

Ad-Hoc Query from Lithuania

Requested on 3th May 2016

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Who could not be expelled from the State due to lack of identification/return documents



Responses from:

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, Norway (23 in total)

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

1. Background Information

Recently there has been an increasing number of cases where Vietnamese citizens could not be expelled from the Republic of Lithuania, because it is impossible to confirm their identity and get the travel documents necessary for return. Upon the expiry of the maximum detention period of 18 months they are released from the Foreigners' Registration Center – a situation which is a legal limbo for both the third-country national and the State. According to the legislation of the Republic of Lithuania, decisions to expel third-country nationals should only be issued if their identity and citizenship are established. But even if the State fails to confirm the identity of a third-country national, return decision should be issued before the maximum detention term expires. Then the enforcement of the return decision is suspended and after 1 year passes since that suspension a person that cannot be returned may be issued a temporary residence permit. As the Republic of Lithuania is faced with this new challenge, the Republic of Lithuania would like to gather information about other Member States' practices in similar situations.

Questions:

1. ***Is a decision to expel a third-country national who is unlawfully present in the country can be issued in cases where the identity of a third-country national has not been confirmed (provided there are no other circumstances hindering the return)? If the answer is YES, at what procedural stage such return decision is issued (i.e. are there specific legal/procedural prerequisites)?***
2. ***What legal status is available to a third-country national who could not be expelled from your (Member) State due to lack of identification/return documents and who can no longer be detained due to the 18 months rule?***
3. ***Does your (Member) State issue a document confirming the legal status of person referred to in Q2?***
- a. ***If the answer is YES, at what point of time and what kind of document is issued to such third-country national by your (Member) State?***
- b. ***If the answer to Q3 is YES, does the fact that the identity of a third-country national has not been confirmed has an impact on issuance of this document? If yes, what kind of effect does it have?***
- c. ***If the answer to Q3 is YES, what rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national who receives this document?***
- d. ***If the answer to Q3 is NO, what rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national referred to in Q2?***
4. ***Are there any obligations imposed on a third-country national who can neither be expelled from your (Member) State nor detained any longer due to the 18 months rule? If yes, what are those obligations?***
5. ***In 2014-2015, how many third-country nationals who could no longer be detained due to the 18 months rule could neither be expelled from your (Member) State due to lack of identification or return documents?***
6. ***In your opinion, would issuance of residence permits to third-country nationals who can no longer be detained due to the 18 months rule and neither can be expelled due to lack of identification or return documents lead to the abuse and continuous hiding of their true identity?***
7. ***We would also kindly ask you to share any examples of your good practices in confirming the identity of Vietnamese citizens' and obtaining documents necessary for their return.***

2. Responses

Austria	Yes	<p>1. As long as the identity is not determined without any doubt, in proceedings an undetermined identity ("procedural identity") is assumed. In practice, most identities are procedural identities, since a verification is not always possible. The return directive stipulates that in general all irregularly residing persons have to be issued a return decision. If the person has not made false representations and has cooperated, the authority may (if there is no readmission in the country of origin) issue a card for tolerated stay.</p> <p>2. If a removal is not possible for the time being due to factual circumstances for which the applicant is not responsible because of the requirement of a replacement travel document, the authority has to issue a card for tolerated stay.</p> <p>3. Yes, see question 2.</p> <p>a. The card for tolerated stay is issued on application of the third-country national. It is valid for one year from the date of issuance and may be renewed each time on application for another year if the conditions of Art. 46a para 1 Aliens Police Act are met.</p> <p>b. No.</p> <p>c. These persons are entitled to basic welfare support (reception benefits, medical care, social benefits).</p> <p>d. N/A. Source: Federal Ministry of the Interior.</p> <p>4. The obligation to cooperate in proceedings and sometimes the obligation to report to the police, if measures terminating residence are concerned.</p> <p>5. Statistics disaggregated in this way are not maintained.</p> <p>6. The abuse of this possibility cannot be excluded. Source: Federal Ministry of the Interior.</p> <p>7. N/I.</p> <p style="text-align: right;">Source: Federal Ministry of the Interior.</p>
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Belgium	Yes	<p>1. Yes, the return order can be issued. However, if the Immigration Office is unable to identify a person illegally present on the territory or if his identity cannot be confirmed by the country of origin and no laissez-passer can be issued, he cannot be returned. When a person in irregular stay is apprehended, a removal order is issued. He or she is asked to leave the country independently, at his or her own initiative. He or she receives an information package outlining the possibilities of voluntary return. The person is expected to adhere voluntarily to that decision and can make use of the voluntary return program. If he or she fails to leave the territory, he or she may be held in a closed centre or housing unit (for families with children) in order to enforce the return. When a person in irregular stay is detained, they are informed in writing of the detention decision, its reasons and the possibility to lodge appeal.</p> <p>2. There is no legal status for persons in irregular stay who cannot be returned due to a lack of identification/return documents.</p> <p>3. No</p> <p>d. Persons in irregular stay are entitled to urgent medical assistance. Minors in irregular stay can attend school.</p> <p>4. The person will be expected to leave the territory (order to leave the territory).</p> <p>5. This information is not available.</p> <p>6. It is a fact that persons in irregular stay might tend to withhold or destroy identity documents to hamper the identification process in the event of a forced return. Issuing a residence permit to persons who cannot be returned due to a lack of identification documents might encourage this.</p> <p>7. There are no best practices specifically for what concerns the identification of Vietnamese citizens. In general it is important to foster a smooth collaboration with the countries of origin of the people in irregular stay with regard to the identification, acquisition of a laissez-passer and return.</p>
Bulgaria	Yes	<p>1. According to the Bulgarian legislation all irregular third-country nationals crossing the borders or identified as such on the territory of the country are imposed compulsory administrative measures à compulsory taking to the border of the Republic of Bulgaria” or “expulsion” (return decisions). There is a legal possibility, irregular third-country nationals to apply for protection under the Law on Asylum and Refugees, in which case the compulsory administrative measures are not enforced till the procedure is completed with a decision entered into force. The compulsory administrative measures shall be revoked if the third-country national is granted asylum or international protection. After a refusal of the application the compulsory administrative measures shall be enforced.</p> <p>2. No legal status available in this case.</p> <p>3. N/A</p> <p>4. No.</p> <p>5. Add later</p> <p>6. Yes.</p> <p>7. Additional information later</p>

