



Ad-Hoc Query on Expulsion Definition Of Manifestly Unfounded As Related To Directive 2008/115/EC

Requested by NO EMN NCP on 28. August 2014

Reply requested by 26 September 2014

Responses from [Austria](#), [Belgium](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Hungary](#), [Ireland](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Netherlands](#), [Slovak Republic](#), [Slovenia](#), [Spain](#), [Sweden](#), [United Kingdom](#) plus [Norway](#) (19 in Total)

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1. Background Information

This ad hoc query concerns Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (The Returns Directive) (expulsion).

This directive establishes common standards and procedures for Member States, whereby illegally staying third-country nationals may be removed from their territories. It lays down provisions for terminating illegal stays, detaining third-country nationals with the aim of removing them within the framework of procedural safeguards. Member States must ensure that the treatment and level of

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protection of third-country nationals excluded from the scope of the directive corresponds at least to certain of its provisions on coercive measures, removal, health care and detention. In all cases, Member States must respect the principle of non-refoulement and take into consideration the best interest of children, family life and the health of the person concerned.

As a result of the Directive Article 7 (4) and 11, the Norwegian authorities have passed a legal provision on expulsion in cases where the Norwegian authorities do not give a voluntary departure date and the departure deadline is not adhered to as the Directive requires.

The wording of the Norwegian expulsion rule section 66 second paragraph is *included in our response in the form below*.

At present there are discussions in the Norwegian Immigration Appeals Board (UNE) on how “manifestly unfounded” shall be interpreted. When implementing the Directive in the Norwegian Immigration Act, our legislator states, inter alia, that the legal exclusion provision was not intended to be applied in most cases, but in cases where the application is presumed to be mainly based on false information. There must be a causal link between the incorrect information and the decision to reject the application for a permit. Illustrative examples: (i) if a foreigner alleged problems related to economic conditions and unemployment as the basis for his application or if (ii) the applicant provides false identity, or (iii) the asylum explanation is fabricated, and / or if (iv) the applicant comes from an EU country or another country which is normally considered safe for return.

QUESTIONS

In some cases, however, the Norwegian Immigration Appeals Board (UNE) experiences that it is difficult to determine what is a «manifestly unfounded” case. In this context, UNE wishes to clarify how other countries, which have a similar exclusion provision, interpret and apply this term.

In this regard, the Norwegian Ministry of Justice and Public Security and the Norwegian Directorate of Immigration would highly appreciate information on the following questions on behalf of the Norwegian Immigration Appeals Board:


1. Is the wording “manifestly unfounded” used in the national legislation in your country?
 - If not, is there a working definition in any practice memos or other written guidelines?
 - If yes, in what specific legal reference does it occur?

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- If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country?
 - If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory work, if it is possible.
2. Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application?
- If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible.
 - In this context we are especially interested in information about what standard of proof the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection?


We would very much appreciate your responses by 26 September 2014.

2. Responses¹






	Austria	Yes	<p>1. No, the term “manifestly unfounded“ is not used in Austrian legislation. Furthermore, there also no working definitions in any practice memos or other written guidelines in this regard.</p> <p>2. The national provisions on “measures terminating residence“ are found in the 8th chapter of the Aliens Police Act. In respect of the return of non-nationals without residence rights as well as asylum-seekers, the provisions of Art. 52 Aliens Police Act (return decision) or Art. 61 Aliens Police Act (order to send abroad).</p> <p>Art. 52 Aliens Police Act provides the requirements under which third-country nationals are to be issued a return decision. Simultaneously, the (written) decision must address the deadline for voluntary departure. A return decision can (not mandatory) be combined with an entry ban.</p> <p>The order to send abroad according to Art. 61 Aliens Police Act is a measure terminating residence for a</p>
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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			<p>limited group of persons. It comprises asylum-seekers as well as other non-nationals whose application or subsequent application for international protection was rejected due to protection in a safe EEA state or Switzerland or another Member State is responsible according to the Dublin Regulation.</p> <p>A „manifestly unfounded stay“ is not a (“direct”) element of the provision, neither for return decisions nor for orders to send abroad. A manifestly unfounded application can indirectly lead to a negative decision in the asylum procedure and thus e.g. to the issuance of a return decision according to Art. 52 Aliens Police Act.</p> <p>The provisions in the Austrian Aliens Police Act can be found here: http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241</p> <p>Source: Federal Ministry of the Interior.</p>	
	Belgium	Yes	<p>1: Yes. The notion “manifestly unfounded” is repeatedly stated in the Law of 15 December 1980 (Immigration Law), namely in Article 12bis (3), paragraph 2 and Article 52 (1), 7°. However, this notion is not defined in the Law of 15 December 1980 nor in the parliamentary work.</p> <p>The wording of the above mentioned provisions is as follows:</p> <ul style="list-style-type: none"> • Title I - Chapter III Stay exceeding three months - Article 12bis (3), paragraph 2: “Where the Minister or his delegate considers that the application is not manifestly unfounded, or when within five months following the confirmation of receipt referred to in paragraph 1, no decision is brought to the attention of the local authority, the application is declared admissible”. • Title II - Chapter II Refugees and persons who can benefit from subsidiary protection - Article 52 (1) “The Commissioner General for Refugees and Stateless Persons may decide not to recognize the status of refugee or not to grant subsidiary protection status to a foreigner when (s)he attempts to enter the Kingdom without satisfying the conditions laid down in Article 2, applied for asylum at the border, and” (...) 7°: 	

