



Good Practices in the
return and reintegration
of irregular migrants:
Member States' entry
bans policy & use of
readmission agreements
between Member States
and third countries

Luxembourg

Second Focussed Study 2014

European Migration Network
National Contact Point Luxembourg

**University of Luxembourg
EMN National Contact Point
P.O. Box 2
L-7201 Walferdange
Luxembourg**

www.emnluxembourg.lu

E-mail: emn@uni.lu

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



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de la Famille, de l'Intégration
et à la Grande Région
Office luxembourgeois de l'accueil
et de l'intégration

Preface

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

The present report was drafted by Lisa Li with the assistance of Adolfo Sommaribas, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Ass.-Prof. Dr. Christel Baltes-Löhr. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Marc Hayot (OLAI, Ministry of Family, Integration and the Greater Region), Sylvie Prommenschenkel (Directorate of Immigration, Ministry of Foreign and European Affairs) and Germaine Thill (STATEC).

Methodology

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

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. As documentary sources legal texts, official documents (such as parliamentary documents), reports and press articles have been used for this study. Jurisprudence was consulted in order to verify if and how the issues which emerged while researching the documentary sources have been treated and interpreted. The cited jurisprudence has been kept in French to maintain its integrity. Furthermore, semi-structured interviews were conducted with the Directorate of Immigration of the Ministry of Foreign and European Affairs and the International Relations Unit of the Grand-Ducal Police.

Executive summary

This study explores Luxembourg's entry bans policy and use of readmission agreements as well as their links with reintegration assistance. The first part of this study will deal with entry bans. In Luxembourg a return decision can be accompanied by an entry ban for a maximum period of 5 years, even though in practice they are imposed for a period of 3 years.

Third-country nationals who are irregularly staying on the territory of the Grand Duchy of Luxembourg are however generally granted a period of voluntary return (30 days) and if they respect the given time limit, no entry ban will be imposed upon them. If on the other hand the obligation to return has not been complied with, this will be considered by the Minister in charge of immigration as the main reason for imposing an entry ban. Another reason which justifies imposing an entry ban is if a person poses a risk to public policy, public security or national security and then the duration of the entry ban can exceed 5 years.

Nevertheless, national legislation does also allow for the possibility to withdraw an entry ban. Concerned persons can apply for such a withdrawal after a reasonable period of time and have to put forward arguments that there has been a material change of their situation, from when the entry ban was imposed. The decision has to be notified in person and concerned individuals also have the possibility to appeal the decision before the administrative courts.

Once a decision on imposing an entry ban has been taken against a third-country national by the Directorate of Immigration, they inform the SIRENE Office which is situated within the Grand-Ducal Police, and which systematically enters an alert into the Schengen Information System. The default duration of this entry is 3 years and in case the entry ban is for a period of more than 3 years, the Directorate of Immigration has to approve the renewal of the alert for the remaining period.

Over the past 5 years, the use of entry bans has increased, with a peak in 2012 where a total of 190 entry bans were issued (compared to 139 in 2013). Unfortunately, no evaluation on the effectiveness of the imposition of entry bans has been conducted so far, but some of the stakeholders have mentioned that difficulties can arise as other Member States do not necessarily enter or withdraw entry ban alerts from the Schengen Information System in a timely manner.

The second part of the study deals with readmission agreements. Firstly, the application of EU readmission agreements will be examined and then the application of separate Benelux readmission agreements will be analysed. The national authority responsible for making applications for readmission to third countries is the Minister in charge of immigration. Even though there are a significant number of readmission agreements in place, they are rarely used and the number of returnees under these agreements remains relatively low. Only 76 applications were made in 2013 (compared to 196 in 2012) under an EU readmission agreement. The top three third countries for whose nationals Luxembourg makes applications for readmission are Serbia, Bosnia and Herzegovina and Montenegro. Concerning the cooperation of third countries when readmitting their own nationals, it has been noted that such cooperation works very well with the Western Balkan countries. With other countries however, with which no readmission agreements exist, cooperation is more problematic. This is mainly due to two reasons: firstly, the insufficient diplomatic relations with other countries and the lack of diplomatic missions on the Luxembourgish territory. Secondly, the unwillingness of certain countries to cooperate regarding the issuance of travel documents enabling a return.

As a member of the Benelux, Luxembourg has concluded several separate Benelux readmission agreements in collaboration with Belgium and the Netherlands. Agreements are in place with Bosnia and Herzegovina, Macedonia, Armenia and Kosovo. Furthermore, Luxembourg has also concluded a separate Memorandum of Understanding with Nigeria. With regards to Bosnia and Herzegovina and Macedonia, where both bilateral and EU readmission agreements exist, Luxembourg now only applies the respective EU readmission agreement. The top third country for whose nationals Luxembourg makes applications for readmission is Kosovo, with 100 applications in 2013 (and 22 in 2012).

The third part of the study will then briefly refer to the implementation of reintegration assistance programmes for returnees. In Luxembourg reintegration assistance is only available to persons who have returned voluntarily and it is offered by the Directorate of Immigration via the International Organisation for Migration. The Assisted Voluntary Return and Reintegration from the Grand Duchy of Luxembourg programme offers both financial and in-kind assistance. However, it is, with one exception, not available to third-country nationals who have received an entry ban. On the other hand, persons who return under a readmission agreement are

eligible for reintegration assistance. One should also note that this programme is not available for nationals from Albania, Bosnia-Herzegovina, Macedonia, Montenegro and Serbia, whose return is directly organised by the Directorate of Immigration.

In 2013, a total 116 persons benefitted from the Assisted Voluntary Return and Reintegration programme, the majority being nationals from Kosovo (78 persons).

1. ENTRY BANS

1.1 National Framework on entry bans: Grounds for imposition of entry bans and categories of third-country nationals subject to entry bans

Q1. In your Member State, which scenario applies to the imposition of entry bans?

- a) **Entry bans are automatically imposed in case the return obligation has not been complied with or no period of voluntary departure has been granted:** Yes.
- b) **Entry-bans are automatically imposed on all return decisions other than under a):** No.
- c) **Entry bans are issued on a case by case basis on all return decisions other than a):** Yes.¹

In Luxembourg a return decision can be accompanied by an entry ban for a maximum period of 5 years. This decision is taken either at the same time as the return decision or subsequently by a separate decision. The Minister in charge of immigration takes into account the individual circumstances of each case and the prohibition of entry onto the territory may be for a period longer than 5 years if the person constitutes a serious threat to public order, public security or national security.² Even though the law does not establish any guidelines on how to determine the duration of the entry ban³, in practice entry bans are imposed for the duration of 3 years⁴.

¹ Please see First instance Administrative Court, 3rd Chamber, n°30584 of 27 February 2013. « Le ministre dispose en la matière d'un pouvoir d'appréciation discrétionnaire, sous la réserve de la durée de l'interdiction du territoire qui est fixée en principe à cinq ans au maximum et sous la réserve de la prise en compte des circonstances propres à chaque cas. » last accessed 12.05.2014.

² Article 112 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³ Please see First instance Administrative Court, 2nd Chamber, n°30343 of 3 June 2013. « En ce qui concerne les interdictions de territoire jusqu'à cinq ans, le loi ne prévoit pas de critères fixes permettant de guider la décision du ministre, de sorte que le tribunal, dans le cadre de son contrôle, doit également procéder à une analyse *in concreto* du dossier administratif afin de vérifier si une telle interdiction ne semble pas disproportionnée en l'espèce. »

⁴ This is due to the fact that the SIS alert can initially only be for a fixed 3-year period. Information provided by the Directorate of Immigration, Interview 01.04.2014.

It should be noted that third-country nationals are generally granted a period of voluntary return. Except in some urgent cases, which have to be duly justified, the person has 30 days from the date of notification of the return decision to comply voluntarily with the obligation to leave the territory and may also ask to benefit from an assisted return programme.⁵ Furthermore, the Minister may exceptionally allow a time for voluntary departure exceeding 30 days by taking into account the personal situation of the individual concerned.⁶

On 31 March 2014, a bill amending the Law of 29 August 2008 was deposited in the Chamber of Deputies.⁷ This bill foresees that, in order to be in full compliance with the Return Directive⁸, the following examples should be explicitly mentioned among the circumstances justifying a period for voluntary departure exceeding 30 days:

- The length of stay;
- The existence of children attending school; and
- The existence of other family and social links.⁹

Situations in which the concerned person has to leave the territory without delay are:

- If s/he constitutes a threat to public order, public security or national security;

⁵ Article 111 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

And Article 22 of the Law of 5 May 2006 on the Right of Asylum and Complementary Forms of Protection, Memorial A N°113 of 3 July 2013,

<http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Please also see Section 5. Entry bans and readmission agreements: Understanding the synergies with reintegration assistance.

