



EMN Ad-Hoc Query on Period of application of an entry ban

Requested by Rafael BÄRLUND on 24th August 2017

Return

Responses from Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Slovak Republic, Slovenia, Sweden, Switzerland, United Kingdom (17 in total)

Disclaimer:

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


Background information:


The Court of Justice of the European Union has given a judgement 26 July 2017 concerning the return of illegally staying third-country nationals (C-225/16). According to the decision, the period of application of the entry ban does not begin until the date on which the person concerned has actually left the territory of the Member States. Finland has this far calculated the period of the entry ban from the moment at which the entry ban was issued and has issued a SIS-alert at the same time. The Finnish Immigration Service makes the decisions on refusals of entry and on en-try bans, and the police enforce the refusal of entry e.g. removal from Finland. In cases where the police enforce the refusal of entry, they can register the beginning of the ban and issue a SIS-alert. A problem arises in cases where the applicant is given opportunity to leave Finland voluntarily and the applicant travels to another Schengen country, without notifying the authorities. In such cases authorities cannot be sure when the applicant has actually left the territory of the Member States and therefore they cannot issue a SIS-alert.




Questions



1. From which date has the Member State calculated the entry ban to begin and when has the SIS-alert been issued?
2. If the Member State has calculated the ban from the date on which the person actually left the territory, how has the beginning of the period been entered into the national register and how has the alert been issued when the applicant has left/disappeared through another Member State? A) In cases mentioned in the second question, has the Member State used a certain assumed date to indicate the start of the period anyway? B) In cases mentioned in the second question, what does the Member State consider as relevant proof of the applicant leaving the territory of the Member States?
3. If the Member State has not calculated the period of the entry ban from the date on which the person actually left the territory, what kind of changes have been made or are planned to the procedures due to the aforementioned decision?


Responses




	Country	Wider Dissemination	Response
	Belgium	Yes	1. In Belgium an entry ban will start applying the day of notification, so not the day that the third-country national leaves Belgium (article 74/11 § 3 of the Immigration Act). As a result the entry ban can expire if the third-country national has never left the territory. Alerts are not entered into the SIS systematically, but on a regular basis. Entering alerts into the SIS systematically is not always


			<p>possible in practice (increasing number of entry bans, number of agents needed, other important tasks,...). So, in Belgium alerts are entered by priority: in the database of notified entry bans, officials look for the persons who have already returned and/or for the worst cases (threat to public order or national security). In those groups, priority of treatment is given to the ones with the longest period of validity of the entry ban. This practice is in accordance with the principle of proportionality provided for in article 21 of the Regulation for SIS II (1987/2006): ‘Before issuing an alert, Member States shall determine whether the case is adequate, relevant and important enough to warrant entry of the alert in SIS II’.</p> <p>2. NA</p> <p>3. No changes have been made yet. A legislative change will be made in order to ensure its compliance with the C-225/16 ruling. Sources: • Immigration Act, article 74/11 • Common template of EMN focused study ‘The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards’, 2017, Belgian answers to questions 63 and 64 • Belgian Immigration Office: legal department</p>
	Croatia	Yes	<p>1. In accordance with Art. 111 of the Law on Foreigners, the prohibition of entry and stay shall be counted from the date: a) the deadline for voluntary departure, b) forcible removal, c) the expiration of the ban on entry and stay issued by the previous decision on expulsion, d) in other cases from the day of execution of the expulsion decision. Upon entry into Schengen, the Republic of Croatia does not enter a ban on the SIS base, but only in the national database.</p> <p>2. The ban on entry and stay is entered into the national information system by knowing that the person left the Republic of Croatia. Relevant evidence is the exit stamp from the Republic of Croatia or EGP in the travel document. Another proof is the application to the Croatian Embassy in the home country of the foreigner unless it has received the exit stamp.</p> <p>3. N/A</p>

