



# RETURNING REJECTED ASYLUM SEEKERS:

policy and practices in the Netherlands



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# RETURNING REJECTED ASYLUM SEEKERS: POLICY AND PRACTICES IN THE NETHERLANDS

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# ABBREVIATIONS

AMIF	Asylum, Migration and Integration Fund
AVIM	Police Department for Aliens, Identification and Trafficking in human beings
AZC	Asylum Seekers' Centre
COA	Central Agency for the Reception of Asylum Seekers
DJI	Dutch Custodial Institutions Service
DT&V	Repatriation and Departure Service
EDT	One-day review
ECHR	European Convention on Human Rights
GAP	General Asylum Procedure
HRT	Return and Reintegration Regulation
IND	Immigration and Naturalisation Service
IOM	International Organisation for Migration
KMar	Royal Netherlands Marechaussee
LTO	Local Repatriation Consultation
LVV	Local facilities for third-country nationals
MOB	Having an unknown destination
NGO	Non-governmental organisation
PIVA	Program for Introduction of the Improved Asylum Procedure
PST	Program 'Streamlining Entry Procedures'
RAO	Regional Repatriation Consultation
REAN	Return and Emigration Assistance from the Netherlands.
Rva	Regulation for Provisions for Asylum Seekers and other categories of foreign nationals
TWV	Work permit
UAM	Unaccompanied minor foreign nationals
VA	Extended Asylum Procedure
VV	Aliens Regulations
VOVO	Provisional Ruling





# 1 INTRODUCTION

*This report seeks to identify how the Dutch government deals with rejected asylum seekers. The report shall further examine what measures have been taken to bring about returning rejected asylum seekers successfully. It also addresses the group of asylum seekers whose application for asylum in the Netherlands has been rejected, but who do not return to their country of origin. Firstly, the background of this study is outlined. Then the aims, research question as well as the scope of this study are addressed. Finally, the way this investigation has been carried out is discussed.*

## 1.1. European background

The number of asylum applications within the EU (and the countries of Norway, Liechtenstein, Iceland and Switzerland) increased significantly in recent years due to conflicts and instability in Africa and the Middle East. In the meanwhile, due to the EU-Turkey Statement which consists of temporary and exceptional measures relating to the approach of irregular migration, the number of asylum seekers has dropped again. In 2015, more than 1.2 million first applications for asylum were submitted in the EU: an increase of 123% compared to 2014.<sup>1</sup> In principle, the majority of these applications are granted. Less than half of the applications are ultimately rejected.<sup>2</sup>

Asylum seekers whose applications for asylum are rejected, no longer have the right to stay in the European Union and are given a return decision. According to the European Return Directive, in such a case third-country nationals must return to their country of origin or another country where they wish to return to voluntarily, and where they are accepted.<sup>3</sup> However, there is a major discrepancy between the number of rejected asylum seekers that have been given a return decision and the number of rejected asylum seekers with a return decision that have actually returned. In 2014, according to the European Commission, the number of rejected asylum seekers who demonstrably left the European territory dropped to less than 40%.<sup>4</sup>

Not all asylum applications are granted. A substantial portion is rejected. Although the number of asylum seekers that have submitted applications has dropped since the EU-Turkey Statement, it is uncertain whether this will remain so in the short and long-term. It is therefore of importance that the Netherlands and other EU Member States map and analyse their policies in relation to asylum seekers. In light of these developments, the European Migration Network (EMN) decided to conduct a study into returning rejected asylum seekers in 2016. In this, on the one hand the emphasis lies on a discrepancy between the number of rejections and the actual returning of rejected asylum seekers, and on the other hand on the measures taken to enhance the effectiveness of the return

1 Eurostat, 'Asylum Statistics', available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics)

2 Eurostat database on asylum applications (asyl\_app)

3 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008. OJ L 348 of 24 December 2008. Since the Tampere Program in 1999, the EU has been working on development of a Common European Asylum System (CEAS). In 2008, the Return Directive was specifically drawn up for returns: the first advisory instrument for voluntary and forced returns from the EU.

4 COM (2015) 453 "EU Action Plan on Return"

policy.<sup>5</sup> This report provides an overview of the return policy applicable in the Netherlands and how rejected asylum seekers are dealt with in practice.

The EMN consists of EU Member States plus Norway, and is financed by the European Commission. Its aim is to provide current, reliable and comparable information in the field of migration and asylum. This report shows the most important results of the Dutch contribution to the EMN study in returning rejected asylum seekers. The Dutch contribution is processed together with those from other EU Member States plus Norway, in an English Synthesis Report.<sup>6</sup>

## 1.2. Aim, scope and research question

### *Aim*

The aim of this study is the mapping of national laws and regulations in the Netherlands applicable to asylum seekers whose applications for asylum have been rejected, and who must return to their country of origin or another country.<sup>7</sup> In this study, attention is also paid to measures to be taken to achieve return. Finally, this report describes how asylum seekers are dealt with who cannot or do not want to leave the Netherlands.

### *Scope*

This study focuses on rejected asylum seekers who have received a return decision after their application for asylum has been rejected. The basic assumption of the study is therefore the asylum application and commencement of the General Asylum Procedure (AA procedure), and ends with the two possibilities that follow rejection of the application for asylum, being the asylum seeker's departure from the Netherlands on the one hand, and irregular stay in the Netherlands on the other. Special attention is paid to the group of asylum seekers who have exhausted all legal means, but who do not return to their country of origin. The study extends over the period 2011-2015, but where relevant, will also include developments from before 2011 as well as developments after 2015, in response to the increased influx of asylum seekers.

### *Research question*

The questions to be answered in this study are:

### *Policy*

- What are the basic assumptions of the return policy of the Netherlands?
- What does the policy framework in the Netherlands entail for rejected asylum seekers who do not return to their country of origin?
- How is implementation of the return policy organised in the Netherlands and who are the most important parties?

5 COM (2015) 453 "EU Action Plan on Return"

6 EMN (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices. Consulted on 12/12/2016. [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn-studies-00\\_synthesis\\_report\\_rejected\\_asylum\\_seekers\\_2016.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf)

7 It could be possible that an asylum seeker that has already been granted legal stay on grounds of a valid residence permit in another country, or for example, previously submitted an application for asylum in such other Member State as a result of which, such other Member State is responsible for the return of the rejected asylum seeker.

*In practice*

- What measures has the Netherlands taken to encourage returning rejected asylum seekers with an enforceable return decision?
- What measures has the Netherlands taken to tackle the increasing number of asylum applications, which also encourage return?
- To what facilities are rejected asylum seekers entitled after their application for asylum has been rejected and after they have exhausted all legal means?
- Which information on return is available to rejected asylum seekers?
- What are the main obstacles in implementing the return policy and what solutions have been found for them?

**1.3. Research methods**

The research questions for this report ensue from the so-called common template, which is developed for each EMN study. This template has been designed as a list of questions and has been developed in consultation with all EU Member States, to enhance comparability of results between the different Member States plus Norway. This template is completed separately by each Member State and Norway, summarised at European level, and combined in a Synthesis Report.<sup>8</sup>

The first research method used was desk research. For this purpose policy documents, laws, websites and reports were consulted. These documents provide an insight into laws and regulations on returning rejected asylum seekers and discern the practical implementation of employees in the asylum chain. The documents researched for this study are all in public domain. Aside from documentation, various statistical sources were also consulted for this study. These were obtained from Eurostat, the IOM, the Ministry of Security and Justice and its subsidiaries the Repatriation and Departure Service (DT&V) and the Immigration and Naturalisation Service (IND).

In the context of this study, an expert group was established. This expert group comprises experts from the most important organisations involved in the return procedure of asylum seekers (see Annex II). The expert group has a supportive and supervisory function towards the research team in relation to gathering and consolidating relevant information. Members of the expert group were also interviewed individually. Finally, a joint meeting was convened where all the relevant organisations discussed the most important viewpoints of their organisations, identified bottlenecks and good practices, and planned changes in policy or practice were discussed.

8 The Synthesis Report was brought about thanks to a contribution from 25 EMN NCPS (Belgium, Bulgaria, Cyprus, Germany, Finland, France, Greece, Great Britain, Hungary, Ireland, Italy, Croatia, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Slovakia, Slovenia, Spain, the Czech Republic and Sweden).



## 2 REJECTION OF THE APPLICATION FOR ASYLUM

*As the return policy is an essential final element of the Dutch asylum policy, it is important for this study to address the way in which the asylum procedure in the Netherlands is organised. It is for this reason that we first look briefly at the asylum procedure in the Netherlands. Then we discuss which steps can be taken by asylum seekers when their application is rejected. Finally, we describe the provisions to which the asylum seeker is still entitled after rejection of the application for asylum.*

### 2.1. The asylum procedure

In the Netherlands, a right of residence is granted to people who run a risk of persecution in their own country and on the basis of which, have the right to protection on grounds of the EU Qualification Directive and two international treaties:

- The Geneva Convention on Refugees, which states that every refugee has the right to protection based on a well-founded fear of being persecuted due to his/her race, religion, nationality, membership of a particular social group or political conviction, and because of this fear cannot rely on the protection of the authorities in his own country.
- The European Convention for the Protection of Human Rights, in which human rights are defined, such as the prohibition of torture and inhuman or degrading treatment and in which the right to liberty and security is guaranteed.
- The EU Qualification Directive (2011/95/EU), in which standards for the recognition of third-country nationals in need of international protection are established, and in which the uniform status for refugees or persons eligible for subsidiary protection and substance of the granted protection are also established.

Whether a third-country national qualifies for protection on grounds of one of these two treaties and directive, is determined in the asylum procedure. This procedure commences when, after arrival in the Netherlands, an asylum seeker has submitted an asylum application to the Immigration and Naturalisation Service (IND) in Ter Apel. After identification and registration the third-country national goes to a reception centre. A different procedure applies to asylum seekers who arrive by airplane: they must report to the Royal Netherlands Marechaussee (KMar) at Schiphol Airport where the asylum application is dealt with by the IND in a so-called border procedure. The procedure takes place at the Schiphol Airport Application Centre.<sup>9</sup>

The asylum procedure is divided into a number of stages. First of all, the Period of Rest and Preparation of at least six days is started, in which the third-country national has the opportunity to recover from the journey and can prepare for the procedure.

#### General Asylum Procedure

<sup>9</sup> For the procedure regarding the treatment of applications for asylum in the Netherlands, see the website of the Government of the Netherlands. Available at: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/inhoud/procedure-behandeling-asielzoekers>

After the Period of Rest and Preparation the General Asylum Procedure (AA procedure) starts, in which a decision is taken on the application for asylum within eight working days. On day one of the AA procedure, the asylum seeker gets a 'first interview' with the IND in which they can give information about their identity, stay in the country of origin and travel route. The asylum seeker can discuss this interview report on day two, and possibly together with a lawyer, provide a supplement to it. On day three a follow-up interview takes place in which the asylum seeker can explain his motives for seeking asylum. On day four this report is discussed in the presence of a lawyer and supplemented where necessary. On day five the IND takes a first decision; this is also known as the 'intention'. If this first opinion is negative, then, with the assistance of the lawyer, the asylum seeker can submit his view on the sixth day. Finally, on day seven, a definite decision is taken by the IND to either grant or reject the application for asylum. The decision shall be made known by no later than the eighth day by issuance or sending thereof.<sup>10</sup>

#### *Extended Asylum Procedure*

After the fourth day of the AA procedure, the IND determines whether sufficient information is available to take a decision on the application for asylum. If, for some reason, it is not possible within eight days to take a definite decision, an Extended Asylum Procedure (VA procedure) is started. This extended procedure may be necessary because more investigation time is needed, for example to establish the nationality of the asylum seeker. The Extended Asylum Procedure can take up to six months.<sup>11</sup>

The Netherlands uses a so-called comprehensive asylum decision. This means that at the time that a third-country national has followed the AA procedure or VA procedure, and the asylum application is rejected, the negative decision on the asylum decision also applies as a return decision. As from that moment, the third-country national no longer stays legally in the Netherlands and must leave the Netherlands within a time limit of 28 days. In some cases this time limit can be reduced to 0 days.<sup>12</sup>

Prior to 2016, a return decision had to be taken on every rejected application for asylum, which also meant on repeat applications. Since April 2016 that has changed, and a repeat asylum application no longer automatically leads to expiry of a previous return decision.<sup>13</sup> For each third-country national only one return decision is issued and this first return decision remains in force until the third-country national has left or obtains a right of residence in the Netherlands.<sup>14</sup> Removal may therefore be resumed at the time

10 The process of the general asylum procedure is stipulated in Articles 3.112 to 3.115 of the Aliens Decree. For more information on the asylum procedure, see the Central government website. Available at: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/procedure-asielzoeker>

11 More information on the Extended Asylum Procedure is available at the website of the Dutch Council for Refugees. Available at: <http://www.vluchtelingenwerk.nl/feiten-cijfers/procedures-wetten-beleid/asielprocedure/verlengde-asielprocedure>

12 Section 45, preamble and under a and b of the Aliens Act in conjunction with Section 62(1) of the Aliens Act. Pursuant to the second paragraph of Section 62, the departure period of four weeks can be shortened in the circumstances referred to in that paragraph, for example, in cases where a third-country national constitutes a danger to public order or that there is a risk that the third-country national may abscond. See [paragraph 2.2](#).