⁶ Article 111 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁷ Bill n°6673 amending the amended Law of 20 August 2008 on the Free Movement of Persons and Immigration, 31 March 2014,

http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/101/308/130007.pdf, last accessed 12.05.2014.

⁸ 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, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>, last accessed 12.05.2014.

⁹ Point 1 of the Bill n°6673 amending the amended Law of 20 August 2008 on the Free Movement of Persons and Immigration, 31 March 2014, http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/101/308/130007.pdf, last accessed 12.05.2014.

- If the application for an authorisation of stay or for a residence permit has been rejected on the ground of its being manifestly inadmissible, unfounded or fraudulent;
- If there exists a risk of absconding, which will be determined on a case-by-case basis. The risk of absconding will be presumed in the following situations:
 1. if the foreigner does not fulfil, or no longer fulfils, the conditions laid down in Article 34;
 2. if the foreigner remains on the territory after the expiry of the period of validity of his/her visa, or, where s/he is not subject to a visa obligation, after three months from the date of entry onto the territory;
 3. if the foreigner has evaded the enforcement of a previous expulsion measure;
 4. if an expulsion decision in accordance with Article 116 is taken against the foreigner;
 5. if the foreigner has forged, falsified or drawn up in a name other than his/her own a residence permit, an identity document or a travel document;
 6. if the foreigner is unable to show that s/he possesses identity documents or travel documents which are still valid, or where s/he has concealed elements pertaining to his/her identity, or where s/he has failed to declare the place of his/her actual residence, or where s/he has evaded the obligations provided for in Articles 111 and 125.¹⁰

After the expiration of the period for the voluntary return, the Minister in charge of immigration will issue an entry ban of a maximum period of 5 years against a person who remains on the territory.¹¹ In this case, the entry ban is automatically imposed.

¹⁰ Article 111 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

¹¹ Article 124 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Furthermore, an expulsion decision will always be accompanied by an entry ban.¹² The expulsion decision is taken by the Minister in charge of immigration and contains an obligation to leave the territory without delay.¹³ An expulsion decision can be taken if a foreigner represents a serious threat to public order or public security, or if a foreigner reappears on the territory and is already subject to an entry ban.¹⁴

A decision to place a person in detention will be taken against a foreigner in particular where there is a risk of absconding, or where the person avoids or hampers the preparation of the return or the removal procedure¹⁵. A third-country national who is placed in detention will always be subject to an entry ban, even if the person subsequently decides to return voluntarily.¹⁶

Q2a. What are according to national legislation in your Member State the grounds for imposing entry bans?

Table 1.1: Grounds for imposing entry bans

<i>Grounds for imposing entry bans</i>	<i>Yes/No</i>	<i>Information on the criteria/indicators used to decide whether particular grounds apply in individual cases</i>
Risk of absconding ¹⁷	No	The risk of absconding is not as such a ground for imposing an entry ban. However, it should be noted that the risk of absconding is the main ground justifying a decision of a placement into detention which subsequently leads to the imposition of an entry ban. ¹⁸ (Please see Q.1)
The third-country national concerned poses a risk to public	Yes	Whether the third-country national poses a risk is decided on a case-by-case basis. The Minister in charge of immigration therefore has to take into

¹² Article 116 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

¹³ Article 116 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

¹⁴ Article 116 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

¹⁵ Article 120 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

¹⁶ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹⁷ As stipulated in the Return Directive Article 11(1) (a) in combination with Article 7(4).

¹⁸ Article 120(1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

policy, public security or national security ¹⁹ .		account the individual facts of the case and has to respect the principle of proportionality. ²⁰ The concerned person will be informed of the precise and comprehensive grounds of public order, public security and public health on which a decision is based, unless this is precluded by considerations of State security. ²¹ The entry ban may also be for a longer period than 5 years if the person constitutes a serious threat to public order, public security or national security. ²² Therefore, a minor prison sentence alone does not for example automatically lead to the imposition of an entry ban. The person has to have committed a serious offence or expressed a threat. ²³
The application for legal stay was dismissed as manifestly unfounded or fraudulent ²⁴	No	

¹⁹ As stipulated in the Return Directive Article 11(1) (a) in combination with Article 7(4).

²⁰ Please see First instance Administrative Court, 3rd Chamber, n°32022 of 13 November 2013. « En ce qui concerne la durée de l'interdiction du territoire, le ministre dispose en la matière d'un pouvoir d'appréciation étendu, sous réserve de prendre en considération les circonstances propres à chaque cas et sous réserve que l'interdiction du territoire ne dépasse pas cinq ans. Si le ministre entend cependant prononcer une interdiction d'entrée sur le territoire dépassant la durée maximale ordinaire de cinq ans, il ne peut le faire que si l'étranger constitue une menace grave pour l'ordre public, la sécurité publique ou la sécurité nationale.

Néanmoins, le pouvoir d'appréciation du ministre n'échappe pas au contrôle des juridictions administratives, en ce que le ministre ne saurait verser dans l'arbitraire. Ainsi, confronté à une décision relevant d'un pouvoir d'appréciation étendu, le juge administratif, saisi d'un recours en annulation, est appelé à vérifier, d'après les pièces et éléments du dossier administratif, si les faits sur lesquels s'est fondée l'administration, sont matériellement établis à l'exclusion de tout doute et s'ils sont de nature à justifier la décision, de même qu'il peut examiner le caractère proportionnel de la mesure prise par rapport aux faits établis, en ce sens qu'au cas où une disproportion flagrante devait être retenue par le tribunal administratif, celle-ci laisserait entrevoir un usage excessif du pouvoir par l'autorité qui a pris la décision.

C'est justement le caractère proportionnel de la durée de l'interdiction du territoire qui est critiquée en l'espèce, ainsi que le constat du ministre que le demandeur constitue une menace grave pour l'ordre et la sécurité publics pour fixer la durée de l'interdiction d'entrée à six ans. »

²¹ Article 109 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

²² Article 112 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

²³ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Please also see Administrative Court, n°29904C of 29 February 2012. « Le tribunal est encore à confirmer dans son constat, en relation avec les antécédents judiciaires de l'intéressé, que le délégué du gouvernement avait utilement complété la motivation fournie à l'arrêté d'expulsion du 7 février 2011 par la référence aux multiples condamnations pénales prononcées à l'encontre de l'actuel appelant décrivant un comportement délinquant répété constitutif d'une menace d'autant plus grave pour l'ordre public. »

²⁴ As stipulated in the Return Directive in Article 11(1) (a) in combination with Article 7(4).

The obligation to return has not been complied with ²⁵	Yes	This is the main reason for imposing an entry ban. A person who remains on the territory after the expiration of the timeframe for returning voluntarily will be subject to an entry ban of a maximum period of 5 years. ²⁶
Other	No	

Q2b. What are the national grounds based upon which your Member State can decide not to issue an entry ban?

Table 1.2: Grounds for not imposing entry bans

<i>Grounds for not imposing entry bans</i>	<i>Yes/No</i>	<i>Information on the criteria/indicators used to decide whether particular grounds apply in individual cases</i>
Humanitarian reasons	Yes	The following criteria (humanitarian reasons, right to family life, health reasons) are taken into account are taken into account when a decision on the right to stay or the execution of the return decision is taken. The Minister in charge of immigration may grant a person an authorisation of stay for humanitarian reasons of an exceptional seriousness. In this case, an authorisation of stay will be granted and an earlier return decision is then annulled. ²⁷ A residence permit for private reasons valid for a maximum period of 3 years will then be issued to the third-country national concerned. This residence permit is renewable if after a re-examination of his/her circumstances, it is apparent that s/he continues to meet the conditions laid down in Article 78 of the Law of 29 August 2008. ²⁸
Right to family life (Article 8 ECHR)	Yes	The minister may grant an authorisation of stay for private reasons to family members as referred to in Article 76 of the Law of 29 August 2008. ²⁹ In relation to health reasons the Minister may extend the benefit of the measures to family members who are accompanying the foreigner and who could otherwise

²⁵ As stipulated in the Return Directive Article 11(1)(b).

