Bachelor Thesis

Asylum policies in Europe: the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden

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Abstract

The introduction of the Return Directive 2008/115/EC was the first directive of the European Union, which established common minimum standards on returning third country nationals to their country of origin. By transposing this directive, the process of Europeanization applies, as EU legislation is downloaded on the EU Member States. The consequences of Europeanization can result in policy convergence or, vice versa, divergence. In this respect, policy convergence is essential for the EU to respond with a common voice towards the rising numbers of asylum seekers and the protection of human rights of third country nationals. In order to see whether asylum policies present a trend towards policy convergence, the transposition of the Return Directive 2008/115/EC is compared to the national asylum legislations of Germany, Italy and Sweden. The time of investigation includes the period from 2008-2012. By means of that, the similarities and differences are evaluated. In this regard, it is concluded whether the transposition of asylum policies leads to policy convergence in these countries. The analysis reveals that Germany and Sweden present similar outcomes, while Italy shows the opposite. Thus, the process of Europeanization can be said to have partial impact on the policy convergence of asylum policies.

Nevertheless, it is essential to state that this thesis provides a comparison between the asylum legislations of Germany, Italy and Sweden and the Return Directive 2008/115/EC. In particular, three articles of the Return Directive 2008/115/EC are chosen to do so, namely voluntary departure, entry ban and detention. Hence, it is not analyzed to what extent the chosen countries have fulfilled these policy agreements. Further, no statement for the transposition of the entire Return Directive 2008/115/EC in Germany, Italy and Sweden can be made. Additionally, it must be noted that only these three EU Member States are compared to the Return Directive 2008/115/EC. This limited country study makes this research only applicable in Germany, Italy and Sweden. Therefore, no universal assumptions for the transposition of the Return Directive 2008/115/EC in other EU Member States can be concluded from this thesis. Lastly, the findings of this study can only be applied to the time period from 2008-2012.

List of Abbreviations

CEAS	Common European Asylum System
EP	European Parliament
EU	European Union
GDP	Gross domestic product
JHA	Council of Justice and Home Affairs
SCO	Safe Country of Origin Policies
TEU	Treaty of the European Union
UNHCR	United Nations High Commissioner for Refugees

Content

1. Introduction

Migration has been an important topic in the European Union (EU) in the last decade. Due to the ongoing flow of third country nationals, who daily apply for asylum in the EU, the Common European Asylum System (CEAS) emerged in 1999. In this regard, protecting human rights and upholding the rule of law is a huge challenge for the EU to deal with (International Jurists, 2014). In the year 2014, there was a peak in the number of asylum applications, 626,065[1] were registered. This is a growth of almost 50% compared to the year 2013. Additionally, more than 250,000[2] migrants entered the EU irregularly. This is a growth of 138%[3] from 2013 to 2014 and presents alarming numbers for the EU. In order to tackle these problems, the European Union took action and introduced several regularization procedures in recent years.

According to Geddes, immigration is mostly understood as a "domestic concern" (Geddes, 2005). It addresses interior ministries and agencies that are responsible to regulate immigration. In this regard, the EU stated that in order to improve the situation of asylum and migration policies, it is essential to ensure an effective return policy on the national level (European Commission, 2006: 10). One important instrument within this policy is the Return Directive 2008/115/EC. It agrees on common standards and procedures for returning illegally staying third country nationals (Baldaccini, 2009). Further, it promotes to protect the "fundamental rights and dignity" (European Commission-DG Home Affairs, 2013: 2) of third country nationals. This represents the perspectives of the Charter of Fundamental Rights[4], which provides the legal grounds for international protection in terms of human rights. Hence, the Return Directive 2008/115/EC grants protection to those third country nationals, who stay illegally in the EU (European Commission-DG Home Affairs, 2013). In order to speak with a common voice towards the ongoing flow of illegal immigration, it is essential that the Return Directive 2008/115/EC is correctly transposed into the asylum legislations of the EU Member States. Here, the transposition of asylum policies and its outcomes are particularly addressed. In respect to that, this thesis aims to examine whether certain Member States of the EU present different or similar outcomes in the transposition of the Return Directive 2008/115/EC. As Germany, Italy and Sweden currently present the highest numbers of asylum seekers in the EU, their asylum legislations are chosen to be compared to the provisions of the Return Directive 2008/115/EC. From a total of 626,065 asylum applications in 2014, Germany received 32%, while Sweden bears 13% and Italy 10%.[5] Resulting, Sweden has 8.4 applicants per thousand inhabitants, which is the highest in the entire EU[6]. Germany and Italy follow on rank 8 and 15, with a number of 2.5 and 1.1. applicants per thousand

[1]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b

[2]European Commission 2015, Irregular Migration & Return

[3]European Commission 2015, Irregular Migration & Return

[4]Charter of Fundamental Rights of the European Union 2000

[5]Eurostat 2015: Asylum in the EU

[6]Eurostat 2015: Asylum in the EU

inhabitants.[7] Based on that, the similarities and differences in the transposition of the Return Directive 2008/115/EC in these countries are evaluated.

Up to 2008, no common policy on how to treat asylum seekers in regard to human rights and migration had been introduced in the EU. Resulting, the Return Directive 2008/115/EC had been put into a developing stage since September 2005. As several Member States had raised certain concerns in the first year, it took three years to find a common denominator (Baldacci, 2009). However, the Return Directive 2008/115/EC was introduced in December 2008 by the European Commission.

The Member States[8] of the EU were obliged to transpose the Return Directive 2008/115/EC into their national legislations within the time frame of two years. The process of Europeanization plays a central role in this case, as the transposing of the Return Directive 2008/115/EC presents a top down approach. This means that EU legislation is downloaded on its Member States. In this way, they are required to transpose EU provisions into their national legislations (Börzel and Panke, 2013). Scholars still discuss whether the process of Europeanization leads to policy convergence in its outcomes. According to Featherstone and Radaelli (2003) and Börzel (1999), the process of Europeanization leads to changes at the domestic level of the Member States. In this regard, they assume that Europeanization may lead to policy convergence. Börzel and Risse (2003) define that the transposition of EU regulations requires policy convergence in policy outcomes. Thus, a lot of discretion how to transpose it exactly is left to the Member States. In this sense, "partial convergence"(Börzel and Risse, 2007: 496) is more likely to be expected than full convergence or divergence. Moreover, the authors Toshkov and de Haan (2013) found out that the concept of policy convergence applies to a limited extent in the national legislations of the EU Member States. More in detail, differences are still perceptible in the national legislations and their policy outcomes (Toshkov and de Haan, 2013). In contrast, the author Dimitrakopoulos (2001) observes a "European Style of transposition" (Dimitrakopoulos, 2001: 444) among the EU Member States. This lets him claim that the transposition of directives rather leads to similar than different outcomes in the transposition of EU legislation.

These contrasting views lead to the purpose of this thesis. Hence, the main research question is stated as:

"Which similarities and differences are present in the transposition of the Return Directive 2008/155/EC into the national asylum legislations of Germany, Italy and Sweden in the period from 2008-2012?"

Due to the fact that policy convergence defines the end result of a policy change over time (Knill, 2007), a time period is included in the research question. As the Return Directive

[7]Eurostat 2015: Asylum in the EU

[8]When using the term member state in connection with the Return Directive, 30 Member States are meant in particular. These are the 28 EU Member States, not including the UK and Ireland, but covering CH, NO, ICl and Lie. For more information see: COM(2014) 199 final, available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/docs/communication_on_return_policy_en.pdf

2008/115/EC was introduced in 2008, however, transposed into the national legislations of Germany, Italy and Sweden in 2011-2012, the time period 2008-2012 is chosen. As it extends the scope of this thesis to compare all articles of the Return Directive 2008/115/EC, three provisions are chosen in particular. The choice falls on the procedures on voluntary departure (Art.7), entry ban (Art.11) and detention (Art.15). This thesis analyses these articles, as they include the main provisions on returning third country nationals to their country of origin. This is also emphasized by existing literature, as many scholars (Acosta, 2010; Baldacci, 2009; Di Martino, 2013; Bertin et al., 2013) discuss the transposition of the Return Directive 2008/115/EC by referring to these procedures. The transposition of the Return Directive 2008/115/EC can be described as the process by which domestic policy areas increasingly become subject to European policy making (Börzel, 1999). In order to see which differences and similarities are present in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden in the period from 2008-2012, the policy convergence of the outcomes is evaluated in each of these Member States.

This is linked to the first sub question: "Do the outcomes of the transposition of the Return Directive 2008/115/EC present a trend towards policy convergence in terms of asylum policies in Germany, Italy and Sweden?"

Connected to this sub-question, this thesis addresses the impact of the process of Europeanization on policy convergence in its outcomes. This is done by the second sub-question, which is stated as follows: "Does the process of Europeanization lead to policy convergence of asylum policies in Germany, Italy and Sweden?"

It is essential to state that the aim of this study is to find out which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden. Thus, it is not analyzed to what extent the mentioned countries have been fulfilling these legal agreements. Further, it must be noted that only three EU Member States are examined. As a result, general assumptions for other EU Member States cannot be made.

1.1. Social Relevance:

Asylum policies have become an important focus in terms of European policies. "Fortress Europe" (Gebrewold, 2013) or "Deportation Machine" (Fekete, 2005) are only two terms the EU has been called due to the fact that the EU seems to block the entrance to Europe. This is executed by using sea, air and land forces. As previously mentioned, the year 2014 was the peak year regarding asylum applications[9] in the EU. The number of refugees, who were caught at crossing the borders of the EU, rose as well[10]. Almost regularly, tragedies of refugees losing their lives by trying to immigrate to Europe are reported in the news. Only recently, a boat with 700 refugees from the MENA region drowned in the Mediterranean See in April 2015.[11] These tragedies pressure the EU to react, especially in respect to the human

[9]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b

[10]European Commission 2015, Irregular Migration & Return

[11]Tagesschau.de, Retrieved from http://www.tagesschau.de/ausland/fluechtlinge-mittelmeer-119.html.

rights of asylum seekers. In 2006, the EU stated that it is essential to ensure an effective return policy to show the will to contribute to the improvement of asylum and migration policies (European Commission, 2006: 10). Resulting, similar asylum policies are a first attempt to act equally throughout the EU. In this sense, policy convergence of asylum policies can be one option to do so. Hence, the European Commission highlighted the importance of the correct transposing the Return Directive 2008/115/EC into the national legislations of the EU Member States. This is due to the fact that it provides "safeguards and legal remedies, as well as to the treatment of children and other vulnerable persons in return procedures"[12]. Further, it strengthens the basis of fundamental rights concerning asylum seekers. Moreover, it intends to improve the corporation between EU Member States and non-EU States. Thus, the Return Directive 2008/115/EC ensures to protect the fundamental human rights and dignity of third country nationals, while returning them to their country of origin (European Commission-DG Home Affairs, 2013). If all Member States converge with its procedures, human protective standards will be similar in each Member State. This is necessary for the EU as in to speak with a common voice towards the ongoing flow of asylum seekers.

In this connection, Europeanization and its theories of con- and divergence are widely discussed among a lot of scholars (Featherstone and Radaelli, 2003; Bulmer and Lequesne, 2005; Börzel and Risse, 2007; Van Vliet, 2010). However, so far, there is little evidence provided on whether Europeanization makes the legislations of the EU Member States more similar. However, the authors Börzel and Risse (2003) claim that the transposition of EU regulations demands policy convergence as a logical consequence. In respect to that, this thesis aims to see whether the transposition of the Return Directive 2008/115/EC has resulted in policy convergence in the asylum legislations of Germany, Italy and Sweden. Additionally, this research presents a contribution to already existing literature on asylum policies and on Europeanization and its theories of policy convergence.

1.2. Thesis overview:

This thesis is structured as follows: First, in chapter two, some background information on the history of asylum policies is given. Further, the transposition of the Return Directive 2008/115/EC in the three countries at hand is addressed. Second, in chapter three, a theoretical part follows which illustrates the concept of Europeanization and its theories of con- and divergence. This section is based on existing literature. Additionally, an insight in the transposition of directives is given. Moving on, the theory part is supported by a methodology part in chapter four. This includes the research design, operationalization and data analysis, which are applied in this study. Next, the Return Directive 2008/115/EC and its objectives are examined in chapter five. Here, the focus is put on three key elements, namely voluntary departure, entry ban and detention. Furthermore, the national asylum legislations of Germany, Italy and Sweden are compared to the Return Directive 2008/115/EC by means of these three procedures. In order to underline the outcomes, an overview of the results is given.

[12]Ecre 2014. Retrieved from http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/654-european-commission-notes-improvements-in-eu-return-policy-but-recommends-better-implementation-of-the-return-directive-to-protect-fundamental-rights-.html

This allows examining which similarities and differences are present in the national asylum legislations of Germany, Italy and Sweden due to the transposition of the Return Directive 2008/115/EC in the period from 2008-2012. In the end, a conclusion follows in chapter six. It discusses the results and answers the main research question of this study.

2. Background

This chapter provides some background information of asylum policies. It allows the reader to gain an insight into the development of European Asylum Policies before the introduction of the Return Directive 2008/115/EC in 2008. First of all, the emergence of a common migration and asylum policy is given. Afterwards, the development and adoption of the Return Directive 2008/115/EC is addressed. Thirdly, the content and its provisions are explained in particular.

2.1. The emergence of a common migration and asylum policy

The development of a Common European Asylum Policy can be traced back to more than half a century. The first step was made in 1949, when the international regime of refugee protection and thus, the United Nations High Commission for Refugees (UNHCR) was founded. Following, the Geneva Convention was published, which entailed itself to be the core element for refugee protection in Western Europe (UNHCR, n.d.). In addition, the New York Protocol in 1967 made the Convention applicable for the whole world (Kaunert, 2009). These encouraged, inter alia, the solidarity and corporation in terms of refugee protection.[13] Further calls for asylum policies started in the early 1970´s migration. By that time, West European Member States tried to control the immigration flow into their countries and to block the access to their asylum system (Boswell, 2003). However, who are these people that apply for asylum?

In this context, it has to be differentiated between refugees and asylum seekers. The former is described as a person ”who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” [14] by the Refugee Convention in 1951. In terms a third country national seeks for protection in a state, he has to apply for asylum. According to the Refugee Convention, asylum has been said to be a human right.[15] Thus, an asylum-seeker is someone who calls himself a refugee, but “whose claim has not yet been definitively evaluated” (UNCHR, n.d.). Thus, asylum systems serve to protect those refugees in need and to determine who this protection should be granted to.

If an asylum seeker has no valid status, he is described as an irregular immigrant. This person can be closest referred to as someone who breaches of a condition of entry or “the expiry of his or her visa, lacks legal status in a transit or host country”[16] . According to Guild (2004), irregular migrants are an “amazingly heterogeneous category’’ (cited by Acosta, 2010: 82)

[13]Convention and Protocol relating to the Status of Refugees 2010

[14]Convention and Protocol relating to the Status of Refugees 2010: 3

[15]Convention and Protocol relating to the Status of Refugees 2010

[16]International Organization for Migration (IOM) 2004, Glossary on Migration: 34

and therefore, a very complex phenomenon. Irregular migration has also been widely discussed on a political level. Resulting, it has been related to different names, inter alia "invasion" (Mitsilegas, 2004: 29). In a historical context, the increase of irregular migration and hence, the call for a common asylum policy, can be closely linked to the development of the Schengen Agreement. This was set into action by the 1985 Convention (Wolf, 2010). Before this arrangement, the borders of the EU Member States were argued to be "hard and relatively closed" (Delanty, 2006: 50), presenting "final frontiers" (Delanty, 2006: 53). After the introduction of the Schengen zone, the Member States have been likely to have more open borders and encourage mobility (Delanty, 2006; Hassner 2006). Therefore, the agreement can be seen as a bordering process. The European Union has become an area of free movement of people and goods (Convey& Kupiszewski, 1995). In contrast, the flow of immigration and the smuggling of drugs and weapons started to increase (Hills, 2006).

In order to see how the numbers of flows have risen and asylum applications have developed, a brief insight into these processes is given. After the introduction of the Schengen zone, the highest rate was accounted in 1992, with 670,000 asylum applications being registered in the EU 15.[17] In 2001, the EU 27 reported 424,200[18] asylum seekers, a falling rate. In 2013, this number rose to 432,055 applications in the EU 28.[19] This was the highest rate since the millennium. Further, in 2014, 626,065[20] refugees were registered, which again approximates the number of 1992. Moreover, it shows another decrease compared to the previous year. According to the UNCHR, the highest application rates can be found in Germany, France, Italy, Sweden and the United Kingdom (UNHCR, 2015).

While starting to block the access to their asylum system, Member States were also encouraged to protect the rights of asylum seekers (Boswell, 2003). Hence, a first attempt to pursue towards a common migration and asylum policy was made in the draft of the Amsterdam Treaty in October 1997 (Thielemann, 2008). Up to the enforcement of the latter in the Tampere Summit 1999, the EU had no "clear-cut competence" (Acosta, 2010: 83) in regulating topics on immigration. Thus, a first call for the Europeanization of migration policies was evoked (Lindstrøm, 2005). By means of moving asylum and migration issues from the third to the first pillar, they became of supranational concern (Kostakopoulou, 2000). Before that, it was in the sovereignty of the EU Member States to execute this competence and to provide asylum (Lavenex, 1998). As earlier mentioned, there are two possibilities to deal with irregular migration, namely regularization and deportation. However, only the latter was emphasized after the Amsterdam Treaty (Acosta, 2010). In addition to that, a time

[17]Eurostat 2015: Asylum Statistics, retrieved from http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics

[18]Eurostat 2015: Asylum Statistics

[19]Eurostat 2015: Asylum and new asylum applicants - annual aggregated data, retrieved from http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00191&language=en

[20]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b

structure for the development of a Common European Asylum System was set (Lavenex, 2001).

Further, the Council emphasized that a Common European Asylum System was necessary for the "area of freedom, security and justice"[21], which is based in a "shared commitment to human rights"[22]. The Council aimed this statement to counter the critical voices, who called Europe a fortress after the Kosovo refugee crisis (Lavenex, 2001). The next stop on the agenda towards a common migration system was the European Council meeting in Brussels in 2004. The Council highlighted that "solidarity and fair sharing of responsibility including its financial implications and closer practical co-operation between Member States" [23] was high essential in terms of a CEAS. In the Green Paper of 2007, the Commission affirmed this by saying that solidarity in the area of asylum was necessary to ensure "a common standard of protection and greater equality in protection across the EU" (Parkes, 2007: 5-6).

2.2. The development and adoption of the Return Directive 2008/115/EC

Up to 1999, no common policy on how to treat asylum seekers in regards to human rights and migration had been developed. As mentioned above, the Amsterdam Treaty made a step towards the harmonization of immigration law, as it rotated the competence of asylum policies to the first pillar. Hence, it was in the sovereignty of the European Union. This implied that an area of shared principles and values had been established, in which people residing are treated the same way in each country. This accounts for a situation, in which people pursue an irregular stay. These principles reflect different parts of the Amsterdam Treaty. Inter alia, they strive to contribute to human rights, democracy and the rule of law.[24]

The fact that human rights are an important value in the European Union is expressed by the Charter of Fundamental Rights. Therefore, it is important to be aware that human dignity is an important factor within this procedure and protected by EU law. This is emphasized by the statements "inviolable"[25] and "must be respected and protected"[26]. Article 6(1) of the former TEU refers to human dignity by stating that "the Union recognizes the rights, freedom and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties" (Douglas-Scott, 2011). Further, the Charter provides principles on how to treat asylum seekers. More in detail, principles of removal, protection and detention are provided (Baldaccini, 2009).

In respect to that, international protection for asylum seekers was set out by the refugee law. It is underlined that there is protection under the non-refoulement principle[27]. This means that Member States need to secure its citizen by desisting from imposing the refoulement principle

[21]European Council, 1999: Conclusion *I.2*

[22]European Council, 1999: Conclusion *I.3.*

[23]Brussels European Council, 4th & 5th November 2004, Presidency Conclusions 2014: 18

[24]Information available at the consolidated TEU version, articles. 2,6 and 21(2) and TFEU, article 208

[25]Charter of Fundamental Rights of the European Union 2000: Article 1

[26]Charter of Fundamental Rights of the European Union 2000: Article 1

[27]See: Convention and Protocol relating to the Status of Refugees 2010: 30, Article 33(1)

in cases there is no security provided in the country of origin. Additionally, the Charter prohibits collective expulsion[28]. As there are a lot of procedures that imply removal and required detention periods of refugees in certain circumstances, they are closely related to the fundamental right of security and liberty (Baldacci, 2009). The first part of Article 5 states that "No one shall be deprived of his liberty [...] the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition"[29]. Hence, a person cannot be held in prison for an unlimited time and needs to receive a final conviction.

Since deportation was stressed after the Amsterdam Treaty in 1999, the EU had always implied the idea to create an effective return policy. This should lead to public support for legal migration and asylum (European Commission, 2006). The method of forced return was thought to make a statement to third country nationals and to avoid further irregular entries (European Commission, 2002). However, this example of "effective governance" (Acosta, 2010: 83) moved the discussion on irregular immigration to the area of "criminal activity" (Acosta, 2010: 83).

The approach towards a common migration and asylum system continued in 2000. In order to fight irregular migration, the Council proposed to "harmonize measures" such as "a common visa identification system" and to focus on a "common administration of migratory flows" (Koff, 2006: 12) with third countries. Further, a common scheme being in line with the Tampere programme had been developed in 2002. The beginning was set in 2001, when the Commission discussed the idea on a common policy on irregular immigration[30]. Additionally, the Green Paper on how to deal with Community Return Policy was published in the same year. In this regard, the key message also was, as earlier mentioned, to work together with third countries in order to combat irregular immigration and to establish a policy addressing this topic.[31] Further, 39 manoeuvres were developed to be authorized from 1999-2004. These included "measures on asylum, irregular migration, trafficking, smuggling and border controls" (Geddes, 2005: 794).

