmission. The relevant functions belong to the general immigration/policing/border or other general agencies that deal with immigration and return.

Readmission, as well as removal, is closely connected to many other migration procedures, such as the admission of persons, the detection and apprehension of irregular migrants, data collection and sharing, the detention and identification of persons subject to readmission/removal in special facilities for migrants, and the actual procedure of transferring a person from the Requesting State to the Requested State.

The rules regarding the admission of foreign nationals returned by a Requesting State through a readmission procedure are the same in the three States studied for the Manual. The admission and further fate of foreign nationals depend on their legal status in the Requested State at the time of readmission, on the manner in which they crossed the border to the Requesting State and on their previous record of offences committed in the country to which they are being returned. An irregular border crossing from the Requested State is by itself not always grounds for the removal of the person if s/he is returned to the Requested State through a readmission procedure. The same rules usually apply to persons who enjoy a visa-free regime in the Requested State. Foreign nationals who crossed the border of the Requested State without authorization and did not have legal grounds to enter/stay in the Requested State are subject to removal once readmitted. Stateless persons are a different
category and can be treated as the country’s own nationals, foreign nationals or as a separate
category because their removal is not always possible.

One of the main problems for all three States is the identification of persons subject to removal.
To date, no method guaranteeing 100 per cent success in identification has been found. Although the
three States use many innovative methods, such as language tests, dactyloscopic databases (for
example, Eurodac and the Visa Information System), and cooperation among themselves and with the
respective agencies in the countries of origin, the final result depends on the will of the person to be
identified, as well as the level of cooperation with the diplomatic/consular authorities.

Another challenge for every State is the detention of migrants. Detention, as the limitation of
personal freedom, is a very sensitive issue. This is why it should be used as a measure of last resort.
It is essential to provide persons who have to be placed in special detention facilities with decent living
conditions and to guarantee their humane treatment and human rights. As international practice
shows, grounds for detention and standards in detention facilities should be clearly defined in national
laws or by-laws, especially on such issues as the rights and obligations of migrants, the provision of
medical care and meals, and the use of force. Provisions should be set in national legislation
regarding alternative means to detention, the treatment of vulnerable groups, and situations when a
person can be neither detained nor removed from the territory of the State. The latter is still a loophole
in the legislation of many countries as some allow the migrant to stay but do not provide him/her with a
legal status, literally “tolerating” their presence until the opportunity for their removal arises. Only after
having stayed on the territory of the country in question for many years can such persons seek a full-
 fledged legal status.

Foreign experience also shows that, for the efficient and rapid implementation of readmission
procedures, particular effort should be devoted to internal inter-agency cooperation among all the
actors involved in the process, including in the field of data exchange.

The EU Members States provide a good example of how best to transmit and store the personal
data of foreign nationals. The transmission of such sensitive information requires the guarantee of a
high level of security and protection. European databases such as Eurodac, the Schengen Information
System and the Visa Information System are accessible by all members of Schengen and at the same
time guarantee the protection of personal data. National legislation and supervision mechanisms
should be in place to protect, secure and monitor data exchange before databases become
operational.

With regard to readmission, three points in particular should be emphasized. First, the practice
of the EU Member States is to give priority to voluntary, not forced, return, both independently and with
the assistance of humanitarian organizations such as IOM. Second, the readmission of third-country
nationals to a country of transit should be done only as a last resort when it is not possible to remove
the person directly to his/her country of origin. Otherwise, the burden on the transit country may result
in delays in the removal of the readmitted person to his/her country of origin. This in turn could result in
the prolonged detention and violation of the human rights of the individuals subject to removal. Third,
when a removal decision is made by the respective State agency, due attention should be paid to the
humanitarian situation in the country of origin, as well as to the particular circumstances of each case,
such as the person’s family ties in the country of residence, health, vulnerability, length of stay and
connections with the country of origin. The person should not be removed to a country where s/he
would be subject to a risk of violation of his/her human rights or to a country with which the person
does not have or no longer has a connection. If it is impossible to remove a person, a legal status with
clearly defined rights should be granted to the person to avoid putting him/her into a precarious legal
status.
### INTERNATIONAL AND REGIONAL INSTRUMENTS

<table>
<thead>
<tr>
<th>Year</th>
<th>Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>1950</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>1951</td>
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<td>1965</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>International Covenant on Civil and Political Rights</td>
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<td>1967</td>
<td>Protocol relating to the Status of Refugees</td>
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<td>1984</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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### EUROPEAN UNION INSTRUMENTS

<table>
<thead>
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<th>Year</th>
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<tbody>
<tr>
<td>1992</td>
<td>Recommendation regarding practices followed by Member States on expulsion</td>
</tr>
<tr>
<td>1994</td>
<td>The Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed at Schengen</td>
</tr>
<tr>
<td>1995</td>
<td>Council Recommendation concerning the adoption of a standard travel document for the removal of third-country nationals</td>
</tr>
<tr>
<td>1997</td>
<td>Council Recommendation concerning a specimen bilateral readmission agreement between a Member State and a third country</td>
</tr>
<tr>
<td>1999</td>
<td>Council Recommendation on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements</td>
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<tr>
<td>1999</td>
<td>Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts; commonly known as the Amsterdam Treaty</td>
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<td>1999</td>
<td>Protocol integrating the Schengen acquis into the framework of the European Union</td>
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<td>2000</td>
<td>Decision of the Executive Committee on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States</td>
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<tr>
<td>2000</td>
<td>Council Decision to include standard readmission clauses in all Community agreements and in agreements between the European Community, its Member States and third countries</td>
</tr>
<tr>
<td>2000</td>
<td>Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part; commonly known as the Cotonou Agreement</td>
</tr>
</tbody>
</table>
Council Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention

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<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>2007</td>
<td>EU acquis in the area of Justice, Freedom and Security</td>
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### NATIONAL LEGISLATION

#### Bulgaria

**Laws**

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<th>Year</th>
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<tr>
<td>1998</td>
<td>Foreigners in the Republic of Bulgaria Act</td>
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<td>2002</td>
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**By-laws**

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<td>2000</td>
<td>Instruction № I-21/29 of February on the working methods referring to the Automatic Dactyloscopic Identification System (AFIS)</td>
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<td>Наредба № I-13 за Реда за Временно Настаняване на Чужденци, за Организацията и Дейността на Специалните Домове за Временно Настаняване на Чужденци</td>
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#### Hungary

**Laws**

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<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>1978</td>
<td>Criminal Code of Hungary, Act IV</td>
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<td>2001</td>
<td>Act XXXIX on the Entry and Stay of Foreigners</td>
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<tr>
<td>2007</td>
<td>Government resolution 114/2007 (V.24) on the execution on Act II on the Admission and Right of Residence of Foreign nationals</td>
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#### Poland

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<tr>
<td>1990</td>
<td>Ustawa z dnia 12 października 1990 r. o Straży Granicznej, Dz.U. 1990 Nr 78 poz. 462</td>
</tr>
<tr>
<td>2003</td>
<td>Act on Aliens</td>
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<td></td>
<td>Act on Granting Protection to Aliens within the Territory of the Republic of Poland</td>
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<tr>
<td>1998</td>
<td>Rozporządzenie Rady Ministrów z dnia 17 lutego 1998 r. w sprawie określenia warunków i sposobu użycia środków przymusu bezpośredniego i użycia broni palnej przez funkcjonariuszy Straży Granicznej oraz warunków i sposobu użycia środków przymusu bezpośredniego, a także zasad użycia broni palnej przez pododdziały odwodowe Straży Granicznej, Dz. U. Nr 27. poz.153</td>
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<tr>
<td>2002</td>
<td>Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 27 czerwca 2002 r.w sprawie trybu przeprowadzania badań lekarskich osób zatrzymanych przez funkcjonariuszy Straży Granicznej, Dz.U.02.98.893</td>
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<tr>
<td>2004</td>
<td>Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 26 sierpnia 2004 r. w sprawie warunków, jakim powinny odpowiadać strzeżone ośrodki i areszty w celu wydalenia oraz regulaminu organizacyjno-porządkowego pobytu cudzoziemców w strzeżonym ośrodku i areszcie w celu wydalenia, Dz.U.04.190.1953</td>
</tr>
<tr>
<td>2007</td>
<td>Zarządzenie Nr 90 Ministra Spraw Wewnętrznych i Administracji z dnia 11 grudnia 2007 r.zmieniające zarządzenie w sprawie wyznaczenia pomieszczeń, w których jest wykonywany areszt w celu wydalenia</td>
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<td>Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 grudnia 2007 r. w sprawie szczegółowego sposobu obliczania niektórych kosztów wydalenia cudzoziemca z terytorium Rzeczypospolitej Polskiej, Dz.U.08.3.20</td>
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<td>Rozporządzenie Rady Ministrów z dnia 24 grudnia 2008 r. w sprawie sposobu postępowania przy wykonywaniu niektórych uprawnień funkcjonariuszy Straży Granicznej, Dz.U.08.236.1648</td>
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**Other countries**