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			<ul style="list-style-type: none"> • Answer to question 2: <p>No. When transposing Article 7 (4) of the Return Directive into Belgian law, the possibility of not granting a period for voluntary departure or a period shorter than 7 days has not been used for third-country nationals whose application for legal stay has been dismissed as manifestly unfounded. This possibility has been used if there is a risk of absconding, or if an application for a legal stay has been dismissed as fraudulent, or if the third-country national poses a risk to public policy or national security.</p> <p>Sources : Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals. (FR version) Immigration Office – Study Unit</p>	
	Bulgaria	Yes		
	Cyprus	Yes		
	Czech Republic	Yes		
	Denmark	Yes		
	Estonia	Yes	<ol style="list-style-type: none"> 1. Yes, we use term “manifestly unfounded” in legal documents, in context of justification of return decision and in case of refusal to review application for temporary residence permit. Yes, standard proofs of manifestly unfounded application are: 1) an alien² has been refused the issue of a residence permit on the basis of Act and an alien has not produced any new essential evidence of the facts of which an alien was unaware during the proceeding regarding the previous application; 2) an alien has lodged an application for a temporary residence permit in order to avoid the enforcement of return, expulsion or extradition procedure and it has been possible for him or her to lodge an application for a temporary residence permit earlier; 3) an alien has not provided credible evidence regarding the reason for application for a temporary residence permit; 4) the explanations of an alien or a person obliged to give explanations are inconsistent, conflicting, improbable or lacking in circumstantial or personal details; 5) a 	

² An alien is a person who is not an Estonian citizen.

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			<p>basis for the refusal to review an application provided for in the Administrative Procedure Act has become evident or; 6) an alien is not required to hold a temporary residence permit in Estonia.³</p> <p>And in return decision context:</p> <p>1) the justification of the precept to leave shall only reveal the legal basis but not the factual basis, related circumstances or relevant considerations if an alien has been refused the residence permit or the granting of international protection because the application for residence permit or the granting of international protection is obviously unjustified;</p> <p>2) the term for voluntary compliance with the obligation to leave is not assigned by the precept to leave and the enforcement of the obligation to leave shall be carried out immediately if an alien has been refused the issue of the residence permit or the granting of international protection because the application for residence permit or the granting of international protection is obviously unjustified;</p> <p>3) if the immediate enforcement of the precept to leave is manifestly unreasonable or manifestly disproportionate for an alien, the term for voluntary compliance may be assigned in the precept to leave if an alien is refused the issue of the residence permit or granting of international protection because the application for residence permit or international protection is manifestly unjustified.⁴</p>
+	Finland	Yes	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes.</p> <ul style="list-style-type: none"> • If not, is there a working definition in any practice memos or other written guidelines? • If yes, in what specific legal reference does it occurs? It occurs in the Finnish Aliens Act, section 101, in reference to decisions on applications for international protection. • If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country? Yes, in the Aliens Act, section 101 (below).

³ According to Aliens Act § 219

⁴ According to Obligation to Leave and Prohibition on Entry Act § 6 (2), 7¹, 7²

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			<p>• If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory work, if it is possible.</p> <p><i>Aliens Act, section 101:</i> <i>An application may be rejected as manifestly unfounded if:</i></p> <p>1) <i>no grounds as mentioned in section 87(1)⁵ or 88(1)⁶ or other grounds that are related to non-refoulement have been presented, or if the claims presented are clearly implausible;</i></p> <p>2) <i>the applicant obviously intends to abuse the asylum procedure: a) by deliberately giving false, misleading or deficient information on matters that are essential to the decision on the application; b) by presenting forged documents without an acceptable reason; c) by impeding the establishment of the grounds for his or her application in another fraudulent manner; or d) by filing an application after a procedure for removing him or her from the country has begun, to prolong his or her unfounded residence in the country; or</i></p> <p>3) <i>the applicant comes from a safe country of asylum or origin where he or she may be returned, and the Finnish Immigration Service has, for weighty reasons, not been able to issue a decision on the application within the time limit laid down in section 104.⁷</i></p> <p>2. Has your national legislation, as a result of the Directive, implemented an expulsion rule which</p>
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⁵ Granting asylum: Aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country. (Aliens Act, section 87, subsection 1)