Following, the idea of a Return Action Programme was mentioned in another Communication document of the European Commission[32]. Resulting, the Council of Justice and Home Affairs (JHA) agreed on the former in 2002[33]. It included provisions for different time periods, namely short, medium and long term. Common standards on return were stated as medium goal, meaning to be achieved within three years.[34]

[28]See: Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto as amended by Protocol No. 11: Article 4

[29]Council of Europe/ European Court of Human Rights 2014, Guide on articles 5 of the convention: 5

[30]Commission of the European Communities 2001

[31]Green Paper on a community return policy on illegal residents 2002

[32]Commission of the European Communities 2002

[33]2002/C 142/01 2002

[34]Council of the European Union 2002: 11

Being introduced in 2004, the Hague Programme underlined the establishment of the CEAS. Its focus was set on "strengthening freedom" (Balzacq & Carrera, 2006: 2) in terms of immigration. The EU focused on different legal instruments and its different aspects of repatriation. These are "removal, detention or the possibility of prohibiting re-entry" (Acosta, 2010: 83). In the Green Paper on the future of the CEAS, a transposition deadline for the EU Member States was planned by the end of 2010.[35] After the Hague Programme, the Council began to process towards common standards and procedures for returning illegally staying thirds country nationals. The first proposal was provided in September 2005. From that year to its actual adoption in December 2008, it took three years to find a common denominator for the so-called Return Directive 2008/115/EC (Baldacci, 2009). Especially the Member States raised certain concerns in the first year. In their opinion, the proposed directive gave third country nationals excessive rights and guarantees (Peers, 2008). Finally, it was put into force in January, 2009.[36]

2.3. The content of the Return Directive 2008/115/EC

The Return Directive 2008/115/EC can be referred to third country nationals who stay illegally in the territory of a Member State. It includes the factors of return, removal, detention and re-entry.[37] In this context, Member States can decide to return third country nationals staying irregularly in their country. In general, the Return Directive 2008/115/EC covers "provisions for terminating illegal stays, detaining third-country nationals with the aim of removing them and procedural safeguards"[38]. Hence, an asylum seeker should not be seen as residing illegally until a decision with a negative outcome concerning the application or its right to stay has been made.[39] Further, this directive mainly aims to support the rights of third country nationals, who cannot return to their country.[40] A decision to return has to be made by a Member State to the immigrant residing irregularly in its country. If another Member State already provided a valid residence permit, this person has to return to that Member State. Thus, the latter has the authority to handle its return decision. In certain circumstances, an autonomous residence permit may be issued to an irregular immigrant. Further, Member States should wait until pending procedures are completed before they decide to return a person (Europe Direct, 2014).

Moving on, the Return Directive 2008/115/EC gives an irregular immigrant the time period of 7-30 days to pursue a voluntary departure. However, there can be deviations, referring to "the length of stay, the existence of children attending school and the existence of other family and social links" (Article 7.2)[41]. Still, certain obligations can be imposed on a person if a risk of

[35]Council of the European Union 2002

[36]Europe Direct 2014, Common standards and procedures for returning illegal immigrants

[37]See Directive 2008/115/EC

[38]Europe Direct 2014, Common standards and procedures for returning illegal immigrants. Retrieved from

[39]Directive 2008/115/EC: procedure (9)

[40]Directive 2008/115/EC: procedure (12)

[41]Directive2008/115/EC: Article 7(2)

absconding[42] is present (Article 7.3). Preferably, voluntary return should be chosen over forced return. This has been encouraged by the Council in the Conclusion of the Justice and Home Affairs on voluntary return in 2005.[43] Sometimes, no voluntary departure is provided. Thus, a third country national has to return to its country of origin immediately (Article 8). In cases the so called removal is not in line with the non-refoulement principle or the occurrence of suspension applies, the former has to be postponed (Article 9). In addition, an entry ban can be imposed together with a return decision. If the former cases of having no voluntary departure or a non-compliance with the return decision is applicable, an entry ban shall be given (Article 11.1). The duration of the entry ban depends on the individual circumstances of the third country national. In general, it should not be set for longer than five years (Article 11.2). This changes if the third country national presents a "threat to public policy, public security or national security" (Article 11.3)[44].

All of the above mentioned procedures must be "provided in writing and accompanied by information on available remedies" (Europe Direct, 2014). Further, third country nationals should be able to give a corresponding consent and to acquire knowledge on why a decision took place.

In case a third country national does not comply with the discussed measures or is in the risk of absconding, Member States may impose a period of detention on that person (Article 15.1). However, this period is supposed to be as short as possible. The detention shall not be longer than six months (Article 15.5). In contrast, it can be extended to another 12 months due to certain circumstances (Article 15.6). Especially the latter detention period, which can last up to 18 months, and the re-entry ban, which can be imposed up to five years, earned the EU a lot of critical voices (Acosta, 2010). It was the first adoption under the so called co-decision procedure, which was used for most issues on border and migration. As the European Parliament (EP) functioned as a co-legislator for the first time, the focus was turned to the Parliament. Because of the co-decision procedure, the EP was in the possession of the same power as the Council concerning the outcome of legislation (Servent, 2010). It earned harsh critics, as the EP undertook no amendments on the Return Directive 2008/115/EC. This was contradicting, as it presented itself as an opponent towards JHA policies in earlier times. Hence, this outcome was seen as a change of value (Lahav & Messina, 2005). This phenomenon was traced back to the fact that the co-decision procedure offers new opportunities to several groups which have not been paid much attention to before (Servent, 2010).

In respect to that, the high criticism on the procedures of detention and entry ban is linked to the provisions on voluntary departure as well. Therefore, these three articles are used to

[42]The risk of absconding is described as "the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond" (Article 3.7)

[43]Council of the European Union 2005. Press Release 2683 Council Meeting

[44]Directive 2008/115/EC: Article 11(3)

compare the transposition of the Return Directive 2008/115/EC to the national asylum legislations of Germany, Italy and Sweden.

3. Theory

The main aim after introducing the CEAS in the Tampere Meeting was to achieve common asylum procedures in the European Member States.[45] As a result, the transposition of asylum policies as in to provide common minimum standards at the EU level was enhanced[46]. In this context, policy convergence of asylum policies allows the European Union to provide equal standards for third country nationals in each Member State. This thesis refers to the transposition of the Return Directive 2008/115/EC in particular. It aims to ensure fundamental rights to those third country nationals, who have no legal grounds in Europe. Hence, the concept of policy convergence has to be defined first, in order to accurately answer the research question of this paper. In this context, policy convergence has been examined by several authors. It is closely connected to the concept of Europeanization, as it can be a consequence of this process. In order to get a clear picture on expectations and possible outcomes of the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden, the following chapter provides some theories on Europeanization and policy convergence. As this thesis addresses the transposition of the Return Directive 2008/115/EC, an introduction to directives and a short overview on the transposition process of EU legislation is given as well. In the end, two hypotheses are stated.

3.1. A definition of directives

As the transposition of the Return Directive 2008/115/EC is to be compared to the national asylum legislations of Germany, Italy and Sweden, it can be useful to have some general background of this instrument. Directives adopted by the EU can be seen as a "framework legislation" (Börzel & Risse, 2007) that allow Member States to adapt to European policies. Instead of acting on a freely basis, directives have a binding character, which results in pressures for Member States to comply with these (Radaelli, 1997). Hence, "domestic institutions, policies and interests" (Börzel & Risse, 2007: 3) are controlled by European policies. In general, directives serve as a main element for the harmonization of EU legislation in the EU Member States. This describes why directives are used to legislate and harmonize asylum legislations. They "shall have a binding effect as to the result to be achieved" (Craig & De Búrca, 2011: 192). However, Member States are given the opportunity to choose their own methods to do so. After the introduction of a directive, a time limit for the transposition into national law is given. If a Member State does not comply with it at first instance, which is often the case, an infringement case for non-communication is opened (European Commission, 2014). Still, Member States get the choice of discretion. As a result, the transposition of a directive does not have to be uniform in every Member State; however, they have to converge with the original aim of the directive. If a directive is only transposed in a broader sense, a correct judicial enforcement at national level is not possible (Craig & De

[45]See Tampere European Council 15 and 16 October. *Presidency Conclusions*

[46]Compare European Council, Presidency Conclusions

Búrca, 2011). Hence, further implementation measures are necessary in order to ensure the correct application of a directive by a Member State in the end.

3.2. A definition of Europeanization

The term Europeanization has not only been a widely discussed topic in recent times, but also in the past.[47] There have been few clear definitions of Europeanization yet. Many scholars have raised several definitions about it, which differ in a broader sense from each other. Two of these definitions state that on the one hand Europeanization is a process by which domestic policy areas become increasingly subject to European policy making (Börzel, 1999). On the other hand it is described as a change within a Member State, whose motivating logic is tied to EU policy or a decision making process (Ladrech, 2010). In the following, the thesis focuses on the former definition of Börzel. However, other definitions are taken into consideration as well.

There are different areas in which Europeanization redefines the external territorial boundaries. Europe can be said to mute to a single political space (Olsen, 2002). Next to this, the institutions of the European Union become more centered and powerful. Their tasks involve binding decision making and to control whether the Member States comply with introduced legislation. Another area, which has changed due to this concept, is the level of governance. Europeanization can be described as a transfer of competence. It refers to a change in the domestic system of each Member State, which implies a necessary, but not sufficient condition (Börzel & Panke, 2013). Further, the authors Radaelli and Featherstone (2003) and Börzel (1999) see Europeanization as the "penetratition of the European dimension in national arenas of politics and policy" (Featherstone and Radaelli, 2003: 29).
In this context, there is a strong connection between the national and European level of policy making. There are national and sub national levels, which refer to a distribution of power (Olsen 2002). These can be divided into the bottom up and top down model. The former deals with the issue to what extent Member States can upload their interests to EU institutions (Börzel & Panke, 2013). On the contrary, the top down model defines how the EU shapes institutions, processes and political outcomes in its Member States and third countries (Sanders, 2012). According to Börzel and Panke (2013), the focus lies on the downloading attempt of EU policies when referring to a domestic change. It emphasizes the influence of the EU on domestic institutions, policies and political processes. The top down model examines factors at domestic level that account for a change in that area. It provides that the EU is able to create adaption connected to national policies, institutions and political processes. In this case, a misfit is present between European and domestic ideas and institutions (Börzel & Panke, 2013). Hence, the top down model is applicable for this research. It visualizes the transposition process of the Return Directive 2008/115/EC into the national asylum legislations in Germany, Italy and Sweden. This means that the EU downloads EU policy into its Member States.

[47]By means of "The Uniting of Europe" (Haas, 1958) and "The choice for Europe" (Moravcsik, 1998), Ernst Haas and Andrew Moravcsik already addressed the understanding of European policy making and integration in earlier years.

3.3. A definition of Policy Convergence

As a new polity was in the making, a tighter focus was developed on the domestic impact of Europe in the 1990s. Would the process of Europeanization result in institutional or policy convergence among the European Member States? Or, vice versa; was divergence the logical follow up? According to Lippert, the attention on Europeanization has been expanded and thus, Member States have come into focus as well (Lippert, Umbach & Wessel, 2001). Mostly, comparisons between countries and policy areas have been illustrated (Börzel & Risse, 2007). In addition, the European Commission has reinvigorated this issue by different policies, e.g. the Lisbon strategy. National policies are expected to enable the "convergence of national social policies towards the common EU goals" (Van Vliet, 2010: 271). The following part brings the issue of convergence into a closer picture.

Policy convergence refers to the "tendency of societies to grow more alike" (Kerr, 1983: 3). Member States are said to be in the process of converging when they move from their original position towards a new point of interest (Bennet, 1991; Hay, 2004). Member States are more likely to adapt to new policies over a longer period of time. The more countries converge with a policy, the more choose to follow. According to Knill (2007), policy convergence can be described as "the decrease in variation of policies among the countries under consideration" (Knill, 2007: 769). This complies with the provision of Van Vliet (2010), who describes convergence as decrease in variation of policies across countries over time. Further, the mentioned concepts deal with spatial, structural and socio economic motives for a policy adaption (Jordana and Levi-Faur, 2005). However, policy convergence should not be mixed up with countries developing an identical strategy (Hay, 2004). In contrast, policy convergence is rather linked to outcomes and effects than processes (Knill, 2005). In respect to that, policy convergence can be the end result of the process of Europeanization. On the other hand, both, con- and divergence can also arise from other factors, such as globalization or international organizations (Van Vliet, 2010). However, convergence studies aim to give an understanding about similarities in policies over a period of time. In contrast, the other two concepts seek to explain how the content of policy processes of transfer or which patterns of adoptions were of importance (Elkins and Simmons, 2005).

As a result of this part, policy convergence can be described as "any increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time" (Knill 2005: 768). Summarized, convergence studies do not focus on processes; they describe the end results of processes in terms of policy change, "regardless of the causal processes" (Knill, 2005: 768).

3.4. Does Europeanization lead to policy convergence?

Policy convergence is often used in context with research on Europeanization. Hence, it is useful to note how to relate it to the latter, as they are often mixed up. As mentioned before, the EU can shape political outcomes in the EU Member States, which is defined by the top down model (Sanders, 2012). In respect to that, policy convergence can be the outcome of the process of Europeanization (Featherstone & Radaelli, 2003).

So far, there has been little evidence provided on whether Europeanization makes the legislations of the EU Member States more similar. This is, because there is no uniform policy model given by the EU, which the Member States have to adjust to. Moreover, directives are only seen as a "framework legislation" (Börzel and Risse, 2007: 496). In this regard, some scholars argue that Europeanization may lead to policy convergence in policy outcomes (Börzel and Risse, 2003; Radaelli and Featherstone, 2003). On the contrary, other factors like veto points, domestic institutions or the "goodness of fit", which refers to the pressure to adjust, can influence policy convergence as well. With regard to the latter aspect, several studies on Europeanization claim that the "goodness of fit" only leads to domestic change, if it is inconvenient (Börzel and Risse, 2003). In this case, a "misfit" (Duina, 1999) or a "mismatch" (Héritier, 1996) has to be present between European and domestic policies. The principle of the "goodness of fit" was introduced by Cowles, Caporaso and Risse in 2001. It refers to the relationship between the European and domestic level and measures the pressure that Member States are facing when adapting to new policies. The authors follow that "the lower the compatibility between European and national institutions, the higher the adaptational pressures" (Cowles et al., 2001: 7). In contrast, scholars like Bulmer and Lequesne (2013) disagree with this provision. As the "goodness of fit" presents a vertical approach from Brussels, it is argued that this principle only applies under certain circumstances and conditions (Featherstone and Radaelli, 2003; Bulmer & Lequesne, 2013). Further, Héritier and Knill (2001) confirm that convergence with European policies can also take place without adaptational pressures. They are convinced that national actors can take advantage of European policies, which are related to policy reforms in the case that European and domestic negotiations share the same common denominator (Héritier et al., 2001). Other examples have shown that a country can well adapt to EU policies if it is exposed to adaptational pressures (Bulmer, & Lequesne, 2013). In order to balance these pressures, domestic actors react in the end. Hence, they either enable or prohibit adaptation (Börzel, 1999).

Moreover, the authors Börzel and Risse (2003) claim that the transposition of EU regulation demands policy convergence as a logical consequence. However, a lot of discretion on how to transpose it exactly is still left to the Member States. In this context, Europeanization is more likely to lead to policy convergence than to institutional convergence. Still, the authors do not expect full convergence in terms of European policies (Börzel and Risse, 2003: 2007). This is, firstly, due to the "goodness of fit" and secondly, because of domestic policies, politics and institutional arrangements. These are not similar among the EU Member States. More in detail, some Member States confront similar pressures to adjust, whereas others do not. Therefore, neither convergence nor divergence should be expected among the EU Member States (Börzel and Risse, 2007: 496). In this regards, "partial convergence" (Börzel and Risse, 2003:18; 2007: 496) is more likely to be present. In addition, the uncertainty of the impact of Europeanization on policy convergence also results from the fact that most studies referring to this topic only present a few country comparison of EU Member States. Thus, a universal statement is not possible (Börzel and Risse, 2007).

3.5. Policy convergence of asylum policies

Several studies have examined national asylum policies in terms of converging EU legislation over the last decade. Some claimed that the change has been extremely low, meaning there have not been many amendments in domestic law towards policy convergence. Hence, the author Heijermann (2010) claims that the aim of the CEAS to converge domestic policies significantly has not been achieved. Others found a trend towards convergence of Safe Country of Origin (SCO) policies, which also belong to the field of asylum policies. The author Engelmann (2014) looked at these policies and concluded that a high level of convergence is present in the national legislations of the EU Member States. However, Member States tend to opt for specific domestic measures in their countries. In this connection, the researchers Toshkov and de Haan (2013) found a similar trend in their studies; they examined 29 European States in the period from 1997-2010. They noticed that the differences among them were smaller than they had been some years ago. Therefore, they concluded that there is a limited level of convergence. Thus, improvements had been made. However, important national differences still existed and the EU Member States continued to have different outcomes in their asylum policies (Toshkov & de Haan, 2013).

3.6. Transposition of EU legislation

The outcomes of European Union policy is influenced by the transposition in each Member State (Toshkov, 2007). The authors Pressmann and Wildavsky (1984) see it as a point of decision concerning the nearer definition on how to implement a policy into the national legislation of a Member State. According to Article 249 EC, "directives require explicit transposition into national law while leaving the choice of implementation measure to the member states" (König & Luetgert, 2009: 163). In this regard, a transposition process can be seen as a techniqual dimension that "focusses on the issue of clarity in EU legislation" (Dimitrakopoulos, 2001: 443). However, in the course of his study, the author Dimitrakopoulos (2001) states that the choices on how to transpose EU legislation are neither neutral nor techniqual. It can rather be linked to being influenced by political circumstances, e.g. interests, institutions and individuals. Furthermore, vagueness is one factor which can affect this process: A lack of clarity or non detailed provisions of the EU make directives imprecise. Additionally, they leave wide interpretation for the transposition of EU legislation (Dimitrakopoulos, 2001). In respect to that, the author Dimitrakopoulos argues that one might not expect similar, but different outcomes among Member States due to the transposition effect. However, he observes a "European Style of transposition" to be present (Dimitrakopoulos, 2001: 444). In his opinion, this does not happen as a result of convergence, but fairly because of the "goodness of fit", which is mentioned earlier. Hence, Member States tend to adjust their policies due to adaptational pressures created by the EU. This obliges them to transpose EU law into their national legislation. As directives have a binding character, the European Member States tend to presents similar outcomes in the transposition of EU legislation (Prechal, 1995; Dimitrakopoulos, 2001).

In connection to that, the EU sets deadlines for the Member States to transpose its directives. Several authors noticed that there are differences in how fast the Member States fulfill this

obligation (Berglund et al., 2006; Kaeding 2007). Often, they do not meet the deadlines to notify the EU of full transposition in time (Börzel, 2001; Dimitrakopoulos, 2001; Toshkov, 2007). A conflict between the EU and the particular Member State can be one cause for non-transposition (König & Luetgert, 2008). Further, preferences might play a minor role, as otherwise a country would not have agreed to transpose a directive (Toshkov, 2007). Also, a high number of veto players can lead to the delay of transposition (Steunenberg, & Kaeding, 2009: Bulmer and Lequesne, 2013). These circumstances can be linked to the transposition of the Return Directive 2008/155/EC. The deadline was set out by the 24 December 2010 (European Commission, 2011). However, only four Member States fulfilled this agreement in time. Nineteen Member States followed in 2011 and five in 2012. In this sense, the EU opened 20 infringement procedures. They were terminated when the concerned Member States notified full transposition. By 2014, only one Member State remained to not have fully transposed the Return Directive 2008/115/EC (European Commission, 2014).

3.7. Hypotheses

As a result of the different theories on policy convergence and the connected process of Europeanization, the two following hypotheses are formualated:

1. *The transposition of the Return Directive 2008/115/EC is done in different ways in Germany, Italy and Sweden in the time period from 2008-2012.*
2. *The transposition of the Return Directive 2008/115/EC results in partial convergence.*

The findings of the theory part and the hypotheses are considered when examining the similarities and differences in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden in the period from 2008-2012. The following chapter presents the methods used to analyze this study and discusses possible limitations.

4. Methodology

The main goal of this thesis is to find out which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden. Hence, a comparison between the asylum legislations of these countries and the Return Directive 2008/115/EC is provided. In respect to that, this chapter gives the reader an overview of the methodological approaches used to come to a conclusion of this research. First of all, the research question and the applied research design are mentioned. Further, this part explains why Germany, Italy and Sweden have been chosen in particular. Additionally, the instruments being used to carry out this study are defined in the operationalization part. In connection to that, the method on how the data was collected is stated. In the end, it is referred to the limitations of this research.

4.1. Research question

The research question is stated as the following: "Which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in the countries of Germany, Italy and Sweden in the period from 2008-2012?" In order to answer the question, the text of

the Return Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals is compared to the corresponding national asylum legislations in Germany, Italy and Sweden.

4.2. Research Design

In order to answer the research question accurately, a qualitative approach making use of desk research and a document analysis is applied. The study is of descriptive nature, as data is collected, organized and summarized (Punch, 2000). In descriptive studies, the researcher does not interfere with its subjects. In this sense, "individual pieces of information" are studied "one piece at a time" (Punch, 2013: 216). This applies to this thesis, as the goal is to evaluate the similarities and differences in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden. Hereby, the time of investigation includes the period from 2008-2012. In connection to that, the descriptive study can be referred to be a longitudinal study in particular. According to the author Ruspini (2002, as cited in Cohen, Manion & Morrison, 2011: 266), longitudinal studies "highlight similarities, differences and changes over time in respect of one or more variable". In this regard, the independent variable is the transposition of the Return Directive 2008/115/EC. Thus, the dependent variable is the corresponding asylum legislation in each of the examined countries after the transposition of the Return Directive 2008/115/EC. More in detail, a longitudinal study refers to a process followed over a certain time period. In this thesis, this process is the transposition of the Return Directive 2008/115/EC in the time period from 2008-2012. Within this qualitative approach, it is possible to give an in depth understanding about the cases. As a result, hypotheses are gathered throughout the study of this literature (Punch, 2000). They are mentioned in the previous chapter.