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
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<tbody>
<tr>
<td>1998</td>
<td>Provisions Governing Immigration and Regulations Concerning the Status of Foreigners (Law No. 40), Italy</td>
</tr>
<tr>
<td>2000</td>
<td>Aliens Act No. 685, Denmark</td>
</tr>
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<td></td>
<td>Law No. 326 of November 30th, 1999 on the Residence of Aliens in the territory of the Czech Republic and Amendment to Some Acts</td>
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<tr>
<td>2002</td>
<td>Law No. 48/2002 of 13 December 2001 on the Residence of Aliens and on the Change and Updates of Some Laws, Slovak Republic</td>
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<tr>
<td>2004</td>
<td>Residence Act of 30 July 2004, Germany</td>
</tr>
<tr>
<td></td>
<td>Law on the Legal Status of Aliens in Lithuania, No. IX-2206</td>
</tr>
<tr>
<td>2005</td>
<td>Aliens Act (2005:716), Sweden</td>
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</table>
Federal Law Concerning the Execution of Alien Police Operations, the Issue of Documents to Aliens and the Granting of Entry Authorization (2005 Aliens Police Act – FPG), Austria


<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
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<tbody>
<tr>
<td>1991</td>
<td>Agreement between the Contracting Parties of the Schengen Agreement and the Republic of Poland related to the readmission of persons in an irregular situation</td>
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<td>1993</td>
<td>Угода між Урядом України і Урядом Республіки Польща про передачу і прийом осіб через спільний державний кордон</td>
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<td>1994</td>
<td>Agreement between the Government of the Federal Republic of Germany and the Republic of Bulgaria concerning the readmission of German and Bulgarian nationals (readmission agreement)</td>
</tr>
<tr>
<td>1995</td>
<td>Accord entre le Gouvernement de la République du Chili et le Gouvernement de la République Française relatif a la réadmission des personnes en situation irrégulière</td>
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<td>1996</td>
<td>Acuerdo entre España y Rumania relativo a la readmisión de personas en situación irregular</td>
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<td>2001</td>
<td>Readmission agreement between Hungary and Serbia and Montenegro and its implementation protocol</td>
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<tr>
<td>2004</td>
<td>Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorization</td>
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<tr>
<td>2005</td>
<td>Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorization</td>
</tr>
<tr>
<td>2006</td>
<td>Agreement between the European Community and the Russian Federation on readmission</td>
</tr>
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<td>2007</td>
<td>Agreement between the European Community and Ukraine on the readmission of persons</td>
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</table>

1991 Agreement between the Contracting Parties of the Schengen Agreement and the Republic of Poland related to the readmission of persons in an irregular situation

1993 Угода між Урядом України і Урядом Республіки Польща про передачу і прийом осіб через спільний державний кордон

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2005 Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorization

2006 Agreement between the European Community and the Russian Federation on readmission

2007 Agreement between the European Community and Ukraine on the readmission of persons
Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorization

<table>
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<tr>
<th>Year</th>
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<tbody>
<tr>
<td>2005</td>
<td>Council of Europe: Committee of Ministers</td>
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<td>Twenty Guidelines on Forced Return, 4 May</td>
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<td>2002</td>
<td>Council of Europe: Committee for the Prevention of Torture and Inhuman</td>
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<td></td>
<td>or Degrading Treatment or Punishment</td>
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<td>The CPT Standards: “Substantive” Sections of the CPT’s General Reports,</td>
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<td>1999</td>
<td>Human Rights Committee</td>
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<td>CCPR/C/21/Rev.1/Add.9, CCPR General comment 27</td>
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<td>2006</td>
<td>Intergovernmental Consultations on Migration, Asylum and Refugees</td>
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<tr>
<td></td>
<td>“IGC report on readmission agreements”, December (unpublished)</td>
</tr>
<tr>
<td>2008</td>
<td>Various authors</td>
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<tr>
<td></td>
<td>Reports on Bulgarian, Hungarian and Polish readmission legislation and</td>
</tr>
<tr>
<td></td>
<td>practices by national experts</td>
</tr>
<tr>
<td></td>
<td>Ivan Sharenkov from Bulgaria, Laszlo Balázs from Hungary and Iwona</td>
</tr>
<tr>
<td></td>
<td>Mączka from Poland</td>
</tr>
</tbody>
</table>
Terminology used in readmission agreements

Accelerated (simplified) readmission procedure – readmission procedure applied when the person who breached the entry rules of the Requesting State is apprehended at the border or within the border region, usually within 48 hours. The procedure is without formalities and the delays are shorter than those in the normal readmission procedure.

Admission – the granting of entry into a state.

Announcement of transfer – notification by the Requesting State to the Requested State of the details of the transfer of a person to be readmitted.

Approval of transfer – approval of the details of the transfer of the person to be readmitted, announced to the Requesting State by the Requested State.

Border area or region – the land area extending a certain distance (usually 30 kilometers) from the land borders of the State into the country, as well as the territories of seaports and international airports.

Competent authorities – the agencies of the Contracting Parties charged with implementing the readmission agreement.

General readmission procedure – the term is used to differentiate between the general readmission procedure and the accelerated (simplified) readmission procedure.

Illegal residence/presence – residence/presence in the territory of the Requesting Party if a person does not, or no longer, fulfills the conditions in force for entry or residence, which are prescribed in national law of the country.

Implementation protocol – protocol on the procedure for the implementation of a readmission agreement (other terms may be used as well); essentially the “operators manual” of the readmission agreement.

Irregular entry – act of crossing borders without complying with the necessary requirements for legal entry into the receiving state.

Member State – Member State of the European Union, with the exception of Denmark (the provisions of the readmission agreement between the European Community and the Russian Federation do not apply to Denmark).

Preconditions (grounds) for readmission – existence of grounds proving or presuming nationality (of own nationals) or entry from the territory of the Requested State (of third-country nationals and stateless persons) that are listed in the readmission agreement between the States concerned and that allow the readmission to be processed.

Readmission application – written request for readmission submitted by the Requesting State to the Requested State. It is submitted with all documents and details containing information on the person to be readmitted.

Readmission procedure – procedure for the transfer of a person according to the rules set in readmission agreements.

Readmission – act by a state accepting re-entry of a person (own national, third-country national or stateless person).

Removal – an act by an authority of the state with the intention and with the effect of securing the removal of a person or persons (non-nationals or stateless persons) against their will from the territory of that state. A multitude of terms exist: deportation, expulsion, repatriation, return, readmission, refoulement.

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78 Denmark is advised to conclude parallel agreements.

79 For example, in the European Community, the Readmission Working Group deals with everything related to “removal”, not only with readmission agreements.
**Requested State** – Contracting Party/State that receives the request for readmission or transit of a person, to its territory.

**Requesting State** – Contracting Party/State that sends the request for readmission or transit of a person, from its territory.

** Stateless person** – a person who is not considered a national by any state under the operation of its law (Art. 1, United Nations Convention Relating to the Status of Stateless Persons, 1954). As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a state, the inherent right of sojourn in the state of residence and the right of return in case s/he travels.

**Third-country national** – person who is not a national of either of the States Parties to a readmission agreement.

**Transfer** – act of transferring a person by the competent national authorities of the Requesting State to the competent national authorities of the Requested State in the process of a readmission.

**Transit** – transit of a third-country national or stateless person through the territory of the Requested State on the way from his/her country of origin (or permanent residence) to the Requesting State or from the Requesting State to his/her country of origin (or permanent residence).

**Other terminology used in the Manual**

**Border crossing point** – a border crossing point defined by a State for crossing its land, sea and air borders.

**Country of origin** – the State of which the person concerned is a national.

**Detention centre/facility** – a closed facility specially designed to confine irregular migrants their pending preparation of their removal.

**Detention** – administrative measure restricting freedom of movement, usually through enforced confinement, of a person by government authorities.

**Dual (or multiple) nationality** – simultaneous possession of the nationality of two or more countries by the same person.

**European Union acquis** – set of the binding and non-binding acts of the European Union on a certain subject matter.

**Irregular migrant** – a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers persons breaching the entry rules as well as those who do not have legal grounds to stay in the country of destination.

**Passport** – a government document identifying a person as a national of the issuing State, which is evidence of the holder’s right to return to that State.

**Personal data** – any information related to a person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity.

**Residence permit** – a document issued by a state to a non-national, confirming that s/he has the right to live in the state concerned.

**Visa** – an endorsement by a consular officer in a passport or a certificate of identity that indicates that the officer, at the time of issuance, believes the holder to fall within a category of non-nationals who can be admitted under the state’s laws; for Schengen States, a visa is defined as permission to present oneself to the border control authorities.