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Croatia	Yes	<ol style="list-style-type: none">1. The TCN can be expelled from the country even without established identity if there are no other circumstances hampering the return. It has to happen before the expiry of the maximum stay in the Reception centre for foreigners.2. That kind of a third country national is staying illegally in the Republic of Croatia.3. Yes, according to the Foreigners Act, 2013, Article 136, paragraph 4 a foreigner whose deportation was temporary postponed shall be provided with a document.<ol style="list-style-type: none">a. If a temporary postponement of removal is approved to a third country national, a document (with photos) on temporary postponement in duration of six months is issued.b. The fact that the identity of a third-country national has not been confirmed hasn't effect on the issuance of this document.c. According to the Foreigners Act, 2013, Article 136, paragraph 6 a foreigner whose deportation was temporary postponed shall be entitled to health protection in accordance with a special regulation. Paragraph 7 is related to a minor, foreign national whose deportation was temporary postponed shall be entitled to education in accordance with a special regulation. Both categories of foreigners are entitled to the accommodation.4. Yes, during the temporary postponement of a removal of a third country national, certain commitments may be imposed: 1. deposit of travel documents and travel tickets, 2. deposit of certain financial assets, 3. prohibition of leaving the particular address, 4. reporting to a police station at a particular time5. Only one third country national in 2015.6. Yes, by our opinion it would increase the risk of avoiding of return.7. We don't have any experience regarding the return of Vietnamese nationals.
Cyprus	Yes	<ol style="list-style-type: none">1. If the identity/nationality of a third country national cannot be confirmed then it's not possible to return him/her.2. There is no general rule for these cases, usually a new Return Decision is issued allowing for a period 1-3 months for the third country national to depart voluntarily.3. No. No such rights are granted, the third-country national is under an obligation to depart voluntarily4. We usually impose an obligation of voluntary departure within 1-3 months, according to the particular circumstances of each case.5. No such data.6. We foresee that this could function as a pull factor.7. n/a

Czech Republic	Yes	<p>1. YES. The administrative body issuing the administrative decision always considers the identity provided by the third-country national concerned. In other words it means that if the person does not hold any travel or other identity document the identity stated by him/her is noted in the official decision. Such decision is issued immediately after the person was apprehended in the territory of the Czech Republic without any legal purpose of residence or stay thus illegally.</p> <p>2. There is no specific legal status provided solely based on lack of identification/return documents once the detention could not be further exceeded.</p> <p>3. NO a)-c): N/A d) Social and other rights are only confirmed in relation with some legal status. If no legal status is confirmed, no social rights are confirmed. Only basic necessary health care is provided in case of emergency.</p> <p>4. No, only the obligation to leave the territory of the CR remains valid as long as the decision on administrative expulsion (issued to any foreigner apprehended illegally in the territory) is in force.</p> <p>5. N/A</p> <p>6. Yes, in our opinion it could be considered as one of the push factors.</p> <p>7. In our experience the Vietnamese counterpart strictly follow the Readmission agreement we have, however, the cooperation is not perfect therefore we have no real best practice to share. In practice we experienced that verification of identity and issuance of temporary travel document takes much longer time if the application is submitted by the Police on behalf of non-cooperating deportee comparing to time needed to issue temporary travel document based on the application submitted by the foreigner him/herself which is much faster.</p>
Estonia	Yes	<p>1. A decision to leave Estonia shall be issued to an alien who is staying in Estonia without a basis for stay. The decision is also basis for forced removal. The decision is issued as one of the first procedural documents as soon as possible. To issue the decision there does not have to be documentally proven identity of the person and it can be issued based on the information available on that moment. If some elements of the identity change during the proceedings the previous decision can be amended.</p> <p>2. If the person is released from detention due to the exhaustion of maximum detention period the person does not receive automatically a different status. If the person wishes he can always apply for residence permit following regular procedural grounds.</p> <p>3. Release from detention does not give the person different status automatically as referred to previously. Therefore for such a person there are same rights preserved as to every other illegally staying third country national (including healthcare and social assistance elements). If the person receives upon his/her application a legal grounds for stay he/she receives the rights based on the obtained legal grounds for stay. In case of postponement of expulsion the decision is provided in writing to the person.</p> <p>4. If the return decision is still valid and the enforcement of the decision is not postponed then in order to ensure compliance with a precept, then the state can require an alien to comply with surveillance measures. Surveillance measures are: residing in a determined place of residence; appearing for registration at prescribed intervals; appearing to clarify circumstances ensuring compliance with a precept; notifying of the changes of residence of the alien and of his or her prolonged absence from the place of residence; notifying of the changes in the alien's marital status; depositing of a travel document of a foreign country or an identity document</p>