By means of the literature review in the previous part, it becomes apparent that the concept of policy convergence can enable the EU to respond with a common voice in terms of human rights towards the ongoing flow of migration. Policy convergence presents the end results of a policy change over a certain period of time (Knill, 2007). In this regard, policy change is referred to as the transposition of the Return Directive 2008/115/EC. Further, the end results are the asylum legislations of Germany, and Sweden in the period from 2008-2012. Thus, it can be visualized whether these legislations have become more similar or different due the transposition of the Return Directive 2008/115/EC.

4.3. Case Selection and Sampling

Since the transposition of an EU Directive is compared to the national asylum legislations of three countries, it is reasonable to choose these countries from the European Member States. It is not possible to analyze the domestic change of EU legislation in a Member State if the country was not part of the EU by the time of the introduction of the Return Directive 2008/115/EC in 2008. Thus, the populations of this thesis are EU Member States. A non-probability sample is used, as a particular group is chosen. Thus, it does not represent the wider population. In particular, a purposive sampling is applied. In this sense, the countries are handpicked. This is a common method used for comparison (Cohen et al., 2011).

As mentioned before, a descriptive study is carried out. This thesis aims to examine countries that share similar background features. In this regard, it can be possible to divine a tendency for the transposition of the Return Directive 2008/115/EC in other EU Member States, which are similar to these cases. By means of that, Germany, Italy and Sweden are selected. First of all, they all are Member States of the European Union. While Germany and Italy are one of the five founders, Sweden joined in 1995.[48] This means that all of them have been in the EU for more than 20 years. Secondly, their GDP per capita is quite similar to each other. While Germany and Sweden have an almost equal rate of 46,895 and 47,228 Euro per capita, Italy presents a similar one of 35,811 Euro per capita.[49] In connection to that, the Human Development Index, which is a statistic based on life expectancy, education and a per capita index, presents similar rates as well. Germany shows the highest index (0,92), closely followed by Sweden (0,91) and Italy (0,88).[50] Fourthly, and with regard to this study very importantly, these states are currently the top three Member States in bearing the highest numbers of asylum seekers in the EU.[51] More in detail, Germany has recently received most of the asylum seekers. From a total rate of 626,065, 202,645 third country nationals applied in Germany in 2014.[52] This accounts for one third of the European asylum applications. Compared to 2013, the rate grew by 60%[53]. Moving on, Sweden is the country having the second highest rate of asylum seekers in Europe. In 2014, it counted 81,180[54] applications. Additionally, Italy is the Member State of the EU having the most rapid growth of asylum seekers from 2013 to 2014. With an asylum application number of 64,625, it rose by 143% compared to the previous year.[55] In connection to that, Sweden bears the highest number of applicants with a rate of 8.4. per thousands inhabitants. Germany and Italy follow on rank 8 and 15. There former has a number of 2.5 and the latter presents 1.1. applicants per thousands inhabitants.[56]

Another reason why these countries have been chosen is the language of the corresponding asylum legislation in each country. If the legislations of these Member States were only available in a to the author unknown language, they would have not been able to be evaluated. However, the national asylum legislations of Germany, Italy and Sweden can mostly be found in English. In cases where this does not apply, a sufficient translation is provided.

4.4. Operationalization

In order to analyze which similarities and differences the Return Directive 2008/115/EC caused in the asylum legislations of Germany, Italy and Sweden, the transposition of three

[48]European Commission 2015, Retrieved from: http://europa.eu/about-eu/countries/index_en.htm
[49]International Monetary Fund n.d, Report for Selected Countries and Subjects
[50]Undata 2013, Inequality-adjusted Human Development Index
[51]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b
[52]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b
[53]Eurostat 2015, Asylum in the EU
[54]Eurostat 2015, Asylum in the EU
[55]Eurostat 2015, Asylum in the EU
[56]Eurostat 2015, Asylum in the EU

articles of the Return Directive 2008/115/EC are examined. In particular, these are the procedures on voluntary departure (Article 7), entry ban (Article 11), and detention (Article 15). The choice fell on these articles, as they are highly relevant for the decision under which conditions a refugee has to leave the country and which impositions come along with it. This is underlined by the fact that they are widely discussed among scholars (Baldacci, 2009; Acosta, 2010; Di Martini, 201; Iyengar et al., 2013).

Secondly, due to the fact policy convergence defines the end result of a policy change over time (Knill, 2007), a time period is included in the research question. As the Return Directive 2008/115/EC was introduced in 2008, this is determined to be the start point. The Member States had time to transpose the Return Directive 2008/115/EC until 24 December 2010 (European Commission, 2011). According to the EU, only four Member States fulfilled this agreement in time. Nineteen Member States followed in 2011 and five in 2012. Germany and Italy transposed the Directive in 2011, whereas Sweden followed in 2012. Hence, the time period between 2008 and 2012 is chosen.

The three chosen articles of the Return Directive 2008/115/EC are compared to the corresponding asylum legislations of Germany, Italy and Sweden. More in detail, there are five different legislative acts, which mainly provide asylum policies in Germany (Aida, 2015). The Return Directive 2008/115/EC is mainly executed in the "Residence Act" (Aufenthaltsgesetz) and its "General Administrative Regulations" (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz). Additional provisions are stated in the "Basic Law Act" (Grundgesetz) and in "The Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction" (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit). Secondly, the national asylum legislation of Italy can be found in the "Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero or Testo Unico Immigrazione". The English version is named "The Unified Text on measures concerning immigration and norms on the condition of foreign citizens". It is also mentioned as "The Unified Text on Immigration or UTI" in short. Moreover, the asylum legislation of Sweden can be found out in the "Aliens Act (2005: 716)", which is named the "Utlänningslag (2005:716)" in the Swedish version. Further, the "Aliens Ordinance (2006: 97)" includes parts of it.

In cases the national legislation or different parts cannot be accessed in the English language or only unofficial translations are provided, the original version in German, Italian or Swedish is inserted. Further, the English translation is added. Additionally, existing literature studies on the transposition of the Return Directive 2008/115/EC are used to underline the findings of this thesis. On this basis, the convergence of each paragraph is evaluated. In this connection, the concept of policy convergence can be applied. This is because it describes "the decrease in variation of policies among the countries under consideration" (Knill, 2007: 769). Thus, it can be well applied to this study.

4.5. Data analysis

In order to measure which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in the period from 2008-2012, the concept of policy convergence is used. It serves to describe whether national asylum policies have become more similar to each other (Knill, 2007). In order to do so, three tables for each provision, which are Article 7, 11 and 15 of the Return Directive 2008/115/EC in this case, are constituted for each country. In the left column of one table, the respective articles and its paragraphs are listed. In the middle part, the corresponding asylum legislation of one Member State is given. The right column presents whether the EU provision converges with the national asylum legislation of one country. In order to determine whether a paragraph converges, significant words, like *may* or *shall,* are marked in bold. These words are chosen, as they represent different meanings, which are important to consider when interpreting legislation. According to a legal dictionary[57], *may* refers to the "choice to act or not, or a promise of a possibility". In contrast, while *shall* is rather "imperative"[58]. Secondly, "the word *may* must be read in context to determine if it means an act is optional or mandatory. For that, *may* be an imperative. The same careful analysis must be made for the word *shall*"[59]. In this context, people not being familiar with law might misinterpret the word *may* and assume they have a choice to act. Further, they might think that they have not to comply "with some statutory provision or regulation"[60]. Hence, *may* and *shall* are crucial words, which serve to emphasize the intension and character of the Return Directive 2008/115/EC. Moreover, specific provisions, which have to be stick to, are marked in bold as well. By means of these guidelines, this thesis looks for regulations in the asylum policies of Germany, Italy and Sweden. Hence, corresponding words are highlighted in bold, too. In some cases, existing literature studies on the transposition of the Return Directive 2008/115/EC are used to underline the findings. On this basis, the transposition of each paragraph is examined. In order to illustrate this, a paragraph is evaluated either with a (+) or a (-). In this context, a (+) means that a provision of the Return Directive 2008/115/EC is fully converged with. In contrast, a (-) represents divergence or no transposition at all. The following visualizes this procedure by giving two examples:

[57]The free legal dictionary by Farlex (2015). Retrieved from: The http://legal-dictionary.thefreedictionary.com/May

[58]The free legal dictionary by Farlex (2015). Retrieved from: The http://legal-dictionary.thefreedictionary.com/May

[59]The free legal dictionary by Farlex (2015). Retrieved from: The http://legal-dictionary.thefreedictionary.com/May

[60]The free legal dictionary by Farlex (2015). Retrieved from http://legal-dictionary.thefreedictionary.com/May

First example: Convergence

Return Directive 2008/115/EC, Article 1: no name	**Corresponding Asylum Legislation of Country A, Article 2: Corresponding article to no name**	**Convergence**
1(1) The grounds for no name **shall include** specific measures, namely **a, b and c**. If the circumstances of d **apply**, **no name shall not exceed 2 years.**	**2(4)** The grounds for no name **shall include** measures like **a, b and c**. It is to be noted that no name **shall not exceed 2 years in terms of d.** **Additional information of literature source (optional):** Country A provides that the grounds for **no name shall include a, b and c.**	**Yes (+)** Article 1(1) is in line with Article 2(4). This is also emphasized by the additional information.

Second example: Divergence

Return Directive 2008/115/EC, Article 1: no name	**Corresponding Asylum Legislation of Country A, Article 2: Corresponding article to no name**	**Convergence**
1(1) The grounds for no name **shall include** specific measures, namely **a, b and c**. If the circumstances of d **apply**, **no name shall not exceed 2 years.**	**2(4)** The grounds for no name **may include** measures like **a, b and c**. **Additional info on literature source (optional):** Country A has **not transposed provisions concerning d** yet.	**No (-)** Article 2(4) of Country A is not in line with Article 1(1). This is due to the fact that country A applies *may* instead of *shall*, which gives the paragraph a rather optional character. Further, no provisions on the time period concerning d have been transposed yet.

The words of Article 1(1) on no name marked in bold are looked for in the corresponding legislation to no name of Country A. In cases they are found, these corresponding words are marked in bold as well. Afterwards, the convergence is evaluated. In the first example, the provisions of Article 1(1) converge with Article 2(4) of the corresponding asylum legislation in country A. The requirements *shall* and the measures *a, b, c, d* and *the time period* are literally transposed. Furthermore, the additional information underlines this statement. Thus, a (+) is given in the right column. This means that *Article 1(1) on no name is converged with by means of Article 2(4*) of the corresponding asylum legislation of Country A. The second example presents an incorrect transposition of Article 1(1). The word *shall* is turned into *may* in Article 2(4) of the corresponding asylum legislation in Country A. This gives the provision a less restrictive character. Further, the regulation concerning *d* is missing

in Country A. The additional information states that the provisions of *d have not been transposed* yet. Because of these reasons, Article *1(1) is not converged with*. Thus, it is rated with a (-). This means, that it represents an example of divergence.

After this comparison, a table shows the results of each country. On the basis of the analysis, it is concluded which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden in the period from 2008-2012.

4.6. Limitations

Concluding, it is referred to the limitations of this research, as some lacks in external and internal validity are notable. Firstly, it is to say that this thesis provides a comparison of the transposition of the Return Directive 2008/115/EC into the national asylum legislations of Germany, Italy and Sweden. Hence, it does not state to what extent these countries fulfill the regulations set out in the Return Directive 2008/115/EC. Further, only three articles are chosen to execute this comparison. These are voluntary departure (Art.7), entry ban (Art.11) and detention (Art.15). This implies that no general statement for the transposition of the entire Return Directive 2008/115/EC can be made. In respect to that, this research provides a limited country study, as only three Member States are compared to the Return Directive 2008/155/EC. Resulting, a small N of three similar countries is illustrated. However, a study with a small N lacks of external validity, as it cannot keep track of "all potential explanatory factors" (Anckar, 2008: 390). Therefore, this thesis is neither able to make universal applications for the transposition of the Return Directive 2008/155/EC nor the policy convergence of asylum policies in other European Member States.

Moving on, this thesis only includes a post-test and no treatment. This is due to the fact that there is no control and no testing group. This research only refers to the current asylum legislations of Germany, Italy and Sweden (Gerring, 2011). This is a threat to the internal validity of this study, while it also diminishes the external validity (Gerring, 2011). In connection to that, this thesis only examines the transposition of the Return Directive 2008/EC/115 in the period from 2008-2012. According to Knill (2007), policy convergence refers to the end results of a policy change over a certain period of time. Additionally, several authors noted that there are differences in the duration of how fast the Member States transpose EU legislation (Bennet, 1991; Hay, 2004; Berglund et al., 2006; Kaeding 2007). In this regard, it is possible that Germany, Italy and Sweden need longer than four years to transpose the Return Directive 2008/115/EC. Hence, they might have changed their legislations after the time period from 2008-2012. Thus, more converging or diverging outcomes could be present by now. These could falsify the results of this thesis. Moreover, it is not possible to rule alternative decisions out. This is due to the fact that the Member States are obliged to transpose the legislations introduced by the EU. This is emphasized by the scholar Dimitrakopoulos (2001). Lastly, the data analysis on how to compare the national asylum legislations to the Return Directive 2008/EC/115 is created for this thesis in particular. Further, it is supported by secondary literature. Though this study aims to execute the analysis

as objectively and accurately as possible, other scholars might interpret the findings differently. Therefore, disagreement on the outcomes of this research can be the consequence.

5. Analysis

In this chapter, the transposition of the Return Directive 2008/115/EC into the legislations of three EU Member States is shown. At first, the Return Directive 2008/115/EC itself is addressed and a short overview about its current situation is given. As the procedures on voluntary departure, entry ban and detention are evaluated in particular, they are shortly explained beforehand. Then, they are compared to the national asylum legislations of Germany, Italy and Sweden. First, an explanation of the transposition of the Return Directive 2008/115/EC in each country is given. Secondly, the findings are illustrated by means of comparison tables, including the provisions of the Return Directive 2008/115/EC and the corresponding asylum legislations of Germany, Italy and Sweden. Following, an overview of the results is given and discussed. In the end, the research question and the sub-questions of this study are answered. With regard to that, the hypotheses of this thesis are addressed.

5.1. The Return Directive 2008/115/EC

The Return Directive 2008/115/EC aims "to ensure the return of third country nationals without legal ground to stay is carried out effectively, through fair and transparent procedures that fully respect fundamental rights and dignity for the people concerned" (European Commission, 2014: 3). Thus, it presents the main instrument of EU return policy. In addition, the European Commission organized 14 contact meetings in recent years since 2008. This should allow dealing with the remaining issues of transposing the Return Directive 2008/115/EC. These meetings were supposed to give the EU Member States the opportunity for open discussions referring to outstanding problems (Fra, 2013). Some of the main issues being concluded after these meetings were[61]:

- The EU wide effect on entry bans
- Definition of risk of absconding[62]
- Criteria for prolonging the period of voluntary departure
- Forced return monitoring
- Criteria for imposing detention

These criteria all belong to the Articles 7, 11 and 15 of the Return Directive 2008/115/EC. In order to gain a clearer insight about their function, they are explained as follows:

[61]See European Commission, 2014, Communication on EU Return Policy: 13-14

[62]The risk of absconding is described as: "the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond" (Article 3.7).

5.1.1. Voluntary departure[63]

Article 7 of the Return Directive 2008/115/EC gives third country nationals, who received the decision to return[64], the possibility to voluntarily follow this approach within a certain period. It is generally preferred to forced return, as it is said to be a more humane and cost saving procedure (Baldacci, 2009). The time frame to return voluntarily may take up from 7-30 days. It can be extended due to individual circumstances, e.g. family reasons. In cases the third country national does not cooperate with this agreement or presents a risk of absconding or a threat to national security, different procedures might be taken by a Member State.

5.1.2. Entry ban[65]

An entry ban is described as a decision which prevents the re-entry of a third country national into the territory of a Member State for a certain period of time. Article 11 of the Return Directive 2008/115/EC describes the obligations and possibilities to determine this prohibition. Thus, when issuing a return decision, Member States shall consider imposing an entry ban. This can only apply if no voluntary departure was granted or the requirement to return has not been complied with (11.1). The reasons for setting an entry ban are quite similar, but vary throughout the European Member States (EMN, 2014). The maximum length of a re-entry ban is stated to be five years. In cases the third country national presents a threat to public policy, it can be exceeded. Here, all relevant circumstances have to be taken into consideration (11.2). An entry ban is described as a coercive policy, which aims to make a signal to third country nationals (European Commission, 2014). Moreover, it also strives to encourage voluntary departure by giving the options to withdraw or refrain from imposing an entry ban. In particular, Member States are encouraged to consider suspending an entry ban if the third country national is in full compliance with the return condition. In contrast, Member States "shall refrain" from imposing an entry ban if a third country national is a victim of human trafficking. Further considerations of withdrawal can be executed on grounds of humanitarian or other reasons (11.3). Moving on, Member States shall consult each other in terms of issuing a residence permit to a third country national, who received an entry ban by another Member State (11.4). Lastly, all paragraphs of the entry ban shall be applied with respect to international protection. This is granted by the European Council Directive 2004/83/EC of 29 April 2004 (11.5). The effectiveness of entry bans is based on the mutual communication and cooperation between the Member States. Once a ban is issued, it is registered into the Schengen Information System[66]. Hence, communication is the key aspect to ensure that an entry ban is able to fully function. This provision aims to support the prevention of an irregular immigrant entering the EU. Further, it shall encourage them to return voluntarily and to establish a certain time period of a non-entry to the EU territory (European Commission, 2014).

[63]See Return Directive 2008/115/EC: Article 7

[64]This is understood as the country of origin, a country or transit or another third country

[65]See Return Directive 2008/115/EC: Article 11

[66]The SIS can be seen as the primary communication channel. Alternatives to cooperate are Euro/Interpol Immigration Liason Officers(ILOs) or direct contact between MS via e-mail or telephone.

5.1.3. Detention[67]

The appliance of detention shall be as short as possible in terms it serves as a reason to ensure removal. The third country national can be detained. However, it has to be strictly determined to the time that is necessary to prepare his return. Especially when the foreigner presents a risk of absconding or hinders or does not comply with these preparations, custody may be constituted (15.1). According to this procedure, detention has to be justified, and the detainee is released in cases "a reasonable prospect of removal no longer exists for legal or other considerations"[68]. Further, the third country national shall be granted a judicial review on the grounds for detention and the possibility to take legal proceedings (15.2). Additionally, a regularly judicial review of detention shall be provided by judicial authorities of the EU Member States (15.3.). In this sense, a detainee shall be released immediately if the grounds for detention are dropped (15.4). In general, the time frame of custody is not supposed to exceed 6 months (15.5.). In specific cases, the detention period can be extended. However, it shall not last longer than 18 months in total. The legal reasons for extension are based on a lack of cooperation of the third country national or the absence or delay of documents. These are necessary in order to ensure a successful removal (15.6).

5.2. The transposition of the Return Directive 2008/115/EC into the national asylum legislation of Germany, Italy and Sweden

In the following, the procedures on voluntary departure, entry ban and detention of the Return Directive 2008/115/EC are compared to the national asylum legislations of Germany, Italy and Sweden in the time period from 2008-2012.

5.2.1. Germany

Having the highest numbers of asylum seekers in Europe, Germany is said to require a "complex legal and regulatory organizational structure" (Grote, 2014: 13) in order to handle the increasing immigration stream of third country nationals. As there are 16 Federal States in Germany, called Federal Länder, the Return Directive 2008/115/EC was also transposed by Local and Regional's Courts. Hence, they can act independently on how to execute it in particular. Thus, variations exist throughout the whole country (Grote, 2014). Nevertheless, there is still sufficient information to carry out the comparison between the EU and the national legislation of Germany.

The Return Directive 2008/115/EC entered into force in November 2011 in Germany (Grote, 2014). The main change was the transposition of grounds for detention. After contrasting the Articles 7, 11 and 15 of the Return Directive 2008/115/EC to the current legislation of Germany, it becomes apparent that the country overall converges with the required EU standards. First of all, Article 7 is fully converged with. Germany sticks to the required provisions on length and extension. Further, it fulfills the obligations to avoid the risk of absconding and alters the regulations on voluntary departure in terms of a risk of absconding.

[67] See Return Directive 2008/115/EC: Article 15
[68] See Return Directive 2008/115/EC: Article 15

In addition, Germany states to highly prioritize voluntary departure over forced return. It is considered to be more "humane" (Kreienbrink & Schneider, 2010: 11). This is one goal being emphasized by the Return Directive 2008/115/EC (European Commission-DG Home Affairs 2013: 231).