**Voluntary return** – the assisted or independent return to the country of origin, transit or another third country based on the free will of the returnee.
Regional Directorates of the Office of Immigration and Nationality and location of structural units

Legend:
- Centre of a Regional Directorate
- Customer services
- Community shelters
- Reception centres
Structure of the Border Policing Branch

Regional

General Directorate for Policing

- Border Policing and Compensation Unit
- Aliens Policing Unit
- Border representative Unit
- Documentation Unit

Border Policing Department

Internal Border

- County Police Headquarters
  - Directorate for Policing
    - Public Order Protection and Border Policing Unit
      - Detention Centre

External Border

- County Police Headquarters
  - Directorate for Policing
    - Border Policing Service
      - Border Policing Unit
      - Aliens Policing Unit
      - Detention Centre

City Police Headquarter

- Border Policing and Public Security Office (20)

Border Policing Office (29 BPO + 2 Units at Ferihegy Airport)
### List of Readmission Agreements of Hungary

<table>
<thead>
<tr>
<th>Contracting Parties</th>
<th>Enactment</th>
<th>Enter into force</th>
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<tbody>
<tr>
<td>Romania</td>
<td>Act LX of 2002</td>
<td>30.11.2002</td>
</tr>
<tr>
<td>Austria</td>
<td>Act V of 1996</td>
<td>20.04.1995</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Act XXIV of 1995</td>
<td>05.06.1994</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Act LXXVI of 1999</td>
<td>16.07.1999</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Act VII of 1996</td>
<td>05.08.1995</td>
</tr>
<tr>
<td>Poland</td>
<td>Act IX of 1996</td>
<td>05.08.1995</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Act LXXI of 1999</td>
<td>29.07.1999</td>
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<tr>
<td>Italy</td>
<td>Act LXXIX of 1999</td>
<td>09.04.1999</td>
</tr>
<tr>
<td>Germany</td>
<td>Act LXXXVIII of 1999</td>
<td>01.01.1999</td>
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<td>Albania</td>
<td>Act XCVIII of 2001</td>
<td>27.12.2001</td>
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<td>Switzerland</td>
<td>Act IV of 1996</td>
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<td>Latvia</td>
<td>Act XXVIII of 2002</td>
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<td>Portugal</td>
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<td>22.02.2002</td>
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<td>Croatia</td>
<td>Act XXXV of 2003</td>
<td>05.10.2003</td>
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<tr>
<td>Serbia and Montenegro</td>
<td>Act XXII of 2003</td>
<td>29.03.2003</td>
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<td>Slovakia</td>
<td>Act VII of 2004</td>
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<td>Benelux</td>
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<td>Estonia</td>
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<td>Macedonia</td>
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<td>13.08.2004</td>
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<tr>
<td>Bosnia and Herzegovina</td>
<td>Act XVIII of 2006</td>
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<tr>
<td>Greece</td>
<td>Act XX of 2005</td>
<td>01.05.2005</td>
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Annex 6

Alien policing competence of 20 County Police Headquarters

Legend
- Alien Policing Department
- Detention Centres
Police checks the data of the person offered in some administrative records

<table>
<thead>
<tr>
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<th>Country</th>
<th>System Name</th>
<th>Description</th>
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<td>WP</td>
<td>SIS</td>
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<tr>
<td>VA</td>
<td>SIS</td>
<td>Vehicle Alert SVE 100</td>
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<td>ID</td>
<td>SIS</td>
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<tr>
<td>KIR</td>
<td>HUN</td>
<td>Hungarian Warrant System</td>
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<tr>
<td>SZL</td>
<td>HUN</td>
<td>Personal Identity and Home Address System</td>
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<tr>
<td>SZIG</td>
<td>HUN</td>
<td>Identity Card System</td>
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<tr>
<td>VEN</td>
<td>HUN</td>
<td>Driving Licence System</td>
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<td>IDTV</td>
<td>HUN</td>
<td>Residence Permit System</td>
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<td>KRL</td>
<td>HUN</td>
<td>Restricted persons of travel abroad</td>
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<td>BUN</td>
<td>HUN</td>
<td>Criminal Records System</td>
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<td>KIN</td>
<td>HUN</td>
<td>Records system of persons in detention</td>
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<tr>
<td>BTT</td>
<td>HUN</td>
<td>Ban on Entry Records System</td>
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<tr>
<td>ISZL</td>
<td>HUN</td>
<td>Personal Identity and Home Address System of foreigners</td>
<td></td>
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<tr>
<td>JAROK</td>
<td>HUN</td>
<td>Vehicle Records System</td>
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<td>UTL</td>
<td>HUN</td>
<td>Passport records System</td>
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The differences between a guarded centre and an expulsion arrest according to the Regulation of Minister of Interior and Administration of Poland

<table>
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<th>Guarded Centre:</th>
<th>Expulsion Arrest:</th>
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<td>Room for the Duty Officer</td>
<td>Room for the Duty Officer</td>
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<tr>
<td>Surgery</td>
<td>Surgery</td>
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<tr>
<td>Isolation ward</td>
<td>Isolation ward</td>
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<tr>
<td>Visiting room</td>
<td>Visiting room</td>
</tr>
<tr>
<td>Kitchen (cooking or serving catered food)</td>
<td>Kitchen (serving catered food)</td>
</tr>
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<td>Stock rooms, decontamination room, drying room</td>
<td>Stock rooms for aliens’ personal belongings</td>
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<tr>
<td>Rooms for aliens</td>
<td>Cell rooms</td>
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<tr>
<td>Rooms for minors</td>
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<tr>
<td>Isolation cell</td>
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<td>Library</td>
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<tr>
<td>Day room</td>
<td>-</td>
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<tr>
<td>Room for religious practices</td>
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<tr>
<td>Shower rooms, laundry room if necessary</td>
<td>Shower rooms</td>
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<tr>
<td>Toilets</td>
<td>Toilets</td>
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<tr>
<td>Sports and recreation yard with playground for children</td>
<td>Yard</td>
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Annex 9

Location of the detention centres and their accommodating capacity

Legend
- Detention Centres
- Capacity of Detention Centres
Annex 10

HUNGARIAN HELSINKI COMMITTEE

NATIONAL BORDER GUARD HEADQUARTERS

COOPERATION AGREEMENT
between the President of the Hungarian Helsinki Committee and the Director General for Law Enforcement of the National Border Guard Headquarters
on maintaining contact with foreigners accommodated in detention facilities of the Border Guard

The Hungarian Helsinki Committee (hereinafter: the Committee) and the National Border Guard Headquarters (hereinafter: NBGHQ)

led by endeavours to facilitate the development of an open and democratic state;

taking into consideration resolutions and recommendations of the United Nations, the Organisation for Security and Cooperation in Europe and the Council of Europe that recognize civilian monitoring of law enforcement activities as a guarantee of human rights protection;

bearing in mind the position of the Ministry of Interior leadership repeated on several occasions, that civilian control of the respect of human rights is an indispensable element of the democratisation process as well as European integration;

recalling the effective cooperation in good faith that the two signatory organisations have previously established,

hereby conclude the following Cooperation Agreement.

In the interest of ensuring respect for detainees’ rights in accordance with constitutional and European standards, the aim of the Cooperation Agreement is to allow the Committee to monitor the situation of foreigners detained in border guard facilities and the implementation of rules relating to their rights, and to bring the findings of this monitoring activity to the attention of the competent authorities and the public; additionally, that the staff of the Committee inform detainees of the availability of free legal assistance or, if necessary, free legal representation in procedures related to the foreigners and to allow the [Committee's staff] to receive authorisation for this end.

Chapter I

In the framework of the Cooperation Agreement, two types of visits may be carried out:

Type A visit (for monitoring);
Type B visit (provision of information on a regular basis).

In the interest of the lawful execution of the monitoring programme, the Committee shall:

1. designate persons taking part in the programme (hereinafter: monitoring team), and shall issue a letter of commission to them in accordance with Annex nos. 1 and 2;
2. inform its staff of rules pertaining to stay in border guard premises. The Committee shall exclude from the given monitoring activity anyone who infringes these rules or falls under the scope of an exclusion close during the programme’s execution;
3. treat confidentially any information acquired during the Committee’s visit, the Committee's report and interviews with detainees until the publication thereof in terms of Chapter IV Article 15; personal data may only be disclosed pursuant to the written consent of the person concerned; with the exception of limitations concerning personal data, these rules shall not apply to non-public reports prepared for the Office of the UN High Commissioner for Refugees;
4. During and after their mission, the Committee’s members are bound by secrecy with respect to any fact or information that may have come to their knowledge and constitutes a state secret or official secret; moreover, the Committee’s members may not make public or disclose to any third party personal data not covered by Article 3 that have come to their knowledge during the monitoring programme;

5. prior to publication, the Committee shall submit reports prepared on type A visits to the Head of the Department of Alien Policing and Petty Offenses of the NBGHQs (hereinafter: ISZFOV), and any remarks shall be discussed by the parties;

6. shall assume the costs related to executing the programme; and shall bear liability for any damages caused during the monitoring activity that may not be attributed to the Border Guard.

Chapter II

The NBGHQ shall:

1. inform the competent border guard directors about the present Agreement and tasks deriving from it;

2. the ISZFOV shall countersign letters of commission issued by the Committee;

3. The Committee shall inform the competent head of the Division of Alien Policing and Misdemeanours (hereinafter: ISZOV) of a type A visit in writing not later than 12 a.m. on the working day preceding the visit;

4. Following consultation with the competent ISZOV, the ISZFOV shall permit longer visits (exceeding one day) to the detention facility of any border guard directorate;

5. The ISZFOV shall issue a specific permit to anyone wishing to participate in a specific visit in addition to persons holding letters of commission and interpreters;

6. The ISZFOV shall present its remarks concerning the report prepared by the Committee prior to its publication in accordance with the deadlines specified in Chapter IV Article 15.

Chapter III

The concerned border guard directorate shall:

agree with the Committee’s local staff member about which day of the week type B visits will be scheduled and the duration thereof.