²⁶ Article 124 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

²⁷ Article 78 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

²⁸ Article 79 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

²⁹ Article 78 (1) b) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

		also be removed from the territory, for the same period as that which is granted to the beneficiary. ³⁰ (Please see health reasons below)
Health reasons	Yes	<p>A person will not be removed from the territory if s/he establishes by means of medical certificates that his/her state of health is such as to require adequate medical treatment without which s/he would face consequences of an exceptional gravity and if s/he provides evidence that appropriate treatment is not available in the country of origin.³¹ The suspension of the removal order will be for a 6 month period and can be renewed for a maximum duration of 2 years.³²</p> <p>The beneficiary of a suspension of removal for medical reasons will be issued a certificate of suspension of removal, which will allow him/her to stay on the territory without being authorised to reside there.³³</p> <p>Where, upon the expiry of the two-year period, the person produces evidence showing that his/her state of health is persisting, s/he may obtain an authorisation of stay for medical reasons for the duration of the treatment which cannot exceed one year. The authorisation can however be renewed, following a re-examination of his/her situation.³⁴</p> <p>The beneficiary of an authorisation of stay for medical reasons will be issued a temporary residence permit in accordance with Article 78 (3) of the Law of 29 August 2008.³⁵</p>

³⁰ Article 131 (4) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³¹ Article 130 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³² Article 131 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³³ Article 132 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³⁴ Article 131 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³⁵ Article 78 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

For the practical implications of this temporary residence permit please see Judgment n°2014/0002 of the Supreme Council of Social Security of 23 January 2014.

Q3. Please provide a short overview of the categories of third-country national that can be issued an entry ban.

Table 1.3: Categories of third-country national who can be issued an entry ban

<i>Categories of third-country national who can be issued an entry ban³⁶</i>	<i>Who comply voluntarily with return decision (Y/N)</i>	<i>Who do not cooperate with return decision (Y/N)</i>
Third-country nationals staying illegally on the territory of a Member State (including residence/visa overstayers, rejected applicants for international protection, third-country nationals who entered the territory illegally)	No. As mentioned before, in general persons who voluntarily comply with the return decision will not be issued an entry ban. On the other hand, an entry ban will be imposed on all irregularly staying third-country nationals ³⁷ , irrespective of the category, if they do not comply with the return decision in the given time frame (30 days).	Yes
Third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code	No. Please see above. The only external Schengen border of the Grand Duchy of Luxembourg is the international airport. In case the Central Unit of the Airport Police refuses entry to a person, they have to be returned to the country of origin or to any other country into where s/he can be admitted by the responsible airliner. A decision refusing entry onto the territory which is issued by an agent of the airport control department can be executed ex officio. Therefore, the Minister in charge of immigration is not	Yes

³⁶ Based on Article 2 Return Directive.

³⁷ According to Article 100 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration a third-country national shall be considered as irregularly staying where s/he:

- (a) does not fulfil, or no longer fulfils, the conditions laid down in Article 34;
- (b) remains on the territory after his/her visa has expired, or, if he/she is not subject to a visa obligation, after three months from the date of his/her entry onto the territory;
- (c) is not in possession of an authorisation of stay valid for a period exceeding three months or a work permit, if the latter is required;
- (d) falls within the scope of Article 117.

Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

	required to issue a decision refusing entry, accompanied by a return decision. ³⁸	
Third-country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State	No. Please see above. If the police apprehend an irregular third-country national, they contact the Return Service within the Directorate of Immigration. However, if the person is placed in the Retention Centre, the return decision will be accompanied by an entry ban. ³⁹	Yes
Third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction	No	Yes. An early release may be granted to a non-resident foreigner upon whom an entry ban has been imposed and who has to leave the territory of the Grand Duchy of Luxembourg after his/her release from prison. The conditions regarding the lapse of time of their sentence are the same as set out in Article 100 of the Criminal Code but without a probation period. This early release includes an entry ban and if the person is in reach of the entry ban the remainder of the sentence becomes enforceable without any other procedure or formality. ⁴⁰
Third-country nations	Yes. An expulsion decision is	Yes

³⁸ Please see Articles 104 to 108 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013,

<http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

³⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁴⁰ Article 11 of the Law of 26 July 1986 concerning certain methods of enforcement of prison sentences, Memorial A N°70 of 11 September 1986,

<http://www.legilux.public.lu/leg/a/archives/1986/0070/a070.pdf#page=2> in relation with Article 100 of the Criminal Code, http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/cp_L1.pdf, last accessed 12.05.2014.

who are subject to an expulsion order	always accompanied by an entry ban. ⁴¹ The expulsion decision is taken by the Minister in charge of immigration and contains an obligation to leave the territory without delay. ⁴² Such a decision can be taken if a foreigner represents a serious threat to public order or public security, or if a foreigner reappears on the territory and is already subject to an entry ban. ⁴³	
---------------------------------------	--	--

Q4. Specify the territorial scope of entry bans that are imposed by your Member State.

Entry bans imposed by Luxembourg apply for the entire Schengen area.⁴⁴

Q5. Which institution(s) in your Member State decides whether or not to issue an entry ban on third-country nationals who are the subject of a return decision?

The Minister in charge of immigration, via the Return Department of the Directorate of Immigration (Ministry of Foreign and European Affairs) is the authority responsible for issuing entry bans.⁴⁵

⁴¹ Article 116 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴² Article 116 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴³ Article 116 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴⁴ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁴⁵ For further information please see: <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangees-et-europeennes/Organisation/Direction-de-l-Immigration>, last accessed 12.05.2014.

1.2. Practical application of entry bans

Q6. Who informs third-country nationals of the imposition of the entry ban and what procedure is used to convey this information?

Notification of the decisions will be given through administrative channels. A copy of the relevant decision will be provided to the person concerned. If that person is not present on the territory, the decision will be communicated via the competent diplomatic or consular authority.⁴⁶ The decision states the available remedies as well as the time limit within which the person has to act.⁴⁷ Upon request, the main elements of the decision will be communicated in a language which s/he understands or can reasonably be expected to understand.⁴⁸

The Judicial Police is the authority in charge of informing the third-country national of the imposition of an entry ban. An agent will hand a copy of the decision to the concerned person. The person should then sign the document. Occasionally, the situation arises where the third-country national refuses to sign and the agent of the Judicial Police will then take note of this and also of the fact that the person has been informed. The reasons for imposing the entry ban are mentioned in the decision.⁴⁹

The return decision as well as the decision on the imposition of an entry ban will normally be communicated simultaneously to them. However, as it is possible to take a decision on imposing an entry ban at a later stage, sometimes, the information regarding the entry ban is communicated separately.⁵⁰

⁴⁶ Article 110 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴⁷ Article 110 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴⁸ Article 110 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁴⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁵⁰ Article 112 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

The Bill amending the Law of 29 August 2008 which was deposited in the Chamber of Deputies on 31 March 2014 in order to be in full compliance with the obligations of the Return Directive, proposes that a third-country national against whom an entry ban has been taken, will be informed that an alert is going to be entered into the Schengen Information System.⁵¹

Q7. Do third-country nationals who have been imposed an entry ban have the possibility to appeal the decision?

Third-country nationals have the possibility to appeal the decision imposing an entry ban. An appeal seeking annulment of the decision can be brought before the First instance Administrative Court in accordance with the ordinary procedure and time limits (3 months)⁵² and the decisions of the First instance Administrative Court can be the subject of an appeal before the Administrative Court (40 days)⁵³. However, the appeals do not have a suspensory effect.⁵⁴

Where an appeal against a decision of the Minister is accompanied by an application for a suspension of the execution of the decision, the removal from the territory cannot take place until a decision by the First instance Administrative Court has been taken.⁵⁵

During appeal proceedings the applicant benefitting from the right of freedom of movement has the right to be present at the audience unless his/her presence may cause serious public order or public security disturbances or concerns the imposition of an entry ban.⁵⁶

⁵¹ Point 2 of the Bill n°6673 amending the amended Law of 20 August 2008 on the Free Movement of Persons and Immigration, 31 March 2014, http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/101/308/130007.pdf, last accessed 12.05.2014.