Moving on, the entry ban is the procedure where Germany lacks cooperation. The provisions of Section 11 of the Residence Act do not fully converge with the EU standards of the entry ban. Article 11(1) of the Return Directive 2008/115/EC gives the option to impose an entry ban on a return decision in terms of non-compliance of the third country national or non-grating of voluntary departure. However, Germany automatically issues a ban on every return decision. Hence, the individual circumstances are not taken into consideration. This gives the entry ban an obligatory character. Further, the time limit of an entry ban is almost converged with. Accordingly to Article 11(2), an entry ban may only be imposed up to a maximum of five years in Germany. However, the time limit of setting the entry ban in cases of a public threat may be extended to an undetermined time period. This is contrary to Article 11(2) of the Return Directive 2008/115/EC, as it requires a determined time frame (European Commission-DG Home Affairs 2013: 166). Moving on, Article 11(3) is converged with. Germany gives options to withdraw an entry ban and makes it applicable regarding victims of human trafficking. Further, Article 11(4) and 11(5) are stick to as well; Germany consults other Member States in cases of issuing a residence permit to a third country national who has a prohibition to enter issued by another Member State. It also applies the paragraphs one-four. This is in line with the international protection standards set out by the Council Directive 2004/83/EC. In this connection, section 25(4-5) of the Residence Act and 16a of the German Basic Law refer to the right of international and national protection. The latter is granted to asylum seekers in terms an entry ban is imposed on them.

Lastly, Germany fully converges with the six paragraphs of Article 15 regarding detention. At this, section 62 is the main corresponding body. The paragraphs 2 and 3 of the latter refer to the grounds on detention issued by Article 15(1). These are the risk of absconding and the avoiding of the removal process by the foreigner. Further, they state that detention can only be ordered by judicial bodies. A judicial review and the assessment of taking actions by the third country national are provided by the German Act on Family Matters, the Civil Procedure and the General Administrative Regulations to the Residence Act. Moreover, the dropping of detention in cases there are no grounds for custody is defined. This is in line with Article 15(2) of the Return Directive 2008/115/EC. Additionally, the regularly judicial reviews required by Article 15(3) are converged with. The same applies for the immediate release, which are set out in Article 15(4), if no grounds for detention are present anymore. These provisions can be found in Section 62.2. of the Aufenhaltsgesetz, the General Administrative Regulations to the Residence Act to Section 62.3 and the German Basic Law. In conclusion, the length on detention is in line with the EU standards of the Return Directive 2008/115/EC; a detainee may not be longer kept in custody for more than 6 months. Due to the risk of absconding or the delay of obtaining documents, the time for detention can be extended up to 18 months. Thus, Section 62 of the Residence Act also converges with Article 15(5) and

15(6). It has to be highlighted that Germany prefers detention to be the last option for removal. Hence, it provides several alternatives to it. However, if grounds for detention are present, e.g. a risk of absconding, a custody period cannot be avoided (Grote, 2014).

Voluntary Departure: Article 7

Return Directive 2008/115/EC, Article 7: Voluntary Departure	**Residence Act Germany, Section 59: Deportation Warning**	**Convergence**
7(1) A return decision **shall provide** for an appropriate **period for voluntary departure** of between **seven and thirty days**, without prejudice to the exceptions referred to in paragraphs2 and 4. Member States may provide in their national legislation that such a period shall be granted only **following an application** by the third-country national concerned. In such a case, Member States **shall inform the third-country nationals** concerned of the possibility of submitting such an application The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to **leave earlier.**	**Section 59(1)** Notice of intention to deport a foreigner **shall be served** specifying a reasonable period of between **seven and 30 days** for voluntary departure. The Federal Office for Migration and Refugees and the German Federal Länder have compiled a comprehensive **list of information** about returns to the country of origin where answers to individual questions put by returnees will be answered. [69]	**Yes (+)** All relevant elements are found in the German legislation. In Germany, voluntary departure is prioritized over forced return[70].
7(2) Member States **shall**, where necessary, **extend the period** for voluntary departure by an appropriate period, taking into account the **specific circumstances of the individual case**, such as the length of stay, the existence of children attending school and the existence of other family and social links.	**Section 59(1), Sentence 4** Taking account of **the particular circumstances of each case**, the period allowed for departure **may be extended** as reasonable or a longer such period may be set. Section 60a (2) shall remain unaffected.[71] The period allowed for departure shall be interrupted if the obligation to leave or the notice of intention to deport ceases to be enforceable.	**Yes (+)** Article 7(2) of the Return Directive 2008/115/EC was transposed in German law by Section 59(1) sentence 4 of the Residence Act. However, the examples contained in the Directive are not exactly mentioned. In contrast, these examples are included in the explanatory memorandum to Section 59(1) sentence 4 of the Residence Act which can be used to interpret this legal provision.[72]
7(3) Certain **obligations aimed at avoiding the risk of absconding**, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place **may be imposed** for the duration of the period for voluntary departure.	**Residence Act, Section 48:** **[Obligations relating to identification papers]** (1) On request, a foreigner shall be obliged to present and surrender 1. his or her passport, passport substitute or substitute identity document and 2. his or her residence title or a document confirming suspension of deportation to the authorities entrusted with implementing the law on foreigners and to leave such documents with the said authorities for a temporary period, insofar as this is necessary in order to implement or safeguard measures in accordance with this Act.	**Yes (+)** In order to avoid the risk of absconding, the foreigner has to submit documents or stay at a certain place.[73]

[69]EMN 2009, Ad Hoc Query on the voluntary return of FNPs

[70]Kreienbrink & Schneider 2010, Return Assistance in Germany: 19 ; Grote, 2014: 19

[71]See Residence Act: 60a (2)

[72]EMN 2013, Ad Hoc Query on Article 7 (2)

[73]European Commission – DG Home Affairs 2013, Evaluation on the application of the Return Directive, Table 26

	Residence Act, Section 54a: **[Surveillance of expelled foreigners for reasons of internal security]** (1) A foreigner against whom an enforceable expulsion order pursuant to Section 54, no. 5, 5a or an enforceable deportation order pursuant to Section 58a exists shall be obliged to report to the police office which is responsible for his or her place of residence at least once a week, unless the foreigners authority stipulates otherwise. If a foreigner is enforceably required to leave the Federal territory for reasons other than the grounds for expulsion stated in sentence 1, an obligation to report to the police authorities corresponding to sentence 1 may be imposed if necessary in order to avert a danger to public safety and law and order	
7(4) If there is **a risk of absconding**, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a **risk to public policy, public security or national security,** Member States **may refrain from granting a period for voluntary departure**, or may grant a **period shorter** than seven days.	**Section 59(1)** […] By way of exception, **a shorter period may be set or the granting of such a period may be waived** altogether if, in individual cases, it is vital to safeguard overriding public interests, in particular where **1.** a well-founded suspicion exists that the foreigner intends to **evade deportation** **2.** the foreigner poses a serious **danger to public safety** or law and order. Under the conditions stipulated in sentence 2, the serving of notice of intention to deport may also be waived if **1.** the residence title pursuant to Section 51(1), nos. 3 to 5 has expired or **2.** the foreigner has already been informed in accordance with the requirements of Section 77 of the existence of his or her obligation to leave the federal territory. **and Section 59(7)** If the foreigners authority has concrete grounds to suspect that the foreigner has been the **victim of a criminal offence** as specified in Section 25 (4a)[74], sentence 1 or Section 25 (4b), sentence 1, it shall, by derogation from sub-section 1, sentence 1, set a deadline for leaving the country which will allow the foreigner **sufficient time** to decide whether he or she is prepared to testify pursuant to Section 25 (4a), sentence 2, no. 3 or Section 25 (4b), sentence 2, no. 2. The foreigners authority **may refrain from setting a deadline for leaving** the country pursuant to sentence 1 or may annul or **reduce the period allowed for departure,** if **1.** the foreigner's stay is **detrimental to public safety** and law and order or other substantial interests of the Federal Republic of Germany or **2.** the foreigner has **voluntarily re-established contact with the persons** pursuant to Section 25(4a), sentence 2, no. 2 after being duly informed pursuant to sentence 4. The foreigners authority or a body authorized by it **shall inform the foreigner** as to the prevailing arrangements, programmes and measures for victims of criminal offences stated in Section 25(4a), sentence 1.	**Yes (+)** Article 7(4) converges with Section 59(1) and 59(7).

Entry Ban: Article 11

Return Directive 2008/115/EC Article 11: Entry ban	Residence Act Germany Section 11: Ban on entry and residence	Convergence
11(1) Return decisions **shall be accompanied by an entry ban**: **a)** if **no period for voluntary** departure has been granted, or **b)** if the obligation to return has **not been complied** with. In other cases return decisions may be accompanied by an entry ban.	**Section 11(1)** A foreigner who has **been expelled, removed or deported** shall **not be permitted to re-enter** or stay in the federal territory. He or she shall not be granted a residence title, even if the requirements entitling him or her to a title in accordance with this Act are fulfilled. **However:** →Entry ban is **automatically imposed on all return decisions**[75]	**No (-)** The Return Directive 2008/115/EC does not require to automatically issue an entry ban on a return decision. However, the German transposition is contrary to that.
11(2) The length of the entry ban shall be determined with due regard to all **relevant circumstances** of the individual case and **shall not in principle exceed five years**. It **may however exceed five years** if the third-country national represents a **serious threat to public policy, public security or national security.**	**Section 11(1)** […] The time limit shall be set according to the individual case concerned and **may only exceed five years if the foreigner has been expelled** on the grounds of a criminal conviction or if he or she poses a **serious danger to public safety or law and order.** The setting of the time limit shall take due account of whether the foreigner has left the federal territory voluntarily and in good time. The time limit shall begin when the person concerned leaves the federal territory.	**No (-)** Normally, Germany is in line with Article 11(2). However, by saying Germany the entry ban "may exceed 5 years", an accurate length is not given. Thus, an indefinite length of the entry ban is implicated. Germany is asked to revise this Article by the EU. [76]
11(3) Member States **shall consider withdrawing or suspending an entry ban** where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in **full compliance** with a return decision. **Victims of trafficking** in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (1) **shall not be subject of an entry ban** without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned **does not represent a threat** to public policy, public security or national security. Member States **may refrain** from issuing, withdraw or suspend an entry ban in **individual cases for humanitarian reasons.** Member States **may withdraw or suspend** an entry ban in individual cases or certain	**Section 25(4**) A foreigner who is non-enforceably required to leave the Federal territory **may be granted a residence permit** for a temporary stay if his or her continued presence in the Federal territory is necessary **on urgent humanitarian or personal grounds** or due to substantial public interests. By way of derogation from Section 8(1) and (2), a residence permit may be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case concerned. **25(4a**) By way of derogation from Section 11(1), a foreigner who has been the **victim of a criminal offence** pursuant to Sections 232, 233 or 233a of the Criminal Code **may also be granted a residence** permit for a temporary stay, even if he or **she is enforceably required** to leave the Federal territory. The residence permit may only be issued if […] **Section 25(5)** (5) By way of derogation from Section 11(1), a foreigner who is enforceably required to leave the Federal territory **may be granted a residence permit** if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months. A residence permit may only be granted if the foreigner is prevented from leaving the Federal territory **through no fault of his or her own**. Fault on the part of the foreigner applies in particular if he or she furnishes false information, deceives the authorities with regard to his or her identity or nationality or fails to meet reasonable demands to eliminate the obstacles to departure.	**Yes (+)** Section 25(4) and 25(5) state that Germany gives options to withdraw an entry ban. It is also emphasized that no entry may be issued on victims of human trafficking or other humanitarian reasons**.** [77]

[75]European Commission 2014, Communication on EU Return Policy

[76]European Commission-DG Home Affairs, Evaluation on the application of the Return Directive: 166

[77]Also see European Commission-DG Home Affairs 2013, Evaluation on the application of the Return Directive: 168

categories of cases for **other reasons.**		
11(4) Where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it **shall first consult the Member State** having issued the entry ban and **shall take account of its interests in accordance with Article 25** of the Convention implementing the Schengen Agreement (2).	**Residence Act, Section 72(1) :** Requirements for the involvement of authorities Permission to enter the Federal territory (Section 11(2)) may only be granted with the consent of the foreigner's authority which is competent for the intended place of residence. The authority which has expelled, removed or deported the foreigner is generally **to be involved.** **Residence Act, Section 73(3):** Other requirements for the involvement of authorities in visa procedures and in the issuance of residence titles. The security authorities and intelligence services stated in sub-sections 1 and 2 shall **notify the inquiring body** forthwith as to whether grounds for refusal pursuant to Section 5(4) or any other security reservations apply. Should the authorities stated in sentence 1 obtain knowledge of grounds for refusal pursuant to Section 5(4) or other security reservations during the period of validity of the residence title, **they shall duly notify the competent foreigner's authority** or the competent diplomatic mission abroad forthwith. The authorities stated in sentence 1 may store and use the data transferred with the inquiry if necessary in discharging their statutory duties. Transfer provisions in accordance with other acts shall remain unaffected.	**Yes (+)** According to the EU, all EU Member States are in line with this Article.[78]
11(5) Paragraphs **1 to 4 shall apply without prejudice to the right to international protection**, as defined in Article 2(a) of **Council Directive 2004/83/EC of 29 April 2004** on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and **the content of the protection granted (3),** in the Member States.	**Section 2, Definitions: (13)** A foreigner **shall be deemed to have international protection status** if he or she enjoys international protection within the meaning of **Section 60(11)** Article 4(4), Article 5(1) and 5(2) and Articles 6 to 8 of **Council directive 2004/83/EC** of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise require international protection and the content of the protection granted (Official EU Journal no. L 304, p.12) shall apply in establishing whether bans on deportation apply pursuant to sub-sections 2, 3 and 7, sentence 2. **German Basic Law, Article 16a:** **[Right of asylum]** **(1) Persons persecuted** on political grounds shall have the **right of asylum.** **(2)** Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat.In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them. […] The Council Directive is implemented in Germany. In the Germany refugee status granted on grounds which are not explicitly covered by Council Directive 2004/83/EC (Qualification Directive) or laid down in national law is assessed using the same procedures as those foreseen by the Directive, or through a similar procedure.[79] .**1.3 National protection statuses granted on** [80] • humanitarian grounds	**Yes (+)** Germany converges with Article 11(5) in Section 60(1) of the Residence Act and 16a of the German Basic Law.

[78]EMN 2010, The different national practices concerning granting of non-EU harmonized protection statuses: 169

[79]EMN 2010, The different national practices concerning granting of non-EU harmonized protection statuses: 14

[80]EMN 2010, The different national practices concerning granting of non-EU harmonised protection statuses: 33

	• family reasons • tolerated stay/ suspension of removal. • Victims of trafficking • National interest	

Detention, Article 15:

Return Directive 2008/115/EC, Article 15: Detention	**German version : Aufenthaltsgesetz, Kapitel 5, § 62/ § 62a: Abschiebungshaft/ Vollzug der Abschiebungshaft** **Residence Act Germany, Section 62: Custody awaiting deportation**	**Convergence**
15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the **subject of return procedures in order to prepare the return** and/or carry out the **removal process**, in particular when: **(a)** there is **a risk of absconding** or **(b)** the third-country national concerned **avoids or hampers the preparation** of return or the removal process.	**62(2)** A foreigner **shall be placed in** custody by judicial order **to enable the preparation of deportation,** if a decision on deportation **cannot be reached immediately** and deportation would be much more difficult or impossible without such detention (custody to prepare deportation). **Section 62(3)** A foreigner shall be placed in custody **by judicial order for the purpose of safeguarding deportation** (custody to secure deportation) if 1. the foreigner is **enforceably required to leave** the federal territory on account of his or her having entered the territory unlawfully, 1a. a de**portation** order has been issued pursuant to Section 58a but is not immediately enforceable 2. the **period allowed for departure has expired** and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached, 3. he or she has **failed to appear** at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible 4. he or she has **evaded deportation** by any other means or 5. a well-founded suspicion exists that he or she intends to **evade deportation**	**Yes (+)** Paragraph 15(1) is transposed by 62(2) and 62(3).
15(2) Detention shall be ordered **by administrative or judicial authorities**.	**Section 62(2)** A foreigner shall **be placed in custody by judicial order** to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be much more difficult or impossible without such detention (custody to prepare deportation). **Basic Law of the Federal Republic of Germany, Article 2:** **[Personal freedoms]** (2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered **with only pursuant to a law.** **German Constitution, Article 104:** **[Deprivation of liberty]** (2) **Only a judge may rule upon the permissibility or continuation of any deprivation of liberty**[81]. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law.[82]	**Yes (+)** **Everything is fulfilled** Article 62(2) and 104 GG confirm that a foreigner cannot be placed into custody without a judicial order. This is supported by The Administrative Regulation (Verwaltungsvorschrift) 62.0.0. . Further, reasons for detention have to be given and Germany provides for a speedy judicial review and allows the foreigner to take legal actions. Moreover, Section 428 of the Code of Civil Procedure allows the immediate release if no grounds for detention are available.

[81] Additionally see the General Administrative Regulations to the Residence Act 62.0.0. (Allgemeine Verwaltungsvorschrift zum AufenthaltsG, German version)

[82] Basic Law for the Federal Republic of Germany 2014

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Detention shall be ordered in **writing with reasons** being given in fact and in law.	**Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, Section 417:** **[Application]** (2) The application shall contain the **grounds therefore.** The statement of grounds shall contain: [...] In proceedings concerning detention prior to deportation the public authority **shall submit the file** of the person concerned together with the application. **Further explanations of the General Administrative Regulations to the Residence Act(German Version);** **62.0.3.** Ein Antrag auf Vorbereitungshaft nach § 62 Absatz 1 ist nur zu stellen, wenn nach der Sach- und Rechtslage der Erlass einer Ausweisungsverfügung erforderlich ist (siehe Nummer 62.1) und **die Haft verhältnismäßig ist.** […] Für die Zulässigkeit ist der **Antrag zu begründen** und hat Tatsachen zu den in § 417 Absatz 2 Satz 2 FamFG aufgeführten Voraussetzungen für die Anordnung der Haft zu enthalten. Zudem sind darzulegen […] **62.0.3.2** [...] Die Erforderlichkeit der Sicherungshaft **setzt das Vorliegen von Haftgründen voraus (§** 62 Absatz 2 Satz 1 und 2. Mit dem Antrag der Ausländerbehörde auf Sicherungshaft beim zuständigen Amtsgericht (§ 416 FamFG) soll die Akte des Ausländers vorgelegt werden (§ 417 Absatz 2 Satz 3 FamFG). Als Voraussetzung für die Zulässigkeit ist der Antrag zu begründen und hat Tatsachen zu den in § 417 Absatz 2 Satz 2 FamFG aufgeführten Voraussetzungen für die Anordnung der Haft zu enthalten. Für die Begründung des Haftantrags sind zudem folgende Gesichtspunkte maßgebend[…] ***This means:*** The detention order has to **give the reasons** why detention has been ordered. As the person concerned has a right to an interpreter in the court hearing if he doesn't understand German, the reasons will generally be translated for him.[83]	
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When detention has been ordered by administrative authorities, Member States shall: (a) either provide for a **speedy judicial review** of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention; or (b) grant the third-country national concerned the right **to take proceedings** by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the	**General Administrative Regulations to the Residence Act(German Version): 62.0.2** Bei freiheitsentziehenden Maßnahmen im Rahmen der Abschiebung ist zu berücksichtigen, dass das aus Artikel 2 Absatz 2 Satz 2 GG abzuleitende **Beschleunigungsgebot**[84] die Behörden verpflichtet, die Abschiebung eines in Abschiebungshaft befindlichen Ausländers mit **größtmöglicher Schnelligkeit zu betreiben**. Verzögerungen des Verfahrens von behördlicher Seite können einen Haftantrag gegenstandslos machen bzw. zur Unzulässigkeit der Haftfortdauer führen. Abschiebungshaft ist nur solange zulässig, wie sinnvolle Maßnahmen zur Vorbereitung der Abschiebung getroffen werden können. **Code of Civil Procedure**[85]**, Section 114(English version)** **[Prerequisites]** (1) Any parties who, due to their personal and economic circumstances, are unable to pay the costs of litigation, or are able to so pay them only in part or only as installments, **will be granted assistance with the court costs upon filing a corresponding application**, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous. Wherever the present title is	

[83] Jesuit Refugee Service (JRS) - Europe, AISBL , Detention in Europe: Germany

[84] principle of expedience

[85] Code of Civil Procedure 2014

relevant proceedings. In such a case Member States shall immediately **inform** the third-country national concerned about the **possibility** of taking such proceedings. --- The third-country national concerned **shall be released** immediately if the detention is **not lawful.**	silent, sections 1076 through 1078 shall apply to assistance with court costs in cross-border disputes within the European Union. (2) The action being brought or the defence against an action is frivolous where a party that has not taken recourse to assistance with the court costs would desist, upon having judiciously assessed all circumstances, from bringing an action or defending against an action in spite of sufficient prospects of succeeding. ***This means:*** ➔ In Germany, the **principle of expedience (Beschleuningungsgrundsatz)** obliges the administration to take all possible measures no to unduly prolong a deprivation of liberty.[86] Detention is only justified for as long as meaningful measures to prepare the removal are taken.[87] ➔ The third country national has the right to be presented by lawyer. Despite that, he will mostly be responsible for the costs. However, there is a possibility of receiving financial support from Germany ("Verfahrenskostenhilfe").[88] --- **Code of Civil Procedure, Section 428[89]** **[Administrative Measures; Judicial Evaluation]** (1) As to each administrative measure associated with a deprivation of liberty that is not based upon a judicial order, the competent administrative authority shall promptly seek a judicial decision regarding the measure. If a deprivation of liberty **has not been ordered through a judicial decision** by the end of the following day, the person concerned **shall be released.**	
15(3) In every case, detention **shall be reviewed at reasonable intervals** of time either on **application** by the third-country national concerned or **ex officio**. In the case of prolonged detention periods, reviews shall be subject to the supervision of **a judicial authority.**	**General Administrative Regulations to the Residence Act: 62.3.0.1** Die Ausländerbehörde ist während der Dauer der Haft **zur Prüfung verpflichtet,** ob die **Voraussetzungen für die Aufrechterhaltung der Sicherungshaft weiter vorliegen oder auf Grund nachträglich eingetretener Umstände entfallen sind.** Dazu zählen beispielsweise die Mitwirkung des Ausländers an der Passbeschaffung, das Ergehen einer verwaltungsgerichtlichen Entscheidung im vorläufigen Rechtsschutzverfahren (vgl. § 80 Absatz 5 VwGO, § 80b Absatz 3 VwGO oder § 123 VwGO), die Erteilung einer Bescheinigung über die Aufenthaltsgestattung oder die längerfristige oder dauerhafte Undurchführbarkeit der Abschiebung (z.B. Vorliegen eines Abschiebungsverbots bzw. Abschiebungsstopps i. S. v. § 60 Absatz1 bis 5 und 7, § 60a Absatz 1). ***This means:*** The Aliens Department of Germany is required to frequently examine whether detention is still reasonable or whether the grounds for custody are dropped. ***Further information*:** The detainee has the right to appeal against the detention order. The appeal will be decided by the regional Court of Appeal, which has to hear the detainee (and other persons involved) again unless it is firmly convinced that this will lead to no new findings. If the Court of Appeal holds that detention shall be continued, the detainee has a further right of appeal to the Federal High Court, which will only judge the legal aspects of the case without hearing the detainee.[90]	**Yes (+)** The General Administrative Regulations to the Residence Act on 62.3.0.1 provide regularly detention reviews.