⁶ Subsidiary protection: An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under section 87 are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means:

1) the death penalty or execution;

2) torture or other inhuman or degrading treatment or punishment;

3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts. (Aliens Act, section 88, subsection 1)

⁷ Seven days: If the applicant is considered to come from a safe country of asylum or origin, a decision on the application shall be made within seven days of the date when the minutes of the interview were completed and the information on their completion was entered in the Register of Aliens. (Aliens Act, section 104, subsection 1)


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			<p>authorizes the expulsion of a person who has filed a “manifestly unfounded” application? Yes. (NB. The term “expulsion” is not used in the Finnish legislation. Expulsion is understood here as “prohibition of entry”.)</p> <ul style="list-style-type: none"> • If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. <p>Pursuant to section 150 of the Finnish Aliens Act, a <u>prohibition of entry is ordered, if no time limit is set out for voluntary return.</u></p> <p><i>Aliens Act, section 150, subsection 1:</i> A decision on refusal of entry or deportation, may include a prohibition of entry imposed on an alien. A prohibition of entry is ordered, if no time limit has been set out for voluntary return under section 147a (2), or if the alien has not left the country voluntarily within the fixed time limit, unless otherwise provided in section 146. An alien who has been issued with a residence permit under section 52a is not prohibited from entering the country, if he or she has not been issued with a new residence permit or his or her residence permit has been cancelled, unless he or she has refused compliance with the obligation to return or he or she is a danger to public order or security. A prohibition of entry may be ordered in a separate decision if the alien has not left the country voluntarily within the fixed time limit.</p> <p><i>Aliens Act, section 150, subsection 2:</i> A prohibition of entry is ordered for a fixed term of no more than five years or until further notice. An alien who has been sentenced to punishment for professional offence may be prohibited from entering Finland until further notice, if he or she is a danger to public order or security.</p> <p>Pursuant to section 147 a, subsection 2, <u>no time limit is set for voluntary return in case of an accelerated procedure under section 103.</u></p> <p><i>Aliens Act, section 147 a, subsection 1</i></p>	
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<p><i>A decision on refusal of entry or deportation sets a time limit of at least seven and no more than thirty days within which the alien may leave the country voluntarily. The time limit for voluntary return is counted from the day the decision is enforceable. The time limit may be extended for certain reasons. No time limit is set if the alien is refused entry immediately after crossing the border or if the alien is refused entry or deported because he or she is subject to a criminal penalty.</i></p> <p><i>Aliens Act, section 147 a, subsection 2</i></p> <p><i>No time limit is set for voluntary return, if there is a risk of absconding, if the person is considered to present a danger to public order or security, if the residence permit application has been refused on the basis of an evasion of provisions on entry, or if the case comes down to dismissing an application for international protection or applying an accelerated procedure under section 103. The risk of absconding is assessed as provided in section 121 a.</i></p> <p><i>Pursuant to section 103, subsection 2, <u>an accelerated procedure may be used if the application can be considered manifestly unfounded.</u></i></p> <p><i>Aliens Act, section 103, subsection 1</i></p> <p><i>An application for international protection may be dismissed if:</i></p> <ol style="list-style-type: none"><i>1) the applicant has arrived from a safe country of asylum defined in section 99 where he or she enjoyed or could have enjoyed protection referred to in sections 87 and 88 and where he or she may be returned; or</i><i>2) the applicant may be sent to another State which, under the Council Regulation on determining the State responsible for examining an asylum application, is responsible for processing the asylum application.</i> <p><i>Aliens Act, section 103, subsection 2</i></p> <p><i>A decision on an application for international protection may be issued under an accelerated procedure if:</i></p> <ol style="list-style-type: none"><i>1) the applicant comes from a safe country of origin as defined in section 100 where he or she is not at risk of treatment referred to in section 87 or 88 and where he or she may be returned;</i><i>2) the application can be considered manifestly unfounded as defined in section 101; or</i>