13 This is by virtue of a ruling of 8 April 2016 by the Council of State

14 Ministry of Foreign Affairs (20 April 2016). An application for asylum no longer leads to cancellation of a return decision. Ministry of Foreign Affairs, consulted on 13 September 2016, <http://www.minbuza.nl/ecer/nieuws/2016/0/asielaanvraag-leidt-niet-meer-tot-verval-terugkeerbesluit.html>

that the repeat asylum application is rejected in cases where a return decision had previously been issued. This ruling contributes to a more effective return of third-country nationals, because a return decision need not be taken anew each time.

### *Objection*

When an application for asylum is rejected the asylum seeker may lodge an objection directly at the court. The court then considers the decision by the Immigration and Naturalisation Service (IND). According to both the Aliens Act as well as the Procedures Directive, the objection generally has a suspensive effect and the asylum seeker may await the court's ruling on the objection in the Netherlands. Exceptions to this are repeat applications or an application which is inadmissible or is manifestly unfounded.<sup>15</sup> If the appeal does not automatically have a suspensive effect, an asylum seeker can lodge a request at the court for a provisional ruling (VOVO). If this is granted, the asylum seeker may nonetheless await the appeal in the Netherlands and the return is suspended.<sup>16</sup>

### *Appeal*

The asylum seeker may still file for appellate proceedings against the court's ruling at the Administrative Jurisdiction Division of the Council of State. This appeal has no suspensive effect and can only be awaited in the Netherlands if the asylum seeker lodges a request for a provisional ruling and such provisional ruling is granted. The Council of State often only grants requests for a provisional ruling if a return date is known or if an asylum seeker is staying in detention of foreign nationals. If the provisional ruling is not granted, the third-country national must leave the Netherlands.<sup>17</sup>

If the court is of the opinion that the IND's decision contravenes the law or treaties, there are a number of possibilities. The court could declare the appeal as well-founded but uphold the legal effects so that the court decision does not obstruct the departure. The court may also settle the case or refer the case back to the IND to re-examine the case. In the latter case, a rejection can likewise follow based on other reasons, but a decision to grant the application is also possible. If the possibilities for appeal have been pursued unsuccessfully, the asylum seeker no longer has any legal remedies at his disposal and has exhausted all legal means in the Netherlands.

### *The European Court of Human Rights*

As a last resort, for a last and definitive final assessment, an asylum seeker can submit a complaint to the European Court of Human Rights within six months after the decision of the Council of State. This is only possible if the case concerns a possible violation of a human right provided for in the European Convention on Human Rights (ECHR). If the third-country national appeals to the European Court of Human Rights, in principle, the asylum seeker may not await this decision in the Netherlands, and a departure period of 28 days after rejection of the appeal applies. Depending on the situation, the decision by the European Court of Human Rights may be awaited in the Netherlands pursuant to an application for a so-called Rule 39 (interim measures) being submitted.

<sup>15</sup> Section 82 of the Aliens Act

<sup>16</sup> For more information see: <http://verblijfblog.nl/?p=967>

<sup>17</sup> See also: <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2001:AE0473&keyword=200104991%2f2>

This looks like a provisional ruling (VOVO), however, in common practice this is rarely granted.<sup>18</sup>

## 2.2. Consequences of the rejection

Rejection of the application involves a number of consequences. On the one hand these provide for legal effects, such as the time limit for the third-country national to leave and a ban to enter the Schengen area; and on the other hand, the right to provisions such as reception facilities.

### *Legal effects*

When a negative decision has been given on an asylum application in the General Asylum Procedure, a departure period is imposed. Basically, this is a departure period of 28 days in which the third-country national can voluntarily depart, possibly assisted by return projects which encourage sustainable returns.<sup>19</sup> If the person does not leave within these 28 days, in most cases an entry ban is imposed. This entry ban means that the third-country national is no longer allowed to enter into the Schengen area for the duration of the entry ban (usually for 3 to 5 years). If the third-country national contravenes this entry ban, s/he is punishable.<sup>20</sup> This may be an additional incentive to leave the Netherlands voluntarily within the departure period. If, after rejection in the General Asylum Procedure, the third-country national still has a lodged objection or appeal in progress and may await its outcome in the Netherlands, the departure period is suspended until after the final decision on the lodged objection or appeal.<sup>21</sup> After the final decision on the lodged objection or appeal, the provisional ruling expires and the third-country national then has 28 days to leave the Netherlands.<sup>22</sup>

In some cases a departure period of 0 days is imposed on the third-country national, which means that the third-country national must leave the Netherlands immediately. This measure is used, for example, when there is a risk that the third-country national may abscond, an application for a residence permit is rejected as manifestly unfounded, or when the third-country national constitutes a danger to public order or national security.<sup>23</sup> This departure period can also be imposed on asylum seekers who come from safe countries of origin.<sup>24</sup> An entry ban is always imposed in case of a departure period of 0 days.

18 For more information on Rule 39, see: [http://www.echr.coe.int/documents/fs\\_interim\\_measures\\_eng.pdf](http://www.echr.coe.int/documents/fs_interim_measures_eng.pdf)

19 See also chapter 4 for more information.

20 More information on an entry ban is available at the IND's website. Available at: [https://kdw.ind.nl/KnowledgeRoot.aspx?restart=true&knowledge\\_id=FAQWatIsEenInreisverbod&jse=1](https://kdw.ind.nl/KnowledgeRoot.aspx?restart=true&knowledge_id=FAQWatIsEenInreisverbod&jse=1)

21 Section 82 of the Aliens Act

22 Section 8.85 of the General Administrative Law Act

23 The IND can reject an application for asylum as manifestly unfounded when no doubt is reasonably possible about the groundlessness of the application. The Procedure Directive provides ten grounds on which an application can be declared as manifestly unfounded. See Section 30(1) of the Aliens Act. See also EMN (2014). Entry bans and Readmissions in common practice in the Netherlands. Rijswijk: Ministry of Security and Justice.

24 For more information see: <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/wat-gebeurt-er-met-asielaanvragen-van-mensen-uit-veilige-landen>



### *Provisions*

The following addresses the most important rights or provisions for an asylum seeker whose application has been rejected, such as reception facilities, employment, social assistance benefit, healthcare and education. These provisions are almost identical to those provided for asylum seekers who are still undergoing the asylum procedure. For example, this is the case when the third-country national is still staying in the Netherlands within the departure period; when it concerns a lodged request for a provisional ruling or a Rule 39 application being granted, which leads to a suspensive effect, and postponement of departure can be arranged in the Netherlands. In such case, the provisions apply as was the case prior to the decision of rejection. Only when the decision with which the application is rejected becomes final, does entitlement to provisions in the Netherlands change.

After the decision of rejection to the application, the third-country national is given 0 or 28 days to leave voluntarily. After these 28 days the provisions of the Central Agency for the Reception of Asylum Seekers (COA) are basically terminated. If a third-country national has lodged an objection or appeal and may await a ruling in the Netherlands, this still means entitlement to reception facilities in the Netherlands. If the departure period is 0 days, that means that the reception facilities can be terminated immediately after issuance of the final decision of rejection. Pursuant to a ruling from the Council of State, the Central Agency for the Reception of Asylum Seekers (COA) is obliged to continue reception in highly exceptional circumstances, irrespective of whether an entitlement (still) exists.<sup>25</sup>

If the third-country national has still not left voluntarily after the time limit of 0 or 28 days, then a discussion is held among the organisations involved, such as the IND, DT&V, COA and the police in the Local Repatriation Consultation (LTO)<sup>26</sup> on whether reception facilities will be extended, or whether the third-country national should be placed in a Freedom-restricting Centre (VBL) or in detention in view of the departure from the Netherlands. It is also examined whether an alternative to detention is possible (other than placement in a VBL).<sup>27</sup> Placement in a VBL happens in cases when the third-country national is demonstrably prepared to cooperate with his/her departure from the Netherlands and the return, in principle, can be realised within 12 weeks. The purpose of placement in a VBL is to work intensively at the Freedom-restricting centre on departure from the Netherlands and to offer an alternative to detention of foreign nationals. Since 2011, (unaccompanied) minors are no longer turned out on the street in the Netherlands.<sup>28</sup> Separate Family Centres (GL) have since been made available for families with minor-aged children. Families can be sheltered at a Family Centre (GL) until the youngest

25 Administrative Jurisdiction Division of the Council of State (ABRvS) 28 March 2007, no. 200605521/1.

26 The local repatriation consultation (LTO) is explained in greater detail in chapter 5.

27 See paragraph 4.4.2 for alternatives for freedom-restricting measures.

28 See judgment by the Supreme Court of the Netherlands of 21 September 2012, no. 11/011153 (Ferreira). It briefly means that the Dutch government is liable for providing shelter to families with minor-aged children if there is a realistic threat that, without shelter from the State, they would end up on the street (humanitarian emergency situation). As a result of this judgment, since 2011 minor-aged children cannot be denied shelter. See also Children's Ombudsman (2013). Report on a complaint about the Minister of Security and Justice in The Hague and the Central Agency for the Reception of Asylum Seekers in Rijswijk. Report number 2013/171. Consulted on 15-12-2016. <https://www.dekinderombudsman.nl/ul/cms/fck-uploaded/2013.KOM006.rapport%20over%20VenJ%20en%20COA.pdf>

child is 18, or return has been arranged. In addition, there is also an option for placement in the Closed Family Centre (GGV) in Zeist, if there is a prospect of departure from the Netherlands and the remaining grounds for detention of foreign nationals have been met.

Rejected asylum seekers do not have a possibility to work in the Netherlands. They are also not entitled to social assistance benefit. However, during reception in a COA reception centre, so too after being rejected, they are given a weekly financial grant for food, clothing and other personal expenses. In addition, there are also provisions for public transport cards for travelling to and from the legal assistance provider;<sup>29</sup> provisions for covering costs of medical services in accordance with a medical expenses insurance scheme taken out for that purpose; an insurance against the financial consequences of civil liability; and payment of extraordinary costs.<sup>30</sup> Rejected asylum seekers who are still entitled to reception from the COA, also have the right to medical care. They are entitled to reimbursement of medical expenses on grounds of the Healthcare Asylum Seekers Regulation (RZA). Lastly, all children in the Netherlands are subject to compulsory education, which includes rejected asylum seekers younger than 18 years. It is for this reason that third-country nationals younger than 18, can start a training programme anyway. Additionally applicable to everyone, is that once a training programme has been started, even without legal stay, it may always be completed. The educational institution does not check on the right of residence. The same also applies for adult-aged students. This does not affect the fact that return of a (minor) third-country national is still possible during the training.

When the decision of rejection has become final the Benefit Entitlement (Residence Status) Act applies in the Netherlands. This law differentiates between lawful and irregularly-staying third-country nationals. The Benefit Entitlement (Residence Status) Act came into force on 26 March 1998 and has amended the Aliens Act aimed at linking the entitlement that third-country nationals have for benefits, provisions, payments, exemptions and grants to the residency status of the third-country national in the Netherlands. Third-country nationals who stay illegally in the Netherlands are generally deprived of benefits, provisions and payments from public resources. There are several other exceptions to the Benefit Entitlement (Residence Status) Act. Certain provisions are accessible to all third-country nationals, so too for irregular migrants. These provisions are discussed further in [chapter 5](#).<sup>31</sup>

29 In connection with the asylum procedure, barring the days during the general asylum procedure, in which the asylum seeker is available for the investigation into the asylum application.