[86] FRA 2010, Detention of third-country nationals in return procedures

[87] See General Administrative Regulations to the Residence Act 26 October 2009: 62.0.2.

[88] Jesuit Refugee Service (JRS) - Europe, AISBL , Detention in Europe: Germany

[89] Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction 2014

[90] Jesuit Refugee Service (JRS) - Europe, AISBL , Detention in Europe: Germany

15(4) When it appears that a reasonable **prospect of removal no longer exists** for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be **justified** and the person concerned **shall be released immediately.**	**Basic Law, Section 425:** **[Duration and Extension of the Deprivation of Liberty]** (2) If there has been **no extension of the duration of the deprivation of liberty within the deadline by way of a judicial order,** the person concerned **shall be released**. The court shall be notified of the release. **General Administrative Regulations to the Residence Act (German version): 62.3.3.** […]Sie hat den Vollzug der Abschiebungshaft unverzüglich bis zu einer Woche auszusetzen (§ 424 Absatz 1 Satz 3 FamFG) un**d deren Aufhebung unverzüglich zu beantragen, wenn die für deren Anordnung maßgebenden Gründe entfallen sind** (§ 426 Absatz 2 FamFG). **Aufenthaltsgesetz , 62.1.2(German version)** **Abschiebungshaft** Bei Wegfall einer der gesetzlichen Voraussetzungen ist von Amts wegen unverzüglich zu beantragen, **die Haft aufzuheben.**	**Yes (+)** Both, Section 425 and the General Administrative Regulations to the Residence Act 62.3.3, underline that a detainee shall not longer be kept in prison and released immediately if the detention is not justified anymore.
15(5) Detention shall be maintained **for as long a** period as the conditions laid down in paragraph 1 are fulfilled and it is **necessary to ensure successful removal**. Each Member State shall set a limited period of detention, which **may not exceed six months**	**Kapitel 5, Abschnitt 2, §62.3. (German version)** **Dauer der Sicherungshaft** Der Ausländer kann für die Dauer von **längstens zwei Wochen** in Sicherungshaft genommen werden, wenn die Ausreisefrist abgelaufen ist und feststeht, dass die Abschiebung durchgeführt werden kann. Von der Anordnung der Sicherungshaft nach Satz 1 Nr. 1 kann ausnahmsweise abgesehen werden, wenn der Ausländer glaubhaft macht, dass er sich der Abschiebung nicht entziehen will. Die Sicherungshaft ist unzulässig, wenn feststeht, dass aus Gründen, die der Ausländer nicht zu vertreten hat, die Abschiebung nicht innerhalb der nächsten **drei Monate** durchgeführt werden kann. Ist die Abschiebung aus Gründen, die der Ausländer zu vertreten hat, gescheitert, bleibt die Anordnung nach Satz 1 bis zum Ablauf der Anordnungsfrist unberührt. **Kapitel 5, § 62.4. (German version)** **Dauer der Sicherungshaft** (4) Die Sicherungshaft kann bis zu **sechs Monaten** angeordnet werden. Sie kann in Fällen, in denen der Ausländer seine Abschiebung verhindert, um höchstens zwölf Monate verlängert werden. Eine Vorbereitungshaft ist auf die Gesamtdauer der Sicherungshaft anzurechnen. **Section 62(3) (English version)** Detention pending deportation may be ordered for **up to six months**. […] A **period of custody to prepare** deportation shall count towards the overall duration of detention pending deportation.[91]	**Yes (+)** The length on detention shall not exceed six months in Germany. This is stated by §62.4 of the German Aufenthaltsgesetz and Section 62(3) of the Residence Act. The German version adds that a period of three, but maximum six weeks may not be exceeded (§62.3.)
15(6) Member States may not extend the period referred to in paragraph 5 except for a limited period **not exceeding a further twelve months** in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to: (a) a **lack of cooperation** by the third country national concerned, or	**Kapitel 5, § 62.4. (German version)** **Dauer der Sicherungshaft** (4) Die Sicherungshaft kann bis zu **sechs Monaten** angeordnet werden. Sie kann in Fällen, in denen der Ausländer seine **Abschiebung verhindert,** um **höchstens zwölf Monate** verlängert werden. Eine Vorbereitungshaft ist auf die Gesamtdauer der Sicherungshaft anzurechnen. **Section 62 (4) (English version)** Custody awaiting deportation Detention pending deportation may be ordered for up to six months. In cases in which the foreigner **frustrates his or her deportation**, it may be extended by **a**	**Yes (+)** Article 15(6) is converged with by 62(3) of the Residence Act. The German version further explains that a lack of corporation or the delay of necessary documents can be further reasons for the extension of detention.

[91]The average detention period of a foreigner accounts for less than 42 days for 73%. (European Commission, 2014)

(b) **delays in obtaining the necessary documentation** from third countries	**maximum of twelve months.** A period of custody to prepare deportation shall count towards the overall duration of detention pending deportation.[92] ***Further additional information:*** **General Administrative Regulations to the Residence Act (German version): 62.3.2** Eine Verlängerung der Sicherungshaft um bis zu **zwölf Monate auf die Höchstdauer von18 Monaten** ist nur dann zulässig, wenn der Ausländer seine Abschiebung verhindert (§ 62 Absatz 3 Satz 2) und ihm dies zurechenbar ist (z. B. **mangelnde Mitwirkung bei der Beschaffung von Reisedokumenten;** Verstoß gegen die Passvorlagepflicht nach § 48 Absatz 1; Weigerung, sich der Auslandsvertretung des Heimatstaates vorzustellen). Es muss feststehen, dass der Ausländer ihm zumutbare Handlungen pflichtwidrig unterlässt bzw. seinen Pflichten **widersprechend handelt**. Das Verhalten des Ausländers muss zudem weiter ursächlich für die Nichtdurchführbarkeit der Abschiebung bleiben. Eine Verlängerung der Sicherungshaft um bis zu zwölf Monate ist unter den gleichen Voraussetzungen zulässig, wenn der Ausländer einen Asylfolgeantrag gestellt hat. Eine Verhinderung der Abschiebung i. S. v. § 62 Absatz 3 Satz 2 liegt nicht vor, wenn der Ausländer Rechtsschutzmöglichkeiten ausschöpft (siehe Nummer 62.2.1.5). **62.2.1.6.2.** Auch die **mangelnde Mitwirkung** an der **Ausstellung oder der Verlängerung der** Gültigkeitsdauer eines Heimreisedokuments oder Beantragung eines erforderlichen Transitvisums kann jedenfalls dann einen Haftgrund darstellen, wenn **entsprechende behördliche Bemühungen deswegen ohne Erfolg sind** und aus den Umständen des Einzelfalls geschlossen werden kann, der Ausländer wolle einer Abschiebung aktiv entgegenwirken. Der Ausländer ist vorher auf seine Mitwirkungspflichten (§§ 48, 82 sowie § 56 AufenthV) hinzuweisen. ***This means:*** ➔ These two regulations confirm that a detainee cannot be kept longer than months in detention, if he does not cooperate with the state of Germany or a delay of documents being necessary is present. However, a maximum of 18 months cannot be exceeded.	

5.2.2. Italy

The first version of the asylum legislation in Italy was introduced in 1998 and named the Legislative Decree 286/1998. From then on, it has been constantly changed and amended. The most important changes came along by Law 189/2002, and were called "Amendments to the legislation on immigration and asylum*"*. It is also known as "Bossi-Fini Law" (Iyengar, Landri, Mini et al., and 2013: 7). Moving on, the Law Decree 92/2008 and Law 94/2009 aimed to foster the former law. They are also known as security decree and security package (Iyengar et al., 2013). After the introduction of the Return Directive 2008/115/EC, Italy did not make any movement to transpose these regulations by the set deadline. Thus, the Court of Justice of the European Union sanctioned Italy. This is also known as the "El Dridi case" (Bertin, Fontanari, & Gennari, 2013: 7). Especially the long detention period rule after a refusal to leave the country was in contrary to the Return Directive 2008/115/EC. Additionally, Italy stated to have a "state of humanitarian emergency in Italy in relation to the exceptional flow of citizens from North Africa" (Di Martino, 2013: 16) due to the Arab Spring. Directly after this process, Italy amended its law and introduced the Law Decree

[92]The average detention period of a foreigner accounts for less than 42 days for 73%. *(*European Commission, 2014)

89/2011. This finally transposed the Return Directive 2008/115/EC (Bertin, Fontanari & Gennari, 2013). It was called the 2011 Security Package. Afterwards, it was modified to the name Law No 129/2011(Di Martino, 2013).

After amendments in 2011, most of the articles of the Return Directive 2008/115/EC are transposed within Article 10, 13, 14 and 19 (Bertin et al., 2013). When reviewing the transposition of the Return Directive 2008/115/EC into the national legislation of Italy, it becomes apparent why it was sanctioned in the El Dridi Case: Italy has not converged with more than half of the 15 paragraphs set out in Article 7, 11 and 15. Especially the voluntary departure, which is found in Article 13.5 of the UTI, lacks of correct application. This is mainly due to the fact that Italy does not promote voluntary departure over forced return. In detail, the word *shall* of the Return Directive 2008/115/EC is often turned into *may*. Hence, Article 13.5. provides that a voluntary departure "may be given"[93] in terms of an application of the third country national. This makes it non-automatic and gives the procedure, which is supposed to be preferred to forced return, a rather optional character (Iyengar et al., 2013). The same accounts for the transposition of Article 7(2). The extension of the voluntary departure in terms of individual circumstances "may", instead of "shall"[94], be extended. The opposite accounts for Article 7(3); while the Return Directive 2008/115/EC states that certain obligations to avoid the risk of absconding may be imposed, Article 13.5. turns these measures into a rather compulsory obligation. This is because it uses the word "requires"[95]. Furthermore, the risk of absconding, which is a reason not to grant a voluntary departure, is extensively defined in 13.4-bis. This results from the possibility to freely determine these criteria, as there is little guidance provided by the Return Directive 2008/115/EC on this topic (No Point of Return, 2014). However, some limits, like the provision of economic resources, are not required by the Return Directive 2008/115/EC. In contrast, they are stated in the Italian legislation. Moreover, further criteria are not reasonable to achieve within a short period of time by the foreigner (International Commission of Jurists, 2014). In conclusion, the procedure on voluntary departure is not converged with. The transposition in Italy presents more restrictive grounds than the regulations set out in Article 7 of the Return Directive 2008/115/EC.

Secondly, the entry ban presents more attempts to compliance. However, the provisions of the probation to enter in Article 13.13 of the UTI show further lacks of convergence. Article 11(1) of the Return Directive 2008/115/EC gives options to impose an entry ban if no voluntary departure was granted or if the third country national does not comply with the return procedure. Italy automatically issues an entry ban on every return decision in Section 13.13 of the UTI. This is contrary to EU regulations. Moving on, Article 11(2) is converged with by section 13.14 of the UTI. An entry ban may be imposed for 3-5 years with respect to individual circumstances. An extension is possible as well. This has to be determined by the

[93]See 13.5. UTI
[94]See Article 7(2) of the Return Directive and 13.5. UTI
[95]See 13.5 UTI

Minister of the Interior. Furthermore, Article 13.13. fails to meet the requirements of the Return Directive 2008/115/EC. There is no provision stating the option to withdraw the probation to enter in terms of full compliance with the voluntary departure. Only the possibility of lifting a ban is given. Therefore, the obligatory non-imposition of an entry ban regarding victims of human trafficking is not met. Hence, Article 11(3) is not converged with. Lastly, Italy converges with Article 11(4) and 11(5). Section 9.13 of the UTI provides that the communication in terms of removing an entry issued by another Member State shall follow. Further, the UTI states that international protection is granted. It also applies the grounds required by the EU, which are underlined in Article 11(5).

Finally, the paragraphs of Article 15 on detention are half converged with. In this connection, the corresponding article is Section 14 of the UTI. The grounds for custody are provided accordingly to Article 15(1): A third country national can only be detained when immediate removal is not possible and a risk of absconding or non- availability of passports of required documents is applicable. Thus, it is in line with the Return Directive 2008/115/EC. It is to mention that a lot of scholars raise critics concerning the broad definition of the risk of absconding (Iyengar et al., 2013). However, this also results due to the fact that the Return Directive 2008/115/EC gives little information on how to determine the criteria regarding the risk of absconding (Point of no return, 2014). Moving on, Article 15(2) presents divergence in terms of the corresponding legislation of the UTI. Correctly, the decision for detention has to be made on a judicial basis. However, Article 14 of the UTI does neither include any parts for a speedy judicial review nor the option to take legal proceedings by the foreigner. This is contrary to the Return Directive 2008/115/EC. Furthermore, Article 15(3) and 15(4) are not correctly converged with either. The required judicial review of detention of the former, which shall take place automatically, can only be requested on application. This has to be made by the third country national. Hence, it is against the intention of Article 15(3), which requires an automatic review. Further, Article 15(4) on the immediate release of detainees, where the grounds for detention elapsed, is not transposed at all (Bertin et al., 2013: Iyengar et al., 2013). However, the last two paragraphs on the length of detention of Article 15 are successfully stuck to. Article 14.1 of the UTI implies that a detention period shall be applied only for the time necessary to ensure removal. The international Italian Law requires that it may not exceed 30 days. This is even less than the maximum requirement of 6 months, which is stated in Article 15(5). Finally, the detention period may only be exceeded in cases documents are delayed to prepare a successful removal. However, this is required to be limited to 90 days in total. Thus, it is in line with Article 15(6), which states to not exceed 18 months in total. Hence, Article 14.1. of the UTI convergences with the length on detention.

Voluntary Departure: Article 7

Return Directive 2008/115/EC, Article 7: Voluntary Departure	UTI(Testo Unico Immigrazione), Article 13.5: [96] Voluntary Departure (Partenza volontaria)	Convergence
7(1) A return decision **shall provide** for an appropriate period for **voluntary departure** of between **seven and thirty days**, without prejudice to the exceptions referred to in paragraphs2 and 4. Member States may provide in their national legislation that such a period shall be granted only **following an application** by the third-country national concerned. In such a case, Member States **shall inform the third-country nationals** concerned of the possibility of submitting such an application The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to **leave earlier.**	**13.5 (Italian)** Lo straniero, destinatario di un provvedimento d'espulsione, qualora non ricorrano le condizioni per l'accompagnamento immediato alla frontiera di cui al comma 4, puo' chiedere al prefetto, ai fini dell'esecuzione dell'espulsione, la concessione di un periodo per la partenza volontaria, anche attraverso programmi di rimpatrio volontario ed assistito, di cui all'articolo 14-ter. Il prefetto, valutato il singolo caso, con lo stesso provvedimento di espulsione, intima lo straniero a lasciare volontariamente il territorio nazionale, entro un termine compreso tra 7 e 30 giorni.[…]. La questura, acquisita la prova dell'avvenuto rimpatrio dello straniero,avvisa l'autorita' giudiziaria competente per l'accertamento del reato previsto dall'articolo 10-bis, ai fini di cui al comma 5 del medesimo articolo. Le disposizioni del presente comma non si applicano, comunque, allo straniero destinatario di unprovvedimento di respingimento, di cui all'articolo 10. **13.5 (English)**[97][98] The alien receiving an expulsion measure, unless the conditions for immediate accompaniment at the border referred to in paragraph 4 apply, **may ask** the prefect, for the purpose of expulsion, the granting of a period **for voluntary departure**, including through voluntary and assisted return programs as per Article 14-ter. The prefect, evaluating the individual case, with the same expulsion measure urges the alien to voluntarily leave the country within **a period of 7 to 30 days**. [...] For the implementation of paragraph 5, the *questura* [99] takes care of providing adequate information to the alien concerning the possibility to ask for a term for voluntary departure, through multilingual informative forms. In case said term is not requested, expulsion is carried out pursuant to paragraph 4. ***This means:*** The Questura is in charge of informing the foreigner of the chance **to apply** for the voluntary departure procedure, by means of multilingual prearranged forms. If no request is submitted, the removal of the foreigner will be enforced as provided for by art. 13.4 UTI. [100]	**No (-)** 1. The Return Directive 2008/115/EC promotes voluntary departure over forced return[101]. However, this is not clearly emphasized in Italy. Instead of the use *shall*, the Italian legislation uses the word *may*. This underlines that the voluntary departure is rather an option than a rule. Therefore, Italy does not encourage the voluntary departure as much as it is stated by the EU. Further, there is a lack of clarity concerning the fact that the enforcement of third country nationals shall follow without coercive measures. Lastly, voluntary departure may only be requested on application. This does not make it automatically enforcable.[102] 2. Forced accompaniment and detention and return forcement is the rule, while voluntary departure is the exception. It is considered to be the secondary choice compared to forced accompaniment to the border. This is said "to betray the spirit of the Return Directive 2008/115/EC"[103].
7(2) Member States **shall,** where necessary, **extend the period** for voluntary departure by an appropriate period, taking into account **the specific circumstances of the individual case**, such as the length of stay, the existence	**13.5 (Italian)** […]Tale termine puo' essere prorogato, ove necessario, per un periodo congruo, commisurato alle circostanze specifiche del caso individuale, quali la durata del soggiorno nel territorio nazionale, l'esistenza di minori che frequentano la scuola ovvero di altri legami familiari e sociali, nonche' l'ammissione a programmi di rimpatrio volontario ed assistito, di cui all'articolo	**No (-)** The reasons for the non-compliance refer to the same as the ones concerning 7(1). Italy uses *may* instead of *shall*, which also makes this paragraph optional and not mandatory (see

[96]Decreto-Legge 23 giugno 2011, n. 89
[97]EMN 2013, Ad Hoc Query on Article 7(2)
[98]Legislative Decree n 286 dated 25 July 1998
[99]The Questura is an office of the Polizia di Stato that is under the authority of the Ministry of the Interior and is competent in the territory of the province (Provincia) where it is located. The Questura's main function consists in maintaining order and ensuring public security within the territory of the province. The Questore is the head of the Italian Questura(Iyengar et al. 2013:8)
[100]Iyengar [et al.] 2013: 10
[101]International Commission of Jurists 2014: 20
[102]Iyengar [et al.] 2013: 22
[103]International Commission of Jurists 2014: 30

of children attending school and the existence of other family and social links.	14-ter.[…] **13.5 (English)** [104] […]This period **may be extended**, if necessary, by an appropriate period, commensurate to the **specific circumstances of the individual case,** such as **the length of stay** in the national territory, **the existence of children** attending the school or other **family and social ties,** as well as the admission to assisted voluntary and return programs, referred to in Article 14-ter. […]	explanation to Article 7.1)
7(3) Certain **obligations aimed at avoiding the risk of absconding**, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place **may be imposed** for the duration of the period for voluntary departure.	**13.5.2 (Italian)** Laddove sia concesso un termine per la partenza volontaria, il questore chiede allo straniero di dimostrare la disponibilita' di risorse economiche sufficienti derivanti da fonti lecite, per un importo proporzionato al termine concesso, compreso tra una e tre mensilita' dell'assegno sociale annuo. Il questore dispone, altresi', una o piu' delle seguenti misure: a) consegna del passaporto o altro documento equipollente in corso di validita', da restituire al momento della partenza; b) obbligo di dimora in unluogo preventivamente individuato, dove possa essere agevolmente rintracciato; c) obbligo di presentazione, in giorni ed orari stabiliti, presso un ufficio della forza pubblica territorialmente competente. Le misure di cui al secondo periodo sono adottate con provvedimento motivato, che ha effetto dalla notifica all'interessato, disposta ai sensi dell'articolo 3, commi 3 e 4 del regolamento, recante l'avviso che lo stesso ha facolta' di presentare personalmente o a mezzo di difensore memorie o deduzioni al giudice della convalida. **13.5.2 (English)** [105] Should a term be granted for voluntary departure, the *questore* **requires** for the alien to prove the availability of **sufficient economic resources** deriving from legal sources, for an amount proportional to the term granted, comprised between one and three months of the annual social cheque. Moreover, the *questore* **provides** for one or more of the following measures: a**) to hand in passport** or other equivalent document in course of validity, which shall be given back at the moment of departure; b) **obligation to live in a place found beforehand, where he can be easily traced**; c) **obligation to present himself,** according to days and hours established, at the police department territorially cognizant. The measures as mentioned under the second period are adopted with motivated measure, which has effect from the notification to the person involved, provided for pursuant to article 3, paragraphs 3 and 4 of the regulation, stating the notice that the same has the right to submit personally or through defender notes or deductions to the validation judge.[…] ***This means:*** If the Prefetto allows an extension of the time-limit for the voluntary departure, the **foreigner must provide appropriate financial guarantees**. Moreover they will be subject to one or more measures imposed by the Questore, such as: a) **passport suspension** (the passport should be given back to the foreigner before his departure); b) **obligation to live in a previously identified house** where he can be easily tracked down; and/or c) **daily attendance at a police** station until the day of departure.	**No (-)** Article 13.5.2 modified to the original sense of Article 7(3). Most of the options are not possible or not reasonable to achieve during the short amount of time.[106] These would be: 1) to ask a third country national for the provision proof of regular accommodation and residence. [107] 2) The obligation to arrange a declaration of where they will stay with friends or relatives.[108] Additionally, it is not stated how these measures shall be provided. Furthermore, these requests seem to have a "compulsory"[109] character, while the Return Directive 2008/115/EC uses the words "may be imposed"[110].