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			<p>3) the applicant has filed a subsequent application referred to in section 102, which does not contain any new grounds for staying in the country that would influence the decision on the matter.</p> <p>See section 101 for when an application may be considered manifestly unfounded (answer to question 1).</p> <ul style="list-style-type: none"> • In this context we are especially interested in information about what standard of proof the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection? <p>Please see the information above (answer to question 1) on how the legislator has interpreted the wording “manifestly unfounded”.</p>
	<p>France</p>	<p>Yes</p>	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes.</p> <ul style="list-style-type: none"> • If not, is there a working definition in any practice memos or other written guidelines? • If yes, in what specific legal reference does it occurs? The wording “manifestly unfounded” is used in article L. 551-1-II-2° of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). • If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country? There is no specific definition for “manifestly unfounded” actually provided in the French legislation. However, the wording “manifestly unfounded” has been defined by the Council of State (the supreme administrative court in France) in decision n°343248 of 28 November 2011.



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			<ul style="list-style-type: none"> • If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory work, if it is possible. According to the Council of State, an application for residence permit is considered “manifestly unfounded” if: <ul style="list-style-type: none"> - the application is not likely to correspond to the criteria for issuing the residence permit ; - the application has no credibility. <p>2. Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application? In France, a third country national can be removed if he/she is subject to a removal order. If his/her application for residence permit is considered “manifestly unfounded”, he/she will not be granted a residence permit and will be removed. The competent administrative authority can decide to remove him/her without a delay for voluntary return.</p> <ul style="list-style-type: none"> • If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. The competent administrative authority can decide to remove a third country national without a delay for voluntary return if his/her application for residence permit has been refused because it was considered manifestly unfounded. (Article L. 551-1-II-2° of the CESEDA) • In this context we are especially interested in information about what standard of proof the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection? See answer to question 1.
	Germany	Yes	<p>1. No. The exceptions for the requirement to set a deadline as provided for in article 7, section 4, of the Directive 2008/115/EG and the possibility of a shorter term allowed for the voluntary departure have been implemented by means of § 59, section 1, subsection 2, Aufenthaltsgesetz (German Residence Act) ,</p>


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			<p>which reads as follows:</p> <p><i>„By way of exception, a shorter time limit may be allowed or the granting of such a period may be waived altogether if, in individual cases, it is mandatory to safeguard overriding public interests, in particular where</i></p> <ol style="list-style-type: none"> <i>1. a well-founded suspicion prevails that the foreigner intends to evade refoulement, or</i> <i>2. the foreigner poses a serious danger to public safety or law and order.</i> <p>The German Residence Act does not provide for the rejection of an application for a residence permit on grounds considered to be „manifestly unfounded“ (unlike in the case of the application of the asylum-procedure law for certain applications for asylum not based on the Directive 2008/115/EG) and therefore this regulation provided for in Article 7, section 4, of the Directive was not transposed into German legislation. This is why explanations hereto are not to be found in administrative regulations and written instruction sheets.</p> <ol style="list-style-type: none"> 2. No, please see reply to question 1. 	
	Greece	Yes		
	Hungary	Yes	<ol style="list-style-type: none"> 1. The term “manifestly unfounded” of The Returns Directive can only be found in Act LXXX of 2007 on asylum art. 51. para. 5. This particular provision provides the legal conditions for rendering an application for an asylum “manifestly unfounded”. The relevant provisions of Article 51. reads as follows: <p>“(1) If the conditions of the application of the Dublin Regulations do not exist, the refugee authority shall decide on the question of the admissibility of the application, as well as whether conditions for ascertaining the manifestly unfounded nature of the application are in place.</p> <p>(2) [...] (3) [...] (4) [...]</p> <p>(5) The application is manifestly unfounded if the applicant</p> <ol style="list-style-type: none"> a) communicates only irrelevant or poorly relevant information in connection with his/her recognition 	

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			<p>both as a refugee and beneficiary of subsidiary protection;</p> <p>b) is not able to verify or substantiate his/her country of origin as a result of his/her conduct in bad faith; or</p> <p>c) has failed to put forward an application for recognition within a reasonable time, though s/he had had the option to submit it earlier, and s/he is unable to justify the delay with reasonable grounds.</p> <p>(6) The application shall not be rejected solely on the basis of Subsection (5) c).</p> <p>(7) The refugee authority shall examine the merits of the application for recognition in the context of manifestly unfoundedness, whether conditions for recognition as refugee or beneficiary of subsidiary protection prevail.</p> <p>(8) If the application is based solely or in part on the circumstances stipulated by Sections 6 (2) or 12 (2), the reasonable time stipulated by Subsection (5) c) shall be calculated from the appearance of these circumstances.”</p> <p>Upon a “manifestly unfounded” application filed by an asylum seeker the general expulsion regime regulating the expulsion of illegally staying third-country nationals apply (governed by the Act on the) i.e. there is no separate legal regime for the expulsion of an illegally staying third country national who has filed a manifestly unfounded application for refugee status.</p>
	Ireland	Yes	Ireland does not participate in Directive 2008/115/EC
	Italy	Yes	<p>1. Yes. In Italy, Article 13 (under the heading “Administrative Expulsion”) of Legislative Decree No 286 of 25 July 1998, (<i>Consolidated Act on Immigration</i>), provides that at present the expulsion of a TCN is enforced by the head of police administration with the TCN being escorted to the border by police officers when, inter alia, an application for a residence permit is rejected «as manifestly unfounded or fraudulent». However, this provision does not provide for a specific definition of “manifestly unfounded”.</p> <p>2. The above addition to Article 13 of the Consolidated Act on Immigration was introduced by Law No 129/2011, implementing Directive 2008/115/EC.</p> <p>The new Paragraph 4(c) of Article 13 reads as follows:</p>