30 This is included in the Regulation for Provisions for Asylum Seekers (Rva). For further information and specific remunerations: <http://wetten.overheid.nl/BWBR0017959/2016-01-01>

31 For further information, see also chapter 5. For more information on the Benefit Entitlement (Residence Status) Act, see the Amendment of the Aliens Act, and any other laws (aimed at linking the entitlement by third-country nationals [...] to legal stay of the third-country national in the Netherlands). Available at: <http://wetten.overheid.nl/BWBR0009511/1998-08-01>.

## 3 MEASURES ENCOURAGING RETURN DURING THE ASYLUM PROCEDURE

*In this chapter measures are discussed which focus on the asylum procedure and encouraging the return of asylum seekers. This includes an efficient and speedy settlement of less promising applications and also measures taken to prevent delays. There is also consideration of measures taken in response to the increased influx of asylum seekers at the end of 2014.*

### 3.1. Acceleration of the asylum procedure

Since 1994, the Netherlands has had an accelerated procedure to quickly deal with asylum applications that have little chance of succeeding and thus encourage return. In 1994, aside from a regular asylum procedure, the Application Centre procedure (AC procedure) was introduced, to quickly deal with asylum cases which were manifestly unfounded within 24 hours. In 1998, the procedure was extended to a 48-hour procedure. At the end of the 1990s, more and more asylum cases were dealt with using this procedure. This was highly criticised by various human rights organisations. The Evaluation Committee of the Aliens Act 2000, who reviewed the Aliens Act, claimed that too much emphasis lay on the handling of asylum cases in the 48-hour procedure and that this was to the detriment of thoroughness of the decisions. In 2010, for that reason it was decided to revise the asylum procedure and the General Asylum Procedure (AA procedure) and Extended Asylum Procedure (VA procedure) came into force. A decision on the application for asylum is taken in the General Asylum Procedure within eight working days. Including the Extended Asylum Procedure, the whole process can take up to six months.<sup>32</sup>

The entry into force in 2010 of the AA procedure and VA procedure seeks to accelerate processing of asylum procedures, without jeopardising any thoroughness. This sooner enables a decision being taken on the application for asylum and, if possible, return can sooner take place if it concerns a rejected application. There may be several reasons why departure from the Netherlands cannot be achieved. Firstly, an asylum seeker can lodge an objection against a negative decision and should this have a suspensive effect, it may be awaited in the Netherlands.<sup>33</sup> The asylum seeker can also submit a new application for asylum. This is dealt with in more detail in the following paragraph.

### 3.2. Prevention of repeat applications

It happens quite often that a rejected asylum seeker submits a repeat asylum application. The submission of a promising repeat asylum application must concern new facts

<sup>32</sup> The General Asylum Procedure (AA procedure) and the Extended Asylum Procedure (VA procedure) are discussed in the previous chapter. For more information see: <http://verbljffblog.nl/?p=973>

<sup>33</sup> See chapter 2. For the reasons, see also: <http://verbljffblog.nl/?p=967>

and circumstances, which were unknown or could not have been known at the time that the first application was rejected, and could give rise to reconsideration of the rejection of the first application.<sup>34</sup> However, sometimes an attempt is made to postpone departure from the Netherlands by submitting a repeat asylum application without any new facts or circumstances being present.

To prevent a delayed departure from the Netherlands because a repeat asylum application has been submitted without any new facts or circumstances, such an application can be dealt with in a simplified procedure (One-day review or EDT). If the third-country national then lodges an appeal against the decision in this simplified procedure, the court ruling is taken within a few weeks. After a rejection of the repeat application, the third-country national can immediately be returned if there are no other ongoing residence procedures. The asylum seeker can prevent forced return during possible objection and appellate proceedings by requesting a provisional ruling from the court. The third-country national can also object to the actual removal.<sup>35</sup>

In the revised asylum procedure which came into force in July 2010, a number of measures were taken to reduce the number of repeat applications that were submitted merely to prevent or to delay departure from the Netherlands:

*Parallel examination:* A parallel examination was introduced in 2010. This measure fell within the scope of the Program for Introduction of the Improved Asylum Procedure (PIVA). One of the objectives was to identify medical conditions sooner in the procedure by already providing medical advice in the Period of Rest and Preparation.<sup>36</sup> Since that time, the asylum procedure includes examining not only the grounds on which the asylum seeker can get an asylum residence permit, but also other possible grounds, such as medical conditions or possible victimhood of trafficking in human beings.<sup>37</sup>

This measure was reviewed in 2014. The outcome of this was that the parallel examination on medical grounds was seldom applied in practice. IND officials were still insufficiently familiar with the parallel procedure, legal aid providers were sometimes reluctant to submit a request for a parallel examination, and the AA procedure generally appeared to be too short, for example, for gathering medical reports. Moreover, medical grounds were often complicated because the applicant's state of health could suddenly change during or after the procedure. After completion of the procedure, a repeat asylum application could still be submitted on medical grounds, even if the parallel examination had been applied previously.<sup>38</sup>

34 Section 4:6(2) of the General Administrative Law Act, see exception for LHBTs in Chapter C1 Article 4.6 of the Aliens Act Implementation Guidelines

35 EMN (2016). EMN ad hoc query "Obstacles to return in connection with the implementation of the Return Directive – 21 January 2016". Response EMN NCP Netherlands. The possibility to object against actual removal is stipulated in Section 72(3) of the Aliens Act.

36 Decision by the Minister for Migration of 20 March 2014, Government Gazette 8529

37 Chapter C14 Article 2.2 of the Aliens Act Implementation Guidelines

38 WODC (Research and Documentation Centre) 2014. Evaluation of the reviewed asylum procedure: final report. The Hague: Ministry of Security and Justice

In response to this evaluation, the Program Streamlining Entry Procedures (PST) was started in 2012 and introduced the first measures of this program in April 2014. PST comprises measures to make the asylum procedure more efficient. For example, the previously mentioned parallel examination was turned into an ex officio testing, which must be done for every asylum procedure. On rejection of an application for asylum this ex officio testing examines whether there is a chance of it being granted on a number of other grounds.<sup>39</sup> The official evaluation of PST is planned for 2017.

Broader interpretation of the ex nunc examination by the court: The ex nunc examination means that the courts can already take new facts and circumstances or revised asylum policy into consideration during the appellate proceedings against rejection of the asylum application.<sup>40</sup> In this way it should prevent an asylum seeker from submitting a new asylum application on the basis of new facts and circumstances or such new policy. No cure less fee: The no cure less fee system means that legal aid providers receive a substantially lower remuneration for second or following applications for asylum which are rejected and for which there are no new facts and circumstances. The aim of this measure is to eliminate any incentives to start new procedures.<sup>41</sup>

One-day review for repeat asylum applications: On 1 April 2014 a 'one-day review' was introduced for second or following asylum applications<sup>42</sup>. This means that third-country nationals who want to submit such an application, must register in writing at the IND. Consequently, assessment of the application can be finalised in one day.

### 3.3. Measures in response to the increased influx

In light of the increased influx of asylum seekers since the end of 2014, the Dutch government has introduced a number of changes to get the return of asylum seekers processed faster and more effectively.

#### *Multi-track policy*

The multi-track policy is one of the most important policy developments in 2015 and was introduced on 1 March 2016. This policy was developed in response to the increased influx of asylum seekers at the end of 2014. This caused an increasing pressure on the AA procedure in the Netherlands resulting in waiting times for applicants being substantially increased. In part, this was due to the fact that all applications for asylum were dealt with in the same kind of procedure. The government was of the opinion that if this policy was not amended, the waiting times would increase further for both promising applications as well as those with little prospect.<sup>43</sup> With this in mind, the multi-track policy was developed in 2015. The multi-track policy entails, depending on the target group to which the asylum seeker belongs, a different procedure (track) being used in

39 See Article 3.6 of the Aliens Decree. Not only does this include medical conditions, but also restrictions relating to Article 8 ECHR, temporary humanitarian grounds, or those who cannot leave the Netherlands through no-fault of their own.

40 As of 1 July 2010, legislature amended Section 83 of the Aliens Act to expand the ex nunc examination in asylum cases.

41 For more information on the no cure less fee system, see the website of the Legal Aid Board. Available at: <http://www.rvr.org/nieuws/2013/december/no-cure-less-fee-treedt-in-werking-per-1-januari-2014.html>

42 Article 3.11(8)(a) of the Aliens Decree

43 *Parliamentary Papers II*, 2015-2016, 19 637, no. 2086

handling the application for asylum. By adapting certain processes within these tracks, the asylum procedure can take place in a more effective manner. So there is no longer a fixed routine of eight days in the General Asylum Procedure (AA procedure). Process steps that are superfluous for certain asylum seekers no longer need to be followed.<sup>44</sup>

Prior to the multi-track policy both promising applications and those with little prospect were dealt with in the same way. This uniform approach led to increasing waiting times. Hence the multi-track policy was developed to be able to use different procedures (tracks) for different target groups. In concrete terms, the multi-track policy consists of five tracks. At an early stage (registration phase) the Immigration and Naturalisation Service (IND) establishes in which procedure (track) the asylum application will be dealt with. Then, depending on the "potential" of the asylum application, the procedure to follow is chosen. The relevant tracks are followed after identification and registration of asylum seekers. Two of these tracks are also used to encourage return. In both cases this concerns asylum applications with little prospect, in which distinction is made for:

- Dublin claimants. If, on the basis of relevant regulations drawn up for this purpose, another Member State is responsible for an asylum application other than the Netherlands, then the Netherlands can submit a request for transfer to that other country, without the Netherlands having to deal with the asylum application. This so-called Dublin claim must, however, be approved by that other country by taking a decision (against which an appeal is possible), and then a transfer of the relevant asylum seeker can take place (track 1).
- Asylum applications from safe countries of origin or asylum applications from asylum seekers of whom it is known that protection has already been granted in another EU Member State (track 2).<sup>45</sup>

#### *List of safe countries of origin*

An important basis for the Netherlands' multi-track policy is the list of safe countries of origin (track 2). Since 3 November 2015, the Netherlands has kept a list of safe countries of origin which was expanded in 2016.<sup>46</sup> This list contains the countries which, according to the Dutch government, can be designated as safe countries. The IND can deal with asylum seekers who come from these countries in track 2, which means that asylum seekers stay shorter in the Netherlands and must return much faster to the country of origin. This list of safe countries is mainly focused on reducing the number of asylum applications from the Western Balkans and North Africa.<sup>47</sup>

44 Decree of 23 June 2010, Bulletin of Acts and Decrees 244

45 *Parliamentary Papers II*, 2015-2016, 19 637, no. 2086

46 *Parliamentary Papers II*, 2015-2016, 19 637, no. 2076. The list of countries is incorporated in Annex 13 of the Aliens Regulations. See also *Parliamentary Papers II*, 2015-2016, 19 637, no. 2123

47 On 31 December 2016 the list consisted of the following countries: Albania, Andorra, Australia, Bosnia and Herzegovina, Canada, Ghana, India, Jamaica, Japan, Kosovo, Macedonia, Morocco, Monaco, Mongolia, Montenegro, New Zealand, San Marino, Senegal, Serbia, Vatican City, United States of America and Switzerland. For a current overview of the list of safe countries of origin see Annex 13 of the Aliens Regulations 2000 available at: <http://wetten.overheid.nl/BWBR0012002/2016-12-17#Bijlage13>.

### *Request for replacement travel documents during appeal phase*

Since July 2015, in the appeal phase in the asylum procedure, the Repatriation and Departure Service (DT&V)<sup>48</sup> has already been able to submit an application for a replacement travel document to authorities of the country of origin, or countries where access of the third-country national will be guaranteed.<sup>49</sup> Due to this measure it is possible to start with preparations for departure of the asylum seeker sooner. Prior to July 2015 the outcome of the appeal phase first had to be awaited before the nationality and/or identity of the rejected asylum seekers could be determined. This does not mean that actual removal is initiated if the third-country national is still involved in residency status proceedings, the outcome of which may be awaited in the Netherlands.