	Czech Republic	Yes	<p>1. There are plenty of situations that occur in practice. Generally the entry ban starts applying after the period for voluntary departure is gone. Such person is registered in national database on the date the decision including entry ban enters into force. SIS-alert is registered on the day the decision becomes enforceable.</p> <p>2. Alerts are entered into the SIS systematically. See answers under Q.1</p> <p>3. CZ is an intraschengen country and majority of foreigners are given chance to leave the territory voluntarily. CZ cannot monitor all border crossings, Entry-Exit System is needed. No changes are feasible before EES is operational.</p>
	Estonia	Yes	<p>1. In accordance with the § 74(1) of the Obligation to Leave and Prohibition on Entry Act the entry ban shall be applied with regard to the TCN as of the date of compliance with the return decision. The entry ban imposed with a return decision is automatically transferred to national registry with a status “ON HOLD”. The entry ban on hold is not visible for operational purposes. The return official checks regularly the information about the possible return of the TCN. There are also regular reminders from the system about the case to the official (ie the deadline for voluntary departure is closing or is exhausted). If the TCN has returned voluntarily or has been returned by force the system is updated with a date of return of the TCN. System automatically updates the entry in the national registry with an enforcement date. In the national registry the date of entry into force of the entry ban is updated and relevant end date is calculated by the system. The status of an entry ban is automatically changed to “VALID” and an alert is automatically created by the system in SIS. Information about the entry ban is immediately visible for operational use.</p> <p>2. In cases in which is not possible to determine the date of the voluntary departure, the date of enforcement of the return decision is considered as starting point.</p> <p>3. N/A</p>
	Finland	Yes	<p>1. Finland has calculated the period of the entry ban from the moment the decision of the entry ban</p>



			<p>was made. The alert has been issued at the same time.</p> <p>2. N/A</p> <p>3. Finland needs to change current procedures due to the decision. Changes are under consideration.</p>
	France	Yes	<p>1. According to the article L.511-1, III of the Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA), the entry ban applies when the decision is notified to the person by the police or the prefecture and not when the person leaves the territory of the MS. An entry ban against a third-country national can be issued: at the same time as an obligation to leave the territory; after the obligation to leave the territory (after the expiration of the 30-day voluntary departure period), if the third-country national remains on the territory after the expiration of this delay; after the obligation to leave the territory with an immediate departure , if the third-country national has remained on the territory. According to the same paragraph of the article, the person who is subject to an entry ban is informed of the issuance of the immediate SIS-alert.</p> <p>2. n/a</p> <p>3. France is examining the possibility of amending its legislation in order to be in conformity with the aforementioned decision. However, it implies a modification of the French law. Furthermore, regulatory provisions will also have to be adapted.</p>
	Germany	Yes	<p>1. According to Art. 11 of the German Residence Act, the entry ban is calculated from the date on which the third country national has left the German territory, either by being forcibly removed or if he or she leaves voluntarily via an AVR programme. Also, according to Art. 50 paragraph 3 of the German Residence Act, a TCN only needs to his or her obligation to leave if he/she leaves the Schengen area. The only exception of this being the case is, if the TCN has a residence permit in one of the member states of the EU. A SIS-alert is only issued when there is relevant proof that TCN has left the country, either by being forcibly removed or if there is a notification from the receiving country. In general, the SIS-alert is initiated by a foreigners authority of the federal states (Bundesländer) responsible for the TCN's case and issued by the federal police. In some cases, the</p>



			<p>SIS-alert can also be issued by the Federal Office for Migration and Refugees.</p> <p>2. As mentioned before, the departure of a TCN can only be counted as proven if he/she has been forcibly removed, if he/she departed via an AVR programme or if there is any documented proof from the receiving country that the TCN has entered this state's territory. If the TCN leaves the Germany territory voluntarily without the aid of an AVR programme, his/her cooperation is needed to notify the foreigner's authority about his/her departure via an "attestation of departure", which will be described later. If the TCN leaves the country without notifying the responsible authorities, the beginning of the entry ban cannot be calculated and will not be estimated until there is significant proof for his/her departure. If significant proof is attained, the entry ban will be calculated from the day on which the TCN is proven to have left the country and is no longer residing in the Schengen area. If a TCN does not report back to the foreigner's authority for at least six weeks, an arrest-warrant is issued. The warrant is usually only issued for the national level. However, if there legal reasons for detention of the TCN, a SIS-alert can also be issued. In general, being accompanied during the departure by either governmental authorities or trusted NGO's like the IOM counts as proof for leaving the country. There is also an "attestation of departure" (Grenzübertrittsbescheinigung) given to TCN who want to leave the country on their own accord. The TCN has to hand in this document either at the border inspection post when leaving the Schengen area or the German embassy in a receiving country, if he/she has a residence permit. The document will then be sent back to the foreigner's authority responsible for the TCN's case. If this document is received by the German authorities, the TCN's departure is considered as proven with the date for the beginning of entry ban being set on the day on which the document was received by the boarder inspection post or the German embassy. Entry or exit stamps in the TCN's travel documents are also considered as rele-vant proof for a departure.</p> <p>3. See question 1</p>
	Hungary	Yes	<p>1. Hungary calculates the ban from the date on which the person actually left the territory and that's the date when the SIS alert is issued.</p> <p>2. According to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, section 47 (7) says: the duration of exclusion ordered in conjunction with expulsion shall apply from</p>