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			<p>«4. Expulsion is enforced by the head of police administration, with escort to the border by the police: ... c) When the application for a residence permit has been rejected as manifestly unfounded or fraudulent».</p> <p>With reference to the notion of “manifestly unfounded”, Law 129 faithfully takes the text of Directive 2008/115/EC, without specifying what the phrase means and, therefore, leaving its interpretation to the discretion of the judicial and administrative authorities.</p> <p>The notion of “manifestly unfounded” is used in Italy in general and for other aims in the case-law of the Constitutional Court. It refers to something that is more than “unfounded” (being, in fact, manifestly unfounded). It requires the presence of <i>clear elements</i> of untruthfulness of a given matter.</p> <p>Law No 129 does not establish a specific expulsion procedure following an application for a residence permit that is manifestly unfounded.</p>
	Latvia	Yes	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes</p> <ul style="list-style-type: none"> • If not, is there a working definition in any practice memos or other written guidelines? - • If yes, in what specific legal reference does it occurs? The wording “manifestly unfounded” is considered as “clearly unjustified” and is used in Immigration Law Section 43. <p>Immigration Law Section 43 (3) determines if, when applying for a residence permit, a foreigner has provided false information or the application for a residence permit <i>is clearly unjustified</i>, the time period, by which the foreigner has to execute the voluntary return decision, may be specified to be less than seven days.</p> <ul style="list-style-type: none"> • If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country? No • If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory



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			<p>work, if it is possible -</p> <p>2. Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application?</p> <p>According to conditions established in Immigration Law third-country nationals may be removed from the territory if they stay in the country illegally, namely without a valid visa in a valid travel document, or without a residence permit issued by the Republic of Latvia or another Schengen Agreement Member State or without a residence permit of a long-term resident of the European Community.</p> <p>Immigration Law Section 41 (1) determines if it is detected that a foreigner is staying illegally in the Republic of Latvia, he or she shall be issued a voluntary return decision.</p> <p>If it establish that foreigner or his or her inviter has not submitted all the documents necessary in order to request a residence permit, or refuses to provide the explanations required which are related to the receipt of a residence permit and foreigner don't have any other legal basis to stay in the country, to the foreigner will be issued a voluntary return decision.</p> <p>Immigration Law Section 43 (1) determines a time period of seven to 30 days for fulfilment of the obligation in a voluntary return decision shall be determined. A foreigner has the right to fulfil such obligation earlier than laid down in the voluntary return decision.</p> <ul style="list-style-type: none"> • If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. See above. • In this context we are especially interested in information about what <u>standard of proof</u> the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection? <p>Up to this moment we haven't had a case regarding to Immigration Law Section 43 (3).</p>	
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	Lithuania	Yes	<p>1. Yes, the wording “manifestly unfounded” is used in the legislation, but not in the context of the return/expulsion procedures. The term “manifestly unfounded” is used only in the asylum procedures. If the request for asylum is considered “manifestly unfounded”, the applicant will not be granted international protection.</p> <p>The Law on the Legal Status of Aliens contains the following definition: Art. 2 par. 1</p> <p>“Manifestly unfounded application for asylum” means an application by an alien for asylum in the Republic of Lithuania in which there is clearly no substance to the applicant’s claim of fear of persecution in the country of origin or it is based on false or misleading representations or is an abuse of asylum procedures and it is clear that for the above-mentioned reasons it fails to meet the criteria established in this Law for the granting of asylum in the Republic of Lithuania.</p> <p><i>At the moment, the amendments of the Law are being discussed in the national Parliament, and it is intended to amend this definition in the following way:</i></p> <p>“Manifestly unfounded application for asylum” means an application by an alien for asylum in the Republic of Lithuania, in which there is clearly no justification of the persecution in the country of origin or (an application) which is based on fraud, or (an application) with which it is intended to abuse the asylum procedure, and which due to the mentioned reasons clearly/manifestly does not meet the criteria established in this Law for the granting of asylum in the Republic of Lithuania.</p> <p>2. No.</p>
	Luxembourg	Yes	<p>1. Yes. Luxembourg transposed article 7.4 of the Directive 2008/115/EC in article 111 (3) b) of the amended law of 29 August 2008 on free movement of persons and immigration. This article reads as follows: Art. 111 ...</p> <p>(3) The alien shall be obliged to leave the territory without delay if:</p> <p>a) his/her conduct constitutes a threat to public policy, public security or national security; b) an application for authorisation to stay or for a residence permit has been rejected on the ground that it was manifestly inadmissible, unfounded or fraudulent; ...</p>