⁵² Article 16 of the Law of 21 June 1999, Memorial A N°196 of 19 September 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0196/a196.pdf#page=18>, last accessed 12.05.2014.

⁵³ Article 38 of the Law of 21 June 1999, Memorial A N°196 of 19 September 2011, <http://www.legilux.public.lu/leg/a/archives/2011/0196/a196.pdf#page=18>, last accessed 12.05.2014.

⁵⁴ Article 113 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁵⁵ Article 114 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁵⁶ Article 115 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Q8. Please indicate whether entry bans can be withdrawn or suspended in your Member State.

Table 1.4: Withdrawal and suspension of entry bans

<i>Categories of third-country national who can be exempted from an entry ban</i>	<i>Entry ban can be withdrawn or suspended (Y/N)</i>	<i>Information on the criteria/indicators used</i>
Third-country nationals who can demonstrate that they have left the territory of the Member State in full compliance with a return decision	Yes. As mentioned above, no entry ban will be imposed on third-country nationals who voluntarily comply with the return decision. For all other third-country nationals who have been imposed an entry ban, Article 112 (2) of the Law of 29 August 2008 states that persons can apply for a withdrawal of the entry ban after a reasonable time and taking into account the circumstances. In any case, they can apply for a withdrawal after 3 years starting from the date of the removal from the territory. The Minister in charge of immigration will give a decision within 6 months. ⁵⁷ In Luxembourg, entry bans cannot be suspended. ⁵⁸	The persons have to put forward arguments that there has been a material change of their situation, which at the time justified imposing an entry ban. ⁵⁹ Two situations should be mentioned here. It could be that the person would like to reunite with his/her family members or that they have found an employer. The Directorate of Immigration then re-examines the file and takes into account the legitimacy of the claim as well as the reasons for initially imposing the entry ban. ⁶⁰

⁵⁷ Article 112 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁵⁸ Article 112 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration does not foresee the suspension of an entry ban. Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁵⁹ Article 112 (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶⁰ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC (provided they do not represent a threat to public policy, public security or national security)	Yes	According to Article 96 of the Law of 29 August 2008, a return decision will not be accompanied by an entry ban, except if the person has failed to comply with the obligation to return within the given timeframe or if s/he represents a threat to public order, public security or national security. ⁶¹
Minors	Yes.	Please see below (cf. disabled people).
Unaccompanied Minors	Yes. In the hypothetical case that there were a removal accompanied by an entry ban, the general rules of Article 112 (2) of the Law of 29 August 2008 would apply. However, at the moment no entry ban will be imposed on unaccompanied minors as they are not being returned.	According to Article 103 of the Law of 29 August 2008 no return decision will be issued against an unaccompanied minor, except for a decision based on serious public security grounds. However, the same article also states, that an unaccompanied minor may be removed from the territory if it is in the best interests of the minor. ⁶²
Disabled people	Yes. The following categories of vulnerable persons do not only determine the issue/withdrawal of entry bans, more broadly they are taken into consideration when a decision on the execution of the return decision is taken. Please see the general rules of Article 112 (2) of the Law of 29 August 2008 above.	According to Article 125bis (2) of the Law of 29 August 2008, during the period where the removal has been suspended, the specific needs of vulnerable persons which include minors, unaccompanied minors, disabled persons, pregnant women, single parents with minor children, elderly persons, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, will be taken into account. ⁶³

⁶¹ Article 96 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶² Article 103 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶³ Article 125bis (2) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Elderly people	Yes.	Please see above (cf. disabled people).
Pregnant women	Yes	Please see above (cf. disabled people).
Single parents with minor children	Yes	Please see above (cf. disabled people).
Persons with serious illness	Yes	Please see above (cf. disabled people).
Persons with mental disorders	Yes	Please see above (cf. disabled people).
Persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence (e.g. victims of female genital mutilation)	Yes	Please see above (cf. disabled people).
Humanitarian reasons	Yes	The Minister in charge of immigration may grant a person an authorisation of stay for humanitarian reasons of an exceptional seriousness. In this case, an earlier return decision is then annulled. ⁶⁴
Health reasons	Yes	The Minister in charge of immigration may grant a person a suspension of the removal for medical reasons or an authorisation of stay for medical reasons. In the latter case, an earlier return decision is then annulled. ⁶⁵

⁶⁴ Article 78 (3) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶⁵ Articles 130 to 132 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Persons who are subject to an expulsion order	Yes. A person against whom an expulsion order has been taken can submit an application for the withdrawal of the entry ban after a reasonable time, and taking into account the circumstances. In any case, they can apply for a withdrawal after two thirds of the duration of the entry ban, from the date of removal from the territory. ⁶⁶	They have to put forward arguments to establish that there has been a material change in the circumstances which at the time justified imposing an entry ban. ⁶⁷
---	---	---

Q9. Is the institution responsible for the imposition of the entry ban the same as the authority that is competent to decide on withdrawal/suspension?

Yes, the authority responsible for deciding on the withdrawal of an entry ban is the Minister in charge of immigration via the Directorate of Immigration (Ministry of Foreign and European Affairs). If such a situation arises, it is not only the Return Department on its own which prepares the decision on the case, there is rather an internal consultation, including for example the legal department, in order to re-examine the file.⁶⁸

⁶⁶ Article 116 (4) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶⁷ Article 116 (4) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁶⁸ Information provided by the Directorate of Immigration, Interview 01.04.2014.

1.3. Cooperation between Member States

Q10. Does your Member State enter an alert into the SIS when an entry ban has been imposed on a third-country national? (e.g. see Article 24(3) of Regulation No 1987/2006 – SIS)

A SIS alert is systematically entered when an entry ban has been imposed on a third-country national.⁶⁹ The authority responsible for deciding on whether to enter such a decision or not is the Minister in charge of immigration via the Directorate of Immigration.

When the Directorate of Immigration takes a decision to impose an entry ban, they inform the SIRENE Office, which is situated within the International Relations Department of the Grand-Ducal Police⁷⁰, via fax or letter (depending on the urgency of the decision) that an entry ban alert against a certain person should be entered into the Schengen Information System.⁷¹ This letter/fax contains all the necessary information for the alert, but the decision as such is not transmitted to the Police.

After two and a half years there is automatic reminder that the entry ban alert is going to expire after the fixed 3-year period. The SIRENE office then contacts the Directorate of Immigration in order to know, if the entry ban should be prolonged and the Directorate of Immigration will inform the Police of the remaining duration of the entry ban decision (if it is for a period longer than 3 years) and has to give its approval in order for the alert to be extended.⁷²

It should therefore be noted that that the SIRENE Office only plays the role of an intermediary and that the decision to enter or withdraw an entry ban alert remains under the sole responsibility of the Minister in charge of immigration via the Directorate of Immigration.

⁶⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁷⁰ For further information please see: http://www.police.public.lu/PoliceGrandDucal/mission_organigramme/organigramme/direction_general.html, last accessed 12.05.2014.

⁷¹ Information provided by the International Relations Department of the Grand-Ducal Police, Interview 08.05.2014.

⁷² Information provided by the International Relations Department of the Grand-Ducal Police, Interview 08.05.2014.

Q11a. Does your Member State share information on the use of entry bans with other Member States?

Luxembourg exchanges information on a case-by-case basis.⁷³ However, it should also be noted that once an alert has been entered into SIS by the Luxembourgish SIRENE Office, it is visible to all the other offices in the Schengen area.

Further information will then only be shared, if there has been a request by another Member State or if Luxembourg needs information from a certain Member State. If another Member State issues a residence permit to a person subject to an entry ban, a consultation procedure is launched according to Article 25 of the Schengen Convention^{74, 75}.

Q11b. What type of information is shared with other Member States? Please indicate whether any or all of the following types of information are shared:

- a) **Number of entry bans imposed:** No.
- b) **Identity of the individuals who have been imposed an entry bans:** Yes.
- c) **Reasons for imposing the entry bans:** Yes.
- d) **Decision to withdraw an entry ban and reasons for this:** Yes.
- e) **Decision to suspend an entry ban and reasons for this:** No.
- f) **Any other information:** No.