			<p>the date of departure from the territory of the Member States of the European Union, or if this is not know, from the deadline prescribed therefor.</p> <p>3. ---</p>
	Ireland	Yes	<p>1. Ireland does not participate in border-related aspects of the Schengen acquis and does not enter entry bans into SIS II.</p> <p>2. .</p> <p>3. .</p>
	Latvia	No	
	Lithuania	Yes	<p>1. -The decision concerning the compulsory return is issued together with the entry ban. The entry ban is calculated from the date on which the person actually left the territory. The SIS-alert is issued when the Migration Department receives the information, that the third country national has left the territory (this might mean that the SIS-alert is issued several days after TCN leaving the territory). -If the decision is issued for the voluntary return of TCN, the entry ban decision can be issued separately from the voluntary return decision – after the period of voluntary return is exceeded. In this case the entry ban is calculated from the day when the entry ban decision is issued and SIS-alert is recorded the same day as the entry ban. -Decisions are adopted by these institutions: decision on voluntary return is issued by the Police, State Boarder Guard Service and Migration Department; the decisions concerning the compulsory return, entry ban and SIS-alerts are issued and recorded by the Migration Department.</p> <p>2. The entry ban is calculated from the date on which the person actually left the territory if the person was issued the entry ban together with compulsory return decision. In this case police or State Boarder Guard Service official escorts the TCN to the boarder crossing point. If the compulsory return decision is issued, the TCNs are usually detained to limit the possibility of hiding. In the case of person disappearing the SIS-alert would not be entered. cases mentioned in t A) No. B) If the</p>

			<p>person was issued the compulsory return decision, Police or State Boarder Guard Service official escorts the TCN to the boarder crossing point.</p> <p>3. There are no plans to change the procedures, because the entry ban is calculated from the day of the decision only in the cases of of voluntary return and entry bans are very rare in these cases. It should also be noted that most TCNs carry out voluntary return decision (in 2016 87 per cent, in 2015 – 90 per cent).</p>
	Luxembourg	Yes	<p>1. Return decisions may carry with them a ban on entering the territory for a maximum period of five years, declared either simultaneously with the return decision or by a separate subsequent decision. The Minister shall take into consideration the specific circumstances of each case. The period of prohibition of entry onto the territory may be longer than five years if the foreigner concerned constitutes a serious threat to public policy, public security or national security.[Article 112 (1) of the amended law of 29 August 2008] As an administrative act, it produces its effects on the day it was issued. However, for the third-country national it only has an effect on the day it was notified[Article 112 (1) in accordance with article 113 of the amended law of 29 August 2008]. The period of the entry ban begins to run on the date that the individual leaves the country and the SIS-alert will be issued the same date.</p> <p>2. Normally entry bans are issued to individuals who are in the context of forced return so the authorities know exactly the date when the individual left the country. In the eventuality that the individual was not in detention (i.e. the deadline for detention expired and the individual was release) and s/he disappears, if the third-country national was notified of the entry ban, the date for calculation the entry ban will begin the date of the notification and in that case the SIS alert can be introduced based on principles of administrative law, as the effects of the decision run from the day of the notification. In these cases the Minister in charge of Immigration and Asylum can order the Grand-ducal police to verify that the individual is not residing in its last known address (articles 133 (1) and 134 of the amended law of 29 August of 2008 on free movement of persons and immigration). A) See above. B) See above.</p> <p>3. N/A.</p>