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		<p>5. in 2014-2015 there has been 9 third country nationals who have been released from detention due to the exhaustion of maximum detention period.</p> <p>6. Issuance of residence permit is not a solution for the problem because it would send clear signals to the illegally staying third country nationals that non-cooperation with authorities gives you the possibility to obtain a legal status in Europe. This would hamper the whole return process.</p> <p>7. In order to identify vietnamese citizens the only working practice identified in Europe is signing a memorandum of understanding with Vietnamese authorities and get into direct contact with authorities responsible for redmission of Vietnamese citizens in Vietnam.</p>
Finland	Yes	<p>1. Yes. The Police's identification and coordination group travels to the country of return to obtain the necessary return documents. The Finnish diplomatic missions have assisted in obtaining information and documents from local authorities.</p> <p>2. The Finnish Immigration Service issues a temporary residence permit if a person cannot be returned to his/her home country or country of permanent residence for temporary reasons of health or his/her return to the home country or country of permanent residence is not actually possible. The Finnish Immigration Service may make a decision on a temporary residence permit when deciding on the asylum application or by the customer's separate application. In this case, the application is subject to a charge. However, a residence permit is not issued if the alien's return remains unexecuted because he or she refuses to return to his or her home country or country of permanent residence or complicates the arrangement of his or her return. If a person wants to return voluntarily but neither IOM nor the Police, upon IOM's request, is able to arrange necessary return documents for him/her, he/she may submit an application to the Finnish Immigration Service for a temporary residence permit on the basis of the fact that he/she could not be removed from the country. The application is subject to a charge.</p> <p>3. Does your (Member) State issue a document confirming the legal status of person referred to in Q2? Only in the rare cases referred to in the answer Q2.</p> <p>a. If the answer is YES, at what point of time and what kind of document is issued to such third-country national by your (Member) State? The Finnish Immigration Service may make a decision on a temporary residence permit when de-ciding on the asylum application or by the customer's separate application.</p> <p>b. If the answer to Q3 is YES, does the fact that the identity of a third-country national has not been confirmed has an impact on issuance of this document? If yes, what kind of effect does it have? If a person wants to return voluntarily but neither IOM nor the Police, upon IOM's request, is able to arrange necessary return documents for him/her, he/she may submit an application to the Finnish Immigration Service for a temporary residence permit on the basis of the fact that he/she could not be removed from the country.</p> <p>c. If the answer to Q3 is YES, what rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national who receives this document? Reception services: accommodation, access to labor market, welfare and healthcare services etc.</p> <p>d. If the answer to Q3 is NO, what rights (employment, healthcare, social assistance etc.) are en-joyed by a third-country national referred to in Q2? If the temporary residence permit is not granted, the person is illegally in the country, and she /he is not entitled to any other services than the emergency healthcare.</p> <p>4. Interim measures in addition to detention include an obligation to report at regular intervals at an office of the Police or border control authorities or to a reception centre; handing over the travel document and the travel ticket to the Police or border control authorities or an obligation to give the Police or border control authorities the address where he/she may be reached; giving a security for the expenses related to residence and return</p> <p>5. The response will be provided later.</p>

		<p>6. Along with the legal reform that entered into force on 1 July 2015, the criteria related to a residence permit issued on the basis of the fact that the person could not be removed from the country became tighter: a temporary resi-dence permit is no longer granted on such a basis if the person concerned could return through voluntary return. At the same time, it was decreed that reception services are discontinued for these persons, which, for its part, is expected to encourage voluntary return.</p> <p>7. The response will be provided later.</p>
Germany	Yes	<p>1. The decision to expel a third-country national can be issued, however the act of expelling cannot be implemented as long as the identity has not been confirmed and travel documents are not presented.</p> <p>2. In most cases the third-country national is issued a tolerated stay. If he can continuously not be expelled over a longer period of time due to lack of identification/ return documents, a staying permit shall be granted, if the third-country national is not personally responsible for the delay of the expulsion (e.g. destruction of documents)</p> <p>3. Yes, every status (tolerated stay, staying permit, etc.) is immediately confirmed with a document that states the current legal status of a third-country national. a) Every status (tolerated stay, staying permit, decision of expulsion etc.) and status change is immediately confirmed with a document that states the current legal status of a third-country national. b) There is no general answer to this question, as every case is handled individually. In most cases of an unconfirmed identity, the first document is a tolerated stay. c) A third-country national that is issued a tolerated stay has the right to receive food, accomo-dation and additionally health care, if the situation of the third-country national puts him in need of such assistance. Everything is provided in a reception accommodation. Additionally, a monthly financial support can be granted. A working permit is generally only granted to third-country nationals that hold a staying permit and additionally requires a permission of the Federal Employment Agency. d) n/a</p> <p>4. There are legal obligations, which oblige the third-country national to cooperate and confirm his identity: Providing a pass photo, documentation of finger prints, declaration of status changes concerning his tolerated stay or staying permit status and the submission of various documents that concern personal matters and are requested by legal authorities.</p> <p>5. The total number of TCNs who could not be expelled due to missing documents is 37 216. The three biggest TCN-groups are India with 2094, Kosovo with 2590 and Serbia with 2959. The number of Vietnamese TNCs is 252 and the number of TCNs whose nationality remain un-known is 2725. (Reference date: 30.04.2016)</p> <p>6. It should be noticed, that every law that states the change of a legal status purely after a certain amount of time will encourage a certain group of people who want this legal status to prolong the bureaucratic processes in order to obtain it. However the circumstances on the international diplomatic carpet can shift significantly over a short period of time. Without such a legal status guarantee the third-country national might be exposed to months or years of uncertainty concerning his national status and thereby his future. The best solution for this dilemma is to obligate the TCN to actively support the legal authori-ties. A law that pledges the TCN to fully cooperate, would give the state that seeks prove or confirmation of the identity of said TCN a useful tool. At the same time it would be a step stone for the TCN to legally obtain a staying permit if the political or humanitarian circumstances would make his expulsion impossible. By connecting the two laws one could minimize the cases of TCNs obtaining a legal status by actively prolonging the bureaucratic process.</p> <p>7. n/a</p>