It depends on the specific case what information is shared. The main type of information that is shared concerns the reasons why a Member State would like to have an entry ban of a specific person withdrawn.⁷⁶ Once the entry ban is withdrawn, it will be removed from the SIS and consequently it will also no longer be visible for the other Member States.⁷⁷

⁷³ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁷⁴ The Schengen acquis - 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, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:en:HTML>, last accessed 12.05.2014.

⁷⁵ Information provided by the International Relations Department of the Grand-Ducal Police, Interview 08.05.2014.

⁷⁶ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁷⁷ Information provided by the International Relations Department of the Grand-Ducal Police, Interview 08.05.2014.

Q11c. How is information shared with other Member States?

First of all, Luxembourg enters the information into the SIS so that other Member States can see this information. (Please see Q.10 and Q.11 above) Information is therefore mainly exchanged via the sending of SIRENE messages (electronic form) among the different SIRENE offices. In urgent cases, all other communication means may be used.⁷⁸

Secondly, if personal relations exist, information is sometimes shared on a more informal basis among government official depending on the situation.⁷⁹

Q12a. Article 11 (4) stipulates that “where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement”. Please describe the processes how these consultations take place; indicate which authorities are involved as well as the method of consultation.

The Minister in charge of immigration, via the Directorate of Immigration, is the authority in charge. If such a situation arises, the Directorate of Immigration consults the competent authority of the Member State in question.⁸⁰

Q12b. Has your Member State ever issued a residence permit or any other authorisation offering a right to stay to a third-country national who is the subject of an entry ban imposed by another Member State?

Yes, on several occasions Luxembourg has issued a residence permit to a third-country national who is the subject of an entry ban imposed by another Member State. Statistics are not available.

⁷⁸ Information provided by the International Relations Department of the Grand-Ducal Police, Interview 08.05.2014.

⁷⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁸⁰ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Q12c. In case your Member State has issued a residence permit or any other authorisation offering a right to stay to a third-country national who is the subject of an entry ban imposed by another Member State, please specify the circumstances based on which such decisions were taken.

One example that could be given is the case of a Ukrainian woman who was subject to an entry ban imposed by Germany and who married a Luxemburgish citizen. She was subsequently granted an authorisation of stay by the Luxembourgish authorities and the entry ban alert was eliminated from the system.⁸¹ Another example is the case of a Moroccan national who was a rejected international protection applicant and who was ordered to leave the territory. After the removal he married a Dutch citizen who applied for an authorisation of stay based on family reunification. The First instance Administrative Court annulled the entry ban decision based on the grounds family reunification⁸² and consequently the SIS alert was withdrawn.

⁸¹ Information provided by an attorney at law, Interview 06.05.2014.

⁸² Please see [First instance Administrative Court, 2nd Chamber, n°23254a of 17 December 2008](#).

1.4 Effectiveness of entry bans

Q13. Has your Member State conducted any evaluations of the effectiveness of entry bans?

Table 1.5: Entry ban's effectiveness

<i>Aspects of the effectiveness of entry bans</i>	<i>Explored in national evaluations</i>	<i>Main findings</i>
Contribute to preventing re-entry	No	
Contribute to ensuring compliance with voluntary return ⁸³	No	
Cost-effectiveness of entry bans	No	
Other aspects of effectiveness	No	

⁸³ i.e. to what extent does the graduated approach (withdrawal or suspension of the entry ban) contribute to encouraging third-country nationals to return voluntarily?

Q14. The following indicators have been developed in order to measure the effectiveness of entry bans as a means for enhancing the ability of (Member) States to carry out sustainable returns, or provide proxy measures of their effectiveness.

Table 1.6: National statistics on entry bans

<i>Indicators</i>	<i>Y/N</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of entry bans imposed	Yes	71	40	63	190	139
Number of decisions to withdraw an entry ban	No	/	/	/	/	/
Number of decisions to suspend an entry ban	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Number of persons who are the subject of an entry ban who have been re-apprehended inside the territory (not at the border)	No	/	/	/	/	/
Proportion of persons issued an entry ban who have returned voluntarily – out of the total number of persons that were issued an entry ban	Yes	2	1	8	20	22
Proportion of persons who were not issued an entry ban who have returned voluntarily – out of the total number of persons that were imposed a return decision	Yes	13	14	175	1127	204

Q15. Please indicate whether your Member State has encountered any of the following challenges in the implementation of entry bans and briefly explain how they affect the ability of entry bans to contribute to effective returns.

Table 1.7: Practical challenges for the implementation of entry bans

<i>Challenges associated with entry bans</i>	<i>Y/N</i>	<i>Reasons</i>
It is difficult to ensure compliance with entry bans on the part of the third-country national concerned	No	Even though, the case does sometimes arise that a person disappears during the return proceedings. ⁸⁴
It is difficult to monitor compliance with entry bans	Yes	It is not possible to monitor the compliance with an entry ban. One can only observe that an entry ban has not been respected, if the person is subsequently detected by the police. ⁸⁵ If a person is arrested and has a previous entry ban the risk of absconding will be presumed. Therefore, if the person cannot be removed immediately, s/he will be placed in detention. ⁸⁶ One should also mention that a person who enters onto the territory even though s/he is subject to an entry ban is liable to a prison sentence of between 6 months and 3 years and/or a fine of between 251 and 3000€. ⁸⁷
It is difficult to secure the cooperation of other MS in the implementation of entry bans ⁸⁸	Yes	Problems can arise as some Member States do not systematically enter an alert into SIS once they have issued an entry ban. ⁸⁹
It is difficult to secure the cooperation of the country of origin in the implementation of entry bans	Yes	It depends on the country of origin. With certain countries the cooperation works very well, with others it is more challenging. Especially with the Western Balkan countries a good cooperation has been put into place. ⁹⁰
Other challenges	No	

⁸⁴ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁸⁵ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Please also see Article 136 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration:

1. Without prejudice to Article 45 of the Code of Criminal Investigation, foreigners must be in a position to produce, whenever requested to do so by the Grand-Ducal Police, the documents by which they are authorised to enter or stay on the territory.

2. Officers of the Grand-Ducal Police are empowered to retain the travel documents of persons in an irregular situation covered by Chapter 3 of this Law. They will, in return, provide such persons with a receipt counting as proof of their identity.

Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

Q16. Please describe any examples of good practice in your (Member) State's implementation of entry bans, identifying as far as possible the reasons why the practice in question is considered successful.

Nothing to report.

⁸⁶ Article 111 (3) 3 in relation with Article 120 (1) of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁸⁷ Article 142 of the Law of 29 August 2008 on the Free Movement of Persons and Immigration, Memorial A N°113 of 3 July 2013, <http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf>, last accessed 12.05.2014.

⁸⁸ This could for example relate to problems in the use of the Schengen Information System, and/or the lack of a common system.

⁸⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁹⁰ Information provided by the Directorate of Immigration, Interview 01.04.2014.

2. READMISSION AGREEMENTS⁹¹

2.1. Institutional set-up

Q17. Which authority is responsible for making applications for readmission to third countries in individual cases of forced and or voluntary return?

The authority responsible for making applications for readmission to third countries is the governmental unit designated by the Minister in charge of immigration. This governmental unit is the Return Department of the Directorate of Immigration (Ministry of Foreign and European Affairs).⁹²

⁹¹ Please note that this Section only concerns readmission agreements with third countries and that any other readmission agreements with EEA countries are outside the scope.

⁹² Please see for example: Readmission agreement Luxembourg - Russia, Memorial A N°283 of 31 December 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0283/a283.pdf>, last accessed 12.05.2014.

For further information, please see: <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangees-et-europeennes/Organisation/Direction-de-l-Immigration>, last accessed 12.05.2014.

2.2. EU Readmission agreements⁹³

Q18. Please provide any available statistics on the number of readmission applications that your Member State has submitted on the basis of EU readmission agreements.