## **3.4. Provision of information for returns**

During the asylum procedure, return is not relevant in an official sense: it would only apply after a negative decision on the asylum application. However, the DT&V, the International Organisation for Migration (IOM) and the Dutch Council for Refugees (VWN) are present at all Asylum Seekers' Centres (AZC) and ensure that information provided on the possibilities for return is easily accessible. In addition to the provision of information, these three organisations are involved in implementation of the return policy in the Netherlands, and they also arrange reintegration projects for rejected asylum seekers in the country of origin. In concrete terms, this provision of information means that flyers are handed out, consultancy hours are kept, and that these organisations are present at these locations to provide information. In addition, after the negative intended decision, the IND also recommends to go and talk to these organisations. After the actual rejection, the DT&V almost immediately contacts the third-country national, possible departure options are identified and perhaps the third-country national is referred to the IOM or to NGOs to arrange a voluntary return. At most Asylum Seekers' Centres there are also columns with display screens available which provide information about services available in the country of origin.

48 The DT&V is the organisation that is responsible for implementation of the return policy in the Netherlands. See paragraph 4.2.

49 See amendment of the Aliens Act Implementation Guidelines. Government Gazette 2015, no. 20854, 17 July 2015





## 4 RETURN AFTER ASYLUM SEEKER HAS EXHAUSTED ALL LEGAL MEANS

*This chapter discusses how return is arranged after the definite rejection of the application for asylum. First the Dutch basic assumptions regarding returns is discussed. This is followed by an explanation on how organising returns in the Netherlands is organised. On returns, distinction is made between independent (or voluntary) return and forced return, in which assisted voluntary return is the basic assumption. This chapter first of all discusses assisted voluntary return. Here an explanation is given of the possibilities of support for voluntary departure. If an assisted voluntary return is not possible a forced return is considered. In the discussion, attention is paid to detention of foreign nationals and eventual removal to the country of origin.*

### 4.1. Basic assumptions of the return policy in the Netherlands

An important basic assumption within the Dutch return policy is that every third-country national who has exhausted all legal means, in principle, can return and also has the responsibility to do so independently. In the Dutch government's opinion a restrictive immigration policy should also include an active and consistent return policy. Those who may not stay in the Netherlands should also leave or be removed. The asylum seeker who has exhausted all legal means preferably arranges the return voluntarily, assisted by the DT&V, and financial support or support in kind from the IOM or other reintegration projects. If this cannot be achieved or the third-country national does not cooperate in the departure, the DT&V could decide on forced return. Here priority is given to groups that cause nuisance or to criminal third-country nationals and asylum seekers who have exhausted all legal means. The actual achievement of return depends on a number of factors including cooperation from the third-country national, and cooperation from the country of origin in obtaining travel documents. Various organisations are involved in implementing the return policy, who each play their own role in the return process of asylum seekers that have exhausted all legal means, and other groups of illegally-staying third-country nationals.<sup>50</sup>

### 4.2. Organisation for departure from the Netherlands

In the Netherlands different organisations are responsible for admissions (IND) on the one hand, and for returns (DT&V) on the other. Before the DT&V was established in 2007, returns were assigned to the IND. The idea is, that by assigning returns to a single organisation, the return organisation can provide better tailoring and is able to specialise in this aspect. This also makes it clear for the third-country national as to which organisation is responsible for which aspect. In addition, the focus remains geared

50 Coalition Agreement VVD – PvdA 2012 “*Bruggen Bouwen*” [“*Building Bridges*”]. Available at: <https://www.rijksoverheid.nl/documenten/rapporten/2012/10/29/regeerakkoord>

towards return, whereas, for an organisation that is concerned with both return as well as admission that would not necessarily be the case when, for example, there is a question of a highly intensified influx.

There are various other cooperating organisations involved in returns. In recent years, many measures were taken to encourage cooperation among the cooperating organisations and to promote the exchange of information. In this, the DT&V conducts the supervision in which the various organisations are or get involved as part of their own responsibility. Cooperation has been established between the DT&V (the returning organisation), the Aliens Police, Identification and Human Trafficking Department (AVIM) of the National Police (monitoring organisation), the Central Agency for the Reception of Asylum Seekers (COA, the reception organisation) and the Immigration & Naturalisation Service (IND, admissions organisation) as laid down in the Repatriation and Departure Guidelines.<sup>51</sup> In addition, there are also organisations across the chain who are involved in returns such as the IOM, the Dutch Council of the Netherlands (VWN), the Royal Netherlands Marechaussee (KMar), the Custodial Institutions Agency (DJI), Stichting NIDOS (guardianship foundation) and the Association of Dutch Municipalities (VNG).

Case management is key in the return process. This means the individual counselling of a third-country national and providing tailored solutions. In this context, case management can be defined as “all activities geared towards jointly achieving the departure of the third-country national”.

At the DT&V the Case Manager is the responsible person who plays a key role in the departure process. Every third-country national who falls under the responsibility of the DT&V, is assigned a Case Manager. The Case Manager is not only the point of contact for the third-country national (and/or his authorised representative), but also for the cooperating organisations who work with the DT&V.

The relationship of cooperation between the organisations is based on the following basic assumptions:<sup>52</sup>

- Intensive, constructive and active cooperation;
- Clear agreements about everyone's role, tasks and responsibilities;
- Having knowledge about each other's work;
- Having confidence in each other's work;
- Making use of one's own strength and the strengths of cooperating organisations; and
- Working arrangements in common working areas.

In the Netherlands, employees involved in implementation of the return policy are sometimes faced with administrative or organisational obstacles. Issues often menti-

51 More information on the cooperating organisations is available in the Repatriation and Departure Guidelines (2015). Available at: [www.dienststerugkeerenvertrek.nl/Kennisbank/leidraad\\_terugkeer\\_en\\_vertrek/](http://www.dienststerugkeerenvertrek.nl/Kennisbank/leidraad_terugkeer_en_vertrek/)

52 Repatriation and Departure Guidelines. Version 6.0. The Hague: Departure Preparation Division. Available at: [https://www.dienststerugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek\\_tcm49-145473.pdf](https://www.dienststerugkeerenvertrek.nl/binaries/Leidraad%20Terugkeer%20en%20Vertrek_tcm49-145473.pdf)

oned are the large volumes of paperwork, the possibility of the third-country national being allowed to lodge an objection during the various stages of the procedure, and cooperation with the various organisations involved in departure of the third-country national.<sup>53</sup>

Mutual cooperation among the cooperating organisations is an important prerequisite for an effective return policy. It is for this reason that communication is of vital importance. These mutual communications actively take place within a consultation structure known as the Local Repatriation Consultations (LTO). Those present at this consultation (LTO) in any case are the Case Manager from the DT&V, an employee from the Police Department for Aliens, Identification and Trafficking in human beings (AVIM), the Case Manager from COA and the IND contact. The aim of a Local Repatriation Consultation (LTO) is to collectively realise the voluntary, if necessary, forced departure of a third-country national through intensive cooperation, seeking and maintaining contact. The LTO's responsibility for each departure dossier is to harmonise the departure strategy, to complete and discuss the details, to monitor progress of the departure process, and to draw up and discuss a risk analysis on the attitude and behaviour of the third-country national. In principle, members of the Local Repatriation Consultation (LTO) meet every two weeks, but have almost daily contact with each other to exchange information and for coordination.

Under certain circumstances an LTO can be upscaled to a Regional Repatriation Consultation (RAO). This is done if, among other things, there are differences in insight, if there is a lack of clarity about which departure strategy should be followed in the LTO, if there are bottlenecks in cooperation between the cooperating organisations, or if there is a need to deviate from the usual frameworks within the departure procedure. The Regional Repatriation Consultation (RAO) consists of the Division Manager for Departure Preparation at the DT&V, the Chief of the Police Department for Aliens, Identification and Trafficking in human beings (AVIM), the COA Implementation Unit Manager and a senior employee of the IND. Furthermore, the Project Coordinator at IOM who is responsible for the REAN scheme,<sup>54</sup> Stichting NIDOS<sup>55</sup>, and stakeholding municipalities are also frequently invited to participate. In the Regional Repatriation Consultation (RAO), attention is not only paid to individual cases, but also aims for an early reporting of organisational developments and capacity deployment so that cooperating organisations can anticipate on this.

Should the parties involved in the RAO not achieve consensus on individual cases, then a case can be upscaled to the Supervision & Repatriation subcommittee where consultations take place on an executive level among the Custodial Institutions Agency (DJI), DT&V, COA, the Public Prosecution Service, KMar, and the IND.

53 EMN (2016). EMN ad hoc query "Obstacles to return in connection with the implementation of the Return Directive – 21 January 2016". Response EMN NCP Netherlands.

54 See <http://www.iom-nederland.nl/nl/vrijwillig-vertrek/terugkeer-naar-uw-land-van-herkomst-rean> The REAN scheme (Return and Emigration Assistance from the Netherlands) supports third-country nationals in their voluntary return to the country of origin or onward migration to a third country where a permanent stay is guaranteed (resettlement) and is financed by the Dutch government.

55 Stichting NIDOS (foundation) has a guardianship duty for unaccompanied minor foreign nationals

To increase the prospects of a successful return, in the Netherlands it is considered essential that return takes place as fast as possible in a careful manner, that collaboration is taken into account among all cooperating organisations, and that an unambiguous message is sent from within that chain of cooperating organisations to the third-country national.<sup>56</sup>

### 4.3. Voluntary return

Assisted voluntary return is the basic assumption of the Dutch return policy. Assisted voluntary return by the third-country national has many advantages compared to forced return. The third-country national can prepare for departure in which assistance can be given by the IOM and/or use can be made of return projects offered by NGOs.<sup>57</sup> Moreover, countries of origin almost always cooperate when a third-country national wants to return voluntarily. This is in contrast to forced returns, where countries of origin do not always want to take the third-country national back. Three alternatives are distinguished among the group who leaves voluntarily to the country of origin: assisted voluntary return supervised by the IOM, assisted voluntary return supervised by the DT&V, and independent departure without supervision.

Assisted voluntary return with help from the International Organisation for Migration Third-country nationals who voluntarily want to return with assistance from the IOM can make use of the Return and Emigration of Aliens from the Netherlands (REAN) scheme.<sup>58</sup> This support includes:

- Advice and information on returning or resettlement;
- Information on possibilities in the country of origin;
- Assistance in obtaining travel documents;
- Supervision at Schiphol Airport and, if necessary, during transit and at the destination airport;
- Airplane ticket and possible financial reimbursement thereof;
- A relief contribution (OSB) subject to certain conditions being met;
- Individual supervision. This includes, for example, reintegration programs for UAMs, victims of trafficking in human beings, and third-country nationals in need of medical assistance.

Moreover, specifically for (former) asylum seekers, supplementary assistance is also possible: the Return and Reintegration Regulation (HRT). This is currently an additional reintegration contribution of € 1,750 for an adult or € 880 for an accompanying child. This is offered in addition to the reintegration contribution ensuing from the REAN scheme at € 200 per adult and € 40 per accompanying child. This scheme only applies to

<sup>56</sup> Research and Documentation Centre, WODC (2014). Rejected and departed from the Netherlands? A study into the background of variations in voluntary return among asylum seekers who have exhausted all legal means. The Hague: Ministry of Security and Justice

<sup>57</sup> See also <https://www.infoterugkeer.nl/>

<sup>58</sup> This is the case when the third-country national returns voluntarily with assistance from the IOM. Distinction is made here of third-country nationals who return by way of the basic REAN scheme, and third-country nationals returning on the basis of the Return and Reintegration Regulation (HRT).

asylum seekers whose country of origin is listed in the Return and Reintegration Programme (HRT) list of countries.<sup>59</sup>

*Assisted voluntary return under the supervision of the Repatriation and Departure Service (DT&V)*

A third-country national can also leave under the supervision of the DT&V or another organisation offering return projects. Assistance in kind (such as a training, medical assistance or help in finding employment or starting a business) is possible under one of the projects for voluntary sustaining returns and reintegration of former asylum seekers.<sup>60</sup> These projects are financed by the Ministry of Foreign Affairs and the European Asylum, Migration and Integration Fund (AMIF), and are carried out by various Dutch NGOs. According to figures by the DT&V, until November 2016 63<sup>60</sup> third-country nationals voluntarily left from the Netherlands under supervision of the DT&V.<sup>61</sup>

*Independent departure without supervision*

Independent departure without supervision is the term used when it is found that the third-country national is no longer present at the last known address, but departure from the Netherlands has not been demonstrated. The third-country national has then left with an unknown destination (MOB). The DT&V's registration system has revealed that up to November 2016, 7272 third-country nationals independently departed without supervision, which amounts to about half of all third-country nationals who left the Netherlands in 2016 according to the DT&V figures.<sup>62</sup>

#### 4.4. Forced return

In [chapter 2](#) it has already been noted that imposition of an entry ban could be an incentive for voluntarily departure from the Netherlands within the departure period. If the third-country national does not comply and does not voluntarily leave within the prescribed departure period, a forced return can be instituted. If the third-country national does not have a valid travel document, with help from the DT&V a replacement travel document (*laissez passer*) must be applied for from the diplomatic representation in the country of origin. When the travel document is issued and for that reason a forced return becomes possible under supervision of the Royal Netherlands Marechaussee (KMar) the asylum seeker is deported back to the country of origin or to a country of which, based on facts and circumstances, it is assumed that the third-country national will be granted access.<sup>63</sup> The asylum seeker may in the meantime, possibly be placed in detention of foreign nationals or other freedom-restricting measures are imposed.