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			<p>The official law and the bill as it was presented to Parliament is available and can be forwarded if anyone would like to read it. Contact kac@udi.no</p> <p>2. No. As we mentioned above, article 111 (3) b) of the amended law of 29 August 2008 establishes that the TCN shall be obliged to leave the territory without delay in the case an application for a legal stay or for a residence permit has been rejected as manifestly unfounded. However, article 116.1 foresees that the expulsion only applies in case the concerned person poses a risk to public policy, public security or national security. The article reads as follows: Art. 116.</p> <p>1. An alien may be expelled from the Grand Duchy of Luxembourg if his/her presence there constitutes a serious threat to public policy or public security or if he/she reappears on the territory despite having been prohibited from entering the territory.</p> <p>2. An expulsion decision taken by the Minister shall be in accordance with the procedure and detailed rules laid down in article 109(2) and article 110 of the law. It shall carry with it the obligation to leave the territory without delay.</p> <p>In case the TCN cannot be removed immediately as required by article 111 (3) b), the Minister in charge of immigration can place the TCN in detention according to article 120.</p>
	Malta	Yes	
	Netherlands	Yes	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes.</p> <p>• If yes, in what specific legal reference does it occurs? “manifestly unfounded” (kennelijk ongegrond) is a criteria laid down in the General Administrative Law (Algemene Wet Bestuursrecht). This Law is applicable to all administrative law decisions, not only to administrative decisions in aliens cases (residence, entry, return etc.). <u>In the national Aliens Law (Vreemdelingenwet) this criteria is only used with respect to administrative appeals (bezwaarschriften).</u> If</p>


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			<p>the appeals are 'manifestly unfounded' the administration may follow a relatively simple procedure to reject/deny the appeals. There is no obligation to hear/interview the person involved in those cases with respect to the appeals. lication t applies also to the Aliens law.</p> <ul style="list-style-type: none"> If yes, is a specific definition for "manifestly unfounded" actually provided in the national legislation of your country? See above. <p>Our highest judicial tribunal in administrative law, has provided the following definition on the criteria 'manifestly unfounded': Van een kennelijk ongegrond bezwaar is sprake indien er naar objectieve maatstaven bezien op voorhand redelijkerwijs geen twijfel over mogelijk is dat de bezwaren niet kunnen leiden tot een andersluidend besluit. Uit het bezwaarschrift blijkt reeds aanstonds dat de bezwaren van de indiener van het bezwaarschrift kennelijk ongegrond zijn.</p> <ul style="list-style-type: none"> Approximate meaning in EN: an appeals is manifestly unfounded if according to objective criteria there can reasonably be no doubt beforehand that the appeals do not lead to another decision (than issued in first instance). Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a "manifestly unfounded" application? If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. No. As stated above, the criteria 'manifestly unfounded' is only used with respect to appeals. Our national law does not provide the possibility to dismiss an application for legal stay as 'manifestly unfounded'. It is therefore no ground to refrain from granting a period for voluntary departure, as foreseen in art. 7 (4) of the Returns directive. 	
	Poland	Yes		
	Portugal	Yes		