Table 2.1: National Statistics on the total number of readmission applications under EU Readmission Agreements

	<i>Total number of readmission applications made based on EURAs</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	53	40	90	33	9	2	17	6
Own nationals	⁹⁴ /	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Table 2.2: National Statistics on the number of readmission applications made under EU Readmission Agreement to Serbia

	<i>Number of readmission applications made to <u>Serbia</u> based on EURAs</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	7	6	53	12	0	1	16	3
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

⁹³ Please see [Annex 1: EU Readmission agreements](#) for the full list.

⁹⁴ Only the total numbers are available for the following tables.

Table 2.3: National Statistics on the number of readmission applications made under EU Readmission Agreement to Bosnia and Herzegovina

	<i>Number of readmission applications made to <u>Bosnia and Herzegovina</u> based on EURAs</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	18	4	9	5	3	0	0	1
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Table 2.4: National Statistics on the number of returns under EU Readmission Agreement to Montenegro

	<i>Number of readmission applications made to <u>Montenegro</u> based on EURAs</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	10	1	6	11	4	0	0	2
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Q19. Has your (Member) State experienced any practical obstacles when implementing EU Readmission Agreements?

Table 2.5: Practical obstacles for the implementation of EU Readmission Agreements

<i>Practical obstacles associated with EU readmission agreements</i>	<i>Yes/No</i>	<i>Please specify whether only in relation to a specific third country, or more of general nature.</i>
Countries of origin do not cooperate in general	Yes	In general, cooperation with the Balkan countries works well. However, with many North or Western African countries, with

		<p>whom no readmission agreements exist, cooperation regarding return is more problematic.⁹⁵ The following examples therefore do not only concern readmission agreements but the return procedure more broadly.</p> <p>When trying to return a third country national, the Directorate of Immigration contacts the diplomatic authorities of the presumed country of origin of the person. Cooperation on behalf of the diplomatic authorities of the country of origin is necessary in order to identify the person and also to obtain the required travel documents, i.e. a “laissez-passer”.</p> <p>However, this process can be long and tedious given that most of the diplomatic missions are located in Brussels. In many cases, the necessary arrangements cannot be made⁹⁶ or the diplomatic authorities are unwilling to cooperate with the Luxembourgish authorities⁹⁷.</p>
Countries do not respect the deadlines	Yes	Occasionally, problems concerning the respect of deadlines have been noted. This is particularly the case with certain African countries where the duration for identifying a

⁹⁵ Information provided by the Directorate of Immigration, Interview 01.04.2014.

⁹⁶ Please see for example: First instance Administrative Court n°30009 of 23 March 2012. « Les autorités luxembourgeoises ont sollicité par courrier du 28 octobre 2011 un laissez-passer auprès de l’ambassade de la République du Mali à Bruxelles et que depuis, elles sont en contact régulier, documenté par des courriers, respectivement par des notes au dossier faisant état de contacts téléphoniques, avec ladite ambassade en vue d’organiser une entrevue afin d’identifier le demandeur, cette entrevue n’ayant pas pu avoir lieu pour des raisons tenant à l’indisponibilité des agents de cette ambassade. »

⁹⁷ Please see for example: Administrative Court n°28790C of 24 June 2011. « Or, l’ensemble de ces démarches entreprises par les autorités luxembourgeoises ne permet pas de suivre les reproches de l’intimé en rapport avec un défaut de diligences de leur part, étant insisté sur ce qu’il ne saurait leur être reproché d’avoir attendu dans une première phase 20 jours avant de relancer téléphoniquement le consulat algérien et ensuite 16 jours pour adresser une lettre de rappel aux autorités algériennes afin d’obtenir la confirmation de l’identité de l’appelant et par la suite l’émission d’un laissez-passer, étant donné dans ce contexte que les autorités luxembourgeoises sont essentiellement tributaires de la collaboration et de l’efficacité des autorités étrangères. »

Please also see: First instance Administrative Court, Vacation Chamber, n°28987 of 30 August 2011. « Par ailleurs, une anticipation des démarches n’aurait pas été possible, puisque l’ambassade de Sierra Leone à Bruxelles exigerait toujours une présentation physique des personnes pour lesquelles un laissez-passer est sollicité, dans les locaux de l’ambassade. Or, le transport d’un détenu à Bruxelles serait impossible. Par ailleurs, au vu des diligences détaillées ci-avant, il convient de constater qu’au moment où le tribunal statue, des démarches suffisantes ont été entreprises afin de pouvoir procéder à l’éloignement du demandeur du territoire, de sorte que le moyen fondé sur une absence de diligences suffisantes, voire de l’inertie des autorités laisse d’être fondé. »

		person by the respective embassy can be extremely long. ⁹⁸
Countries do not cooperate in relation to readmission applications of third-country nationals (as opposed to own nationals)	Yes	This is generally problematic. ⁹⁹
Countries do not cooperate in relation to readmission applications of stateless persons (as opposed to own nationals)	Yes	This is also generally problematic. However, one should note that Luxembourg has only a very limited number of stateless persons on its territory. ¹⁰⁰
Countries do not issue travel document to enable readmission/return	Yes	The problem is not only that the country of origin does not issue travel documents, sometimes they issue documents to their nationals but make it almost impossible for the accompanying personnel to receive travel documents. Or their documents are only valid for a very short period, which makes the return from an organisational point of view impossible. ¹⁰¹ There have also been cases where the diplomatic authorities recognised the person as a national of their country but later on refused or delayed the issuance of a “laissez-passer”. ¹⁰²
Gaps in own (Member) State’s administrative capacity to implement readmission agreement	No	
Lack of diplomatic representations	Yes	For many third countries Luxembourg does not have an embassy and is represented by another Member State (i.e. Belgium, France,

⁹⁸ Please see for example: First instance Administrative Court, 2nd Chamber, n°28767 of 30 June 2011. « Au vu des diligences ainsi déployées par l’autorité ministérielle, le tribunal est amené à constater qu’au moment où il statue, des démarches suffisantes ont été entreprises afin d’organiser l’éloignement du demandeur du territoire et que confrontées aux hésitations des autorités nigérianes à délivrer des documents de voyage au demandeur... »

Please also see: Administrative Court n°28790C of 24 June 2011.

⁹⁹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹⁰⁰ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹⁰¹ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹⁰² Please see for example: First instance Administrative Court, 2nd Chamber, n°28621 of 16 May 2011. « Il ressort d’une autre note au dossier qu’en date du 9 mai 2011, l’agent ministériel a recontacté l’ambassade et que le représentant de cette dernière ne semblait plus trop disposé à délivrer un laissez-passer. Finalement, il ressort d’une note au dossier du 17 mai 2011 que l’agent ministériel a encore recontacté l’ambassade en vue d’avoir une réponse définitive au sujet du laissez-passer à émettre au nom du demandeur et que le représentant de l’ambassade lui a assuré de fournir une réponse au courant de la semaine subséquente. »

		Germany, Hungary, the Netherlands, Portugal, Slovenia, and Spain). ¹⁰³ Cooperation largely depends on the diplomatic relations and the government in place in the country of origin. Quite often it also depends on the personal relations between the personnel of the embassy in question and the Luxembourgish representatives. Quite commonly, it is in collaboration with the embassy personnel in Belgium that readmission agreements are being implemented. Sometimes it has been noted that the cooperation between a third country and the Belgian officials works whereas with the Luxembourgish officials it does not work and vice versa. ¹⁰⁴
--	--	---

Q20. Has your (Member) State conducted any evaluations of the effectiveness of EU and/or its bilateral readmission agreements?

Table 2.6: Findings of the evaluations of EU Readmission Agreements carried out by your Member State

<i>Aspects of effectiveness</i>	<i>Covered in national evaluations</i>	<i>Main findings</i>
Recognition rates of readmission applications	No	
Other	No	

¹⁰³ LU EMN NCP, Visa Policy as a Migration Channel, 2011, <https://www.emnluxembourg.lu/type-documentation/visa-policy-migration-channel>, last accessed 12.05.2014.

¹⁰⁴ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Q21. The following indicators have been developed in order to provide (proxy) measures of the effectiveness of EU and bilateral readmission agreements.

Table 2.7: Indicators measuring the effectiveness of EU Readmission Agreements

<i>Indicators</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of readmission applications sent	44	55	42	92	34
Number of readmission applications that received a positive reply	38	48	30	71	21
Number of requests for travel documents in the context of a readmission application	/	/	/	/	/
Number of travel documents issued by third country after the positive reply	/	/	/	/	/
Number of persons who were effectively returned	36	28	18	44	14

Q22. Please provide an assessment of the added value of the EU Readmission Agreements in facilitating the effective returns in comparison with the period before the EU Readmission Agreements were concluded.