59 For the countries appearing on this list, refer to the IOM website. Available at: [www.iom-nederland.nl/nl/vrijwillig-vertrek/migranten-met-een-asielachtergrond/herintegratie-regeling-terugkeer-hrt/landenlijst-financiele-ondersteuning](http://www.iom-nederland.nl/nl/vrijwillig-vertrek/migranten-met-een-asielachtergrond/herintegratie-regeling-terugkeer-hrt/landenlijst-financiele-ondersteuning)

60 See <http://www.iom-nederland.nl/nl/vrijwillig-vertrek/terugkeer-naar-uw-land-van-herkomst-rean/> Assistance in kind is offered by the IOM office in the country of origin after return, and can be used for setting up or investing in a business, a study programme and, if necessary, partly for housing

61 For these and more figures concerning return, see the DT&V website. Available at: <https://www.dienstterugkeerenvertrek.nl/Mediatheek/Vertrekcijfers/index.aspx>

62 Ibidem.

63 See chapter A3/6 of the Aliens Act Implementation Guidelines.

#### 4.4.1. *Obstacles in returning to the country of origin and measures to eliminate these obstacles*

A case of forced return may face a number of obstacles which could obstruct a successful forced return.<sup>64</sup> These will be mentioned and described below and a number of measures are included that the Netherlands has taken to eliminate these obstacles.

##### *Resistance by the third-country national*

The Netherlands is regularly faced with resistance from third-country nationals in cases of scheduled removal, either while being moved to a different location (like a detention centre) or while staying at a location. This could be in the form of physical resistance, self-inflicted injury, or absconding.<sup>65</sup> Attempts are made to limit this as much as possible by aiming for assisted voluntary return. Should voluntary return not be an option, pursuant to compliance of prescribed grounds, third-country nationals can be placed in detention to prevent them from absconding. Detention is a means that is seen as a last resort. Not all third-country nationals end up in detention. Where possible, an alternative measure is applied such as a duty to report or security deposit. A sincere effort is made to get third-country nationals to leave the country without making use of detention. In the case of self-inflicted injury or physical resistance, employees can also use physical force to calm the third-country national down and to ensure that he does not harm himself and others. Should too many complications arise, then departure can be postponed or even cancelled. However, this rarely happens.

Resistance by third-country nationals could also be aimed at the deliberate destruction of travel documents or not showing them to the authorities, thus making return more difficult.<sup>66</sup> To be able to establish the identity despite the absence of documents, a number of resources are deployed. In the Netherlands use is made of special software which makes it possible to identify fingerprints better. Even if the fingerprint is damaged, this method can be used to track down the identity of the third-country national if it appears in a database, and travel documents can be applied for. Use is also made of interpreters to establish the third-country national's origin.<sup>67</sup> In the Netherlands, no use is made of detention of foreign nationals during the time needed to obtain travel documents, provided that the third-country national cooperates in obtaining the travel documents. Another major obstacle that obstructs successful return is the fact that some third-country nationals refer to medical complaints to postpone their departure.<sup>68</sup> If there genuinely are medical complaints, departure can be suspended or, should the complaints be warranted as such that travelling to and living in the country of origin is not justifiable, then departure may possibly not take place at all.<sup>69</sup> There are a number of measures that

64 *Parliamentary Papers II*, 2013-2014, 29 344, no. 121

65 EMN (2016). EMN ad hoc query "Obstacles to return in connection with the implementation of the Return Directive – 21 January 2016". Response EMN NCP Netherlands.

66 *Ibidem*.

67 This is done by a different interpreter to the regular interpreters who assist third-country nationals during a first and second interview. These language analyses are done by the IND to establish whether it is plausible if someone comes from a certain country or from a specific region. For more information, see the IND website. Available at: <https://ind.nl/EN/organisation/themes/language-analysis/Pages/default.asp>

68 EMN (2016). EMN ad hoc query "Obstacles to return in connection with the implementation of the Return Directive – 21 January 2016". Response EMN NCP Netherlands.

69 Section 64 of the Aliens Act

have been designed to allow returning of third-country nationals with medical complaints to the country of origin. One of those measures is a medical transfer to the country of origin instead of a normal commercial flight. Medical supervision is also taken care of during transfer and in certain cases, recourse can also be made to medical assistance in the country of origin.

### *Political and social pressure*

In the last few years a great deal of attention has been paid both in Dutch politics and in the media to the return of asylum seekers. Attention to individual cases such as the Afghan girl Sahar, and the Angolan boy Mauro, or interventions by key political figures which make return in individual cases more difficult. In this, the media also play a prominent role.<sup>70</sup> Sometimes a great deal of attention is paid to individuals due to political pressure and attention in the media. In special cases the Minister for Migration can make use of his discretionary authority. He may as yet decide to grant a residence permit if there is any evidence of “distressing circumstances”. The Case Manager at the DT&V assesses the distressing circumstances during the course of the entire departure process. On advice from the IND and the DT&V, the Minister for Migration decides on the basis of his discretionary authority whether the residence permit shall be granted anyway.

### *Civic organisations*

In the Netherlands there are broad-based and well-organised civic organisations. Some of those civic organisations are highly critical of the Dutch asylum and return policy. Civic organisations that are active in the field of asylum and migration, are often primarily focused on supporting third-country nationals, even if they have already exhausted all legal means and no longer have legal residency in the Netherlands.<sup>71</sup> Sometimes these organisations also facilitate illegal stay of asylum seekers who have exhausted all legal means, and offer support both financially and in kind.<sup>72</sup> In order to keep these organisations committed to the return policy as best as possible, various organisations are regularly invited for consultations in the LTO or RAO. Examples of such organisations are the Dutch Council for Refugees and Stichting NIDOS. Various return projects that are organised by civic organisations are also funded by public authorities. Examples of such organisations are Stichting LOS (National Support Organisation for Undocumented People), Bridge to Better, and Stichting ROS (Rotterdam Support Organisation for Undocumented People).<sup>73</sup> To increase the prospects of a successful return, in the Netherlands it is considered important that civic organisations are involved as much as possible.

70 See for example: <https://www.nrc.nl/nieuws/2013/03/30/mauro-heeft-verblijfsvergunning-en-mag-definitief-in-nederland-blijven-a1435999> en <http://nos.nl/artikel/231580-afghaans-meisje-sahar-mag-blijven.html>

71 Such as Stichting LOS (National Support Organisation for Undocumented People). More information is available at the website of Stichting LOS: <http://www.stichtinglos.nl/>

72 Such as the Church of Refuge and the associated initiative We Are Here. For more information see <http://www.devluhtkerk.nl/home>. Stichting ROS (Rotterdam Support Organisation for Undocumented People), for example, provides free language lessons, shelter and support in lobby and protest. For more information see: <http://www.stichtingros.nl/wpsite/home/>

73 More information on these organisations can be found in EMN (2016). Voluntary return. Provision of information to third-country nationals who stay illegally in the Netherlands. Rijswijk: Ministry of Security and Justice.

### *Insufficient or no cooperation from the country of origin*

When implementing the return policy there could be inadequate cooperation from authorities in the third-country national's country of origin. This happens in different ways. For example, the country of origin cannot issue travel or identity documents necessary for the return.<sup>74</sup> This is dealt with in various ways. On a political level the Netherlands has agreed to bilateral arrangements with various countries of origin to ease the return of third-country nationals. These agreements were concluded with EU countries as well as third countries. There are also 140 Dutch embassies and consulates scattered all over the world. These representative offices of the Netherlands abroad, contribute to a better understanding and ensure fast communications with various countries. Furthermore, an attempt is made to encourage third countries to cooperate in getting the return policy to run smoother. This is done, among other things, in the form of providing emergency funding or aid packages. There is also a possibility of exerting political pressure on authorities of third countries.

In this context, the following outlines two measures which contribute to a better cooperation with third countries, namely the setting up of task forces and the so-called Readmission Agreements.

### *Task forces*

Task Forces consist of delegations of representatives from countries of origin who are invited to establish the nationality and/or identity of alleged compatriots. These are the ministries from the countries of origin who are involved in the return of its own compatriots, and as such, are appointed as being authorised by the authorities of those countries. These task forces are effective because third-country nationals that must return to their country of origin can immediately be presented at that time to the authorities of that country. The task force is authorised to issue travel documents for returns or to issue a confirmation of the nationality. Since the DT&V (2007) commenced, more than 30 task forces have taken place. These were task forces of the following countries: Armenia, Azerbaijan, Guinea, Iraq, Liberia, Nepal, Nigeria, Sierra Leone, Gambia and Mali.<sup>75</sup>

### *Readmission Agreements*

Arrangements have been made with various countries on behalf of the EU for returning or readmitting third-country nationals originating from those countries. These arrangements are provided for in Readmission Agreements. The purpose of these agreements is for easing the returning and readmission of nationals from those affiliated countries. This refers to the readmission of third-country nationals who no longer have right of residence within the European territory. It is an effective instrument to counter illegal stay and irregular migration. These agreements also make it easier for migrants to return to their country of origin.

74 EMN (2016). EMN ad hoc query "Obstacles to return in connection with the implementation of the Return Directive – 21 January 2016". Response EMN NCP Netherlands.

75 Letter from the Minister for Migration Teeven (Ministry of Security and Justice) to the Dutch House of Representatives on the existing task forces in light of the return policy and their procedures. 28 October 2013.



#### **4.4.2. *Freedom-restricting measures and the security deposit***

The basic assumption of the migration policy is that third-country nationals have an own responsibility to leave the Netherlands if they no longer have legal residency in the Netherlands. Forced return may be necessary when it is clear that the third-country national does not intend to leave voluntarily. After rejection of the application for asylum, it is important to monitor third-country nationals, so that they do not abscond.<sup>76</sup> If there are reasonable grounds for believing that a third-country national would abscond during a departure procedure, the third-country national could be placed in detention on the proviso that there is a prospect of removal. Placement in detention is seen as a last resort and in accordance with both international and national law, it should only be applied if the same objective cannot be achieved with less drastic measures. It is for this reason that a number of alternatives for detention have been drawn up.<sup>77</sup> Every rejected asylum seeker who actively cooperates with their return, is eligible for a lighter supervisory measure than detention. The following measures are possible here:

##### *Surrendering travel and identity documents*

After the decision of rejection, a third-country national is assigned a Case Manager by the DT&V, with whom they have discussions and cooperate on returning to the country of origin. The DT&V Case Manager can request that travel and identity documents are surrendered. The Case Manager holds this in safekeeping and will return them the moment that the third-country national actually leaves.

##### *Duty to report*

Duty to report is understood to mean a weekly obligation to report to the Aliens Police by illegally-staying asylum seekers who have reception facilities or shelter (e.g. with family) and are therefore monitored by the authorities. This duty to report takes place in combination with DT&V facilitating the return.

##### *Shelter in a Freedom-restricting Centre (VBL)*

If a third-country national, according to Dutch law, has no right to accommodation at a reception facility, or he/she cannot be placed in detention (yet) and is prepared to cooperate on returning, then the third-country national is transferred to the Freedom-restricting Centre (VBL).<sup>78</sup> The third-country national basically stays in the Freedom-restricting Centre (VBL) for up to twelve weeks, where further efforts are made with the DT&V for the return.

76 The legislative proposal of the Repatriation and Detention of Aliens Act, provides for an own basis of assessment for the regime of detention of foreign nationals. Formerly, the regime of detention of foreign nationals was under criminal law. Due to the increased influx, large groups of third-country nationals are regularly found to be staying illegally, and placing them in custody within six hours has proven to be unsuccessful. It's for this reason that the legislative proposal provides for an extension of the term, from six hours to nine hours, for preparation of placement into custody.