[104]EMN 2013, Ad-Hoc Query on the Return Directive (2008/115/EC) Article 7(2)
[105]Legislative Decree n 286 dated 25 July 1998
[106]Di Martino 2013: 53
[107]Di Martino 2013: 53
[108]Di Martino 2013: 53
[109]Di Martino 2013: 54
[110]Directive 2008/115/EC: 7(3)

7(4) If there is **a risk of absconding**, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a **risk to public policy, public security or national security,** Member States **may refrain from granting a period for voluntary departure**, or may grant a **period shorter** than seven days.	**UTI: 13. 4-bis (Italian)** Si configura il rischio di fuga di cui al comma 4,lettera b), qualora ricorra almeno una delle seguenti circostanze da cui il prefetto accerti, caso per caso, il pericolo che lo straniero possa sottrarsi alla volontaria esecuzione del provvedimento di espulsione: a) mancato possesso del passaporto o di altro documento equipollente, in corso di validita'; b) mancanza di idonea documentazione atta a dimostrare la disponibilita' di un alloggio ove possa essere agevolmente rintracciato; c) avere in precedenza dichiarato o attestato falsamente le proprie generalita'; d) non avere ottemperato ad uno dei provvedimenti emesis dalla competente autorita', in applicazione dei commi 5 e 13, nonche' dell'articolo 14; e) avere violato anche una delle misure di cui al comma **UTI : 13. 4-bis (English)**[111] The risk of escape[112] falls within what mentioned under paragraph 4, letter b), should at least one of the following circumstances occur from which the *prefetto* ascertains, case by case, the risk that the alien **can avoid the voluntary execution** of the expulsion measure: a) the alien is not **in possession of passport** or other equivalent document, in course of validity; b) the alien does not **have proper documentation** capable of proving the availability of a lodging where he can be easily traced; c) the alien stated previously or **falsely certified** his personal data; d) the alien **did not comply** with one of the measures issued by the cognizant authority, implementing paragraphs 5 and 13, as well as article 14; e) the alien **infringed** also one of the measures as mentioned under paragraph ***Further information***[113]**:** In order to benefit from this measure **some strict requirements must be fulfilled:** • **no expulsion order** for **state security and public order grounds** should have been issued against the person concerned; • there should be **no risk of absconding**[114]; • the **request of permit of stay should not have been rejected** because it was manifestly unfounded or fraudulent.	**No (-)** The risk of absconding effects that the voluntary departure is restricted. Therefore, it is contrary to the Return Directive 2008/115/EC. This has the following reasons: 1. "The criteria to assess the risk of absconding are based on conditions that are beyond the person's control (e.g. loss of passport; non-availability of housing because of irregular status, which prevents rental of accommodation), or on the basis of previous conduct already sanctioned by law (i.e. declaring false identity). The application of such rules makes voluntary return a very marginal option."[115] 2. The provision of economic resources is not requested by the Return Directive 2008/115/EC. Thus, it is contrary to the latter.[116] 3. According to the ICJ[117], the risk of absconding is considered to be contrary to the Return Directive 2008/115/EC.[118] 4. The voluntary departure introduced by *the l.n. 129/2011* is difficult to apply, because of the inaccuracy in arts. 13.5.2 & 13.5.1 and because of its limitations concerning their application. They are highly restricted by the wide interpretation of the risk of absconding, which the legislator decided to use. That excludes the application of voluntary departure.[119]

[111]Legislative Decree n 286 dated 25 July 1998

[112]See Appendix for Italy's Definition of risk of absconding

[113]Aida 2015, Country Report Italy

[114]See Appendix for Italy's Definition of risk of absconding

[115]Di Martino 2013: 56

[116]International Commission of Jurists 2014: 30

[117]The ICJ, namely International Commission of Jurists, is a Commission made up of 60 judges and lawyers from all regions coming from different countries of the world. They stand for the promotion and protection of human rights by means of the Rule of Law and its unique legal expertise. By means of that, they develop and strengthen national and international judicial systems (International Commission, 2014)

[118]International Commission of Jurists 2014: 29

[119]Bertin, Fontanari, & Gennari 2013: 15

Entry Ban: Article 11

Return Directive 2008/115/EC, Article 11: Entry ban	UTI(Testo Unico Immigrazione), Article 13.13: Entry Ban(Il divieto previsto)	Convergence
11(1) Return decisions **shall be accompanied by an entry ban**: **c)** if **no period for voluntary** departure has been granted, or **d)** if the obligation to return has **not been complied** with. In other cases return decisions may be accompanied by an entry ban.	**13.13 (Italian)** Lo straniero destinatario di un provvedimento di espulsione ([8]) non può rientrare nel territorio dello Stato senza una speciale autorizzazione del Ministro dell'interno . In caso di trasgressione lo straniero è punito con la reclusione da uno a quattro anni ed è nuovamente espulso con accompagnamento immediato alla frontieraLa disposizione di cui al primo periodo del presente comma non si applica nei confronti dello straniero già espulso ai sensi dell'articolo 13, comma 2, lettere a) e b), per il quale è stato autorizzato il ricongiungimento, ai sensi dell'articolo 29. . **13.13 (English)**[120] A foreigner who was issued a deportation order cannot re-enter Italy, unless they are granted a special authorisation by the Ministry of the Interior. In case of a violation, the foreigner will face a criminal charge punishable with detention (one to four years imprisonment) and will be immediately subject to forced removal. This disposition does not apply to the alien who was already deported, in compliance to article 13, comma2 , letters a), b), and for whom reunification was granted, as stated by article 29. ***This means:*** The entry ban is automatically imposed on all return decisions in Italy.[121]The effect of the expulsion order is the obligation to leave the country and the issuance of a re-entry ban[122]	**No (-)** While the EU states options not to automatically give an entry ban, Italy imposes it on all decisions. Additionally, it is sanctioned with 1-4 years of imprisonment. This is not in line and is more restrictive than the Return Directive 2008/115/EC. Thus, 11(1) it is not correctly transposed.
11(2) The length of the entry ban shall be determined with due regard to all **relevant circumstances** of the individual case and **shall not in principle exceed five years**. It may however exceed five years if the third-country national represents a **serious threat to public policy, public security or national security.**	**UTI: 13.14 (Italian)** Il divieto di cui al comma 13 opera per un periodo non inferiore a tre anni e non superiore a cinque anni, la cui durata è determinata tenendo conto di tutte le circostanze pertinenti il singolo caso. Nei casi di espulsione disposta ai sensi dei commi 1 e 2, lettera c) del presente articolo, ovvero ai sensi dell'articolo 3, comma 1, del decreto-legge 27 luglio 2005, n. 144, convertito, con modificazioni, dalla legge 31 luglio 2005, n. 155, può essere previsto un termine superiore a cinque anni, la cui durata è determinata tenendo conto di tutte le circostanze pertinenti il singolo caso. Per i provvedimenti di espulsione di cui al comma 5, il divieto previsto al comma 13 decorre dalla scadenza del termine assegnato e può essere revocato, su istanza dell'interessato, a condizione che fornisca la prova di avere lasciato il territorio nazionale entro il termine di cui al comma 5. **13.14. (English)**[123] The Italian law (art. 13, paragraph 14 of the) establishes the period of entry ban for the expelled alien from **three to five years.** The actual length of the ban is determined by the Prefect taking into account "**all the circumstances relevant to the individual case**". In practice, the assessment of the duration of the ban takes into account the previous length of stay, any family ties and social inclusion. Instead, in cases of expulsion adopted for reasons of **social dangerousness** (e.g. one or more criminal convictions, subjection to preventive measures) or for reasons of **public order or public security** (e.g. reasonable suspicion of belonging to a terrorist or subversive organisation), a period **longer than five years may be envisaged.** In these cases, the law **does not establish a maximum limit but relies on the prefect or the Minister of the Interior** - depending on their respective responsibilities – in assessing the period of entry ban that, even in these cases, is determined taking into account "all relevant	**Yes (+)** The re-entry ban lasts between 3 and 5 years depending on the specific circumstances of each individual. The exceeding is determined by the Prefect in Italy. This is in formal line with the Return Directive 2008/115/EC.[124]

[120]Iyengar [et al.] 2013

[121]European Commission 2014, Communication on Return Policy

[122]Di Martino 2013: 46

[123]European Comission 2013, Ad-Hoc Query on the period of entry ban

[124]Also see Di Martino 2013

	circumstances" (e.g. seriousness of the misconduct, as well as the need to respect family life, etc.).	
11(3) Member States **shall consider withdrawing or suspending an entry ban** where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in **full compliance** with a return decision. **Victims of trafficking** in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (1) **shall not be subject of an entry ban** without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned **does not represent a threat** to public policy, public security or national security. Member States **may refrain** from issuing, withdraw or suspend an entry ban in **individual cases for humanitarian reasons.** Member States **may withdraw or suspend** an entry ban in individual cases or certain categories of cases for **other reasons**.	**UTI: 13.14 (Italian)** Per i provvedimenti di espulsione di cui al comma 5, il divieto previsto al comma 13 decorre dalla scadenza del termine assegnato e può essere revocato, su istanza dell'interessato, a condizione che fornisca la prova di avere lasciato il territorio nazionale entro il termine di cui al comma 5. **Explanation of 13.14, UTI (English)** Voluntary departure of the foreigner within the set deadline may result in the lifting of the entry ban.[125] Hiowever, no automatic suspension is provided, even if it is appealed. Suspension only on request.Authorization is not required to expel immigrants victims of crimes: the victim's expulsion cannot be suspended, although article 17 Immigration Law formally ensures the full exercise of the right to defense of both victims and alleged perpetrators of crimes. Such inconsistency in the system seriously affects the victim's right to a fair trial, in violation of the EU standards of protection for victims of crime.[126]	**No (-)** No provisions on the withdrawal or suspension of an entry ban are provided.
11(4) Where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it **shall first consult the Member State** having issued the entry ban and **shall take account of its interests in accordance with Article 25** of the Convention implementing the Schengen Agreement (2).	**UTI: 9.13 (Italian)** È autorizzata la riammissione sul territorio nazionale dello straniero espulso da altro Stato membro dell'Unione europea titolare del permesso di soggiorno UE per soggiornanti di lungo periodo di cui al comma 1 che non costituisce un pericolo per l'ordine pubblico e la sicurezza dello Stato **UTI : 9.13 (English)** The alien expelled by another Member State of the European Union is authorized **to be readmitted on the national territory** if holder of the*((EU residence permit for long-term residents))* as mentioned under paragraph 1 and does not constitute danger for public order and the State's security. **UTI: 9.13-bis. (Italian)** È autorizzata, altresì, la riammissione sul territorio nazionale dello straniero titolare del permesso di soggiorno UE per soggiornanti di lungo periodo titolare di protezione internazionale allontanato da altro Stato membro dell'Unione europea e dei suoi familiari, quando nella rubrica 'annotazioni' del medesimo permesso è riportato che la protezione internazionale è stata riconosciuta dall'Italia. Entro trenta giorni dal ricevimento della relativa richiesta di informazione, si provvede a comunicare allo Stato membro richiedente se lo	**Yes(+)** The elements for Artilce 11(4) are found in 9.13 of the UTI.

[125]Iyengar [et al.] 2013: 11
[126]Di Martino 2013: 48

	straniero beneficia ancora della protezione riconosciuta dall'Italia. **UTI 9.13-bis. (English)** Moreover, **readmission on the national territory is authorized** for the alien with EU residence permit for long-term residents holder of international protection removed by another Member State of the European Union and for his family members, when under the 'annotations' of the mentioned permit it is stated that the **international protection was recognized** by Italy. Within thirty days from the reception of the relevant request for information, **communication is sent to the Member State asking if the alien still benefits** from the protection recognised by Italy.	
11(5) Paragraphs **1 to 4 shall apply without prejudice to the right to international protection**, as defined in Article 2(a) of **Council Directive 2004/83/EC of 29 April 2004** on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and **the content of the protection granted (3),** in the Member States.	**UTI 9.13-bis. (English)** Moreover, **readmission on the national territory is authorized** for the alien with EU residence permit for long-term residents holder of international protection removed by another Member State of the European Union and for his family members, when under the 'annotations' of the mentioned permit it is stated that the **international protection was recognized** by Italy. Within thirty days from the reception of the relevant request for information, **communication is sent to the Member State asking if the alien still benefits** from the protection recognised by Italy. **National protection statuses granted on** [127] • Temporary protection • humanitarian grounds • family reasons • tolerated stay/ suspension of removal • Victims of environmental disasters	**Yes (+)** According to the EU, Italy fulfills this paragraph.

Detention: Article 15

Return Directive 2008/115/EC, Article 15: Detention	UTI(Testo Unico Immigrazione), Article 14: Execution of the Expulsion (Esecuzione dell'espulsione)	Convergence
15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the **subject of return procedures in order to prepare the return** and/or carry out the **removal process**, in particular when: (a) there is a **risk of absconding** or (b) the third-country national concerned **avoids or hampers the preparation** of return or the removal process.	**14.1.(Italian)** Quando non e' possibile eseguire con immediatezza l'espulsione mediante accompagnamento alla frontiera o il respingimento, a causa di situazioni transitorie che ostacolano la preparazione del rimpatrio o l'effettuazione dell'allontanamento, il questore dispone che lo straniero sia trattenuto per il tempo strettamente necessario presso il centro di identificazione ed espulsione piu' vicino, tra quelli individuati o costituiti con decreto del Ministro dell'interno, di concerto con il Ministro dell'economia e delle finanze. Tra le situazioni che legittimano il trattenimento rientrano, oltre a quelle indicate all'articolo 13, comma 4-bis, anche quelle riconducibili alla necessita' di prestare soccorso allo straniero o di effettuare accertamenti supplementari in ordine alla sua identita' o nazionalita' ovvero di acquisire I documenti per il viaggio o la disponibilita' di un mezzo di trasporto idoneo. **14.1 (English)**[128][129] Art. 14.1 UTI: When immediate removal is not possible due to temporary conditions that hinder the preparation or the implementation of the deportation, the Questore establishes that the foreigner must be detained in the closest CIE.	**Yes (+)** **Limitations**: The broad definition of the risk of absconding has raised criticism by scholars (Masera 2011; Natale 2011). [132] **BUT:** The risk of absconding critera presents the same obstacles as with Article 7(4). A lot of critics say that these criteria are not in line with the Return Directive 2008/115/EC.

[127] European Commission-DG Home Affairs, Evaluation on the application of the Return Directive (2008/115/EC) (Final Report): 169

[128] Iyengar [et al.] 2013: 12

[129] Legislative Decree n 286 dated 25 July 1998

[132] Global Detention Project 2007-2014, Italy Detention Report

	Circumstances justifying such detention – that should be as short as possible - are limited to: - the risk of absconding (as defined by art. 13.4 bis UTI); - the need to provide the foreigner with assistance; - the need to inquire into the foreigner's identity and nationality or to prepare their travel documents; and - unavailability of a suitable means of transport ***Further explanation of 14.1*** If the foreigner holds their own passport and does not pose risk to public policy and public or national security, instead of detention in CIE, the Questore can decide to impose one or more of the following measures: a) passport suspension (the passport should be given back to the foreigner before their departure); b) obligation to live in a previously identified house where they can be easily tracked down; and/or c) daily attendance at a police station until the day of departure. Such measures are to be communicated by the Questore within forty- eight hours to the judge, who validates, modifies or dismisses them within th e next forty -eight hours. Non -compliance with any of these measures entails the imposition of a fine from 3,000 to 18,000 Euros and immediate forced removal. ***This means:*** **Grounds for detention.** In line with Article of the Consolidated Immigration Act, when **immediate expulsion or refusal of** entry is not possible, a person may be detained at the nearest CIE. The situations that justify administrative custody include the need to provide relief to the immigrant, ascertain his identity or nationality, acquire travel documents, or arrange a suitable means of transport.[130] Another set of circumstances permitting detention relates to the risk that the person concerned may **escape the voluntary execution** of the expulsion order. As laid down in article 13(4bis), the Prefect may determine that there is a **risk of absconding** when the person concerned: (1) does not have valid passport or equivalent document; (2) does not have documents proving accommodation; (3) has previously made false declarations with respect to his or her identify; (4) has breached reporting obligations during the voluntary departure period; (5) has not left during that period or re-entered despite the ban on re-entry. This broad definition of the risk of absconding has raised criticism by scholars (Masera 2011; Natale 2011). [131]	
15(2) Detention shall be ordered **by administrative or judicial authorities**.	**Art 14.1. –bis (Italian)** Le misure di cui alprimo periodo sono adottate con provvedimento motivato, che ha effetto dalla notifica all'interessato, disposta ai sensi dell'articolo 3, commi 3 e 4 del regolamento, recante l'avviso che lostesso ha facolta' di presentare personalmente o a mezzo di difensore memorie o deduzioni al giudice della convalida. Il provvedimento e' comunicato entro 48 ore dalla notifica al giudice di pace competente per territorio. Il giudice, se ne ricorrono i presupposti, disponecon decreto la convalida nelle successive 48 ore. **Art. 14.1 – bis (English)[133]** […]. The measures as mentioned under the first period are adopted with motivated provision, which has effect as of the notification to the party involved, provided for pursuant to article 3, paragraphs 3 and 4 of the regulation, stating the notice that the same has the possibility to submit personally or through a defender notes or deductions to the validation judge. The provision is communicated within 48 hours as of the notification to the **lay**	**No (-)** Though the first paragraph concerning the administrative decision is transposed, no information on a speedy judicial review can be found (Art 15.2.a). Additionally, the third country national cannot take any legal proceedings, which is in contrast to Article 15(2.b).

[130]Global Detention project 2007-2014, Italy Detention Report

[131]Global Detention project 2007-2014, Italy Detention Report

[133]Legislative Decree n 286 dated 25 July 1998

	judge cognizant by territory. If there are the conditions, the judge with decree provides for the validation within the following 48 hours. The measures, upon request of the party involved, having heard the *questore*, can be **modified or revoked by the lay judge.** ***Other explanations*:** Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary **stating a reason and only in such cases and in such manner as provided by the law**. […]	
Detention shall be ordered in **writing with reasons** being given in fact and in law.	In addition, the decision must be in writing and reasoned[134]	
When detention has been ordered by administrative authorities, Member States shall: (a) either provide for a **speedy judicial review** of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention; or (b) grant the third-country national concerned the right **to take proceedings** by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately **inform** the third-country national concerned about the **possibility** of taking such proceedings.	Detention of irregular migrants is possible on **administrative decision alone (without any legal proceedings**). Such a practice deprives migrants of their basic right to freedom and also of their right to legal representation. Moreover, as the findings of this report reveal, detention does not entail repatriation[135]	Additionally: The Return Directive 2008/115/EC requires five languages to be available for transaltion. Italy only has three. [136]
The third-country national concerned **shall be released** immediately if the detention is **not lawful.**	**14.4. (Italian)** Allo scopo di porre fine al soggiorno illegale dello straniero e di adottare le misure necessarie per eseguireimmediatamente il provvedimento di espulsione o di respingimento, il questore ordina allo straniero di lasciare il territorio dello Stato entro il termine di sette giorni, qualora non sia stato possibile trattenerlo in un Centro di identificazione ed espulsione, ovvero la permanenza presso tale struttura non ne abbia consentitol'allontanamento dal territorio nazionale. L'ordine e' dato conprovvedimento scritto, recante l'indicazione, in caso di violazione, delle conseguenze sanzionatorie. L'ordine del questore puo' essere accompagnato dalla consegna all'interessato, anche su sua richiesta, della documentazione necessaria per raggiungere gli uffici della rappresentanza diplomatica del suo Paese in Italia, anche se onoraria, nonche' per rientrare nello Stato di appartenenza ovvero, quando cio' non sia possibile, nello Stato di provenienza, compreso il titolo di viaggio. **14.4. (English)** The judge has to validate or dismiss the detention order within the next forty-eight hours. If no validation occurs within the set deadline, the order has no further effect and the **foreigner must be released** form CIE. Both the foreigner and his lawyer must be promptly informed about the hearing and take part in it, as well as the representatives from Questura. The foreigner, who is granted free	Last paragraph is converged with.