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Hungary

Yes

1. After a hearing â including questions regarding their personal circumstances, migration route and also questions regarding the country of origin â the aliens policing authority determines a country where the third-country national shall be expelled. The country designated as the destination of expulsion shall be determined according to the following sequence: - any Schengen State, if the third-country national has a valid residence permit that was issued by this Schengen State, - a Member State of the European Union, if the third-country national in question is holding a residence permit issued by that Member State certifying long-term residence status under Council Directive 2003/109/EC or is in possession of a valid residence document; - the country that is liable to accept the third-country national in question; - the country where the third-country national's permanent or temporary residence is located; - the country in which the third-country national in question has a citizenship; - any third country prepared to accept the third-country national in question. The immigration authority shall inquire a statement from the asylum authority that the non-refoulement is not applicable in the case of the foreigner regarding the country where the immigration authority wishes to expel him or her. The execution of the expulsion is suspended if the third country national does not bear a valid travel document. Travel documents / laissez-passers are obtained from the foreign representations.
2. They do not receive any legal status. A certificate of temporary residence shall be issued to any third-country national who is subject to any immigration related proceeding for unlawful entry and residence pending. This does not mean that their stay is legalized.
3. Those who received a certificate of temporary residence based on being a subject to any immigration related proceeding for unlawful entry and residence pending are not entitled to be engaged in gainful activities. Migrants are entitled to GP level healthcare, specific health care is ensured by the centre in medical institutions based on territory. The fee of any medical treatment is covered by the Central Budget or by the immigration authority.
4. A certificate of temporary residence constitutes the right of residence in the territory of Hungary, it may not be used for exit or reentry. The validity of the certificate of temporary residence is 6 months which can be extended for 6 months again. Usually the third-country national shall appear in every 30 days in front of the immigration authority. If the third country national fails to appear without an excuse the immigration authority can suppose that the third country national absconded and can order a scene investigation at the domicile of the immigrant and can order a warrant.
5. No data available
6. Detention under immigration laws may be ordered for a maximum duration of seventy-two hours, and it may be extended by the district court of jurisdiction by reference to the place of detention until the third-country national's deportation or transfer, or for maximum sixty days at a time. The usual 6 months is not always enough for obtaining a travel document, in many cases the foreign representations identify the foreigners in 8-9 months. Legalizing the stay of a third country national â only on the base that the authorities were not able to clearly identify him or her â would lead to the point where foreigners from countries with less developed registry systems would receive residence permits only because they misled the authorities by using false identity.
7. - The foreign representation in (embassy) Hungary has an application form which should be filled in Vietnamese (by using the proper alphabetical stresses) - fingerprints are crucial - exerting data from the VISA system in case of earlier visa attempts - the foreign representation holds regular interviews via phone or vis-Ã-vis in the detention centres.

Ireland	Yes	<p>1. The applications made by a third-country national for asylum, for temporary leave to remain in the State and for subsidiary protection, together with all refoulement issues are all fairly and comprehensively examined before a decision to deport is issued (a Deportation Order). It is after this process that the identity of the TCN is confirmed via the issuing of a travel document.</p> <p>2. There is no detention in Ireland and applicants reside in private accommodation or in dedicated accommodation centres during the application process. There is no legal status available to a TCN who cannot be expelled due to a lack of ID documents. They are deemed to be illegally present in the State.</p> <p>3. No, as there is no legal status confirmed and they are deemed to be illegal in Ireland. There are no rights to be enjoyed by such TCNs.</p> <p>4. They are obliged to remove themselves from the State.</p> <p>5. As stated earlier, there is no detention in Ireland.</p> <p>6. No opinion.</p> <p>7. The number of illegal Vietnamese in Ireland is relatively low and consequently so are the numbers deported to that country. Ireland has a good relationship with the Vietnamese Embassy in London and there is generally no difficulty procuring travel documents.</p>
Italy	Yes	<p>1. In the Italian legal system, identification is a pre-requisite for the expulsion of a third-country national (TCN) who is unlawfully present at the borders or within the country. For this reason, Article 14 of the Consolidated Act on Immigration introduced Identification and Deportation Centres (CIEs), formally known as CTPs, which have been specifically established for the identification of TCNs who could not be expelled immediately for a number of different reasons, including unconfirmed identity. Actually, there is no specific rule laying down whether an expulsion decree could be issued to a foreign national whose identity has not been confirmed. However, it is possible to argue that a TCN whose identification turns out to be difficult may be subject to an expulsion decree issued by the Provincial Police Authority (Questura), but enforcement is delayed to the moment when his or her identity is finally established. As a result, a TCN who has been subject to expulsion is detained in a CIE for the time needed for identification, which cannot exceed the maximum length provided for in national legislation, i.e., three months.</p> <p>2. At the end of the three-month period in a CIE, the TCN is released and requested to leave the country. Italian legislation does not grant any legal status to an unidentified foreign national who can no longer be detained. Therefore, if the TCN does not leave the country autonomously despite an expulsion decree and the ensuing removal order, and if he or she is again found in the country in an irregular position, the Police and the Prefecture may take again expulsion and detentions measures.</p> <p>3. No - 3a. See answer b. See answer 3 - c. See answer 3 - d. A TCN who is irregularly present in the country and who has been subject to expulsion that has not been enforced due to unconfirmed identity is granted fundamental human rights, as established in Article 2 of the Consolidated Act on Immigration. Article 35(3) expressly includes «urgent or essential, even long-term outpatient and hospital treatments for diseases and accidents» in public or private facilities, as well as «preventive medicine programmes aimed at protecting individual and collective health», such as vaccination, diagnosis and treatment of infectious diseases. These health services are provided free of charge if the recipients do not have sufficient economic means.</p>