77 Letter from the Directorate for Migration Policy to the President of the House of Representatives. "Promises made on migration policy reports and recommendations". The Hague: 13 September 2013.

78 Section 54 in conjunction with Section 56 of the Aliens Act

*Shelter in a Family Centre (GL)*

Separate Family Centres (GL) have been made available for families with minor-aged children. Since 2011, minor-aged children are no longer turned out on the street in the Netherlands, so families can be sheltered at a Family Centre (GL) until the youngest child is 18, or returning is arranged.

*Shelter in a Closed Family Centre (GGV)*

Since 1 October 2014 a closed, child-friendly family facility was taken into service in Zeist. This facility is meant for families with minor-aged children in border detention and detention of foreign nationals, and for unaccompanied minor third-country nationals in detention. This facility is part of the Dutch Custodial Institutions Agency (DJI), which maintains close collaboration with partners in the cooperating organisations. As is the case with regular detention centres, this facility is only used as a last resort. In the case of minors, whether in a family context or not, more stringent requirements are set for justification of the decision of placement in custody. Unaccompanied minor foreign nationals are not placed in border detention. For families with minor-aged children this is only possible if it appears, after a screening at the border, that there is doubt about the family relationship or problems relating to public order or security. The facility contains 12 residences for families of up to six people, and ten locations for unaccompanied minor third-country nationals. Families stay at this location for a maximum of two weeks. Due to the fact that families are only placed in the closed family care facility after they have obtained the required travel documents, it is easier to arrange departures from the Netherlands from this location. In this way it prevents families or unaccompanied minor third-country nationals from absconding at the last moment while under supervision by the DT&V.<sup>79</sup>

*Security deposit*

On implementation of the Return Directive, it has become legally possible that a third-country national makes a security deposit. In common practice arrangements are made between the DT&V and the third-country national about a security deposit and a departure period. The third-country national signs a return contract which establishes his/her rights and obligations. The security deposit is paid in advance and returned when the third-country national reports at the airport and actually leaves the Netherlands.<sup>80</sup>

In principle, the DT&V Case Manager assesses whether one of the above measures should be taken to get the third-country national to return. In addition, a Local Repatriation Consultation (LTO) and Regional Repatriation Consultation (RAO) takes place with the partners in cooperating organisations to jointly organise the voluntary, if need be, forced departure of a third-country national. This is done by working intensively together, seeking contact and staying in touch.

79 More information on the Closed Family Centre (GGV) in Zeist is available at DJI's website. Available at: <https://www.dji.nl/Organisatie/Locaties/Detentiecentra/GGV-Zeist/>. See also Parliamentary Papers II, 2013-2014, 19 637, no. 1827 and Parliamentary Papers II, 2013-2014, 19 637, no. 1896.

80 Ministry of Security and Justice (20 December 2013). More freedom for third-country nationals placed in custody. Ministry of Security and Justice, consulted on 13 September 2016, <https://www.rijksoverheid.nl/actueel/nieuws/2013/12/21/meer-vrijheden-voor-vreemdelingen-binnen-bewaring>

## 5 WHAT IF RETURNING CANNOT BE ACHIEVED?

*This chapter provides an overview of the policy and provisions for asylum seekers who cannot be removed or who (temporarily) cannot return. The chapter is structured in three parts, each describing the situation for a group of people who have exhausted all legal means in the Netherlands. The first paragraph concerns special arrangements for the group of people who have exhausted all legal means who (temporarily) cannot return to their country of origin. The second paragraph concerns the rights and provisions for the group of people who have exhausted all legal means who, according to the Dutch government, can return to the country of origin, but nonetheless continue to stay in the Netherlands. The third paragraph discusses temporary arrangements made for third-country nationals staying illegally in the Netherlands.*

The Dutch government maintains the principle that basically every asylum seeker who has exhausted all legal means is responsible for his/her own return to his/her country of origin or continuous residence. The moment the asylum seeker is rejected, in principle, he/she must independently arrange departure to the home country. Even when the third-country national does not want to cooperate in the departure and/or absconds from supervisory authorities, that does not lead to the conclusion that returning is not possible. At that point in time a rejected asylum seeker stays illegally in the Netherlands.

### **5.1. Special regulations for people who have exhausted all legal means but cannot return**

The moment that the rejected asylum seeker (temporarily) cannot return to the country of origin, further investigations will be carried out by the IND or DT&V. If the investigation leads to the conclusion that the third-country national cannot return, this will have consequences for the residential status of the asylum seeker who has exhausted all legal means. Acknowledgement that a third-country national cannot return, falls under the IND's responsibility. This could be the result of the general situation in the country of origin which is the reason why rejected asylum seekers from that country cannot be returned immediately, but this could also be due to individual circumstances. In both cases the IND and DT&V monitor when safe departure to the country of origin could be possible. This could be the result of changed policy having created a different situation or if a third-country national's specific circumstances change. It is for this reason that the third-country national regularly has discussions with the DT&V Case Manager about possible departure, provided of course that the third-country national is being monitored by the DT&V. For families it also applies that they stay in a family location and then they are always being monitored by the DT&V.

There are several possible situations in which the IND can decide that an asylum seeker who has exhausted all legal means cannot return to the country of origin.

There could possibly be a temporary postponement of decisions and departures for asylum seekers from a specific country. This means that although the asylum application has been rejected, it is not yet deemed justified to return the third-country national to the country of origin. This could be because of the perception of the situation or denial of the danger.<sup>81</sup> Then the IND issues a legal residence document to the third-country national for the postponement period. This document does not give any entitlement to a residence permit.<sup>82</sup>

Temporary medical impairments could also obstruct departure. In that case postponement of departure could possibly be based on Section 64 of the Aliens Act. Should the IND grant a request for postponement, then departure from the Netherlands will not be put into effect. Taking the condition of health of the third-country national or of one of his family members into consideration, this departure continues to be postponed as long as it is considered not justifiable to travel.<sup>83</sup> In this case too, a legal residence document is issued to the third-country national for the duration that he or she cannot return to the country of origin. This document does not give any entitlement to a residence permit either.<sup>84</sup>

If return is not possible and that is not attributable to the third-country national, the IND can also issue a no-fault residence permit. This is a special residence permit for this group of third-country nationals. This is the case, for example, for a third-country national who has no identity documents and where the country of origin refuses to issue a replacement travel document for returning. In such cases, subsequent to the DT&V rendering a compelling recommendation, the IND issues the third-country national with a conditional temporary regular residence permit on: "temporary humanitarian grounds".<sup>85</sup> This residence permit is granted for the duration of one year. This residence document is endorsed with an employment status "No employment restrictions. Work permit not required".<sup>86</sup> This means that this third-country national may undertake all kinds of employment without being in possession of a work permit (TWV).

A no-fault residence permit can be granted to a third-country national on the following conditions:<sup>87</sup>

- The third-country national has independently tried to accomplish his departure. He has demonstrated or made it plausible that he has turned to the representation of the country or countries of his nationality, or to the country or countries where, as a sta-

81 Section 45(4)(5) of the Aliens Act and Chapter C3 Article 3 of the Aliens Act Implementation Guidelines.

82 This is called a 'W document'. For an example of such document, see: <http://wetten.overheid.nl/BWBR0012002/2016-04-01#Bijlage7f2>.

83 Chapter B7 Article 1(3) of the Aliens Act Implementation Guidelines

84 This is called a 'W document'. For an example of such document, see: <http://wetten.overheid.nl/BWBR0012002/2016-04-01#Bijlage7f2>.

85 Articles 3.4(1)(p) and 3.48(2)(a) of the Aliens Decree

86 Article 3.1(3)(a) of the Aliens Regulations

87 Article 3.48(2)(a) of the Aliens Decree

teless person he has previously had his regular place of residence, and/or to other countries of which, on the basis of all facts and circumstances, it can be assumed that the third-country national will be granted admission there;

- There is no reasonable doubt about his nationality and identity;
- The third-country national has requested the DT&V to submit an application on his behalf for a (replacement) travel document to the authorities of his country of origin or another country of which, based on all facts and circumstances, can be assumed that admission will be granted to him there (a request for mediation) and this request has not resulted in the desired outcome;
- On grounds of objective, verifiable facts and circumstances regarding the person concerned and which must be substantiated with documents, in its treatment of this request for assistance, the DT&V has established that there is a question of a coherent whole of facts and circumstances from which it is apparent that the party concerned cannot leave the Netherlands through no fault of his own; and
- The third-country national stays without a residence permit in the Netherlands.

If such a no-fault residence permit is granted and this must be renewed, the DT&V investigates whether new developments have come to light in the relevant case which would enable the third-country national to leave the Netherlands. Finally, on the basis of his discretionary authority, the Minister for Migration can, in individual cases, grant applications for a no-fault residence permit or renewal of them, which cannot be granted on grounds of the existing policy.<sup>88</sup>

## 5.2. Rights and facilities for people who have exhausted all legal means but do not leave

Although rejected asylum seekers have to leave the Netherlands after expiry of the departure period, there is a certain group that does not leave. For this group of third-country nationals it has been established that there are no obstacles for them returning to the country of origin. Yet if they decide not to return, for whatsoever reason, they do not stay legally in the Netherlands. It is difficult to prove how many illegal immigrants there are in the Netherlands. In the period from 1 July 2012 to 30 June 2013 the Research and Documentation Centre (WODC) estimated that the number of immigrants staying illegally in the Netherlands was 35,530.<sup>89</sup>

For asylum seekers who have exhausted all legal means, who stay illegally in the Netherlands after their departure period of 0 or 28 days has expired, this means that they have limited rights to provisions. This is evident from the Benefit Entitlement (Residence Status) Act discussed in [chapter 2](#).<sup>90</sup> The following explains the few rights or provisions that are available for this group of illegally-staying asylum seekers.

<sup>88</sup> Article 3.4(3) of the Aliens Decree

<sup>89</sup> It concerns estimates that have a 95% confidence interval, ranging from 22,881 to 48,179. See Research and Documentation Centre (WODC 20115). Estimates of irregular migrants in the Netherlands 2012 - 2013. The Hague: Ministry of Security and Justice.

<sup>90</sup> Law of 26 March 1998, Bulletin of Acts and Decrees 203

### *Reception centre*

Basically, asylum seekers that have exhausted all legal means in the Netherlands, are not entitled to reception facilities. They must leave the Netherlands within the departure period of 28 or 0 days, and after this period has expired, they are not entitled to reception facilities. In cases where third-country nationals come from safe countries of origin or where public order aspects are involved in which a departure period of 0 days apply, reception facilities are terminated as fast as possible. In practice though, preparation for the termination of reception facilities can only commence from the time that a decision of rejection has been issued. And then it could still take some time before provisions are definitely terminated. For compelled termination of reception facilities, cooperation from the police is necessary, which is under the authority of the mayor of the municipality where the reception centre is located. If the mayor, whether under local political pressure or not, does not want the police to be deployed for termination of reception facilities, this could lead to a substantially longer stay in the reception centre.

Families with minor-aged children are always given shelter in family locations provided by the DT&V. This arrangement applies until the youngest child has reached the age of 18 or departure from the Netherlands actually takes place. For all other asylum seekers who have exhausted all legal means who do not actively cooperate on their departure, no reception facilities are provided by the Dutch government, unless a medical condition gives rise thereto. Providing shelter to third-country nationals who have exhausted all legal means without demanding an offsetting measure to arrange a return, according to the Dutch government, undermines the credibility and sustainability of the Dutch migration system.<sup>91</sup> In common practice, however, all kinds of measures are taken at a local level for third-country nationals staying illegally, which are not in line with this principle. This has led to a political and social debate known as “bed, bath and bread” discussions.<sup>92</sup> This focused on the key question whether an obligation by international law exists for the Netherlands to unconditionally provide accommodation to third-country nationals staying illegally in the Netherlands. After intensive discussions and a great deal of attention in the media, the governing coalition parties VVD and PvdA reached a compromise, in which it was agreed that illegal immigrants would be given entitlement to temporary accommodation in a limited number of municipalities at Local facilities for third-country nationals (LVVs). In other municipalities the emergency facilities would be closed down. The State had discussions with municipalities about the concrete elaboration of this Administrative Agreement.<sup>93</sup> Negotiations between the State and the municipalities ceased on 20 November 2016. The reason for cessation of the negotiations on the Administrative Agreement between municipalities and the State, according to the Minister for Migration, was due to the uncertainty on whether the opening of the Local facilities for third-country nationals (LVVs) would really coin-

91 *Parliamentary Papers II*, 2015-2016, 2015Z08092, no. 875.