For a small country like Luxembourg an EU readmission agreement can only be considered as an advantage as Luxembourg does not have the means to conclude such agreements. It lacks the necessary personnel but also the know-how, the political and economic weight and of course the diplomatic network. Therefore, Luxembourg is very much in favour of the EU concluding readmission agreements.¹⁰⁵

However, it is also important to note that the effectiveness of the returns of third-country nationals depends a lot on the diplomatic relations between the Luxembourgish government officials and the embassy personnel of the third-country in question. (Please see Table 4.4 Practical obstacles for the implementation of EU Readmission Agreements)

¹⁰⁵ Information provided by the Directorate of Immigration, Interview 01.04.2014.

2.3. Separate bilateral readmission agreements¹⁰⁶

Q23. Does your Member State have any separate bilateral readmission agreements in place with third countries?

As a country of the Benelux¹⁰⁷, Luxembourg has concluded several Benelux readmission agreements in collaboration with Belgium and the Netherlands. Agreements are in place with Bosnia-Herzegovina (signed on 19 July 2006)¹⁰⁸, Macedonia (signed on 30 May 2006)¹⁰⁹, Armenia (signed on 3 June 2009)¹¹⁰ and Kosovo (signed on 12 May 2011)¹¹¹.

Luxembourg has also concluded a separate Memorandum of Understanding with Nigeria (signed on 28 March 2006).¹¹²

¹⁰⁶ Please see [Annex 2: Bilateral Benelux readmission agreements](#).

¹⁰⁷ For further information, please see: <http://www.benelux.int/fr>, last accessed 12.05.2014.

¹⁰⁸ Readmission Agreement: Benelux – Bosnia and Herzegovina, Memorial A N°62 of 20 April 2007, <http://www.legilux.public.lu/leg/a/archives/2007/0062/a062.pdf>, last accessed 12.05.2014.

¹⁰⁹ Readmission Agreement: Benelux – Macedonian Government, Memorial A N°61 of 20 April 2007, <http://www.legilux.public.lu/leg/a/archives/2007/0061/a061.pdf#page=2>, last accessed 12.05.2014.

¹¹⁰ Readmission Agreement: Benelux – Republic of Armenia, Memorial A N°258 of 28 December 2009, <http://www.legilux.public.lu/leg/a/archives/2009/0258/a258.pdf>

¹¹¹ Readmission Agreement: Benelux – Kosovo, Memorial A N°104 of 24 May 2012, <http://www.legilux.public.lu/leg/a/archives/2012/0104/a104.pdf>, last accessed 12.05.2014.

¹¹² Memorandum of Understanding with Nigeria.

Please also see the response to the Parliamentary Question n°1207 of 31 January 2011, http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=1079002&fn=1079002.pdf

Q24. Please provide any available statistics on the number of readmission applications that your Member State has submitted on the basis of separate bilateral readmission agreements.

Table 2.8: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Kosovo

	<i>Number of readmission applications made to <u>Kosovo</u> based on separate bilateral readmission agreements</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	54	35	21	93	12	8	9	40
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Table 2.9: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Armenia

	<i>Number of readmission applications made to <u>Armenia</u> based on separate bilateral readmission agreements</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	1	0	1	0	0	0	0	0
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Table 2.10: National Statistics on the number of readmission applications made under separate bilateral readmission agreements to Croatia

	<i>Number of readmission applications made to <u>Croatia</u> based on separate bilateral readmission agreements</i>				<i>How many have concerned voluntary return?</i>			
	2010	2011	2012	2013	2010	2011	2012	2013
Total numbers	0	0	0	1	0	0	0	0
Own nationals	/	/	/	/	/	/	/	/
Third-country nationals (including stateless persons)	/	/	/	/	/	/	/	/

Q25. Please indicate the most common problems encountered in the implementation of separate bilateral readmission agreements.

Table 2.11: Practical obstacles experienced under separate bilateral readmission agreements

<i>Practical obstacles associated with separate bilateral readmission agreements</i>	<i>Yes/No</i>	<i>Please specify whether only in relation to a specific third country, or more of general nature.</i>
Countries of origin do not cooperate in general	Yes	Please see Q.19
Countries do not respect the deadlines	Yes	Please see Q.19
Countries do not cooperate in relation to readmission applications of third-country nationals (as opposed to own nationals)	Yes	This is a general problem.
Countries do not cooperate in relation to readmission applications of stateless persons (as opposed to own nationals)	Yes	This is a general problem.
Countries do not issue travel document to enable readmission/return	Yes	Please see Q.19
Gaps in own (Member) State's administrative capacity to implement readmission agreement	No	
Other obstacles	No	

Q26. Do any of the separate bilateral readmission agreements signed by your (Member) State include an article encouraging both Parties to promote the use of voluntary return?

There is no specific article encouraging the use of voluntary return in any of the existing readmission agreements. However, voluntary return is generally promoted by Luxembourg regardless of whether a readmission agreement has been put into place or not.

(Please also see Section 5 below)

Q27. Does your Member State prefer to use separate bilateral readmission agreements instead of EU Readmission agreements with particular third countries? (Yes/No) If yes, please indicate with which third countries and the reasons for this.

With regards to Bosnia and Herzegovina and Macedonia, where both bilateral and EU readmission agreements exist, Luxembourg only applies the respective EU readmission agreement.¹¹³

Generally, Luxembourg is in favour of both EU and Benelux readmission agreements, because as mentioned above, Luxembourg does not have the means to establish separate bilateral readmission agreements. One disadvantage of an EU readmission agreement is that a consensus has to be found between all the Member States, which can take a long time. Therefore, it can sometimes be easier to conclude bilateral readmission agreements.

With regards to the Memorandum of Understanding with Nigeria, Luxembourg is in favour of continuing to work on a bilateral basis as is currently working well.¹¹⁴

¹¹³ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹¹⁴ Information provided by the Directorate of Immigration, Interview 01.04.2014.

Q28. Has your (Member) State conducted any evaluations of the effectiveness of separate bi-lateral readmission agreements?

Table 2.12: Evaluations on separate bilateral readmission agreements

<i>Aspects of effectiveness</i>	<i>Covered in national evaluations</i>	<i>Main findings</i>
Recognition rates of readmission applications	No	
Other (please indicate and add rows as necessary)	No	

Q29. The following indicators have been developed in order to provide (proxy) measures of the effectiveness of separate bilateral readmission agreements.

Table 2.13: Indicators measuring the effectiveness of separate bilateral readmission agreement with Kosovo

<i>Indicators</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of readmission applications sent	114	56	35	22	100
Number of readmission applications that received a positive reply	110	50	30	22	92
Number of requests for travel documents in the context of a readmission application	/	/	/	/	/
Number of travel documents issued by third country after the positive reply	/	/	/	/	/
Number of persons who were effectively returned	66	34	20	9	51

Table 2.14: Indicators measuring the effectiveness of separate bilateral readmission agreement with Armenia

<i>Indicators</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of readmission applications sent	0	1	0	1	0
Number of readmission applications that received a positive reply	0	1	0	1	0
Number of requests for travel documents in the context of a readmission application	/	/	/	/	/
Number of travel documents issued by third country after the positive reply	/	/	/	/	/
Number of persons who were effectively returned	0	0	0	0	0

Table 2.14: Indicators measuring the effectiveness of separate bilateral readmission agreement with Croatia

<i>Indicators</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Number of readmission applications sent	0	0	0	0	1
Number of readmission applications that received a positive reply	0	0	0	0	1
Number of requests for travel documents in the context of a readmission application	/	/	/	/	/
Number of travel documents issued by third country after the positive reply	/	/	/	/	/
Number of persons who were effectively returned	0	0	0	0	1

Q30. Please provide an assessment of the added value of the separate bilateral readmission agreements in facilitating effective returns in comparison with the period before the separate bilateral readmission agreements were concluded.

As mentioned above (Q.22), Luxembourg does not have the means to conclude separate readmission agreements and is therefore in favour of concluding Benelux agreements.