Chapter IV

Rules of implementing the programme:

Monitoring and information provision activities in border guard premises shall be carried out in accordance with Act XXXIX of 2001 on the entry and stay of foreigners, Act CXXXIX of 1997 on asylum, Act XXXII of 1997 on guarding the border and subsequent executive decrees thereof, as well as border guard regulations accessible for the Committee and the present Agreement.

Rules of executing type A (monitoring) visits:

1. The monitoring activity shall be carried out by teams of two to six members, or in case of longer monitoring visits, by the number of team members specified in the permit. The monitoring activity shall be carried out with respect to the physical conditions of the building or parts of buildings designated for detention, the treatment and accommodation conditions of detainees, the respect for detainees’ rights, medical care, as well as the quality of relationships between detainees and persons in charge of their detention.

2. Members of monitoring teams may enter border guard detention facility upon presenting their letters of commission (specific permit in case of persons not holding letters of commission) and personal identification documents, and may remain in the facility without restrictions between 8 a.m. and 8 p.m. The particular rules for visits exceeding one day shall be set forth in the specific permit issued by the ISZFOV.

3. Upon entry and exit, the border guard may check the clothing and packages of monitoring team members using visual inspection and technical devices. The monitoring team member may not take into the facility any instrument capable of taking human life or causing bodily injury and
telephones. The taking of audio and video recording equipment shall be announced, and the person in charge of detention may prohibit the taking of such equipment into the facility for security reasons. Photographs or video recordings may only be taken in locations permitted by the person in charge of detention. Interpreters not holding letters of commission may only enter the facility upon presentation of an identification document and in the company of a visitor holding a letter of commission.

4. Members of monitoring teams may only enter the facility, cells or the reception room by complying with security regulations. The on-duty commander of the facility may prohibit entrance into certain cells in the interest of protecting the monitors’ safety or for medical reasons. In the former case, it shall be ensured that monitors may speak separately in a different room with detainees detained in the cell.

5. Upon the monitors’ arrival, the leader in charge shall allow their entry into premises specified in Article 4 without delay. The representative of the border guard shall briefly inform the team members of any security risks.

6. Upon contacting detainees, the members of the monitoring team shall clearly state the purpose of their visit, and shall simultaneously inform detainees’ that they are not official persons, therefore cooperation and provision of replies shall be voluntary and no one shall be obliged to do so.

7. The Committee’s staff members who hold letters of commission for type B visits in the specific facility may join the monitoring team in the course of a type A visit.

8. Members of the monitoring team may converse and, based on their consent in writing, conduct questionnaire-based interviews, audio and video recordings with the detainees under security supervision but without other restrictions. The person in charge of detention shall enclose one copy of the Consent Form (Annex no. 3) in the detainee’s case file. The member of the monitoring team shall inform detainees also in case of a type A visit about their procedural rights and obligations, may distribute the Committee’s information materials, and may receive authorization for representation. It shall be ensured that persons wishing to rest shall be respected during the visit.

9. Upon the request and written consent of the detainee, the member of the monitoring group may have access to the detainee’s case file, as well as any documents related to his/her detention and medical care as listed in Annex no. 4 of the present Cooperation Agreement that do not contain data of other persons.

10. Photocopies may not be made of, and no entries shall be made on the accessed documents. The member of the monitoring team may not have access to documents that contain entries by the prosecutor concerning his/her findings from standard detention supervisory activities.

11. The physician member of the team may examine the detained person based on the latter’s consent, and may produce a medical constant.

12. Designated border guard personnel may choose or refuse to reply to the monitors’ questions. Detainees may not be present during a conversation between a border guard and a monitor.

13. The Committee shall inform without delay the concerned directorate and the ISZFOV of any problem it deems to be acute after the monitoring activity has been carried out. Should a member of a monitoring team observe a phenomenon that implies a violation of the law, based on the Committee’s consent and the simultaneous notification of the ISZFOV, s/he shall notify the prosecutor’s office. The Committee may approach the ISZFOV with any disputes arising out of the visit as well as complaints regarding the facility commander’s purportedly unjustified restrictive measures.

14. Prior to the end of the monitoring period, members of the monitoring teams may only make public statements concerning their experiences gained during the monitoring activity in a general manner, without mentioning specific cases.
15. The Committee shall also send in parallel to the NBGHQ any evaluation reports that it prepares for the Office of the UN High Commissioner for Refugees that contain data and opinions related to the jails and the situation of detainees.

16. The Committee shall send its report evaluating the findings of the monitoring activity to the ISZFOV, who in turn shall initiate consultations about any disputed issues within fifteen days of the receipt of the report. If the consultations are unable to resolve the dispute, the ISZFOV shall inform the Committee of its dissenting opinion within an additional fifteen days. In case of a dissenting opinion, the Committee make public its own report by attaching the ISZFOV’s opinion in its entirety without any changes therein.

Rules of executing type B (provision of information on a regular basis) visits:

1. The Letter of Commission for a type B visit shall allow visits to the detention facility/facilities indicated therein.

2. Type B visits shall be conducted on one occasion per week in usually two hour long periods in accordance with the day agreed to by the ISZOV and the Committee’s local staff member.

3. The following persons may take part in the visit: the local attorney commissioned on a permanent basis by the Committee, the attorney’s trainee attorney and assistant, persons holding type A letters of commission, professors and students of the legal clinics in Győr and Szeged as well as interpreters. Maximum four persons excluding the interpreters may take part in an individual visit. The ISZOV may grant a specific permit to allow the participation of more than four persons.

4. Participants of a type B visit may enter the jail at the agreed time upon presenting their letters of commission and personal identification documents. Interpreters not holding a letter of commission may exclusively enter the facility, following certifying their personal identity, in the company of visitors holding letters of commission.

5. The provisions of Chapter IV Article 3 shall apply to the entry and exit of visitors in case of a type B visit as well, with the difference that audio and video recording equipment may only be taken in the facility based on a specific permit granted by the ISZOV.

6. Visitors shall provide information to detainees about their procedural rights and obligations as well as the right to benefit from free legal assistance during the procedure; visitors shall compile a list of detainees who request legal assistance. Visitors may distribute information materials published by the Committee, may have foreigners sign authorisation forms for representation, and may complete case sheets with respect to the case of foreigners requesting their assistance. The visitor may use audio and video recording equipment with prior permission for completing the case sheet.

7. If a visitor observes an act which seem unlawful act or another acute problem, s/he shall inform orally or in writing the ISZOV of the respective border guard directorate and the Committee. The visitor may inform the prosecutor’s office upon the consent of the Committee’s President.

Chapter V

Closing provisions

1. In the course of both type A and B visits, the member of the monitoring team shall comply with rules pertaining to the regime in the border guard facility and security of detention, and shall respect the privacy of the facility’s border guard personnel and of the detainees. The monitor may only take from the detainee documents required for providing representation or letters addressed to person(s) or organization(s) specified in Section 7 (1) of Joint Decree no. 27/2001 (XI. 29.) of the Minister of Interior and the Minister of Justice. The person in charge of detention may check the nature of documents or the addressees of letters transmitted by the detainee.
2. The Cooperation Agreement shall enter into force on the eighth day following its signature. Following its entry into force, the ISZOV and the Committee’s local staff member shall agree on the date of type B visits. Should such an agreement not be reached within thirty days from the Agreement’s entry into force, the ISZFOV and the Committee’s President shall select the date jointly.

3. The Parties may initiate the review of the Cooperation Agreement at any time. The Border Guard may temporarily suspend, by simultaneously informing the other Party, the execution of the Cooperation Agreement for justified public health reasons with respect to one facility or all facilities maintained by the Border Guard. Either Party may give immediate notice by informing the other Party in writing about the reasons thereof.

Done at Budapest, on 6 September 2002

[signature]  [signature]
FERENC KÖSZEG  ISTVÁN SAMU
President  border guard brigadier-general
Hungarian Helsinki Committee  border guard chief counsellor
General Director for Law Enforcement

[seal]  [seal]
POLICE KISKUNHALAS

HOUSE REGULATIONS
For foreigners in alien police detention

I

General Orders
1. The freedom of movement and the choice is only applicable to foreigners legally present in Hungary.
2. On arrival, the detainee has to be informed about his rights and obligations in his own language or an other language he understands.
3. These HOUSE REGULATIONS are only codicils of the “Guidance” which defines the fundamental rights and obligations for detainees.
4. Expenses of any translation, in connection with the rights of detainees, or in connection with detention - are on the account the detention centre. If the detainee requests the services of a translator in a matter not related to his detention he will be liable.
5. Mails, letters for addressees listed in the "Guidance", points 2. a)-f), are forwarded by telefax by the detention centre if the detainee is destitute requests sending mail. Letters to these addressees are not scrutinized. Letters to competent authorities and containing complaints in connection with the detention and letters addressed to human rights organizations are forwarded immediately.