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		<p>4. As replied to questions 3 and 3d, a TCN who has not been identified and who can no longer be detained in a CIE is in an irregular position, which means he or she is required to leave the country as soon as possible.</p> <p>5. Data is not available at the moment</p> <p>6. Italian authorities have never issued residence permits under these circumstances, so it is difficult to predict what the implications could be. Arguably, the issuance of temporary residence permits to TCNs who have not been identified might lead them to exploit this temporary regularisation and therefore keep on concealing their identity.</p> <p>7. Not available at the moment.</p>
Latvia	Yes	<p>1. In accordance with Latvian legislation forced return decision should be issued with regard to identified third-country national.</p> <p>2. A stay of the third-country national, who could not be expelled because of being not identified and who was released because the max. detention time period of 18 months has already expired, is unlawful in the Republic of Latvia. Article 505 of Immigration Law provides that: "if a foreigner who has been issued a voluntary return decision or in relation to whom a removal order has been issued (identified third country nationals), does not have a valid travel document and it is impossible to obtain it through diplomatic or consular services, a standard travel document shall be issued to him or her".</p> <p>3. There is no special document confirming the status of non-removable third-country national to be issued by the competent authorities of the Republic of Latvia.</p> <p>d. The third-country national illegally staying on the territory of the Republic of Latvia does not have right for employment, has the right for emergency healthcare.</p> <p>4. There are no special obligations imposed on non-removable person.</p> <p>5. In 2014 and 2015 there were no cases of release of non-removable third-country nationals (unidentified third-country nationals or third-country nationals, who have not obtained travel documents for their return) from the detention center because of the reason that the maximum time period for detention has expired.</p> <p>6. In accordance with the national legislation of the Republic of Latvia the residence permit could not be issued to a person, who does not have valid travel document and does not comply with the rules of entry and residence on the territory of the Republic of Latvia. The issuance of residence permit to non-removable foreigners, especially those who refuse to cooperate with the state authorities, will definitely lead to increasing number of foreigners hiding their identity and non-cooperating with the state authorities.</p> <p>7. The Republic of Latvia has good cooperation with Embassy of the Vietnam in Sweden (Stockholm). The identification procedure of citizens of Vietnam, who do not have identity documents, takes maximum 3 - 6 weeks, but verification and issuance of travel documents for citizens of Vietnam having identity documents or expired passports take maximum 20 days. The issuance of a return certificate (Emergency travel document) for a person costs 90 euro. The State Border Guard of Latvia carries out removals of Vietnamese via Russian Federation (Moscow airport).</p>

Lithuania	Yes	<ol style="list-style-type: none"> 1. Yes. Before the expiry of the maximum detention periods. 2. A third-country national is unlawfully in the Republic of Lithuania. 3. Yes. <ol style="list-style-type: none"> a. The decision on the expulsion and the decision on the suspension of the enforcement of a decision on the expulsion. b. If the identity of a third-country national is not confirmed, decision on the expulsion is issued before the end of the maximum time limits for detention. If the identity of a third-country national is confirmed within 10 working days from the day it is established. c. The same rights that are available to any third-country national who is staying illegally in the territory of Lithuania. d. n/a 4. There are no special obligations. 5. None 6. Yes. In our opinion, the issuance of a residence permit to a third-country national who cannot be expelled from Lithuania within a maximum detention periods due to lack of identification leads to the abuse and continuous hiding of their true identity. 7. n/a
Luxembourg	Yes	<ol style="list-style-type: none"> 1. Yes. A decision to expel a third-country national who is unlawfully present in the country can be issued in cases where the identity has not been concerned. For executing the expulsion decision the identity and the country where the individual has to be expelled has to be established prior to the decision. In those cases, the authorities are obliged to put the individual in detention (article 120 (1)) in order to determine the identity and obtain the travel documents. 2. The person concerned can benefit a postponement of removal. If the postponement of removal is granted the person concerned will benefit of the rights associated with the measure (See answer to Q.3c). 3. Yes. It will be issued at the request of the person concerned once s/he is granted a postponement of removal. In practice these individuals can be regularised. 3a. N/A. 3b. No. It will be issued based on the information that is disposable at the time. 3c. The person concerned will be entitled during the time that the return decision cannot be executed to benefit of a humanitarian aid in accordance with article 27 of the Law of 18 December 2009 organising social aid (article 125bis (2) of the amended Law of 29 August 2008 on free movement of persons and immigration). The Minister may grant an authorisation to engage in temporary work for the duration of the period of postponement of removal. It will be subject to the conditions laid down in Article 42 of the law of 29 August 2008 in regards to salaried workers. The authorisation to engage in temporary work is only be valid in relation to a specific employer and for a single occupation. It shall be withdrawn if the person to whom it is granted works for an employer or in an occupation other than those provided for in his/her authorisation, or if he/she, with fraudulent intent, has engaged in dishonest practices or has made false statements with a view to obtaining the authorisation. The beneficiary can also benefit of healthcare. 3d. N/A. 4. No. 5. No information available. 6. Yes. 7. Luxembourg has not dealt with the problem of Vietnamese citizens who hide their true identity.