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	Romania	Yes	
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. No, the term “manifestly unfounded” derived from the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 is not mentioned in the Slovak legislation in relation to the rejection of an application for a residence permit. 2. No, Slovak legislation does not include such a provision based on the aforementioned directive. However, in relation to lodging an application for a residence permit, it is possible to expel a person who provided false, incomplete or misleading data or presented falsified or counterfeited documents or a document of another person during the proceedings.
	Slovenia	Yes	<p>Slovenia transposed Article 7(4) of the Directive by Article 67(5) of ZTuj-2. A period of voluntary departure shall not be granted if the risk of absconding exists and if the stay of the alien in the Republic of Slovenia poses a risk to public order, public safety or national security.</p> <p>Article 67 (5) ZTuj - 2: In principle, the time limit for voluntary departure shall not be assigned to an alien regarding whom a risk of absconding exists, and to an alien whose stay in the Republic of Slovenia poses a risk to public order, public safety or national security. If less serious risk of absconding exists in certain circumstances a time limit for the voluntary departure may be granted</p> <p>Transposition of the Article 11 of the Directive can be found in Article 66 of ZTuj-2: With the return decision, the alien shall be also denied to enter the country if: a voluntary return in accordance with the fifth paragraph of Article 67 of this Act has not been granted to the alien or the alien has not left the country within the period of voluntary departure.</p>
	Spain	Yes	<ol style="list-style-type: none"> 1. Spain has no definition for “manifestly unfounded” applicable to immigration procedures. A permit is


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			<p>either granted or refused, without any further categories for the kind of refusal.</p> <p>2. Someone whose application is refused, is given 15 days to leave the country. After that, he/she will be staying illegally and a return procedure can be started.</p>
	Sweden	Yes	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country?</p> <p>No, but according to Chapter 8, Section 19 in the Swedish Alien’s Act (2005:716), the Swedish Migration Board may direct that the Board’s order to refuse entry may be enforced even if it has not become final and non-appealable (refusal of entry with immediate enforcement), if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds. “Manifestly unfounded” cases may fall in the scope of this section.</p> <ul style="list-style-type: none"> • If not, is there a working definition in any practice memos or other written guidelines? In the preparatory works for the provision above, it is stated that the provision is aimed at manifestly unfounded cases, see proposition prop. 2004/05:170 p. 214-215. <p>In a judicial position paper by the Director for legal affairs, it is also stated that manifestly unfounded cases may fall in the scope of Chapter 8, Section 19 above, i.e. that these cases may be considered as cases where there is obvious that there are no grounds for asylum or residence permit on other grounds.</p> <ul style="list-style-type: none"> • If yes, in what specific legal reference does it occur? See above. • If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country? See above. • If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory work, if it is possible.

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<p>In the preparatory works to older legislation, is given examples of cases where the provision above may be practiced, see prop: 1988/89:86 p. 198. The provision was considered to conform to the provisions of the Asylum Procedure Directive (2005/85/EG) when that directive was implemented in the Swedish legislation, prop. 2009/10:31 p. 208-209.</p> <p>2. Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application?</p> <p>The expulsion rule above came into force before the Returns Directive was implemented in the Swedish legislation. The provision was considered to conform to the Directive. In these cases, the time period for voluntary return in the Directive is not used according to the Alien’s Act, Chapter 8, Section 21.</p> <ul style="list-style-type: none">• If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. Prop. 2011/12:60 p. 32• In this context we are especially interested in information about what <u>standard of proof</u> the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection? <p>If the applicant only alleges economic problems or unemployment, the application can be considered as manifestly unfounded. Also, if the applicant comes from an EU country or another country where it is obvious that there is no persecution or treatment contrary to human rights, the application can be considered as manifestly unfounded.</p> <p>Concerning the question of false information, it is required that a person gives blatantly false information on all relevant circumstances. Normally, an application is not, according to our legislation or practice, considered as manifestly unfounded, if the applicant’s credibility is to be assessed (this is unclear to me!</p>



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			<p>Kate). Only the fact that the applicant has used false identity is generally not sufficient to consider the application as manifestly unfounded.</p>
	<p>United Kingdom</p>	<p>YES</p>	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes, though the UK uses the words ‘clearly unfounded’.</p> <p>If yes, in what specific legal reference does it occur? The UK adopts the wording “clearly unfounded” in section 94 of the Nationality, Immigration and Asylum Act 2002. This has been in force since 1st April 2003 and applies to all appeals made under Part 5 of the 2002 Act. It provides a certification process which removes the right for an in-country appeal where the claim is being rejected and is considered to be ‘clearly unfounded’. If a decision is certified under section 94, the right of appeal can only be exercised from abroad.</p> <p>Section 94: Appeal from within United Kingdom: unfounded human rights or asylum claim (1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.] (2) A person may not bring an appeal to which this section applies in reliance on section 92(4)(a)] if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded. (3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.</p> <p>This means that one of the following criteria must be met before certifying, and only <u>after</u> a decision has been taken to reject the claim: (a) An applicant resides in a state listed in section 94 (4) (designated states) (b) An applicant resides outside of one of the designated states but the claim is considered ‘clearly unfounded’ under section 94(2) (this is referred to as case-by-case certification).</p>