[134] International Commission of Jurists 2014: 47

[135] Borderline-Europe 2014, At the limen“ – New report on detention centers and the EU Return Directive

[136] International Commission of Jurists 2014: 47

	legal aid assistance, is entitled to choose their own lawyer or they will be granted a State-appointed lawyer. Foreigners also have the right to be assisted by an interpreter during the hearing.	
15(3) In every case, detention **shall be reviewed at reasonable intervals** of time either on **application** by the third-country national concerned **or ex officio**. In the case of prolonged detention periods, reviews shall be subject to the supervision of a **judicial authority.**	**14.5 (Italian)** La convalida comporta la permanenza nel centro per un periodo di complessivi trenta giorni. Qualora l'accertamento dell'identità e della nazionalità ovvero l'acquisizione di documenti per il viaggio presenti gravi difficoltà, il giudice, su richiesta del questore, può prorogare il termine di ulteriori trenta giorni. **14.5 (English)**[137][138] The validation entails the permanence at the centre for a total of thirty days. Should the ascertainment of the identity and nationality or the acquisition of travel documents present serious difficulties, the judge, upon the *questore's* request, can postpone the term for another thirty days. However, the judge must re-examine the case every 30 days and then again after 60 days.	**No (-)** The Return Directive 2008/115/EC requests that the judicial review shall be either automatically set by the law or under the detainee's request. **However:** 1. No procedure exists to request this case re-examination (either by the administrative authorities, or by the detained person) before the end of those periods. This runs contrary to art. 15 of the Return Directive 2008/115/EC [139] 2. The Italian Law provides that not detainees can request review for their detention. According to the Law, the detainees can expect their first hearing 30 days after the start of their detention.[140] 3. The current immigration law is said to lack a judicial review.[141]
15(4) When it appears that a reasonable **prospect of removal no longer exists** for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be **justified** and the person concerned **shall be released immediately.**	**Article 15.4 has not been transposed**[142]	**No (-)** No convergence at all.

[137]Bertin[et al.] 2013: 15

[138]Legislative Decree n 286 dated 25 July 1998

[139]Bertin [et al.] 2013: 15

[140]Iyengar [et al.] 2013: 22

[141]International Commission of Jurists 2014, Undocumented" Justice for Migrants in Italy: 47

[142]Bertin [et al.] 2013: 15 or Iyengar et al.2013: 23

15(5) Detention shall be maintained for **as long a period** as the conditions laid down in paragraph 1 are fulfilled and it is **necessary to ensure successful removal.** Each Member State shall set a limited period of detention, which **may not exceed six months**.	**14.1 (Italian)** Quando non e' possibile eseguire con immediatezza l'espulsione mediante accompagnamento alla frontiera o il respingimento, a causa di situazioni transitorie che ostacolano la preparazione del rimpatrio o l'effettuazione dell'allontanamento, il questore dispone che lo straniero sia trattenuto per il tempo strettamente necessario presso il centro di identificazione ed espulsione piu' vicino, tra quelli individuati o costituiti condecreto del Ministro dell'interno, di concerto con il Ministrodell'economia e delle finanze. **14.1. (English)**[143] When it is not possible to carry out expulsion immediately by accompanying to the border or rejection, due to transitory situations that hinder the preparation of the repatriation or the carrying out of the removal, the *questore* provides for the alien to **be kept for the time strictly necessary at the nearest identification and expulsion centre**, among those found or established with decree of the Ministry of Interior, together with the Ministry of Economy and Finance. ***This means*:** Art. 14.1 establishes that irregular migrants (as well as asylum seekers) can be detained at specified facilities for a period "**strictly limited to the time necessary"** to determine the identity and qualification for remaining in Italy. Furthe, it is evaluated whether or not they should **be deported**.[144] **International Italian Law 161/2014: Article 3 (Italian)**[145] La convalida comporta la permanenza nel centro per un periodo di complessivi trenta giorni. Qualora l'accertamento dell'identità e della nazionalità ovvero l'acquisizione di documenti per il viaggio presenti gravi difficoltà, il giudice, su richiesta del questore, può prorogare il termine di ulteriori trenta giorni. **International Italian Law 161/2014: Article 3 (English)** By virtue of Law 161/2014, since the 25 November 2014,[…] In this respect it should be pointed out that the initial validation of administrative immigration detention provides **only for maximum a 30 days-stay in a CIE.**	**Yes (+)** The dentention period shall last for the time necessary to ensure successful removal. Further, Italy is in line with the maxium detention period, which accounts for 30 days. This is less than the maximum of six months, which is terminated by the Return Directive 2008/115/EC**.**
15(6) Member States may not extend the period referred to in paragraph 5 except for a limited period **not exceeding a further twelve months** in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to **last longer owing to**: (a) a **lack of cooperation** by the third country national concerned, or (b) **delays in obtaining the necessary documentation** from third countries	**International Italian Law 161/2014: Article 3(Italian)** Anche prima di tale termine, il questore esegue l'espulsione o il respingimento, dandone comunicazione senza ritardo al giudice. Trascorso tale termine, il questore può chiedere al giudice di pace una o più proroghe qualora siano emersi elementi concreti che consentano di ritenere probabile l'identificazione ovvero sia necessario al fine di organizzare le operazioni di rimpatrio. In ogni caso il periodo massimo di trattenimento dello straniero all'interno del centro di identificazione e di espulsione non può essere superiore a novanta giorni. **International Italian Law 161/2014: Article 3(English)** […] In case the verification of the identity and nationality of the third-country national or the acquisition of his/her travel **documents** are particularly difficult, the judge, upon request of the Questore, can **extend the detention period for an additional 30 days after the first 30 days**. After this first extension (30 days + 30 days), the Questore may submit a request for one or more extension(s) to a lower civil court, where it is decided by a judge of the peace, in case there are concrete elements to believe that **the identification** of the concerned third country national is likely to be carried out or that such **delay is necessary** to implement the return operations. The assessment concerning the duration of such an extension lies with the judge of the peace who decides on a case-by-	**Yes (+)** Italy stayed in line with not exceeding 18 months of Return Directive 2008/115/EC. While the limit was 18 months at first, it was changed to 90 days.[148]

[143]Legislative Decree n 286 dated 25 July 1998

[144]Global Detention project 2007-2014, Italy Detention Report

[145]Legge no. 161 del 30 October 2014

	case basis; however, the overall detention period should **never exceed 90 days**.[146][147]	

5.2.3. Sweden

Sweden bears the second highest number of asylum seekers in Europe[149]. This number doubled compared to 2013 and the Swedish population increased by more than 100,000[150] people as a result of immigration.

The asylum policy in Sweden is mainly managed by the Migration Agency. It is to say that the administrative system in Sweden differs from the rest of the EU Member States. The decisions made by the government are issued collective and jointly. At this, the Migration Agency functions as the main authority in terms of asylum issues. It works closely together with the Ministry of Justice. Hence, it is allowed to make its decision freely and non-dependent from the government (Aida, 2015). The central tasks of the Migration Agency are the processing of asylum applications and the co-ordnance of the "divisions of Asylum, Managed Migration and Citizenship" (Aida, 2015:12). The asylum legislation was modified in 2005 in order to adapt to European guidelines (Parusel, 2008). The Act entered into force on 31 March 2006 and was amended in 2009 (2009:1542).

In September 2011, Sweden notified to have partially transposed the Return Directive 2008/115/EC. In this regard, it missed the deadline set by the EU for December 2010. As a consequence, Sweden almost received a sanction by the European Commission (European Commission, 2011). However, the Swedish Parliament announced the Return Directive 2008/115/EC to have entered into force on May 1, 2012. The main parts being changed are the regulations for the refusal-of-entry, namely entry ban, and the time period to leave the country voluntarily. With the aim to foster cooperations and relations in terms of migration policies, Sweden joined a lot of readmission agreements with several EU states and third countries (Ministry of Justice, 2013). Sweden accounts as an example for good practices in the EU. It is exampled by the EMN for its transposition of the entry ban[151].

The procedures on voluntary departure, entry ban and detention are mainly provided in chapter 8, 10 and 12 of the Utlänningslag (2005:716). Sweden transposed all paragraphs of Article 7, 11 and 15 into its national legislation except for two. These can be found within the voluntary departure. Section 21 of chapter 8 of the Swedish Utlänningslag (2005:716) and Chapter 12 Section 15 of the English Aliens Act (2005:716) provide the regulations of paragraph 7(1) on returning an alien[152] voluntary. In this sense, Sweden allows a time period

[148]Picum 2015 , Picum Position Paper on EU Return Directive

[146]aida 2015, Grounds for detention in Italy

[147]Legge no. 161 del 30 October 2014 ("European Law 2013bis")

[149]Eurostat 2015: Asylum in the EU, available at: http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b

[150]Sweden 2015, available at: https://sweden.se/contact-us/

[151]See EMN report on Sweden, 2014

[152]A third country national is referred to as "alien" in the Swedish legislation

of four weeks in cases of expulsion. Moving on, no specific transpositions of Article 7(2) and 7(3) of the Return Directive 2008/115/EC are found. As a general rule, Sweden states that the time period of an entry ban can be extended if there are special grounds to do so (EMN, 2013). However, these special grounds have not been provided yet (European Commission-DG Home Affairs, 2010: 85). Furthermore, Article 7(3) on the imposition of measures to avoid the risk of absconding is not found at all, which implies a non-transposition of this paragraph (European Commission-DG Home Affairs, 2010). In contrast, Section 21 of Chapter 8 of the Utlänningslag (2005:716) converges with the non-granting of a voluntary departure in terms of the risk of absconding of Article 7(4). Additionally, Sweden supports the incentive of the Return Directive 2008/115/EC to leave the country voluntarily (EMN, 2014).

Moving on, the second procedure, namely entry ban, which is referred to as the refusal to entry in the Aliens Act (2005:716), is fully converged with. The corresponding provisions are regulated in Chapter 8 of the Utlänningslag. Section 21 converges with Article 11(1), while Article 11(2) and 11(3) are fulfilled by Section 24 of the Utlänningslag (2005:716). In particular, the wide range of possibilities to suspend or withdraw an entry ban are explained and translated by Section 20 and 21 of the Aliens Act (2005:716). Moving on, the Aliens Ordinance (2006: 97) converges with Article 11(4) on the consulting of other Member States in terms of issuing an entry ban. Concluding, Chapter 4 of the Aliens Act (2005:716) provides for international protection granted to an alien and defines the certain criteria for it. Therefore, Article 11(5) is also stuck to. In this regard, Sweden offers a lot of grounds for protection.

Finally, Chapter 10 of the Utlänningslag (2005:716) and the Aliens Act (2005:716) provide the regulations for detention. The Swedish legislation fully converges with all paragraphs, providing the national grounds for custody in Section 1. Further, inter alia Section 9, 10, 11, Chapter 14, Chapter 18 and the Aliens Ordinance (2006:97) provide for the judicial regulations set out in Article 15(2). Regularly reviews and the immediate obligation to release an alien in terms the reasons for detention appear to be inconsistent accordingly to Article 15(3) and 15(4) are converged with by Section 9 and 10 of Chapter 10. The last two paragraphs concerning the length of detention are stuck to with Section 4; Sweden issues detention for a maximum of two months, or, due to specific circumstances, three months. Thus, this is shorter than the time period determined in Article 15(5) of the Return Directive 2008/115/EC. Further, the maximum detention period in terms of a lack of corporation or a delay in obtaining the necessary documents may not exceed 18 months. This is in line with the provisions of Article 15(6). It has to be emphasized that Sweden serves an alternative to detention, namely supervision. Instead of being imprisoned, the alien is required to regularly report to the Swedish Migration Board or police authorities. In respect to that, supervision is usually preferred to detention. This only applies, if the alien does not present a risk of absconding or non-compliance (EMN Sweden, 2014).

Voluntary Departure: Article 7

Return Directive 2008/115/EC, Article 7: Voluntary Departure	Swedish version: Utlänningslag (2005:716), 8 kap. : Avvisning och utvisning English version: Aliens Act (2005:716), Chapter 12: Enforcement of refusal-of-entry and expulsion orders	Convergence
7(1) A return decision **shall provide** for an appropriate **period for voluntary departure** of between **seven and thirty days**, without prejudice to the exceptions referred to in paragraphs2 and 4. Member States may provide in their national legislation that such a period shall be granted only **following an application** by the third-country national concerned. In such a case, Member States **shall inform the third-country nationals** concerned of the possibility of submitting such an application The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to **leave earlier.**	**8 kap., Section 21 (Swedish version)** Tidsfrist för frivillig återresa och återreseförbud[153] Ett beslut om avvisning eller utvisning ska innehålla en tidsfrist inom vilken utlänningen frivilligt ska lämna landet (tidsfrist för frivillig avresa). Tidsfristen ska bestämmas till två veckor om utlänningen avvisas och till fyra veckor om utlänningen utvisas. **Chapter 12, Section 15 (English version)** In other cases, an alien who is refused entry shall leave the country within **two weeks** and an alien who is expelled shall leave the country within **four weeks** from the date when the order becomes final and non-appealable, unless otherwise provided in the order.[154]	**Yes (+)** The conditions for granting a voluntary departure is set out in Chapter 8, Section 21 of the Swedish Utlänningslag (2005:716). It is explained in Chapter 12, Section 15 of the English version.
7(2) Member States **shall**, where necessary, **extend the period** for voluntary departure by an appropriate period, taking into account the **specific circumstances of the individual case**, such as the length of stay, the existence of children attending school and the existence of other family and social links.	**8 kap., 21§ (Swedish version)** Tidsfrist för frivillig återresa och återreseförbud153 […] Om det finns särskilda skäl får en längre tidsfrist bestämmas. **English Explanation**: The Utlänningslag (2005:716) states that the time limit may be extended if there are special grounds for doing so. Sweden has also opted for not limiting the possibilities of an extension by giving examples.[155]	**No (-)** On the legal transposition, it must be noted that Sweden has not transposed any of the specific grounds, which are mentioned in Article 7(2) of the Return Directive 2008/115/EC[156].
7(3) Certain **obligations aimed at avoiding the risk of absconding**, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place **may be imposed** for the duration of the period for voluntary departure.	**Not yet transposed**	**No (-)** According to the EU, Article 7 (3) has not been transposed by Sweden. [157]
7(4) If there is **a risk of absconding**, or if an application for a legal stay has been dismissed as manifestly unfounded or frau-	**8 kap., 21§ (Swedish version)** Tidsfrist för frivillig återresa och återreseförbud153 En tidsfrist för frivillig avresa ska dock inte meddelas om 1.det finns risk för att utlänningen avviker, 2.utlänningen utgör en risk för allmän ordning och säkerhet,	**Yes (+)** Article 7(4) is met with Chapter 7, Section 21 of the Swedish Utlänningslag (2005:716).

[153]In English: Deadline/ Time Limit for voluntary return and re-entry ban

[154]Sweden has two types of return decisions, namely refusal-of-entry (avvisning) and expulsion (utvisning). The former are initiated by police services and the Swedish Migration Board, while the latter is only issued by the Migration Board. (Norwegian Directorate for Immigration, 2009)

[155]EMN 2013, Ad Hoc Query on Article 7(2)

[156]European Commission-DG Home Affairs, Evaluation on the application of the Return Directive (2008/115/EC) (Final Report): 85

[157]European Commission-DG Home Affairs, Evaluation on the application of the Return Directive (2008/115/EC) (Final Report)

dulent, or if the person concerned poses a **risk to public policy, public security or national security,** Member States **may refrain from granting a period for voluntary departure**, or may grant a **period shorter** than seven days.	3.utlänningen genom ett avvisningsbeslut nekas att resa in i landet, 4.utlänningen hejdas i samband med att han eller hon olagligen passerar e yttre gräns och då avvisas, eller 5. utlänningen avvisas av Migrationsverket med omedelbar verkställighet. För EES-medborgare och deras familjemedlemmar gäller i stället för första stycket 12 kap. 15 § tredje stycket. Lag (2014:198). **A period for voluntary departure shall not be granted if (English version)[158]:** ➔ there is a **risk of the alien absconding** [159] ➔ the alien poses a **risk to public order and safety** ➔ the alien is denied to enter the country through a removal order ➔ the alien is arrested in connection with his or her irregular crossing of an external border and then refused entry ➔ the alien is given an removal order with immediate execution by the Swedish Migration Board or ➔ the alien is expelled following a crime conviction .	

Entry Ban: Article 11

Return Directive 2008/115/EC, *Article 11: Entry ban*	**Swedish version: Utlänningslag (2005:716), 8 kap. : Avvisning och utvisning** **Aliens Act (2005:716), Chapter 8: Refusal of entry and expulsion**	**Convergence**
11(1) Return decisions **shall be accompanied by an entry ban**: (a) if **no period for voluntary** departure has been granted, or (b) if the obligation to return has **not been complied** with. In other cases return decisions may be accompanied by an entry ban.	**8 kap., 23§ (Swedish version)** Tidsfrist för frivillig återresa och återreseförbud153 Finns det inte förutsättningar att meddela en tidsfrist för frivillig avresa enligt 21 §, ska Polismyndighetens beslut om avvisning och Migrationsverkets beslut om avvisning eller utvisning förenas med ett återreseförbud, om inte särskilda skäl hänförliga till utlänningens personliga förhållanden talar mot att ett sådant förbud meddelas. Ett beslut om avvisning varigenom en utlänning nekas att resa in i landet ska dock inte förenas med ett återreseförbud. Ett beslut om avvisning eller utvisning som avser en EES-medborgare eller en familjemedlem till en EES-medborgare eller som avser en utlänning som beviljats uppehållstillstånd enligt 5 kap. 15 §, får förenas med ett återreseförbud endast om beslutet har meddelats av hänsyn till allmän ordning och säkerhet. Lag (2014:655) **Section 19 (English version)** When the Swedish Migration Board orders **refusal of entry or expulsion**, the **order may be combined with a prohibition** against the alien returning to Sweden **for a certain period** of time. **Section 21(English version)** […] When it reviews a refusal-of-entry or expulsion order, a migration court or the Migration Court of Appeal **may decide to prohibit the alien from returning to Sweden for a certain time,** even if no lower instance has issued such a prohibition. […] **Grounds for imposing entry bans[160]:** • risk of absconding • The third country national poses a risk to public policy, public security or national security. [161]	**Yes (+)** Article 11(1) is converged with in Chapter 8, Section 21 of the Swedish Utlänningslag (2005:716). In the Aliens Act (2005:716), it is explained in Section 19 and 21 of Chapter 8.

[158] EMN 2014, Good Practices in Sweden

[159] See appendix for Sweden's definition of risk of absconding

[160] EMN 2014, Good Practices in Sweden Table 3.1

[161] EMN 2014, Good Practices in Sweden

	• The application for legal stay was dismissed as manifestly unfound or fraudulent • **The obligation to return has not been complied with**.[162]	
11(2) The length of the entry ban shall be determined with due regard to all **relevant circumstances** of the individual case and **shall not in principle exceed five years**. It may however exceed five years if the third-country national represents a **serious threat to public policy, public security or national security.**	**8 kap., 24 § (Swedish version)** Tidsfrist för frivillig återresa och återreseförbud Tiden för återreseförbud enligt 23 eller 27 § ska bestämmas till högst fem år. Utgör utlänningen ett allvarligt hot mot allmän ordning och säkerhet får dock en längre tidsperiod bestämmas. Lag (2014:198). **Explanation (English version)** The length of a re-entry ban should **be determined with regard to the circumstances** of the individual case and may as a general rule **not exceed five years**. [163]	**Yes (+)** 11(2) is transposed by Chapter 8, Section 24 of the Utlänningslag (2005:716). However, there is a long list of certain circumstances, where the entry ban can be extended. Also, this time is determined.
11(3) Member States **shall consider withdrawing or suspending an entry ban** where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in **full compliance** with a return decision.	**8 kap., 24 § (Swedish version)** Upphävande av återreseförbud[164] 26 § Ett beslut om återreseförbud enligt 23 eller 27 § eller 12 kap. 14 a eller 15 a § som har vunnit laga kraft får helt eller delvis upphävas av Migrationsverket, en migrationsdomstol eller Migrationsöverdomstolen om det finns särskilda skäl för att förbudet inte längre ska gälla. En utlänning får ansöka om upphävande av ett förbud som avses i första stycket. En sådan ansökan ska ges in till Migrationsverket. Migrationsverket får dock inte upphäva ett återreseförbud som meddelats av domstol. Om Migrationsverket finner att ett sådant återreseförbud bör upphävas ska verket inte besluta i ärendet utan med eget yttrande lämna över detta till den migrationsdomstol till vilken verkets beslut i fråga om upphävande hade kunnat överklagas. Lag (2014:198). **Section 20 (English version)** An alien who, pursuant to Section 13, 19 or 21, has been prohibited from returning to Sweden for a certain period or for an unlimited time may be given special permission by the Swedish Migration Board to make a short visit to this country, if the visit has to do with exceptionally important matters. If there are special grounds, such **permission may also be granted upon application** by someone other than the alien. If an alien has been prohibited from returning to Sweden in a security case, such permission as is referred to in the first paragraph is instead granted by the Government. **Section 20a (English version)** If an EEA national or a member of his or her family has been issued a prohibition against returning to Sweden under Section 19, second paragraph, the Government **may set aside the prohibition wholly or in part if there are special grounds why the prohibition shall no longer apply.** **Section 21 (English version)** When the Swedish Migration Board, a migration court, the Migration Court of Appeal or the Government examines a refusal-of-entry or expulsion order, such an order may be issued at the same time concerning a person under the age of 16 who is in the alien's custody. This applies even if no lower instance has examined this issue. In actions before a migration court and the Migration Court of Appeal and in cases before the Government, however, **this does not apply if such circumstances as are referred to in Chapter 4, Sections 1 and 2**[165] have been invoked on the child's behalf, as long as it is not obvious that there are no grounds for a residence permit under these provisions.	**Yes (+)** All parts of Article 11(3) are transposed. The Swedish Utlänningslag (2005:716) states with Chapter 8, Section 24, that the suspension of an entry ban is possible. The Aliens Act (2005:716) mentions this in Section 20 and 21. Further grounds on the non-imposition of entry bans are given by EMN study on Sweden.