3. UNDERSTANDING THE SYNERGIES WITH REINTEGRATION ASSISTANCE

Q31. Do the authorities in charge of imposing an entry ban subsequently consult with and/or inform the authorities in the concerned third country to which the individual is to be returned?

The authorities in the country of origin are not specifically informed of the fact that an entry ban has been imposed on a person. However, as forced returns are always accompanied by an entry ban, the authorities are usually aware of it anyhow as they know the relevant legislation.

Whether travel bans are imposed depends on the policies in place in the country of origin. In some countries, notably in some Western Balkan countries, the possibility to take away the passport exists.¹¹⁵

Q32. Is it possible in your (Member) State for returnees who have been the subject of an entry ban to apply for re-integration assistance?

In Luxembourg reintegration assistance is only available to persons who have returned voluntarily and it is offered by the Directorate of Immigration (Ministry of Foreign and European Affairs) via the International Organisation for Migration (IOM).¹¹⁶ In principle, third-country nationals who have been imposed an entry ban cannot apply for reintegration assistance as they have not complied with the obligation to return voluntarily. The only exception concerns persons who have been placed in retention and who would like to return voluntarily. These persons will be imposed an entry ban but do have access to a certain reintegration assistance. (Please see basic aid below)

The Assisted Voluntary Return and Reintegration from the Grand Duchy of Luxembourg (AVRRL) programme, which exists since 2008, offers both financial

¹¹⁵ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹¹⁶ Convention between the Luxembourg Ministry of Foreign Affairs and the International Organisation for Migration on their cooperation regarding assisted voluntary return and reintegration.

and in-kind assistance. Concerning the financial aid, and depending on the category of third-country national, s/he will either receive the complete aid (500€) or the basic aid (300€), which is given as a premium at the airport before departure.¹¹⁷ Concerning the assistance provided in kind prior to (or during) departure, the following assistance is offered:

1. Information on the functioning of the programme;
2. Assistance for obtaining travel documents;
3. Assistance at the Luxembourg International Airport and at the transit airport;
4. Transportation from Luxembourg to their town/village of origin;
5. A medical escort (if needed).¹¹⁸

After their arrival the third-country national has access to further assistance in kind for a period up to 6 months:

1. Temporary lodging and housing;
2. Assistance in finding a job;
3. Material and legal aid;
4. Assistance in setting up a business;
5. Professional equipment;
6. Training and education;
7. Medical assistance, orientation and information on the health system in the country of origin.¹¹⁹

In 2013, 116 persons benefitted from this programme, compared to 94 in 2012. The majority of voluntary returns concerned nationals from Kosovo (78 persons in 2013

¹¹⁷ For further information please see Ad Hoc Query on financial contribution (in-cash) to third-country nationals (TCNs) in the context of return and reintegration programmes, requested by COM on 10 March 2013.

¹¹⁸ For further information please see Ad Hoc Query on assistance provided in kind to third-country nationals (TCNs) in the context of return and reintegration programmes, requested by COM on 10 March 2013.

¹¹⁹ For further information please see Ad Hoc Query on assistance provided in kind to third-country nationals (TCNs) in the context of return and reintegration programmes, requested by COM on 10 March 2013.

and 58 persons in 2012)¹²⁰ and up until 2013, this programme was co-financed by the European Return Fund.¹²¹

One point that should be noted is that nationals from the following countries do not have access to the AVRRL programme offered by IOM: Albania, Bosnia-Herzegovina, Macedonia, Montenegro and Serbia.¹²² For third-country nationals from these particular countries, the Directorate of Immigration finances their return bus ticket but no further reintegration assistance is offered. The reason for this is that firstly these persons no longer need a visa to travel to Luxembourg and secondly because it would be financially impossible to offer reintegration assistance to all those persons as the number is very high.¹²³

Furthermore, it should be noted that those returning voluntarily and benefitting from reintegration assistance are not subject to an entry ban, but informally pledge not to return within the following five years. If they do decide to return, they are obliged to reimburse the reintegration assistance that was provided to them.¹²⁴

Q33. Are the competent authorities involved in making decisions about the use of entry bans and granting of re-integration assistance the same?

The Minister in charge of immigration, via the Directorate of Immigration, is the authority which decides upon the use of entry bans. The Directorate of Immigration is also the authority responsible for granting reintegration assistance. From an operational point of view, a convention was signed with IOM, and it is IOM which is providing the assistance.¹²⁵

¹²⁰ Ministry of Foreign and European Affairs, Activity Report 2013, p.83 and Ministry of Foreign and European Affairs, Activity Report 2012, p. 87, <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres-et-europeennes/Rapports-annuels>, last accessed 12.05.2014.

¹²¹ For further information please see: <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres-et-europeennes/Organisation/Direction-de-l-Immigration/Fonds-europeen-pour-le-retour>, last accessed 12.05.2014.

¹²² Ministry of Foreign and European Affairs, Activity Report 2013, p.82, <http://www.mae.lu/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres-et-europeennes/Rapports-annuels>, last accessed 12.05.2014.

Please also see LU EMN NCP, Policy Report on Migration and Asylum 2013, p.56 and p.83 (not yet published).

¹²³ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹²⁴ Information provided by the Directorate of Immigration, Interview 01.04.2014.

¹²⁵ Convention between the Luxembourg Ministry of Foreign Affairs and the International Organisation for Migration on their cooperation regarding assisted voluntary return and reintegration.

Q34. Have any formal cooperation mechanisms been set up to facilitate coordination? (e.g. Protocols, contracts, conventions, working arrangements, etc.)

Not applicable.

Q35. Do the competent authorities consult with each other when making decisions?

Not applicable.

Q36. Does your (Member) State offer re-integration assistance to returnees who have been removed on the basis of a readmission agreement?

There is no difference between returnees who return under a readmission agreement and other returnees who return voluntarily. IOM is the organisation which provides the reintegration assistance to all third-country nationals who return voluntarily except for the list of countries mentioned before (Please see Q.32).

Q37. Are the competent authorities involved in making readmission applications and granting re-integration assistance the same?

Yes. The Minister in charge of immigration, via the Directorate of Immigration, is the authority which decides upon readmission applications. The Directorate of Immigration is also the authority responsible for granting reintegration assistance. (Please see Q.33)

Q38. Have any formal cooperation mechanisms been set up to facilitate coordination? (e.g. Protocols, contracts, conventions, working arrangements, etc.)

Not applicable.

Q.39 Do the competent authorities consult with each other when making decisions?

Not applicable.

Annex 1: EU Readmission agreements

<i>Country</i>	<i>Agreement signed</i>	<i>Entry into force</i>	<i>Benelux Application Protocol signed</i>
Hong Kong	27 November 2002	1 March 2004	
Macao	13 October 2003	1 June 2004	
Sri Lanka	4 June 2004	1 May 2005	
Albania	14 April 2005	1 May 2006	9 June 2005
Russia	25 May 2006	1 June 2007	Luxembourg: 13 September 2011 ¹²⁶
Ukraine	18 June 2007	1 January 2008	
Macedonia	18 September 2007	1 January 2008	30 July 2012
Bosnia and Herzegovina	18 September 2007	1 January 2008	5 December 2013
Montenegro	18 September 2007	1 January 2008	4 July 2012
Serbia	18 September 2007	1 January 2008	25 January 2013
Moldova	10 October 2007	1 January 2008	25 January 2013
Pakistan	26 October 2009	1 December 2010	
Georgia	22 November 2010	1 March 2011	5 September 2013
Armenia	19 April 2013	1 January 2014	
Cape Verde	18 April 2013		
Turkey	16 December 2013		
Azerbaijan	28 February 2014		

¹²⁶ Signed separately by the Benelux three countries: Belgium on 17 December 2009 and the Netherlands on 9 March 2011.

Annex 2: Bilateral Benelux readmission agreements

<i>Country</i>	<i>Agreement signed</i>	<i>Ratified by Luxembourg</i>	<i>Entry into force</i>
Macedonia	30 May 2006	14 May 2006	1 December 2008
Bosnia and Herzegovina	19 July 2006	14 May 2007	1 July 2008
Armenia	3 June 2009	21 January 2010	
Kosovo	12 May 2011	12 June 2012	