Ad-Hoc Query:**Who could not be expelled from the State due to lack of identification/return documents**

Malta	Yes	1-7 Please refer to attached.
Netherlands	Yes	<p>1. The Netherlands do not have an expel decision. A return decision is imposed by either the Immigration and Naturalisation Service (INS), Royal Netherlands Marechaussee (RNM or National Police (NP). The INS issues a return decision together with a decision to refuse a residence permit. Herewith legal stay is ended. If a foreign national is apprehended by the RNM or the NP and if he/she is found to be without legal stay, a return decision may be issued. If the foreign national does not leave the country as specified by the decision, the authorities are by law authorized to take the necessary steps to ensure the return or removal of the foreign national. A return decision can be issued with the name and nationality the third-country national has given. The authorities do not have to prove this. Biometric data such as fingerprints are entered into the (national) system.</p> <p>2. No legal status is available in the Netherlands for a third-country national who could not be expelled due to lack of identification/return documents if this is due to the lack of cooperation by the third country national. It remains primarily the responsibility of the third-country national to give evidence of his identity and nationality and to leave the Netherlands. When there is no doubt about the identity and nationality of a third-country national, and despite that it is not possible to leave the country and that is not the fault of the third-country national, a no fault residence permit can be provided. For most third-country nationals who can not be expelled due to lack of identification/return documents this is not the case.</p> <p>3. No, the status of third-country nationals is registered in our registration system for third-country nationals.</p> <p>d. The third-country national who resides illegal in the Netherlands has no rights to employment or social assistance. Healthcare is only provided in case of care that is medically necessary (healthcare from public means). This is different for illegal minor children, who are entitled to education, healthcare and shelter until they leave the Netherlands or turn 18. If the TCN is cooperating with the preparation of his return, he will be able to find shelter in government provided locations, for a limited period of time.</p> <p>4. Such a third country national still has the obligation to leave the Netherlands.</p> <p>5. Legislation provides in a maximum duration of the administrative detention of six months, which can be prolonged with a maximum of twelve months (total 18 months), when despite all reasonable efforts the removal operation is likely to last longer owing to a lack of cooperation by the third country national concerned or delays in obtaining the necessary documents from third countries. It is important to note however that since 2011 none of the detained returnees have been detained for this maximum period. Re-detention of released returnees is possible. Jurisprudence has established a fine tuned system as to when this is allowed. First the reason of the earlier release has to be evaluated. When the main reason for the release was that there was no reasonable prospect of removal re-detention is not allowed within a year after the release, unless there are new prospects on the possibilities of this removal. When the release was due to other reasons, e.g. not working with due diligence on returning the irregular third country national to his country of origin or formalities regarding the apprehension of the irregular third country national, re-detention is allowed. The Dutch system does not add the successive periods of administrative detention to a maximum of 18 months in total.</p> <p>6. Yes, we expect this to lead to obstructing the return to the country of origin, and prolongingly hiding the true identity.</p> <p>7. The Netherlands have a bilateral agreement with Vietnam since 2009. Requests for identification are sent (by email and post) to the Dutch embassy in Hanoi, who forwards it to the Immigration Department of the Ministry of Public Security of Vietnam. In general, documented requests receive a positive result. Since there is no direct flight route, EU-Laissez -Passers are not used.</p>

Poland	Yes	<ol style="list-style-type: none"> 1. In such cases a return decision cannot be issued and expelled. 2. If return of a foreigner is not feasible for reasons beyond the control of the authority responsible for execution of the return decision and beyond the control of the foreigner, the foreigner shall be granted a permit for tolerated stay. 3. Yes. <ol style="list-style-type: none"> a. If the answer is YES, at what point of time and what kind of document is issued to such third-country national by your (Member) State? There is no time frame, each case is considered individually. Such a foreigner may be granted a permit for tolerated stay (the document confirms the legal status of the foreigner in Poland but does not entitle the him/her to cross the state border). b. If the answer to Q3 is YES, does the fact that the identity of a third-country national has not been confirmed has an impact on issuance of this document? If yes, what kind of effect does it have? According to the national law, if return of a foreigner is not feasible for reasons beyond the control of the authority responsible for execution of the return decision and beyond the control of the foreigner, the foreigner shall be granted a permit for tolerated stay. Therefore, if the identity of a foreigner has not been confirmed beyond the control of the above mentioned authority and beyond the control of the foreigner s/he is granted a permit for tolerated stay. c. If the answer to Q3 is YES, what rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national who receives this document? If on a foreigner's permit for tolerated stay the information about access to the labour market has been placed, s/he, inter alia, has provided healthcare, social assistance and s/he is entitled to perform work on the territory of the Republic of Poland as performing work or unemployed Polish citizen. d. If the answer to Q3 is NO, what rights (employment, healthcare, social assistance etc.) are enjoyed by a third-country national referred to in Q2? Not applicable 4. In such cases the alternatives to detention measures can be imposed on a foreigner. 5. We do not collect such data. 6. In our opinion this procedure is not abuse by foreigners. 7. In the frame of the Agreement between the Government of the Republic of Poland and the Government of the Socialist Republic of Vietnam on transferring and readmitting the citizens of the both States signed on 22 April 2004 and the Memorandum of Understanding in the field of organisation of Task Forces signed on 25 May 2007, the Polish Side has managed to organise 12 visits of experts in identification from Immigration Department of Ministry of Public Security in Hanoi. This kind of identification method is used when it is not possible to confirm the identity of a person by correspondence. The last session in Poland took place from 22 till 25 of April 2014. This year we are planning the next visit of the identification experts in Poland. According to the Polish experience the above mentioned method of identification is very effective.
Portugal	Yes	<ol style="list-style-type: none"> 1. The return decision must always have the identification of the person that it is being issued to. If the identification is not correct, it may be corrected later. 2. Portugal doesn't issue residence permits to TCNs who do not have documents to confirm their identity and nationality. However, even if it's not the query's scope, Portugal issues residence permits and travel documents under refugee or subsidiary protection status (based on declarations without supporting documents) 3. See answer to question 2.