92 Van den Dool, P. (16 April 2015). In 5 minuten bijgepraat: ‘bed, bad, brood’ en de spanningen in de coalitie [Updated within 5 minutes: ‘bed, bath, bread’ and tensions in the coalition]. NRC Handelsblad (newspaper), consulted on 13 September 2016, <https://www.nrc.nl/nieuws/2015/04/16/in-5-minuten-bijgepraat-bed-bad-brood-en-de-spanningen-in-de-coalitie-a1417027>

93 *Parliamentary Papers II*, 2015-2016, 19 637, no. 2106. In November 2015, the Council of State assessed that, if a third-country national refuses to cooperate in working on his departure, then shelter may be refused. In a recent ruling by the European Court dated 5 July 2016, case number 17931/16, it was confirmed that refusal of shelter in a general sense, is not a violation of the European Convention on Human Rights.

cide with putting an end to the municipal bed, bath and bread provisions. In a letter at the end of November 2016, the conclusion by the Minister for Migration was that an agreement, at that time, was still far from being achieved.<sup>94</sup>

### *Work*

Just like rejected asylum seekers who have a legal right of residence in the Netherlands, rejected asylum seekers whose departure period has expired may not work. However, in practice it does happen that they do provide for their own income by undertaking undeclared work.<sup>95</sup>

### *Social assistance benefit*

On termination of reception facilities the Regulation for Provisions for Asylum Seekers (Rva) is discontinued. On placement in a Freedom-restricting Centre or Family Centre (VBL/GL), the pocket money component of the weekly allowance is discontinued for adults and the money for food is continued. Benefits for minors remain the same. In addition, a restricted group of third-country nationals may also sometimes make use of special schemes, such as the Regulation on Provisions for certain categories of foreign nationals (Rvb), which is implemented by the State.<sup>96</sup> This regulation is intended for potential victims or witnesses of trafficking in human beings.<sup>97</sup> If there is good cause, third-country nationals could also get legal aid, irrespective of their residential status. The Legal Aid Board examines whether legal aid is required. A personal contribution is required, depending on the ability to pay. If someone can prove having no income, an exemption could be granted for this purpose.<sup>98</sup>

In practice, special assistance benefits are also paid to third-country nationals who stay illegally in the Netherlands.<sup>99</sup> Municipalities may deviate from the law, because special assistance benefit relates to a municipal decision.<sup>100</sup> Furthermore, sometimes illegally-staying third-country nationals get financial support or support in kind from charitable organisations or NGO.<sup>101</sup>

### *Healthcare*

Rejected asylum seekers who, after expiry of the departure period stay in the Netherlands either in a Freedom-restricting Centre (VBL) or Family Centre (GL), also have a right to medical care. Only emergency healthcare is reimbursed: third-country nationals must pay for any other healthcare themselves.<sup>102</sup> In order to pay for costs incurred, healthcare

94 *Parliamentary Papers II*, 2016-2017, 19 637, no. 2264

95 See the website of Stichting LOS (National Support Organisation for Undocumented People). Available at: <http://www.stichtinglos.nl/content/arbeidsrechten-ongedocumenteerden>

96 For more information on the Regulations on Provisions for asylum seekers and special categories, see the website of Amnesty International. Available at: <https://www.amnesty.nl/illegalen-ongedocumenteerde-migranten>

97 For more information see: <https://www.amsterdam.nl/beleidwerkeninkomen/4-specifieke/>

98 For more information on the Regulations on Provisions for asylum seekers and special categories, see the website of Amnesty International. Available at: <https://www.amnesty.nl/illegalen-ongedocumenteerde-migranten>

99 Section 11 of the Participation Act.

100 Interview with the Directorate for Migration Policy, 18-05-2016 in The Hague.

101 Such as Stichting ROS (Rotterdam Support Organisation for Undocumented People). See also [paragraph 4.4.1](#).

102 Pharos (2007): Physician and third country national: Report by the Healthcare Committee for asylum seekers who (imminently) have exhausted all legal means and illegal third-country nationals. Zeist: A-D Druk

providers in the Netherlands receive a contribution from the National Healthcare Institute.<sup>103</sup> Rejected asylum seekers not returning to their country of origin cannot take out healthcare insurance.

### *Education*

In the Netherlands, in principle, education is compulsory until the age of 18. This also applies to asylum seekers staying illegally. In principle, every illegally-staying third-country national may complete a started training, unless s/he can be removed. If this is not the case, then the education institution may not check whether the parents of the minor do stay legally in the Netherlands either.

In practice, there are also many possibilities for taking Dutch language courses. Civic integration courses at the Regional Training Centre (ROC) are not accessible to people without a residence permit, but the language courses at the adult education institute are, and so too the language courses given at community centres. Also, organisations who provide assistance to people without a residence permit often offer their own language courses.<sup>104</sup>

## **5.3. Temporary regulations**

In the past few years, the situation of certain groups of third-country nationals who have exhausted all legal means in the Netherlands have led to discussions in the political and social debate, because this was experienced as being distressing. Temporary arrangements were made for a number of these groups of TCN's, which has led to regularisation and permanent residence in the Netherlands.

In October 1999, a temporary amnesty for illegal aliens came into force, in which a selective group of illegal immigrants became eligible for a residence permit.<sup>105</sup> If they complied with eight stringent conditions, they were allowed to stay in the Netherlands. This happened to a total of about 1900 illegal immigrants.<sup>106</sup>

The second arrangement in the second half of the 1990s related to a backlog of processing asylum applications that had arisen at the IND, which meant that many asylum seekers had to wait a long time for a decision. On 15 June 2007 an Amnesty Settlement was decided on, which meant that a clearly defined group of third-country nationals who had lived uninterrupted in the Netherlands since 1 April 2001, became eligible for a residence permit. One of the conditions to become eligible for this regulation was that the third-country national did not pose a threat to public order.<sup>107</sup>

<sup>103</sup> Section 122(a) of the Health Insurance Act

<sup>104</sup> For more information on education, see the website of Stichting LOS (National Support Organisation for Undocumented People). Available at: <http://www.stichtinglos.nl/content/onderwijs-en-opvoeding>

<sup>105</sup> The policy regarding admission on grounds of temporary amnesty for long-term illegal aliens, was laid down in an Interim Supplement to the Aliens Act Implementation Guidelines (TBV) 1999/23, which was valid from 1 October 1999 to 1 December 1999.

<sup>106</sup> For this, see: <http://www.doorbraak.eu/gebladerte/10691f42.htm>

<sup>107</sup> Decision by the Minister for Migration of 12 June 2007, Government Gazette 36575



It is also possible that social discussions on individual asylum seekers lead to special regulations. This happened in 2011 with the Afghan girl Sahar. The then Minister for Immigration and Asylum decided, in response to Sahar's situation, as she had already been living in the Netherlands for ten years, but whose different applications for asylum had been rejected by the IND, to grant her and her family a residence permit. The Minister justified his decision by making it clear that under certain circumstances "on compelling humanitarian grounds that westernised girls cannot be expected to return to Afghanistan".<sup>108</sup> In 2011 this resulted in a relaxation of policy. Since that time, westernised school-aged minor women who, should they return to Afghanistan, would conceivably be under disproportionately heavy psychological pressure, would be eligible for a residence permit.<sup>109</sup>

Lastly, the Coalition Agreement of 29 October 2012 also states that long-term staying children and unaccompanied minor third-country nationals, would be eligible for a residence permit under certain conditions. In 2013 the regulation entered into force for children with an asylum seekers' background and their family members who had already stayed in the Netherlands for a long time with little prospect of a residence permit.<sup>110</sup> Foreign nationals who have submitted an application for asylum in the Netherlands at least five years before their 18th birthday, became conditionally eligible for the Transitional long-term resident Regulation for children. At the same time as the Transitional Regulation, a permanent long-term resident regulation for children was also introduced. This latter policy is more stringent than the Transitional Regulation.<sup>111</sup>

108 For more information on Sahar, see: <http://nos.nl/artikel/231580-afghaans-meisje-sahar-mag-blijven.html>

109 See Article 3.48(2)(b) of the Aliens Decree in conjunction with policy as laid down in Chapter B2 Article 10.1 of the Aliens Act Implementation Guidelines

110 Decision by the Minister for Migration of 30 January 2013, Government Gazette 2573

111 *Parliamentary Papers II*, 2012-2013, 19 637, no. 1597.



## 6 SUMMARY AND CONCLUSION

### *Background and cause*

The number of asylum applications within the EU, and the countries of Norway, Liechtenstein, Iceland and Switzerland, increased significantly in recent years. Although the number of asylum seekers that have applied has dropped since the EU-Turkey Statement, which entails extraordinary measures that tackle irregular migration, it is uncertain whether this will remain so in the short and long-term. A number of these asylum seekers have their applications for asylum rejected and they will have to return to their country of origin or prior stay. In light of these developments, the European Migration Network (EMN) decided to conduct a study into returning rejected asylum seekers in 2016.

This report provides an overview of the return policy applicable in the Netherlands and how rejected asylum seekers are dealt with in practice. In this report, on the one hand the emphasis lies on the difference between the number of rejections and the actual return of rejected asylum seekers, and on the other hand on the measures taken to enhance the effectiveness of the return policy.

### *Measures encouraging return during the procedure*

In the Netherlands there is hardly any difference between the return policy for rejected asylum seekers and for other groups of foreign nationals. By far, most of the measures taken apply for all groups of third-country nationals who no longer have legal residency in the Netherlands. Measures encouraging the return of asylum seekers mainly provide for accelerating the procedure. A difference between the regular procedure and the asylum procedure is that the shortened General Asylum Procedure was introduced in 2010 to quickly implement the return of asylum applicants that evidently have little chance of succeeding.

Another important measure taken by the Netherlands in March 2016 to accelerate the process of returning asylum seekers and to make it more effective is the multi-track policy in which distinction is made between promising applications and those that evidently have little chance of succeeding. An important basis for the Netherlands' multi-track policy is the list of safe countries of origin which has been used in the Netherlands since 2015. This list contains the countries which, according to the Dutch government, can be designated as safe countries. Applications from asylum seekers from these countries are dealt with accelerated in track 2.

### *Return after appeal proceedings*

The Netherlands maintains a return policy on the basic assumption that third-country nationals who have exhausted all legal means, have no right to stay in the Netherlands and, in principle, can return to his/her country of origin or country of prior residence. Here, return on a voluntary basis takes preference over a forced return. An additional

incentive to voluntarily leave the Netherlands is the entry ban that may be imposed if the voluntary departure period has expired, and the asylum seeker has not voluntarily left within that time limit.

In the Netherlands, two different organisations are responsible for admissions on the one hand, and departures on the other. The Immigration and Naturalisation Service (IND) is responsible for admissions and the Repatriation and Departure Service (DT&V) is responsible for departures. Strictly speaking, return is not relevant during the procedure. However, the DT&V, the Central Agency for the Reception of Asylum Seekers (COA), the International Organisation for Migration (IOM) and the Dutch Council for Refugees (VWN), are present at all reception centres and ensure that information provided about returns is easily accessible. After the rejection, the DT&V almost immediately contacts the third-country national, who is possibly referred to the IOM and other NGOs. In the case of voluntary return, the rejected asylum seeker can make preparations for departure to the country of origin, perhaps with the help of reintegration projects, and there is often better cooperation from the country of origin than in cases of forced departure.

Yet the scheme for rejected asylum seekers to voluntarily return via IOM is different from that for other foreign nationals. Former asylum seekers who voluntarily return to the country of origin or who migrate elsewhere to a third country could, in addition to the basic benefits from IOM's REAN scheme, be eligible for a financial contribution. This contribution can be used to support reintegration in the country of origin, or resettlement in a third country where the third-country national is officially admitted.

If the third-country national does not voluntarily leave, a forced return can be instituted. If the third-country national does not have a valid travel document, with help from the DT&V a replacement travel document (*laissez passer*) will be applied for from the diplomatic representation of the country of origin. When the travel document is issued and for that reason a forced return has become possible, the asylum seeker is deported back under supervision of the Royal Netherlands Marechaussee (KMar) to the country of origin or to a country of which, based on facts and circumstances, it is assumed that the third-country national will be granted access. The asylum seeker may, in the meantime, possibly be placed in detention of foreign nationals or other freedom-restricting measures are imposed.