II

Obligations of foreign citizens being in alien police custody
6. Detainees are obliged to comply with the house regulations and daily schedule. Detainees are obliged to keep order and cleanliness in the center and must obey and follow orders related thereto fully and immediately. Execution of lawful orders can be enforced by applying coercitive measures.
7. To establish his identity the detainees are obliged to have their fingerprints and photographs taken. Detainees can also be obligated to undergo health and disinfecting procedures.
8. Detainees are obligated to remain in the designated areas. The custody commander can restrict their freedom of movement. The implementation of this is controlled by custody guards.
9. Detainees are obliged to cooperate in cleaning the space they use without payment. The necessary equipment is provided by the center. Cleaning times are determined by the daily schedule. The cleaning is supervised by the guards who are to be obeyed.
10. If there is any suspicion that packages received do not originate from the senders mentioned they are opened in the presence of two witnesses apart from the detainee. This has to be enacted in a protocol. The checks only apply to the sender. If the scrutinized package constitutes any kind of threat for security and it is impossible to avoid it in any circumstances, the package is not given to the detainee. Money and objects that can not be allowed to remain in possession of the detainee, will be kept in secure deposit.
11. The detainee has to put his shaver after every use in the container for this. The shaver is kept individually.
12. On departure, the detainee is obliged to account for each item he received, and reimburse any damage.
III

Rights of detainees

13. Detainees are entitled to eight hours of rest between wake-up and lights out. Any deviation of this has to be allowed by the commander of the center. A deviation is possible in extreme situations.

14. Meals are to be provided three times daily. Lunch time is at least 40 minutes, other meals at least 30. Health conditions and religious considerations of the detainees will be respected. This is made clear to detainees on arrival. Meal times are determined by the daily schedule.

15. Detainees receive a plastic table set, drinking-glass, sheet, pillow case, pillow and mattress. Sheets, pillow cases, night wear and towels are to be changed every two weeks. Detainees are if necessary provided with two towels, night wear, one pair of slippers, soap, toilet-paper, toothbrush, toothpaste, shaver and shaving foam. These items are replaced for persons staying over a month.

16. The detainee can have visitors. Visiting hours are published and permitted in writing by the commander.

17. The number of visitors is unlimited in as far as security is not endangered.

18. The detainee can receive an unlimited number of packages twice a week, not weighing more as 5 kilograms. Postage and package costs are on the expense of the detainee.

19. Letters are posted in the provided post box. The Post Office will empty this every two days. Incoming mail is given to the detainees within two days.

20. Detainees have access to their deposited money to buy allowed goods in the custody area, especially food, tobacco, toiletries, envelopes, stamps and telephone cards. The detainee can only purchase items he/she is allowed to keep with him/her. Shopping details and rules are described in the daily schedule.

21. Detainees can use the common education and sports facilities, watch television, listen to radio described in the daily schedule.

22. Detainees are not obliged to work, apart from the cleaning duties described above.

23. Detainees person are released when their detention expires or ends by authority of a non-appealable provision. Detainees are handed over to the authority that ordered the detention, or to an authority entitled to transfer the detainee. If there is no arrangement from the side of the entitled authority the detainee has to be released.

IV

Regulations for legal remedies

24. Detainees have the right to complain against any action (or lack of it) which occurred during his detention. The complaint by itself does not suspend the action. The action will only be suspended in the circumstances provided by law. The Head of the center decides on it within 8 days. If this decision is not acceptable to the detainees, they may appeal to the Director of the Kiskunhalas Border Guard Headquarters within 8 days, who has to decide on the appeal within 15 days.

25. Complaints or applications submitted on the same base or motivation within 3 months of the last decision on it will be rejected without verification of its merits, except if the application requests medical screening or if the application includes new elements.

26. Detainees have the right to address themselves directly to the prosecutor who has legal control over penal authorities in cases related to custody, and ask for a personal interview. In the same conditions they have the right to address themselves directly to the competent ombudsman or to organizations engaged in the protection of human rights.

27. The commander of the center is responsible for the respect of detainees’ rights.

Safety Regulations

28. The detainee must not have objects or material on him/her that is liable to endanger his own or other people’s life and health. The quantity of personal belongings can be limited by the detention center depending on actual accommodating circumstances. The list of permitted personal belongings can be found in the supplement of the Guidance.
29. Personal valuables and identity documents have to be deposited. Cash has to be deposited and transferred to a bank. In any case detainees dispose over their deposited cash.

30. At the end of the detention, deposited valuables have to be returned, except those being disposed of for hygienic reasons.

31. Smoking is only allowed in designated areas. Smoking is prohibited in the bedrooms.

32. Detainees are obliged to inform staff about fire or any other harmful event. In case of fire they are obliged to follow all orders given by competent staff.

Closing directions

Detainees have to be informed properly about the house regulations and daily schedule of the detention center. The house regulations and daily schedule need to be translated into the language spoken by most of the detainees and have to be displayed in a clearly visible and accessible way and position for everybody.

Those violating these facing proceedings according to the law.

The house regulations come into effect on 01.01 2002, and apply to cases already under process.


Head of the Detention Center
**POLICE CENTRE KISKUNHALAS**

**DAILY SCHEDULE**

*foreign citizens being in alien police detention*

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.00</td>
<td>Wake up</td>
</tr>
<tr>
<td>7.00-7.45</td>
<td>Cleaning, washing oneself</td>
</tr>
<tr>
<td>7.45-8.05</td>
<td>Breakfast for the first group</td>
</tr>
<tr>
<td>8.05-8.25</td>
<td>Breakfast for the second group</td>
</tr>
<tr>
<td>8.25-9.00</td>
<td>Cleaning, tidying up the detention sector</td>
</tr>
<tr>
<td>9.00-9.30</td>
<td>Control of order and number of people in custody</td>
</tr>
<tr>
<td>9.30-12.00</td>
<td>Leisure and using of public education facilities</td>
</tr>
<tr>
<td>12.00-12.30</td>
<td>Control of order and number of people in custody</td>
</tr>
<tr>
<td>12.30-13.00</td>
<td>Lunch for the first group</td>
</tr>
<tr>
<td>13.05-13.35</td>
<td>Lunch for the second group</td>
</tr>
<tr>
<td>13.35-14.30</td>
<td>Submission of applications, complaints</td>
</tr>
<tr>
<td>14.30-17.00</td>
<td>Leisure and usage of public education facilities</td>
</tr>
<tr>
<td>17.00-17.30</td>
<td>Control of order and number of people in custody</td>
</tr>
<tr>
<td>17.30-17.50</td>
<td>Supper for the first group</td>
</tr>
<tr>
<td>17.55-18.15</td>
<td>Supper for the second group</td>
</tr>
<tr>
<td>18.15-21.30</td>
<td>Leisure and usage of public education facilities</td>
</tr>
<tr>
<td>21.30-22.00</td>
<td>Cleaning, tidying up the detention sector</td>
</tr>
<tr>
<td>22.00-22.30</td>
<td>Cleaning, washing oneself, and shaving</td>
</tr>
<tr>
<td>22.30-23.00</td>
<td>Control of order and number of people in custody</td>
</tr>
<tr>
<td>23.00</td>
<td>Bedtime</td>
</tr>
<tr>
<td>23.00-7.00</td>
<td>Night rest</td>
</tr>
</tbody>
</table>

**Alien police office working hours:** 8.00-16.00

**Doctors' consultation:** weekdays 16.00-17.30

**Psychological consultation hours:** Wednesdays one hour only for those registered previously

**Outdoor leisure:** one hour walk in the courtyard between 9.30-12.00, 14.30-17.00

**Visiting hours:** each day between 9.30-12.00 and 14.00-16.00 according to earlier arrangements

**Handing over of shopping lists:** every Tuesday between 19.00-21.00

**Submitting requests for money exchange:** every Thursday between 9.30-11.00

**Canteen shopping hours:** every Thursday between 14.30-17.00

**Hand out of clean clothing:** every week on Tuesday between 14.00-16.00
Smoking is only permitted in designated areas such as room 115, and 128 and in the courtyard. Persons violating the smoking prohibition can be fined.

Detainees are allowed to use the common leisure facilities and public telephone if this does not offend other detainees’ rights and rest.

This right can be limited by the regulations of the detention centre. Using the telephone can be permitted at other times for justified reasons by the Officer on duty.

Telephone numbers: 00-36/77/420-929
Address for visitors: Kiskunhalas, Mártírok street 25
Mailing address: 6401 Kiskunhalas Pf: 23/K2

Head of the Detention Center
INFORMATION
on the basic rights and obligations, detention and examination of a foreigner during an alien policing procedure

Hungarian and foreign citizens have equal rights in the legal procedures before the authorities and their cases are handled without any discrimination. During a legal procedure a foreign citizen has certain rights and obligations defined by the law.

The rights of a foreign citizen

The right to use their own language
During legal procedures a foreign citizen is allowed to use his own language both in spoken and written. No-one may suffer any detrimental effect due to the lack of knowledge of the Hungarian language, and an interpreter must be provided by the authorities.

The right of protection of personal data
“I authorize the alien policing authority to handle, store, work with, send, make available my address, marital status, present job, qualifications, language skills, the type, number, validity, visa number of the identity and/or travel documents, place of stay in Hungary, number and data of family members travelling with me, for the sake of the purpose of the procedure.”
*delete what is not relevant

Further rights of foreign citizens during an alien policing procedure

The right to make a statement
During a legal procedure a verbal or written statement can be made refused by a foreign citizen. In case a statement is not made or the information requested by the authorities is not provided, the authorities will make their decision on the basis of the data and documents in their possession.
In case he makes false claims or omits relevant facts in his statement, included the obligatory supply of data, he can be subjected to a procedural fines.