	Slovak Republic	Yes	<p>1. According to the Slovak legislation, the period of an entry ban begins with: a) the day of the execution of the administrative expulsion (return) b) the day on which the third-country national leaves the territory within the assisted voluntary return, or c) the day on which the period for departure set in the decision on administrative expulsion (return decision) expires unless a) or b) applies. In order to make a record in the national database (IS INBO) and subsequently in IS SIS, the first condition which has to be met is that the decision on administrative expulsion (return decision) along with an entry ban has to be enforceable. Cases when the Police unit ensures the enforcement of the return decision of a foreigner and cases when the foreigner leaves the territory of the Slovak Republic within assisted voluntary return are clear and so the day when this takes place is also the day when the record is made into IS INBO/IS SIS. As for the option c) - the day on which the period for departure set in the return decision expires, the practice is as follows: As mentioned above, the decision on return decision along with an entry ban has to be enforceable. Currently, when the Police units issue return decisions, they basically do not remove the suspensive effect of an appeal and thus the return decision is not enforceable when issued. If the Police unit removes the suspensive effect of an appeal, the return decision becomes enforceable on the day of its issuance, which also has to be justified by the respective Police unit. Foreigners who are given a period for departure and the enforcement of the return decision is not ensured, the suspensive effect is removed only in special and justified cases. In such cases, the enforcement is linked to the moment when the return decision comes into effect. (The authority has to wait whether the foreigner appeals the return decision and if so, the appeal procedure has to pass and only when the appeal body rules out its decision, the return decision comes into effect and is enforceable.) The second condition which has to be met in order to make a record in IS INBO/IS SIS is that the period for departure has to be expired. The period for departure beings with the moment when the return decision becomes enforceable. In order for a record in IS INBO/IS SIS, it is necessary for a period for departure to be expired. Upon its expiry, Slovak Republic makes a record in IS INBO and subsequently in IS SIS. As currently there is no common information system which would enable a flexible control of entry and departure of foreigners within all Schengen areas, it is not possible, from the point of view of the Slovak Republic, verify the fulfilment of an obligation of a foreigner and his/her actual departure from the Schengen area. However, the absence of such system cannot cause that records on foreigners who broke laws of the Slovak Republic are not made. Such a record in the system makes it possible to reveal the foreigner who did not comply with his/her obligation to depart. Thus what it considered as decisive</p>
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			<p>and sufficient for the creation of a record is the existing enforceable return decision (including an entry ban) as well as the provision of information about the consequences of his/her record in the respective information systems.</p> <p>2. See 1.</p> <p>3. No such changes are envisaged, the procedure will follow as described in 1.</p>
	Slovenia	Yes	<p>1. Entry ban starts with the day of removal from the country.</p> <p>2. For obvious reasons the person is transferred to the border by the Police and removed. In case of escape the entry ban would start on the day the person escaped. Relevant proof of leaving is official act of the police officers only.</p> <p>3. n.a.</p>
	Sweden	Yes	<p>1. Entry ban starts when the decision is final and enters into legal force which is three weeks after the decision has been taken unless there is an appeal of the decision. Alerts are entered into the SIS as soon they have entered into force.</p> <p>2. 2. Not applicable however there is a mechanism in Sweden to verify if the third-country national has left the country. A proof of exit, “utresebevis” is issued by the Migration Agency and given to the third-country national who is instructed to leave the proof of exit when exiting the country. If the applicant leaves Sweden via an international airport the document/written statement is to be handed over to the Swedish border police when passing the border control. If they do not leave Sweden via an international airport, it is also possible to ask the applicant to approach a Swedish mission abroad to clarify that they have left the country. The proof of exit is then sent by the Police to the Migration Agency to register that the third-country national has left the country. To ensure an exit out of Schengen area, there is no transfer to Schengen countries when the Migration Agency is responsible for the outward journey.</p> <p>3. Sweden will implement that an entry ban begins when a person leaves the country. How this will</p>

			be done is now looked into.
	Switzerland	Yes	<p>1. The date is set on a case by case basis and independent from the date of departure. The SIS-alert is issued at the same time with the entry-ban.</p> <p>2. See 1.</p> <p>3. None. An order to leave the territory is not identical with measures regarding containment. They are issued independet from each other.</p>
	United Kingdom	Yes	<p>1. • In the UK, entry bans apply from the date the person concerns leaves the UK. • The UK only participates in the Schengen Information System (SIS II) for the purposes of police and judicial cooperation. We therefore do not participate in Regulation 1987/2006, which governs the use of the system for border control purposes, and so do not have the right to create these types of alerts.</p> <p>2. • When an irregular stay is detected on exit, an individual will be subject to the same enforcement ban procedures as other immigration offenders. • Anyone who has broken the immigration laws and is subject to a return decision, or whose irregular stay has been detected on exit, would have their details including date and method of departure noted on the Warnings Index. As indicated in the answer to 1), we cannot create a SIS alert.</p> <p>3. • Not applicable. The UK calculates the entry ban from the date the individual leaves the UK.</p>