Obstructions which the Netherlands encounters with regard to departures from the Netherlands not only apply to asylum seekers, but to all foreigners. This not only includes resistance from the third-country national or insufficient support or cooperation from the country of origin, but also political and social pressure from the Netherlands itself to allow the third-country national to stay in Netherlands.

In recent years, various measures were taken into consideration to tackle these obstructions where possible, including organising task forces consisting of delegations of countries of origin who are authorised to issue travel documents, making use of Readmission Agreements, making use of new techniques for the collection of identity data, and regular consultations with all the parties involved in so-called Local Repatriation Consultations (LTOs).

#### *What if return cannot be achieved?*

According to the Dutch government, the return policy is an essential final element within the asylum policy. However, it is difficult to make it a 100% working return policy. There are various important factors for a successful return where no or hardly any influence can be exercised, such as the obstructions mentioned above. But the basic assumption remains that there is no entitlement to stay, even if removal fails.

There is a small group of exceptions who, once it is ascertained on the basis of a number of strict criteria that they cannot return, become eligible for a residence permit on grounds of the so-called no-fault policy.

Sometimes certain categories of third-country nationals are not eligible for a residence permit, but removal also fails because those third-country nationals refuse to return. In such cases there is no sound solution at hand and local solutions are being sought, which are not in line with the basic assumption of the Dutch return policy, that a third-country national who has exhausted all legal means has no right to stay in the Netherlands and, in principle, can return to his/her country of origin or country of prior residence.

In the past, temporary measures were taken for several groups of people who had exhausted all legal means, which led to regularisation and permanent residence in the Netherlands. The first measure was the 'temporary amnesty for illegal aliens' (1999), then there was the 'Settlement of the Legacy of the Former Aliens Act' (2007) and finally, the 'Transitional long-term resident Regulation for children' (2013).

#### *Conclusion*

Although return often concerns rejected asylum seekers, the Dutch return policy is not specifically tailored for rejected asylum seekers, but applicable to all groups of foreigners who have no right of stay in the Netherlands. For returns, there are a number of circumstances which can barely be influenced. To increase the prospects of a successful return, certain conditions are essential in the Netherlands:

- That returns should take place as fast as possible in a careful manner;
- That collaboration is taken into account among all cooperating organisations;
- That an unambiguous message is sent from within such chain of cooperating organisations to the third-country national; and
- That insofar as is possible, civic organisations should be involved in the returns.



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# ANNEX I: DEFINITIONS

**Rejected asylum seeker:** A third-country national covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.

**Asylum seeker:** in a general context, a person who seeks protection against persecution or serious harm in a country other than his own, and is awaiting a decision on the application for a refugee status under the relevant international and national instruments. In the EU context, a person who has submitted an application for protection under the Geneva Convention on Refugees, for whom a final decision has not yet been taken.

**Third-country national:** Any person who is not a citizen of the European Union (including stateless persons) and who is not a person enjoying the right of free movement, as defined in the Schengen Borders Code.<sup>112</sup> In light of the Return Directive, this is a person who is not a citizen of the countries to which the entry ban applies.

**Forced departure:** The host EU Member State forces a third-country national to return based on an administrative decision by the public authority responsible for immigration or on a judgment of the court. Such return could be to the country of origin, the country of permanent residence or another third country.

**Assisted voluntary return:** Voluntary return in which the returnee receives logistic, financial and/or other support in kind.

**Repeat application:** A subsequent application for international protection, which a person submits after a final decision has been taken on a previous application for international protection, including cases where the applicant has withdrawn his application, and cases where the applicant withdrew his application after the deciding authority had rejected an application.

**Irregular stay:** The presence of a third-country national who actually stays in the territory of a Member State, and who does not fulfil the legal conditions set out for residence by that Member State.

**Entry ban:** An administrative decision by a responsible public authority or a judgment of the court of the host country in the European Union that is attached to a return decision, to the effect that after departure from the host country it is prohibited to re-enter the Member States of the European Union, European Economic Area (EEA) and Switzerland for a specific period.

**Return:** A third-country national leaves the host country in the European Union back to the country where he/she came from prior to entering the European Union. It may concern voluntary or forced return. It may be related to his/her country of origin, or a country in which the person concerned stayed briefly, or a third country where he/she fulfils the legal conditions to gain access or actually has access.

**Return Decision:** An administrative decision by a responsible public body or a judgment of the court in the host country in the European Union, stating or declaring the stay of a third-country national to be illegal and imposing an order to return or stating an obligation to return.<sup>113</sup>

**Removal:** Implementation of forced return, being the physical transporting of a third-country national from the territory of the host country in the European Union<sup>114</sup> to the country of origin or another country where the third-country national has or can be given right of stay.

**Voluntary departure:** A third-country national chooses departure from the host country in the European Union independently and/or with financial or in kind assistance.

113 Article 3(4) of the Return Directive

114 Article 3(5) of the Return Directive

## ANNEX II: LIST OF INTERVIEWED ORGANISATIONS

Association of Dutch municipalities (VNG)  
Directorate for Migration Policy (DMB), the Ministry of Security and Justice  
Immigration and Naturalisation Service (IND)  
Repatriation and Departure Service (DT&V)  
Central Agency for the Reception of Asylum (COA)  
International Organisation for Migration (IOM)  
Dutch Council for Refugees (VWN)





## ANNEX III: LIST OF ORGANISATIONS

**Aliens Police, Identification and Trafficking in Human Beings Department:** The Aliens Police, Identification and Trafficking in Human Beings Department (AVIM) is responsible for supervising lawful residency of foreign nationals in the Netherlands. The AVIM mainly focuses on the prevention of abuses in Dutch society, preventing and combating disturbances of public order, and the rule of law. The AVIM also conducts research into the identity and residency status of foreign nationals. If the AVIM arrests an asylum seeker who has exhausted all legal means, they work in conjunction with DT&V on a departure from the Netherlands.

**Central Agency for the Reception of Asylum Seekers:** The Central Agency for the Reception of Asylum Seekers (COA) is an independent administrative body that is accountable to the Minister for Migration. On behalf of the Minister for Migration, COA offers housing to asylum seekers and people in a vulnerable position, and counsels them for their future in the Netherlands or elsewhere. In conjunction with the Repatriation and Departure Service (DT&V), COA plays a key role in the preparation and supervision of third-country nationals in their departure from the Netherlands, as they have exhausted all legal means and have no right of residence.

**Custodial Institutions Agency:** On behalf of the Ministry of Security and Justice, the Dutch Custodial Institutions Agency (DJI) is responsible for executing custodial measures and for coordinating freedom-restricting measures, such as placing those third-country nationals that are forced to leave the country in custody. The DJI is responsible for taking daily care of persons subject to certain jurisdiction, and works on preparations for return to their country of origin. The DJI conducts the supervision at freedom-restricting institutions and detention centres in the Netherlands, with the aim to keep the third-country national available for departure from the Netherlands.

**Repatriation and Departure Service:** The Repatriation and Departure Service (DT&V) is an agency of the Ministry of Security and Justice. It is the return organisation of the organisations cooperating in the immigration process and manages the actual departure of third-country nationals who are not eligible to stay in the Netherlands. As administrator of the return policy, the DT&V takes the lead in ensuring that return progresses carefully and in good time. The DT&V conducts interviews with rejected asylum seekers and asylum seekers who have exhausted all legal means, and takes the lead in making decisions relating to the return of individual rejected asylum seekers.

**Various NGOs:** In addition to the IOM, there are various other NGOs in the Netherlands that are involved in returning asylum seekers who have exhausted all legal means, out of the Netherlands. Aside from IOM's return and reintegration programs, the DT&V can also try to accomplish the return with other organisations. These organisations include the Dutch Council of the Netherlands (VWN), Bridge to Better, Stichting ROS (Rotterdam

Support Organisation for Undocumented People), Stichting LOS (National Support Organisation for Undocumented People), and Stichting Solid Road (foundation).

**International Organisation for Migration:** The International Organisation for Migration (IOM) is an intergovernmental organisation that has its headquarters in Geneva. The organisation was established in 1951 to assist displaced persons in Europe back home in the post-war situation. The basic assumption for the IOM is that humane and orderly migration benefits both migrants and society at large. The IOM provides the DT&V with support in returning rejected asylum seekers, by way of information and advice, mediation in obtaining travel documents, and in facilitating actual departure.

**Immigration and Naturalisation Service:** The Immigration and Naturalisation Service (IND) is an agency of the Ministry of Security and Justice. The IND is the admissions organisation of the Netherlands. The IND assesses all applications from third-country nationals who want to live in the Netherlands or who want to become Dutch nationals. The IND is the organisation that approves or rejects applications in the General Asylum Procedure and Extended Asylum Procedure. After there has been a first negative decision on the asylum application, the IND hands third-country nationals over to the DT&V.

**Association of Dutch Municipalities:** The Association of Dutch Municipalities (VNG) is the umbrella organisation of all municipalities in the Netherlands. The VNG supports municipalities in their development and manages their interests in political lobbying in The Hague. In the return of asylum seekers who have exhausted all legal means, the VNG plays an important role in consistent implementation of the return policy. The DT&V shares information with the VNG which is of importance for implementation of the return policy. In its turn, the VNG monitors the fact that the return policy is implemented consistently and uniformly in the Netherlands.

**Dutch Council for Refugees:** The VWN is a non-governmental organisation that manages the interests of refugees and asylum seekers in the Netherlands. Implementation operations are done by paid staff and a large number of volunteers. The three core tasks of the Dutch Council for Refugees (VWN) are: providing personal support through legal guidance and social counselling; influencing policy by identifying bottlenecks in the asylum procedure; and finally, encouraging support for asylum seekers and refugees in society.

# ANNEX IV: INFOGRAPHIC OF RETURN PROCESS

## Return procedure of adult third-country nationals\*

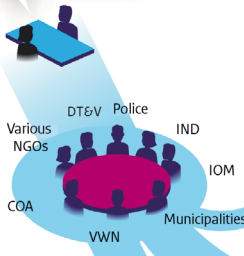
This infographic outlines an overall picture of the return procedure. TCN's whose application for a residence permit is rejected, the residence permit has been withdrawn, or people staying illegally in the Netherlands, must leave the Netherlands. They are given a period to leave voluntarily

### Drawing up a departure scheme

In the departure scheme, the **Repatriation and Departure Service (DT&V)** describes the strategy to get the TCN to depart from the Netherlands **voluntarily** or **forced**.

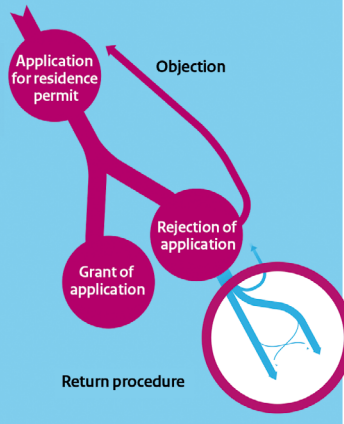
The DT&V regularly and structurally talks to the TCN to encourage assisted **voluntary return**

In the event of **new circumstances** the TCN can submit a **new application** for a residence permit



### Admission procedure

The return procedure is the last step in a carefully executed admission procedure



### TCN cooperates with return

TCN cooperates with return and gets sheltered for a certain period

### TCN does not cooperate with return

TCN has supervisory measures imposed. These are: reporting regularly to the police, confiscation of passport or paying a deposit. In exceptional cases, as a last resort and under DT&V supervision, TCNs are placed in custody

### Implementation departure scheme

The DT&V facilitates and encourages TCNs to return to the country of origin, e.g. by using return projects to remove obstacles to return

TCN still does **not** cooperate with independent departure

TCN placed in custody changes his mind and **does cooperate** with assisted voluntary return

DT&V itself takes care of correct documents at embassies

More information available at [www.dtenv.nl](http://www.dtenv.nl)

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\* Third-country nationals = TCNs



Immigration and Naturalisation  
Service  
*Ministry of Security and Justice*



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### **The European Migration Network**

The European Migration Network (EMN) was established in 2008 by the Council of the European Union, to provide for the need of information of policy makers and authorities of the European Union, and of the individual national Member States in the area of migration and asylum. For this purpose the EMN collects current, objective, reliable and, where possible, comparable information about migration and asylum.

[www.emnetherlands.nl](http://www.emnetherlands.nl)