The right to look into documents
During a legal procedure a person can look into the documents relevant to the procedure personally or through his representative; he can copy or summarize or ask the authority to provide a copy of a document. He can order secure treatment of his personal data.

Rights to legal remedy
- Appeal
A person is entitled to appeal against the resolution/decision if it is not excluded by the law. The submission of the appeal has a suspending effect – with the exception of the preliminary execution of the decision. The appeal should be delivered to the authorities within a defined time. An alien is entitled to renounce his rights to appeal within that time limit.
- Court review
In case this appeal is rejected or was impossible, a court review can be applied for. However, if the right to appeal was renounced court review can not be applied for.
- Objection on execution of a decision
In case there is no right to appeal, and the person whose rights or rightful interest is infringed upon by the execution of a decision can submit an “objection on execution” against the illegal action of the executing authority or in case the authority is failing to execute the measure.
- Equity procedure
A person can request the authority to modify the final decision or cancel its decision which by itself is not violating the rules, in case its execution causes a serious unjust disadvantage because of a reason which became apparent after the decision was rendered, and the equity is/was not exercisable during the executive procedure.

- Resumption procedure
After the decision became non-appealable and in case the foreign citizen obtains knowledge of any relevant fact, data or any other evidence concerning the case which existed before the decision was rendered and was not used in the procedure yet – the foreign citizen can request the resumption of his case within 15 days from the date when he gained knowledge of it, in case when the considerations could have resulted in a more advantageous decision.

Right to complaint
A complaint is a request to end the the negative impact on individual rights or interests if the situation is not the result of other procedures, especially jurisdictional and executive procedures.
Foreigners can lodge their complaints in verbal or written form to the organisation authorized for this procedure. The complaint must be dealt with according to Act XXIX of 2004, paragraphs 141-143 on the modification of rules following the accession to the EU.
They can complain against the Police decision to the Director of Police Directorate which executes the decision. They can submit their complaints in their own language in writing to the proceeding authority.

Representation
If personal presence of a person is not necessary according to the law during an alien policing legal procedure, his legal or appointed representative, the competence of who may be investigated by the authorities, can proceed for him/her.

The right to compensation
If it has been decided by court that a decision of the police officer as an alien policing authority on obligatory place of stay or alien policing custody is unlawful, an alien is entitled to request a compensation for the damages suffered by him/her. The claim for compensation – in the case of the lack of an agreement between the involved parties – can be enforced through civil court.

The opportunity to leave Hungary with the assistance of IOM.
A foreigner who has to leave the territory during the alien policing procedure and does not have the necessary means to do so voluntarily, is entitled to apply to IOM for assistance.
This application voluntary; however the decision on the application is the right of the Hungarian authorities. The foreigner, by weighing the opportunities according to his comprehension/perception can decide to participate in the programme. In case of positive decision IOM will organize the return journey at an early date.
The address of the Hungarian representative of the IOM:
Budapest, District VI. 12 Révai street
Tel: +36 1 472 25 00
Internet: www.iom.hu or www.iom.int

The obligations of a foreigner
During the procedure he is obliged to obey the decisions of the authorities and make the necessary documents, data, information and certificates available to the representatives of them. He must cooperate in good faith during the procedure, and give valid data. An uncooperative foreigner can be subjected to procedural penalties and to paying additional fines.
The foreigner must (re)pay all sums advanced and the costs of any damages that he/she caused intentionally in the centre during his custody.

Taking into custody
"I inform you that - on the basis of Act II of 2007 on the entry and stay of foreigners paragraph 67 sub-paragraph (4) and Act XXXIV of 1994 on the Police paragraph 33 - I take you to the competent alien policing authority which is informed
The reasons of custody:
You are unable to credibly verify your identity.
You are unable to credibly verify the legitimacy of your stay
You are under a search warrant ordered during an alien policing procedure.
You violated the alien policing rules."
The Police can keep a person in custody for the time required, but this can not exceed 8 hours. In well-founded cases when the aim of the custody is not yet realized, the Police's official in charge can extend the custody’s time once by four hours.

According to Act XXXIV of 1994 on the Police paragraph 18, the Police is bound to give opportunity to the alien in custody to communicate with his relatives or other persons. This could be refused if it jeopardizes the aim of the decision. Beside the above mentioned the rights of a person could be limited to an appropriate level with the aim to secure the custody, to prevent the person’s escape or hiding, to prevent the destruction or modification of the evidence and to prevent other criminal actions.

**Examination of baggage and clothing**
The Police can examine your clothing, baggage and vehicle.

**ADDITIONAL CLAUSE**

At the beginning of the legal procedure I was informed on the above described rights and obligations in my own language (or another language which I understand and accept) by the authorities and I fully understand and accept them. I confirm receipt of a copy of this document.

Date:

P. H.

Prosecuted foreigner

Official in charge

Interpreter
### Maximum custody periods in the EU Member States

<table>
<thead>
<tr>
<th>Group</th>
<th>Country(S)</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>France, Cyprus</td>
<td>32 days</td>
</tr>
<tr>
<td></td>
<td>Italy, Spain</td>
<td>40 days</td>
</tr>
<tr>
<td></td>
<td>Ireland</td>
<td>8 weeks</td>
</tr>
<tr>
<td></td>
<td>Portugal</td>
<td>60 days</td>
</tr>
<tr>
<td></td>
<td>Luxembourg, Greece</td>
<td>3 months</td>
</tr>
<tr>
<td></td>
<td>Slovenia, Slovakia, Czech Republic, Hungary, Romania</td>
<td>6 months</td>
</tr>
<tr>
<td></td>
<td>Belgium</td>
<td>8 months</td>
</tr>
<tr>
<td></td>
<td>Austria</td>
<td>10 months</td>
</tr>
<tr>
<td></td>
<td>Poland</td>
<td>12 months</td>
</tr>
<tr>
<td></td>
<td>Malta, Germany</td>
<td>18 months</td>
</tr>
<tr>
<td>b.</td>
<td>Latvia</td>
<td>20 months</td>
</tr>
<tr>
<td></td>
<td>Denmark, Estonia, Finland, Lithuania, Netherlands, United Kingdom, Sweden</td>
<td>Unlimited duration</td>
</tr>
</tbody>
</table>

For the moment of research (spring 2009) duration of detention periods in the Member States of the European Union differs substantially. The Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the EU Returns Directive) contains provisions aimed at harmonization of these periods. Article 15 para 5 of the Directive sets 6 months as the maximum duration of detention in the Member States. Para 6 of the same article allows, in exceptional cases, the extension of this limit up to 18 months. By 24 December 2011 the Directive should be transposed into national legislations of the EU Member States.

Such provisions do not affect legislation of those Member States who already have maximum duration of detention of less than 18 months (group ‘a’ in the table). The Member States whose detention periods are longer than 18 months (group ‘b’ in the table) will have to set new limits in their detention provisions.

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80 Information on periods of detention is taken from *Controversy over custody period and re-entry ban*, European Parliament, Justice and home affairs – 11-06-2008, REF.: 20080609BKG31068