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		<p>4. After the course of the detention period, the adoption of a lighter coercion measure, such as periodic presence of the subject to a police station/SEFÄ 's delegation, during a certain period of time, may be required to the competent court of law.</p> <p>5. N/A.</p> <p>6. Yes.</p> <p>7. PT has no cases related to Vietnamese citizens.</p>
Slovak Republic	Yes	<p>1. Yes. The person is taken to the respective Police department in order to deal with his/her irregular stay in the territory of the Slovak Republic and in order to start the administrative expulsion procedure from the territory of the Slovak Republic. Within the procedure, the person is interrogated, the interview is recorded in writing, a personal search is conducted, or his/her belongings are searched and his/her identity is verified in the respective systems. If it is found out during this procedure that there is a reason for his/her administrative expulsion, he/she is issued a decision on administrative expulsion (return decision). If there is no such reason for administrative expulsion, the person is released or if there are reasons for it, the person is handed over to the law enforcement authorities. If the person applies for asylum in the territory of the Slovak Republic, the administrative expulsion procedure is suspended and the return decision is not issued.</p> <p>2. The person is issued a tolerated stay if he/she fulfills the legislative conditions conditions.</p> <p>3. Yes, the third â country national is issued a document which confirms that he/she has been issued a tolerated stay. However, he/she is not issued a residence card.</p> <p>a. The Police department issues a decision on the application for tolerated stay within 15 days since its submission. Tolerated stay can be issued for the period of 180 days which is possible to be prolonged if there are still reasons for its issuance. If there is a positive decision on the application for the tolerated stay, the third-country national is issued a document proving that he/she has been granted the tolerated stay and which includes the date when the tolerated stay was granted.</p> <p>b. No, provided that the tolerated stay was granted on the grounds that his/her departure is not possible and detention is inefficient.</p> <p>c. Third-country nationals granted tolerated stay cannot work or set up a business during the period of tolerated stay. This does not concern those third-country nationals who were granted tolerated stay on the grounds of protection of their personal and family life, who were granted tolerated stay on the grounds that they were victims of human trafficking and who were granted tolerated stay on the grounds that they were illegally employed under particularly exploitative circumstances. In such cases third-country nationals granted tolerated stay are allowed to work but not to run a business. Persons granted tolerated stay are not provided accommodation by the state with the exception of persons who were granted tolerated stay on the grounds that they were victims of human trafficking, who are granted tolerated stay on the grounds of being illegally employed under particularly exploitative circumstances or an illegally employed minor. Third-country nationals granted tolerated stay who cannot work, are not entitled to have public health insurance but they can arrange commercial health insurance.</p> <p>d. N/A</p> <p>4. If the reasons for which the third-country national was granted tolerated stay no longer exist, he/she is obliged to inform the respective Police department within 15 days since he/she has learned about this fact.</p> <p>5. During 2014 â 2015, only 1 case was recorded (Nigerian national) when the embassy did not issue an emergency travel document during the detention period of the third-country national despite repetitive requests. In 2016 there has been one case of an Indian national released after termination of the detention period of 18 months.</p>

		<p>6. Yes, according to the Bureau of Border and Alien Police of the Police Force Presidium issuance of a residence permit would lead to an abuse. However, it is a good practice to monitor movement of the persons who cannot be detained after the maximum detention period and who cannot be expelled due to missing documents. E.g. the Indian embassy requires a personal interview in order to issue an emergency travel document. When a detained foreigner does not provide his/her identity, does not cooperate and is not willing to return to his country of origin, the embassy does not issue the emergency travel document. Therefore, in order to obtain residence, it would be sufficient for the foreigner to wait until the end of the maximum period for detention.</p> <p>7. Slovak Republic has good experience with the Vietnamese embassy which processes the requests of the Alien Police and in most cases issues necessary travel documents.</p>
Slovenia	Yes	<p>1. Yes, provisions of Aliens Act in this regard are the following: (1) A return decision shall be issued by the police to an alien who resides illegally in the Republic of Slovenia, save where the alien is apprehended due to the illegal crossing of the state border or in connection with it and has not been granted the right to reside, or the alien is the subject of a return or extradition procedure based on an international agreement on readmission, or an secondary sanction of expulsion from the country has been imposed on the alien. If the return procedure based on an international agreement ends in the nonreadmission of the alien to the state party, the alien shall be issued with a return decision.</p> <p>2. Provisions of Aliens Act provide for permission to stay as follows: (1) Under this Act, a stay in the country means permission granted to an alien who must be deported to remain temporarily in the Republic of Slovenia. (2) Permission to stay in the Republic of Slovenia shall be granted in the following circumstances: â if the deportation of the alien is not permitted under the preceding Article; â if the alien does not possess and is unable to acquire a valid travel document of the country of his nationality; â if a physician advises that immediate deportation is avoided due to the health condition of the alien; â if an alien minor attends primary school in the Republic of Slovenia; permission shall be granted till the end of the school year; â if the country of the alien’s nationality or, for stateless persons, of last habitual residence refuses to admit the alien; â if deportation is not possible because the transportation of the alien from the country cannot be provided by land, air or water; â if deportation is not possible because circumstances preventing return, such as natural or other disasters, occurred in the country of the alien’s nationality or in the country where the alien last resided as a stateless person; â if it is required by a guardian for special case assigned to an unaccompanied alien minor.</p> <p>3. Permission to stay shall be granted by the police at the request of the alien or ex officio for a period of six months. The permission may be renewed at the alien’s request or ex officio for as long as the conditions referred to in the preceding paragraph exist. An alien who acquires permission to stay in the Republic of Slovenia shall be issued a personal card by the police evidencing that the alien has permission to stay in the Republic of Slovenia. (1) An alien who has been granted a temporary stay in the Republic of Slovenia shall have the right to emergency health insurance pursuant to the Act governing healthcare and health insurance and to basic treatment, while alien minor schoolchildren shall also have the right to basic education. (2) The right to basic treatment referred to in the preceding paragraph shall mean the right to an allowance granted in the amount and manner specified for financial social assistance by the Act governing social support allowances. Resources for the payment of the allowance shall be provided by the Centre. (3) An alien who fails to act in compliance with the first and second paragraphs of Article 90 of this Act shall not be entitled to basic treatment.</p> <p>4. (1) An alien who is at risk of absconding or fails to depart from the country by the deadline specified and who for any reason can not be removed immediately shall receive by the police an order restricting his movement and obliging him to stay in the Centre or outside it until he is deported from the country, but for no longer than six months. (2) The provision of the preceding paragraph shall also be applied in cases where the identity of the alien is not known. (3) Restriction of movement shall be provided separately for women, families, children, unaccompanied minors, elderly people, and severely ill and other vulnerable persons with a view to ensuring an appropriate degree of privacy. The minister responsible for the interior shall determine a procedure for the accommodation of aliens at the Centre. (4) Restriction of movement may last only for the period necessary to deport the alien from the country, but no longer</p>