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			<p>If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country?</p> <p>Legislation does not provide a definition. A definition, though not precise, is provided in guidance to caseworkers as follows: “To be ‘clearly unfounded’, a caseworker must first be satisfied that the claim cannot, on any legitimate view, succeed.”</p> <p>This has been expanded and more closely defined in judgments by the UK Courts, principally, in October 2002 by the House of Lords* (now known as the UK Supreme Court). It made the following two points in respect of “manifestly unfounded” claims (this is applied equally to “clearly unfounded” adopted since April 2003):</p> <ul style="list-style-type: none"> • A “manifestly unfounded” claim is a claim which is so clearly without substance that it is bound to fail; • It is possible for a claim to be manifestly unfounded even if it takes more than a cursory look at the evidence to come to a view that there is nothing of substance in it. <p><i>*R v. Secretary of State for the Home Department, ex parte Thangarasa; R v. Secretary of State for the Home Department, ex parte Yogathas [2002] UKHL 36</i></p> <ul style="list-style-type: none"> • Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application? If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. <p>The UK has not opted into the Returns Directive. A person whose claim has been rejected and certified under section 94 of the 2002 Act is required to leave the UK.</p> <ul style="list-style-type: none"> • In this context we are especially interested in information about what standard of proof the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information that will not fulfill the requirements to be granted protection? <p>A claim is rejected and certified not because blatantly false information is provided or because it lacks</p>
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			credibility, but because the claim, even if accepted as true and taken at its highest, could not succeed.
	Croatia	Yes	
	Norway	Yes	<p>1. Is the wording “manifestly unfounded” used in the national legislation in your country? Yes.</p> <ul style="list-style-type: none"> • If not, is there a working definition in any practice memos or other written guidelines? • If yes, in what specific legal reference does it occurs? The wording “manifestly unfounded” is used in Section 66, Expulsion of foreign nationals not holding a residence permit: <p>The wording of the Norwegian expulsion rule section 66 second paragraph runs as follows:</p> <p>“Unless it would constitute a disproportionate measure, see section 70, a foreign national without a residence permit shall be expelled</p> <p>(a) when the foreign national has not complied with the obligation to leave the realm within the time limit given pursuant to section 90, sixth paragraph,</p> <p>(b) when the foreign national has not been given a time limit for voluntary return</p> <ul style="list-style-type: none"> • because there is a risk that the foreign national will evade implementation, see section 90, sixth paragraph (a), and section 106 a, • because an application has been dismissed as <u>manifestly unfounded</u> or as a result of materially false or manifestly misleading information, see section 90, sixth paragraph (b), <p>or</p> <ul style="list-style-type: none"> • because the foreign national has been found to pose a threat to public order or fundamental national interests, see section 90, sixth paragraph (c).”

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			<p>And in section 90 sixth paragraphs (b), Implementation of administrative decisions:</p> <p>“An administrative decision entailing that a foreign national must leave the realm shall be implemented by ordering the foreign national to leave within a set time limit. The time limit shall be set at between seven and thirty days. If deemed necessary, a longer time limit may be set. A time limit for voluntary return of less than seven days may be set, or a time limit may be dispensed with when:</p> <p>b) an application has been rejected as <u>manifestly unfounded</u> or as a result of materially false or manifestly misleading information.”</p> <ul style="list-style-type: none"> • If yes, is a specific definition for “manifestly unfounded” actually provided in the national legislation of your country? Preparatory work: Our legislator states that the legal exclusion provision was not intended to be applied in most cases, but in cases where the application is presumed to be mainly based on false information. There must also be a causal link between the incorrect information and the decision to reject the application for a permit. Illustrative examples: (i) if a foreigner alleged problems related to economic conditions and unemployment as the basis for his application or if (ii) the applicant provides false identity, or (iii) the asylum explanation is fabricated, and / or if (iv) the applicant comes from an EU country or another country which is normally considered safe for return. • If yes, please provide the wording of the article of your national ruling act and legal history/ preparatory work, if it is possible. Please see the information above. • Has your national legislation, as a result of the Directive, implemented an expulsion rule which authorizes the expulsion of a person who has filed a “manifestly unfounded” application? If yes, please provide the wording (exact definition) of the article of your national ruling act and legal history/ preparatory work, if it is possible. Yes, section 66 second paragraph. We refer to the legal text above. • In this context we are especially interested in information about what standard of proof the authorities need in order to expel a person? For example, is it possible to expel a person only if they actually give blatantly false information, or could a person be expelled just because he/she has presented information 	
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			<p>that will not fulfill the requirements to be granted protection? Please see the information above on how the legislator has interpreted the wording “manifestly unfounded”.</p>	
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