accessed on 02.02.2009
# ALTERNATIVES TO DETENTION

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Act</th>
<th>Existing alternatives to detention</th>
</tr>
</thead>
</table>
| Austria | Federal law concerning the execution of aliens police operations, the issue of documents to aliens and the granting of entry authorization (2005 Aliens Police Act – FPG) | Article 77. More lenient measures  
(1) The authority may refrain from imposing an order for detention pending deportation if it has reason to assume that its objective can be achieved by the use of measures of a more lenient nature. The authority shall be required to use more lenient measures in the case of persons under full age unless it has reason to assume that the objective of an order for detention pending deportation cannot thereby be achieved.  
(2) The ordering of more lenient measures shall be subject to the requirement that the alien consent to being photographed and fingerprinted, unless such procedures have already been carried out ex officio for the reason stated in subparagraph 1 of paragraph (1) of article 99.  
(3) In particular, orders to take up accommodation in premises specified by the authority or to report at regular intervals to the police station indicated to the alien shall be regarded as measures of a more lenient nature.  
(4) If the alien does not comply with his obligations as set out in paragraph (3) above or fails without good cause to answer a summons requiring his appearance before the authority and drawing his attention to the consequences of his non-appearance, an order for his detention pending deportation shall be issued. With regard to the time spent in the accommodation, article 80 shall apply with the proviso that the period of admissibility shall be doubled.  
(5) The use of more lenient measures shall not preclude the exercise of powers of command and constraint necessary for the enforcement of a deportation, forcible return or transit order. If required for the implementation of such action, the person concerned may be instructed to remain at specific locations for periods not exceeding 72 hours in all. |
Section 45 Obligation to Report to the Police and Other Means of Control  
When required by investigations into whether an alien should be allowed to enter Finland or if it has been decided that he will be refused entry or deported or if such a decision is under consideration, he may be required to report to the police at stipulated intervals until it has been decided whether he is to be allowed to enter the country, or until he has been refused entry, deported or the matter has been otherwise resolved.  
An alien may, under the circumstances stipulated in paragraph 1 above be obliged to surrender his passport or ticket to the police, post a bond set by the police, or inform the police of the address he may be reached. |
| Germany | Residence Act of 30 July 2004 | **Section 54a**  
**Surveillance of expelled foreigners for reasons of internal security**  
(1) A foreigner against whom an enforceable expulsion order pursuant to Section 54, no. 5, 5a or an enforceable deportation order pursuant to Section 58a exists shall be obliged to report to the police office which is responsible for his or her place of residence at least once a week, unless the foreigners authority stipulates otherwise. If a foreigner is enforceable required to leave the Federal territory for reasons other than the grounds for expulsion stated in sentence 1, an obligation to report to the police authorities corresponding to sentence 1 may be imposed if necessary in order to avert a danger to public safety and law and order.  
(2) His or her residence shall be restricted to the district of the foreigners authority concerned, unless the foreigners authority stipulates otherwise.  
(3) He or she may be obliged to live in a different place of residence or in certain types of accommodation outside of the district of the foreigners authority concerned, if this appears expedient in order to hinder or to prevent activities which have led to the foreigner's expulsion and to facilitate monitoring of compliance with provisions under the law governing organizations and associations or other statutory conditions and obligations.  
(4) In order to hinder or prevent activities which have led to the foreigner's expulsion, the foreigner may also be obliged to refrain from using certain means of communication or communication services, insofar as means of communication remain at his or her disposal and restrictions are necessary in order to avert serious risks to internal security or to the life and limb of third parties.  
(5) The obligations in accordance with sub-sections 1 to 4 shall be suspended if the foreigner is in custody. An order in accordance with sub-sections 3 and 4 shall be immediately enforceable. |
|---|---|---|
| Hungary | Act XXXIX of 2001 on the entry and stay of foreigners | **Ordering stay in a designated place**  
**Article 56**  
(1) The regional alien policing authority (the Office) may, by resolution, order the foreigner to stay in a designated place by the way of a measure restricting personal freedom which does not qualify as detention when  
(a) the return, refusal or expulsion of the foreigner cannot be ordered or implemented owing to an obligation of the Republic of Hungary undertaken in an international agreement;  
(b) the period for detention has expired but the reason owing to which the detention had been ordered still remains;  
(c) the foreigner has a permission to stay for humanitarian reasons;  
(2) The operative part of the resolution shall determine:  
(a) the place of mandatory stay,  
(b) the rules of stay,  
(c) when the place of stay is not a community shelter, the obligation of regular appearance in front of the authorities. |
(3) The foreigner whose personal identity is unclear shall permit that his/her fingerprints and photo be taken.

(4) The mandatory place of stay may be designated in a community shelter when the foreigner is unable to maintain himself/herself and does not have appropriate accommodation, financial coverage or income or a person who had invited him/her under the obligation to maintain him/her or a relative who could be charged with an obligation to maintain him/her.

(5) With the exception of the foreigner who has a permission to stay for humanitarian reasons, the costs incurred in relation to staying at a community shelter shall be borne by the foreigner.

(6) There shall be no appeal against the resolution ordering stay in a designated place but the foreigner may request a court review of the resolution. The provisions concerning the court review are the same which apply to detention procedures.

**Article 57**

(1) When eighteen months have passed since ordering mandatory stay at a community shelter but the circumstances due to which it has been ordered continue for reasons beyond the control of the foreigner, another place of stay shall be designated for the foreigner.

(2) In the case specified in paragraph (1), the Office may, upon the request of the foreigner, permit continued stay at the community shelter for humanitarian reasons.

**Article 58**

(1) The Office shall enter the place of mandatory stay, the prescribed rules of behaviour and the obligation to appear in front of the authorities in the certificate entitling the holder for temporary stay.

(2) In possession of the certificate entitling the holder for temporary stay and with the consent of the regional alien policing authority having ordered the mandatory place of stay, the foreigner shall be entitled to perform work with the permit specified in relevant laws.

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**Lithuania**

Law On The Legal Status Of Aliens 29 April 2004 No. IX-2206

**Article 115. Measures Alternative to Detention**

1. In view of the fact that the alien's identity has been established, he constitutes no threat to public security and public policy, provides assistance to the court in determining the alien's legal status in the Republic of Lithuania as well as other circumstances, the court may take a decision not to detain the alien and to grant him a measure alternative to detention.

2. Measures alternative to detention shall be as follows:
   1) requiring that the alien regularly at the fixed time report at the appropriate territorial police agency;
   2) requiring that the alien communicate his whereabouts at the fixed time by communication means to the appropriate territorial police agency;
   3) entrusting the care of an unaccompanied minor alien to a relevant social agency;
   4) entrusting the care of the alien, pending the resolution of the issue of his detention, to a citizen of the Republic of
Lithuania or an alien legally resident in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and to support the alien;  
5) accommodating the alien at the Foreigners' Registration Centre without subjecting him to restriction of freedom of movement.  

3. In the event of failure to implement the measures alternative to detention imposed by the order of the court the territorial police agency shall apply to the court with a motion to detain the alien.  
4. When taking a decision to impose a measure alternative to detention, the deadline for its application must be set.

<table>
<thead>
<tr>
<th>The Netherlands</th>
<th>Complete revision of the Aliens Act (Aliens Act 2000)</th>
<th>Section 55</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1. Our Minister may give an alien whose application for a residence permit as referred to in section 26 has been rejected a direction to stay in a given space or at a given place and to observe the directions of the competent authority there, even if the decision rejecting the application is not yet irrevocable or if the application for review suspends the operation of the decision.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Poland</th>
<th>Act on Aliens of 13 June 2003</th>
<th>Art. 90</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1. The decision on expulsion:</td>
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<td>…</td>
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<td>3) may oblige an alien to stay in the indicated place until the execution of the decision and may oblige his / her to report to the authority indicated in the decision at specified intervals of time.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Art. 137</th>
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</thead>
<tbody>
<tr>
<td>1. An alien referred to in art. 135 sec. 1 [those found being illegally brought by the carrier], may be rendered the decision on:</td>
</tr>
<tr>
<td>1) obligation to reside in the indicate place; the costs of the residence shall be covered by the carrier;</td>
</tr>
<tr>
<td>2) the ban on leaving the board of seagoing vessel or aircraft;</td>
</tr>
<tr>
<td>3) obligation to leave the territory of the Republic of Poland on the board of seagoing vessel or aircraft other than the one on which he / she has arrived.</td>
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<tbody>
<tr>
<td></td>
<td>Voluntary departure</td>
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<td></td>
<td>3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of the period for voluntary departure.</td>
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<tr>
<th>Article 15</th>
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<tbody>
<tr>
<td>Detention</td>
</tr>
<tr>
<td>1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process.</td>
</tr>
</tbody>
</table>
The notion of tolerated status is on few occasions referred to in this research. This annex provides brief explanation accompanied by examples from legal acts of the EU Member States on what the ‘tolerated status’ is.

There may be situations when an alien is subject to expulsion but the latter cannot be implemented due to objective circumstances, such as impossibility to identify a person, to obtain her/his travel document, bad health condition of the alien etc. To avoid a situation when an alien is continuously detained without a clear prospect of being removed from the country, many EU states have developed legal provisions on so called ‘tolerated stay’. The term itself is not used in all of the countries, but the meaning is almost the same everywhere: the person is allowed to stay temporarily in the territory of the state with the final aim of being expelled when the conditions which prevent her/his removal cease to exist. Some countries provide such aliens with a document which gives legal status, others do not, letting the person stay illegally. However, even if such a document is issued it does not vest any rights or benefits in its holder. In essence it certifies that the expulsion was suspended and prevents from repeated detention of the alien.

Some of the reviewed countries (Germany, Lithuania, Slovak Republic) provide for possibility of granting to the alien a temporary permit after he/she cannot be expelled for long period of time. This gives to the alien certain rights and benefits (work, social protection etc). Such permit is not renewable if the expulsion becomes possible.

