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LV AD-HOC QUERY ON OBTAINING A NEW TRAVEL DOCUMENT FOR IRREGULAR THIRD-COUNTRY NATIONAL FOR RETURN PROCEDURE

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Responses from Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (21 in Total)

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

1. Background Information

The State Border Guard of the Republic of Latvia is sometimes faced with cases that are not regulated either by national legislation, or by the Return Directive. Latvia is considering the necessity of developing a specific regulation within the national legislation and would like to receive information on existing practices in other Member States and the regulation defined in the national legislation of the Member States in relation to the case of a (TNC) foreigner, who is not in possession of a valid travel document, and is unauthorized to be in the territory of the Member State A, where there is no Embassy of the state of his/her home country. Latvia wanted to identify the best practices.

2. Questions asked in the AHQ

In case if a foreigner who is staying in one Member State without a valid travel document and he/she is willing to depart to his home country, but the Embassy of his/her home country is located in another Member State:

- 1) Whether the national legislation of Your Member State includes provisions that allow solving the situation mentioned.
- 2) In case if a specific document is issued to the foreigner, what kind of document is this and what are the grounds for issuance?
- 3) Whether the destination Member State and the transit Member State is informed on the person and the case?
- 4) In case if the competent authorities of Your Member State escort a foreigner to the Embassy in the respective Member State, what is the procedure of organizing the travel?

3. Highlights / Norway's practice in relation to others

In regards to national legislation including provisions that facilitate obtaining a valid travel document for an unauthorized TNC; only CZ, PT, SI and NO *have* national legislation regulating this phenomena. Many of the other respondents practice, expect and only rely on mutual consular protection according to the Vienna Convention. LU, NL and PL seem to have well-developed functional routines with neighboring countries above and beyond practices related to this Convention.

The one observation common to all responses is that ideally the country of origin should issue travel documents, but if not possible, then at least any temporary travel document issued to a foreigner needs to be one that the country of origin will accept. The grounds for issuing a temporary travel document can vary: if someone has genuinely lost or had stolen a travel document and is intent on a voluntary return, there are fairly simple procedures which basically result in a laissez-passer – for a one time travel event. But if this is not the case and there is a question of forced return, it is usually handled in other ways. It was also noted that how the dilemma was handled might depend on the nationality of the person in question.

A number of MS report that there are so many diplomatic missions represented in their country that the logistics of obtaining valid travel documents is hardly an issue. In some countries, there is a tight working arrangement to enable people in this situation easy access to a foreign mission in the neighboring country. Though FI and MT require that the country of origin issue a form of travel document, in order to effect the return of a person staying illegally, a number of creative solutions and documents are noted by the other reporting MS: a return travel certificate, an EU travel document, a travel identity card for exit purposes, temporary travel document, a certificate of readmission (to travel to neighbouring country to get passport), sometimes IOM can play a key role using their international network and Norway can issue an immigrant's passport which serves a temporary purpose. LT points out that receiving countries often do not recognize such documents.

In cases where there is a question of escorted transit such as with forced returns, the MS who have responded, indicate that if there is the need for cooperation, then the other MS are notified in advance; such as when police or immigration authorities specifically request

authorization to enter with a person without travel documents. NL and BE have special working agreements and SI and GR invite authorities of respective embassies to come to their countries to conduct interviews and issue travel documents.

The AHQ enquires about procedures for organizing travel between MS for the purpose of visiting an embassy in the respective MS. Few MS responded to this last question. A number of MS who did, share the UK's stand: they do not transfer individuals to other member states to obtain documentation for return to their country of origin; the third country national should reach the embassy of his/her Member State by their own means. However, some MS invite a delegation or a representative of the country of origin for identification. Another solution would be the implementation of a videoconference system. Travel documents can then be issued after necessary interviewing/identifying of the returnees. A few concrete examples of escorts of detained TCN to other MS to gain access to third-country embassies were reported.