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		<p>than six months. (5) An alien specified in the first paragraph of this Article whom it is not possible to accommodate at the Centre due to special reasons or needs may, in agreement with the social security office and with the costs borne by the Centre, be accommodated at a social security facility or provided with other appropriate institutional care.</p> <p>5. see above</p> <p>6. It might.</p> <p>7. not available</p>
Sweden	Yes	<p>1. No</p> <p>2. Generally speaking; no status will be given.</p> <p>3. No a NA b NA c NA d Health care of emergency character. As of June 1st a person with that status won't be entitled to any social support (housing, daily allowances, etc) from the Swedish Migration Agency.</p> <p>4. No obligations as such, however the person can be subject to supervision.</p> <p>5. In Sweden the 18-months rule given in the return directive actually is 12 months. We have not had any third-country nationals detained for 12 months.</p> <p>6. We do not know if such a regime would lead to an abuse. However, and hypothetically speaking, there could typically be a risk of such a behavior that is described in the question if we generally issue residence permits in those cases.</p> <p>7. Sweden has experience from inviting task forces (3) from Vietnam to Sweden (2011, 2013, 2014) which have all proven to be very successful as many identities could be verified and many travel documents delivered. The task forces were all delegations from the Ministry of Public Security (MPS) who interviews the returnees in order to verify citizenship and/or identities. The delegations have been able to verify the returnees as Vietnamese and approvals were given for both documented and undocumented persons. The Vietnamese delegations have had the mandate to issue ETC immediately after citizenship is verified, without the involvement of the Vietnamese Embassy. Sweden has a bilateral readmission agreement with Vietnam since 31.12.2008 which we are satisfied with and the Vietnamese reply according to the time frames set in the agreement, and approvals can be granted for undocumented people as well. The problems Sweden face with return concerns Vietnamese people who came to Sweden and applied for residence permit before 2008 and before the readmission agreement entered into force. The Vietnamese refer these cases to the Embassy in Stockholm which unfortunately has not been cooperating very well with these cases.</p>

Norway	Yes	<p>1. Yes, in Norway, we can make a decision of expulsion to a third-country national even though the identity has not been confirmed. There are no specific legal/procedural prerequisites. However, if the identity is not confirmed it might be problematic to obtain travel documents and return the person back to his country of origin.</p> <p>2. If the third-country national has received a decision of expulsion, the stay in Norway will be illegal even though it is not possible to enforce the decision due to lack of identification.</p> <p>3. No, as long as the stay is considered illegal no other document than the decision of expulsion is issued. d. The person will not have the right to work and only have the right to emergency healthcare and social assistance.</p> <p>4. According to section 105 (a) of the Norwegian Immigration Act, an obligation of notification or stay in a specific place may be imposed on a foreign national where the foreign national is not cooperating on clarifying his or her identity or there are specific grounds for suspecting that the foreign national has given a false identity. The requirement to leave Norway, and return, remains in place, regardless of whether the person has been retained for 18 months or not, even though the government has not managed to bring about a return. The person in question will still be required to cooperate with the authorities to determine their identity and to facilitate a return, including leaving the country voluntarily.</p> <p>5. According to section 105 (a) of the Norwegian Immigration Act, an obligation of notification or stay in a specific place may be imposed on a foreign national where the foreign national is not cooperating on clarifying his or her identity or there are specific grounds for suspecting that the foreign national has given a false identity. The requirement to leave Norway, and return, remains in place, regardless of whether the person has been retained for 18 months or not, even though the government has not managed to bring about a return. The person in question will still be required to cooperate with the authorities to determine their identity and to facilitate a return, including leaving the country voluntarily.</p> <p>6. This response requires some speculation. Norway does have some experience with some foreigners actively working against the authorities's efforts to verify their identity, probably because they know about the 18-month detention limit. Should we issue a residence permit to persons without a verified ID, it is conceivable that this could lead to an even greater number of detainees working against our efforts to verify their ID in connection with returns.</p> <p>7. Norway has had return agreements with Vietnam since 2007 which regulate our practices. The applicant fills out a form in Vietnamese which we send to the Norwegian Embassy in Hanoi together with any ID documents. The embassy then sends these to the Vietnamese authorities with a diplomatic note. If the information the applicant has provided are correct, the Vietnamese authorities will provide a travel document within 4 weeks. If the information is not correct, we will be informed as such. If the applicant then does not provide new information about him/herself and further investigation to verify that person's ID is not successful, then we can invite immigration authorities to Norway to identify the applicant. The delegation then has a conversation with the applicant and issues a travel document in the name provided as long as they are convinced the person is in fact from Vietnam. This process actually took place in April, 2016, and all 10 persons presented were verified. Among these there was one person who had been detained for more than 1 year where we had 3 failed attempts at verification through our embassy.</p>
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