Tolerated state is different from non-refoulment principle and temporary protection in sense that in the case of non-refoulment expulsion is prohibited and the person is provided with temporary or humanitarian protection till the circumstances which endanger the person’s life, security or integrity in the country to which s/he can be returned cease to exist. Temporary protection can give grounds for more permanent status if the reasons on which it is based continue for substantial period of time, while tolerated status is per se temporary and is not based on protection reasons.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Act</th>
<th>Reasons for granting tolerated stay</th>
<th>Agency authorized to issue tolerated stay</th>
<th>Period of duration of the status</th>
<th>Rights and benefits of the status</th>
</tr>
</thead>
</table>
| Germany | Residence Act of 30 July 2004 | **Section 25 Residence on humanitarian grounds**  
(5) ...a foreigner who is enforceable required to leave the Federal territory may be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. | Foreigners’ authorities as defined in the Lands’ laws | No benefits when no residence permit is given. The person is in fact illegal although not in detention. This allows a person to take a decision to leave voluntarily rather than keep being just 'tolerated' in the country. |
|         |           | **Section 60a Temporary suspension of deportation**  
(2) The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no residence permit is granted. |                                    |                                  |                                  |
|         |           | **Section 62 Custody awaiting deportation**  
Detention pending deportation shall not be permissible if it is established that it will not be possible to carry out deportation within |                                    |                                  |                                  |
|         |           |                                    |                                    |                                  |                                  |

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<tr>
<td>Hungary</td>
<td>Act XXXIX of 2001 on the entry and stay of foreigners</td>
<td>the next three months for reasons for which the foreigner is not responsible.</td>
<td>Central and regional alien policing authorities (the Office)</td>
<td>Maximum 6 months with the possibility of extension</td>
<td>Certificate entitling the holder for temporary stay, which only allows the stay in the territory of Hungary</td>
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<td><strong>Article 46</strong> (8) Detention shall be terminated when ... it becomes obvious that the expulsion cannot be implemented. The regional alien policing authority ordering detention shall designated a mandatory place of stay for the foreigner.</td>
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<td></td>
<td><strong>Article 24</strong> (1) ... the Office or the regional alien policing authority shall provide - ex officio - the foreigner in Hungary who (c) has been obligated to stay in a designated place with a certificate entitling the holder for temporary stay. ...</td>
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<td>(4) The certificate may be issued with a validity ... (b) of maximum six months in the case according to point (c) which may be extended.</td>
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<tr>
<td><strong>Italy</strong></td>
<td>Law No. 40 of 6th March 1998 &quot;Provisions governing immigration and regulations concerning the status of foreigners&quot;</td>
<td><strong>Art. 17 Prohibitions regarding expulsion and rejection</strong>&lt;br&gt;2. Expulsion is not allowed … against:&lt;br&gt;a) foreigners younger than eighteen years old, without prejudice to the right to follow an expelled parent or guardian;&lt;br&gt;d) women during pregnancy or in the six months following the birth of a child they are caring for.</td>
<td></td>
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</tr>
<tr>
<td><strong>Lithuania</strong></td>
<td>Law on the Legal Status of Aliens, No. IX-2206, issued on 29 April 2004</td>
<td><strong>Article 128. Circumstances Taken into Account when Making a Decision to Expel an Alien or Due to which the Implementation of the Decision on the Expulsion of an Alien from the Republic of Lithuania May be Postponed</strong>&lt;br&gt;2. The implementation of the decision regarding the expulsion of an alien from the Republic of Lithuania shall be suspended if:&lt;br&gt;2) the foreign country to which the alien may be expelled refuses</td>
<td>Ministry of Internal Affairs</td>
<td>Article 132. Issue of a Temporary Residence Permit to an Alien whose Expulsion has been Suspended&lt;br&gt; If an alien’s expulsion is suspended due to the circumstances provided for by subparagraphs 2 to 4 of paragraph 2 of Article 128 of this Law and the circumstances have not disappeared within one year from the suspension of enforcement of the decision to expel the alien, he shall be issued a</td>
<td>No legal status till the residence permit is issued</td>
</tr>
</tbody>
</table>
3. With the disappearance of the reasons indicated in paragraph 2 of this Article the decision concerning expulsion of the alien from the Republic of Lithuania must be implemented without delay.

Article 132. Issue of a Temporary Residence Permit to an Alien whose Expulsion has been Suspended
If an alien’s expulsion is suspended due to the circumstances provided for by

Article 40.
Grounds for Issue and Replacement of a Temporary Residence Permit
1. A temporary residence permit may be issued or replaced to an alien if:

8) the alien may not be expelled from the Republic of Lithuania according to the procedure established by this Law or his expulsion from the Republic of Lithuania has been postponed according to the procedure established by Article 132 of this Law.
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<tr>
<td>The Netherlands</td>
<td>Aliens Act 2000</td>
<td>subparagraphs 2 to 4 of paragraph 2 of Article 128 of this Law and the circumstances have not disappeared within one year from the suspension of enforcement of the decision to expel the alien, he shall be issued a temporary residence permit on the grounds set in subparagraph 8 of paragraph 1 of Article 40 of this Law and the decision regarding the expulsion of the alien shall be reconsidered by the court.</td>
<td></td>
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</tr>
</tbody>
</table>
| Poland          | Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland | **Chapter 2 Tolerated stay**  
**Art. 97**  
1. An alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his / her expulsion:  
…  
2) is  
**Voivods (regional Governors) upon the request of the authority obliged to execute the decision on expulsion, Chief (President)**  
**Art. 99.**  
1. An alien who has been granted the permit for tolerated stay shall be issued the residence card.  
2. The residence card issued to an alien, who has been granted the residence |                                                                           |                                  |                                  |

**The Netherlands**  
*Section 62*  
An alien shall not be expelled as long as his health or that of any of the members of his family would make it inadvisable for him to travel.

**Poland**  
*Chapter 2 Tolerated stay*  
**Art. 97**  
1. An alien shall be granted the permit for tolerated stay on the territory of the Republic of Poland if his / her expulsion:  
…  
2) is  
**Voivods (regional Governors) upon the request of the authority obliged to execute the decision on expulsion, Chief (President)**  
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<tr>
<td>Slovak Republic</td>
<td>The Act No. 48/2002 Coll. on Residence of Foreigners.</td>
<td>unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond this alien</td>
<td>of Aliens Bureau</td>
<td>been granted the permit for tolerated stay, shall be valid for one year.</td>
<td>permit for a fixed period, unless the provisions of this act or of other acts state otherwise.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: The permit in this case can be canceled if there is a possibility to expel the person; after one year the situation is checked whether he should be granted the tolerated stay once more, or maybe the person can be expelled (for example the identity was confirmed)</td>
<td></td>
<td>Note: With a title under Art.97.2 an alien will not be able to travel to another state if the reason of impossibility of expulsion is that s/he cannot be identified, as then s/he does not have necessary documents to travel. But s/he will have the right to stay and to work.</td>
<td></td>
</tr>
</tbody>
</table>

81 The Act No. 48/2002 Coll. on Residence of Foreigners, §58 Obstacles in Administrative Expulsion
The alien can not be administratively expelled into a country, in which his/her life would be endangered for grounds of his/her race, religion, belonging to certain social group, or for political conviction. Similarly it is not possible to expel an alien administratively to a country, in which he/she was sentenced with death penalty, or it is assumed, that in a pending proceeding such penalty could be imposed.

The alien can not be expelled to a country, in which his/her freedom for grounds of his/her race, religion, belonging to a certain social group, or for political conviction would be endangered, or in which he/she would be in danger of torture, cruel, inhuman or humiliating treatment or punishment, this does not apply if the alien threatens with his/her acting the security of the state or if he/she has been sentenced for a especially grave criminal offence [20] and represents a danger for the Slovak Republic.
<table>
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</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>Aliens Act (2005:716) issued on 29 September 2005.</td>
<td>who has been granted temporary shelter or if his/her traveling leaving the country is not possible and there is no ground for his/her detention.</td>
<td>The Swedish Migration Board</td>
<td>Up to one year</td>
<td>employment relation or similar labour relation. Upon request of an alien who has been granted tolerated stay the police section may, following the expiration of first three years from granting tolerated stay, grant a permit for temporary stay for the purpose of employment.</td>
</tr>
</tbody>
</table>

An alien being a stateless person, who holds a permanent residence permit, also may not be expelled administratively; this does not apply if he/she endangers the state security or the public order with his/her acting.
Detention centres in Hungary

Corridor Room

Security arrangement in detention centres

Security camera system
Detention facilities in Poland

Guarded detention centre in Lesznowola (under the Police supervision)

Guarded detention centre in Przemyśl (under the Border Guard Service supervision)

Guarded detention centre in Lesznowola (kitchen)

Guarded detention centre in Lesznowola
Guarded detention centre in Przemyśl (entrance)

Guarded detention centre in Przemyśl (duty officer’s room)

Guarded detention centre in Przemyśl (community room)
This Manual is the result of close and fruitful cooperation between the International Organization for Migration (IOM) and the Federal Migration Service of Russia (FMS), has been written by experts from each organization and contains a quintessence of knowledge collected on readmission in Russia to date. The idea of such a Manual was realized in the course of the Programme “Assistance to the Government of the Russian Federation in Establishing an Administrative and Legislative Framework for Developing and Implementing Readmission Agreements” jointly implemented by the IOM and FMS of Russia and funded by the European Commission and the Governments of Finland and Germany.

The Manual consists of two Volumes. Volume One in its turn includes two Parts. The first Part covers theoretical, historical and conceptual aspects of the readmission process, as well as relevant international documents. The second Part presents practical information on foreign legal and administrative procedures of readmission, as well as the related issues of return. The main country studies were conducted in Bulgaria, Hungary and Poland, based inter alia on their experience before entry into the European Union.

Volume Two of the Manual provides an analysis of the Russian legislation and national procedures pertaining to readmission. It provides recommendations on how to further improve the regulatory and institutional framework for activities in this field, in order to guarantee, on the one hand, the effective implementation of readmission agreements concluded by the Russian Federation and, on the other hand, to ensure that the human rights of migrants are safeguarded.

To assist the reader with the material mastering, this publication includes an e-training module for migration specialists based on the Manual. It gives an opportunity to self-study the short course and get a Certificate or just to use it as a quick and reliable enquiry material.

Only Volume One of the Manual has been translated into English, while Volume Two and the CD are available only to the Russian-speaking audience.