[162] EMN 2014, Good Practices in Sweden

[163] No section on the length of an entry ban can be found in the English Aliens Act (2005:716)

[164] In English: Suspension/ Withdrawal of the Entry-ban

[165] See Aliens Act (2005:716), Chapter 4

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (1) **shall not be subject of an entry ban** without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned **does not represent a threat** to public policy, public security or national security. Member States **may refrain** from issuing, withdraw or suspend an entry ban in **individual cases for humanitarian reasons.** Member States **may withdraw or suspend** an entry ban in individual cases or certain categories of cases for **other reasons.**	***Additional information:*** **Grounds for suspension/ withdrawal[166]:** Third-country nationals who can demonstrate that they have left the territory of the Member State **in full compliance with a return decision**. In this way, the withdrawal/suspension of entry bans may be used as an "incentive" to encourage third-country nationals to leave the territory of the Member State voluntarily **Non Imposition of Entry ban[167]:** **Victims of trafficking** in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC (provided they do not represent a threat to public policy, public security or national security) are not issued **Grounds for not imposing an entry ban[168]:** **1) Humanitarian reasons** **2) Right to family life** (Article 8 ECHR) [169] **3) Other reasons**: The TCN has a residence permit in another MS.	
11(4) Where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it **shall first consult the Member State** having issued the entry ban and **shall take account of its interests in accordance with Article 25** of the Convention implementing the Schengen Agreement (2).	**Aliens Ordinance (2006:97)** An authority issuing a residence permit or a national visa shall, in connection with the issuance perform **the inspection and consultation** imposed by European Parliament and Council Regulation (EU) No 265/2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562 / 2006 as regards movement of persons with a long-stay visa. Sweden states that it **is possible to grant a residence permit** if other Member States imposed an entry ban on the basis of minor offence or reasons that are not sufficiently severe. [170]	**Yes (+)** Consultation is provided within the Aliens Ordinance (2006:97).
11(5) Paragraphs **1 to 4 shall apply without prejudice to the right to international protection**, as defined in Article 2(a) of **Council Directive 2004/83/EC of 29 April 2004** on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and **the content of the protection granted (3),** in the Member States.	**Chapter 4 (Refugees and persons otherwise in need of protection), Section 1(English version)** In this Act 'refugee' means an alien who - is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and - is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals. A stateless alien shall also be considered a refugee if he or she - is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence and - is unable or, because of fear, unwilling to return there.	**Yes (+)** Sweden provided a chapter for human protection in the Aliens Act (2005:716). Thus, it is line with paragraph 11(5).

[166]EMN 2014, Good Practices in Sweden: Table 3.4

[167]EMN 2014, Good Practices in Sweden: Table 3.4

[168]EMN 2014, Good Practices in Sweden: Table 3.2

[169]Article 8 of the ECHR is addressed to protect the private and family life of an individual. Further, there shall be no interference by a public authority in accordance with the law (European Convention on Human Rights, 2010)

[170]EMN 2014, Good Practices in Sweden: Q12a

	Section 2 (English version) In this Act a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she 1 feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, 2 needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or 3 is unable to return to the country of origin because of an environmental disaster. **The Council Directive 2004/83/EC is implemented in Sweden**.[171] Sweden also considered the Aliens Act (2005:716) as more generous than the regulation for subsidiary protection in the Council Directive 2004/83/EC (Qualification Directive), since the Swedish regulation covers other severe conflicts.[172] Sweden grants subsidiary protection on grounds not covered by the Council Directive 2004/83/EC[173]. **3.1.3 National protection statuses granted on**[174] • humanitarian grounds • family reasons • tolerated stay/ suspension of removal. • Victims of environmental disasters	

Detention: Article 15

Return Directive 2008/115/EC, Article 15: Detention	**Swedish version: Utlänningslag (2005:716), 10 kap.: Förvar och uppsikt avseende utlänningar**[175] **Aliens Act (2005:716), Chapter 10: Detention**	**Convergence**
15(1) Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the **subject of return procedures in order to prepare the return** and/or carry out the **removal process**, in particular when: (a) there is **a risk of absconding** or (b) the third-country national concerned **avoids or hampers the preparation** of return or the removal process.	**Section 1(English version)** An alien who has attained the age of 18 may be detained if 1. the alien's identity is unclear on arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot establish the probability **that the identity** he or she has stated is correct and 2. the **right of the alien to enter** or stay in Sweden cannot be assessed anyway. An alien who has attained the age of 18 may also be detained if 1. it is **necessary** to enable an investigation to be conducted on the right of the alien **to remain in Sweden**, 2. it is probable that the alien will be refused entry or expelled under Chapter 8, Section 1, 2 or 7 or 3. the purpose is to enforce a **refusal-of-entry or expulsion order**. A detention order under the second paragraph points 2 or 3 may only be issued if there is reason on account of the alien's personal situation or the other circumstances to assume that the alien may otherwise **go**	**Yes (+)** Article 15(1) is transposed. This is especially done with the second paragraph of Section 1 in Chapter 10 of the Aliens Act (2005:716).

[171]EMN 2010, The different national practices concerning granting of non-EU harmonised protection statuses: 14
[172]EMN 2010, The different national practices concerning granting of non-EU harmonised protection statuses: 4
[173]EMN 2010, The different national practices concerning granting of non-EU harmonised protection statuses: 21
[174]EMN 2010, The different national practices concerning granting of non-EU harmonised protection statuses: 38
[175]In English: detention and supervision regarding foreigners

	into hiding or pursue criminal activities in Sweden. **Additionally:** This does not mean that all foreigners who are not in the possession of a passport, can be detained. If their identity is proofed to be correct, detention is not applicable. [176]	
15(2) Detention shall be ordered **by administrative or judicial authorities**. --- Detention shall be ordered in **writing with reasons** being given in fact and in law --- When detention has been ordered by administrative authorities, Member States shall: (a) either provide for a **speedy judicial review** of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention; or (b) grant the third-country national concerned the right **to take proceedings** by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the	**Section 12 (English version)** Decisions on detention or supervision are taken by **the authority or court handling** the case. If an alien who has been detained or placed under supervision is refused entry or expelled, the **authority or court** that takes this decision **shall examine** whether or not the alien shall be retained in detention or remain under supervision. The Swedish Migration Court, the Swedish police , a minister responsible for a specific case and the migration courts are in the position to order the detention of a TCN.[177] **Section 18 (English version)** The **Swedish Migration Board** is responsible for the enforcement of detention orders. **Section 19 (English version)** When so requested by the authority or court that **has made a detention** order the police authority shall provide the assistance needed to enforce the order. --- **Section 15, Detention (English version)** The decisions taken by the Swedish Migration Board in special cases under Chapter 10, Section 20, and Chapter 11, Sections 3–13 of the Aliens Act (2005:716) **shall be documented** in an appropriate way. **Reasons shall be given for decisions on placement in a correctional institution, remand centre or police arrest facility under Chapter 10**, Section 20 of the Alien's Act and they shall be set out in a special document. The same also applies to decisions to refuse visits under Chapter 11, Section 4 and on isolation under Chapter 11, Section 7 of the same Act. --- **Section 9 (English version)** A detention order under Section 4, second paragraph shall be **re-examined within two weeks** from the date on which enforcement of the order began. In cases where there is **a refusal-of-entry or expulsion orde**r, the detention order shall be **re-examined within two months** from the date on which enforcement of the order began. A **supervision order shall be re-examined within six months from the date of the order.** If the alien is retained in detention or is to remain under supervision, the order shall be re-**examined regularly** within the same intervals. **Section 10 (English version)** An appeal against a decision of a migration court shall be lodged within three weeks from the day on which the decision was issued. If, however, the decision was not issued at an oral hearing and no announcement has been made at such a hearing of when the decision will be issued, the appeal period for the alien shall be counted from the day on which he or she was informed of the decision.	**Yes (+)** Everything is fulfilled. The conditions are met by Section, 9, 10, 11, 12, 18 and 19 of Chapter 10 of the Aliens Act (2005:716). Further, they are supported by Chapter 14, Section 9 and Chapter 18, Section 1.

[176] EMN Sweden 2014, The use of detention and alternatives to detention in the context of immigration policies in Sweden (Report 2014:1)

[177] Aida 2015

relevant proceedings. In such a case Member States shall immediately **inform** the third-country national concerned about the **possibility** of taking such proceedings. --- The third-country national concerned **shall be released** immediately if the detention is **not lawful.**	A decision of a migration court on detention may be appealed without limitation to a certain period of time. **Section 11 (English version)** Each **re-examination of a detention order shall be preceded by an oral hearing.** This also applies to a re-examination of a supervision order, unless it appears obvious in view of the nature of the investigation or other circumstances that an oral hearing is of no importance. The provisions that apply to oral hearings at a government authority are **set out in Chapter 13**, Sections 1–8. Provisions concerning oral hearings in a court are set out in Chapter 16. […] **Chapter 14, Section 9 (English version)** **Appeal against the decision of an administrative authority** **Detention** A detention order made by a police authority or the Swedish Migration Board may be appealed to a migration court. A detention order may be appealed separately and without limitation to a certain period of time. If a detention order has been issued by the Government Minister responsible for cases under this Act, the Supreme Administrative Court examines, at the request of the alien, whether the measure shall remain in force. **Chapter 18, Section 1 (English version)** **Public Counsel** A public counsel shall be appointed for the person whom the measure concerns, unless it must be assumed that there is no need for a counsel, in court actions and other cases concerning […] enforcement of a refusal-of-entry or expulsion order under this Act, but only concerning the **question of** detention under Chapter 10, Section 1 or 2 in cases where the alien has been held in detention for more than three days and depending on the authority responsible for the initial decision to detain, an appeal can be made either to the Migration Agency, the Migration Courts or to the Migration Court of Appeal.[178] --- **Section 9 (English version)** **[…]**A detention or supervision order **shall be set aside** immediately if there are **no longer any grounds** for the order.	
15(3) In every case, detention **shall be reviewed at reasonable intervals** of time either on **application** by the third-country national concerned or **ex officio**. In the case of prolonged detention periods, reviews shall be subject to the supervision of **a judicial authority.**	**Section 9 (English version)** A detention order under Section 4, second paragraph shall **be re-examined within two weeks** from the date on which enforcement of the order began. In cases where there is a refusal-of-entry or expulsion order, the detention order shall be re-examined **within two months** from the date on which enforcement of the order began. A **supervision** order shall be re-examined within **six months** from the date of the order. If the alien is retained in detention or is to remain under supervision, the order shall be re-examined **regularly** within the same intervals. **Section 11 (English version)** […] In cases concerning detention that **are handled by the Government,** the **Government Minister responsible for cases under this Act** or the official designated by the Minister may order an oral hearing and instruct a migration court to hold the hearing. The provisions of Chapter 13 apply to the hearing, where relevant. A representative of the Government Offices shall attend the oral hearing. The Government Offices may order that other persons shall be heard at the hearing, in addition to the alien. In security cases, what applies is instead that the task of holding an oral hearing may be assigned to the Higher Migration Court	**Yes (+)** The review of detention is determined in Section 9 and 11 of Chapter 10 in the Aliens Act (2005:716).

[178] aida 2015, Country Report Sweden

15(4) When it appears that a reasonable **prospect of removal no longer exists** for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be **justified** and the person concerned **shall be released immediately.**	**Section 9 (English version)** **[…]** A detention or supervision order **shall be set aside** immediately if there are **no longer any grounds** for the order. **Section 10 (English version)** A detention or supervision order that is not re-examined within the prescribed **period expires**.	**Yes (+)** Article 15(4) is converged with by Section 9 and 10 of Chapter 10 of the Aliens Act (2005:716)
15(5) Detention shall be maintained **for as long a** period as the conditions laid down in paragraph 1 are fulfilled and it is **necessary to ensure successful removal**. Each Member State shall set a limited period of detention, which **may not exceed six months**	**10 kap., 4 § (Swedish version)** En utlänning får inte hållas i förvar för utredning med stöd av 1 § andra stycket1 längre tid än 48 timmar. En utlänning får inte hållas i förvar för verkställighet med stöd av 1 § andra stycket 3 längre tid än två månader, om det inte finns synnerliga skäl för en längre tid. Även om det finns sådana synnerliga skäl får utlänningen inte hållas i förvar längre tid än tre månader eller, om det är sannolikt att verkställigheten kommer att ta längre tid på grund av bristande samarbete från utlänningen eller det tar tid att införskaffa nödvändiga handlingar, längre tid än tolv månader. Tidsgränserna om tre och tolv månader gäller dock inte om utlänningen av allmän domstol utvisats på grund av brott. I andra fall än som avses i första och andra styckena får en utlänning som har fyllt 18 år inte hållas i förvar längre tid än två veckor, om det inte finns synnerliga skäl för en längre tid. Lag (*2012:129*). **Chapter 10, Section 4 (English version)** An alien may **not be** detained for investigation pursuant to Section 1, second paragraph, point 1 for **more than 48 hours.** In other cases an alien who has attained the age of 18 may not be detained for more **than two weeks**, unless there are exceptional grounds for a longer period. If, however, a refusal-of entry or expulsion order has been issued, the alien may be detained for **at most two months** unless there are exceptional grounds for a longer period.	**Yes (+)** Section 4 of the Swedish Utlänningslag (2005:716) states, that a detention period longer may not last longer than two or, in special cases, three months. The Aliens Act (2005:716) confirms this in Section 4 as well. No longer time period than two months is allowed.[179]
15(6) Member States may not extend the period referred to in paragraph 5 except for a limited period **not exceeding a further twelve months** in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to: (a) **lack of cooperation** by the third country national concerned, or (b) **delays in obtaining the necessary documentation** from third countries	**10 kap., 4 § (Swedish version)** En utlänning får inte hållas i förvar för utredning med stöd av 1 § andra stycket1 längre tid än 48 timmar.En utlänning får inte hållas i förvar för verkställighet med stöd av 1 § andra stycket 3 längre tid än två månader, om det inte finns synnerliga skäl för en längre tid. Även om det finns sådana synnerliga skäl får utlänningen inte hållas i förvar längre tid än tre månader eller, om det är sannolikt att verkställigheten kommer att ta längre tid på grund av bristande samarbete från utlänningen eller det tar tid att införskaffa nödvändiga handlingar, längre tid än tolv månader. Tidsgränserna om tre och tolv månader gäller dock inte om utlänningen av allmän domstol utvisats på grund av brott. I andra fall än som avses i första och andra styckena får en utlänning som har fyllt 18 år inte hållas i förvar längre tid än två veckor, om det inte finns synnerliga skäl för en längre tid. Lag (*2012:129*). **English explanation:** [180] An alien may not be detained for enforcement under section 1, second paragraph 3 (that is if the purpose is to enforce a refusal-of-entry or expulsion order) **longer than two months**, unless there are exceptional reasons for a longer term. Even if there are such exceptional circumstances, the alien may not be detained **for longer than three months**, or if it is likely that the enforcement will take longer because of the **lack of cooperation by the alien** or it takes time to acquire the necessary documents, **not longer than twelve months**. The time limits of three and twelve months do not apply if the alien by a court has been deported because of crimes committed.	**Yes (+)** The provision for a detention not being allowed of longer than twelve months is stated in the Swedish Utlänningslag (2005:716). Section 4 of Chapter 10 states that in terms of a lack of corporation or delays in obtaining necessary documents, the extension can be given. The English explanation is given by the EMN.

[179] See also the European Commission 2013, Final Report on the Evaluation of the Return Directive : Table 57

[180] EMN 2013, Ad-Hoc Query on the Return Directive (2008/115/EC) Article 15(6) extension of period for voluntary departure upon specific circumstances

5.3. Overview of the Results

Table 1: Overview of the convergence with the Return Directive 2008/115/EC in Germany, Italy and Sweden

Return Directive 2008/115/EC	Germany	Italy	Sweden
Article 7 (1)	**Yes (+)**	No (-)	**Yes (+)**
Article 7 (2)	**Yes (+)**	No (-)	No (-)
Article 7 (3)	**Yes (+)**	No (-)	No (-)
Article 7 (4)	**Yes (+)**	No (-)	**Yes (+)**
Article 11 (1)	No (-)	No (-)	**Yes (+)**
Article 11 (2)	No (-)	**Yes (+)**	**Yes (+)**
Article 11 (3)	**Yes (+)**	No (-)	**Yes (+)**
Article 11 (4)	**Yes (+)**	**Yes (+)**	**Yes (+)**
Article 11 (5)	**Yes (+)**	**Yes (+)**	**Yes (+)**
Article 15 (1)	**Yes (+)**	**Yes (+)**	**Yes (+)**
Article 15 (2)	**Yes (+)**	No (-)	**Yes (+)**
Article 15 (3)	**Yes (+)**	No (-)	**Yes (+)**
Article 15 (4)	**Yes (+)**	No (-)	**Yes (+)**
Article 15 (5)	**Yes (+)**	**Yes (+)**	**Yes (+)**
Article 15 (6)	**Yes (+)**	**Yes (+)**	**Yes (+)**
Convergence	**13/15**	**6/15**	**13/15**

By means of this overview, the research question *"Which similarities and differences are present in the transposition of the Return Directive 2008/155/EC into the national asylum legislation of Germany, Italy and Sweden in the period from 2008-2012?"* can be addressed. The comparison shows that Germany and Sweden are quite similar in their outcomes. Each of them has not converged with two paragraphs. Contrary to paragraph 11(1) of the Return Directive 2008/115/EC, Germany enforced stricter provisions for imposing an entry ban. Further, the country does not determine the time period of an entry ban in terms of an extension, which is set out in paragraph 11(2). Moving on, Sweden does not clearly state the grounds on extending voluntary departure. These are referred to in paragraph 7(2). Additionally, it has not transposed any provisions for Article 7(3) yet. In contrast to these two Member States, Italy rather corresponds with divergence to the transposition of the Return Directive 2008/115/EC. Italy does not fully stick to Article 7, 11 and 15. In this connection, the procedures on voluntary departure are not converged with at all. Moreover, Article 11 on the application of an entry ban and Article 15 on issuing detention are half converged with. This is mainly due to the fact that Italy provides rather restrictive and compulsory measures where the EU demands less restrictive ones. In terms of voluntary departure, Italy does not support the incentives of the Return Directive 2008/115/EC. The latter promotes this procedure over forced return. However, Italy does not show any approach to do so. Despite this, some parts of the corresponding legislation result in divergence, as the risk of absconding criteria are kept very broad in Italy. Thus, the options to make use of certain provisions of the Return Directive 2008/115/EC are very limited. However, this can be traced back to the fact that there is little guidance provided by the Return Directive 2008/115/EC on this topic. Concluding, the voluntary departure has been fully converged with by Germany. This applies

for Sweden in terms of the entry ban. Regarding detention, Germany and Sweden fully converge with all paragraphs. In contrast, Italy does not present a convergence trend in any of these three articles.

The first sub-question "Do the outcomes of the transposition of the Return Directive 2008/115/EC present a trend towards the convergence of asylum policies in Germany, Italy and Sweden?" is referred to in the following paragraph:

Overall, Germany is the country who transposed all provisions into its national asylum legislation. Further, it converges with 13 out of 15 paragraphs. It is closely followed by Sweden, who has not converged with two paragraphs. One of them has not been transposed yet. On the opposite, Italy presents an example of divergence in the transposition of the three Articles. Thus, it differs from the other two Member States.

In this regard, the second sub-question: "Does the process of Europeanization lead to policy convergence of asylum policies in Germany, Italy and Sweden?" can be answered as well. The process of Europeanization does not lead to policy convergence of asylum policies in Germany, Italy and Sweden. It rather results in partial convergence. There only is a trend towards convergence in Germany and Sweden, while Italy presents divergence.

Based on these findings, both hypotheses can be confirmed. Firstly, *the transposition of the Return Directive 2008/115/EC is done in different ways in Germany, Italy and Sweden in the time period from 2008-2012*. In respect to that, *the transposition of the Return Directive 2008/115/EC results in partial convergence.*

6. Conclusion

The main aim of this thesis was to find out which similarities and differences are present in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden in the period from 2008-2012. This is achieved by comparing the procedures on voluntary departure, entry ban and detention to the corresponding national asylum legislations of these three Member States. With regard to that, Germany and Sweden present similar outcomes, while Italy does not. The former two converge with all paragraphs except for two. In contrast, Italy fails to converge with more than half of the provisions. Based on these findings, it can be concluded that Europeanization leads to partial convergence of asylum policies in these EU Member States. However, other factors, e.g. adaptational pressures or political interests, can be responsible for policy convergence as well.

According to Featherstone and Radaelli (2003) and Börzel (1999), Europeanization is a process, which serves to penetrate the visions of the EU into the national legislations of its Member States (Sander, 2012). Within the top down model, the EU shapes policy processes and political outcomes. More in detail, it downloads legislation and creates a change at the domestic level (Börzel & Panke, 2013). These outcomes can result in policy convergence. The author Kerr (1983) describes it as the tendency of societies to grow more alike. While Europeanization is stated to be a process, policy convergence defines the end result of a

policy change over time (Knill, 2005). In respect to the impact of Europeanization on policy convergence, scholars share different opinions about this topic. Hence, can the transposition of one EU directive be expected to present similar outcomes in the EU Member States? In this regard, the author Dimitrakopoulos (2001) is confident that the transposition of EU legislation makes the EU Member States more similar, as he observes a "European style of transposition" (Dimitrakopoulos, 2001: 444). Thus, he expects the EU to present similar outcomes after the downloading of EU regulation. In contrast, the authors Börzel and Risse (2003) and Featherstone and Radaelli (2003) argue that Europeanization may lead to policy convergence. This is due to the fact that EU legislation requires policy convergence in its outcomes. Additionally, Börzel and Risse (2000) define that Europeanization leads to policy convergence in policy outcomes, whereas divergence rises in policy processes. More in detail, they expect neither con- nor divergence, but partial convergence in policy outcomes (Börzel and Risse, 2007). Next to this, the authors Toshkov and de Haan (2013) found out that convergence among the Member States increased, however, on a limited level. According to their study, Member States still perceive differences in their national legislations and their policy outcomes.

With regard to these theories, what do the results of this thesis mean for previous research? After comparing the national asylum legislations of Germany, Italy and Sweden to the provisions on voluntary departure, entry ban and detention of the Return Directive 2008/115/EC, the theories of Börzel and Risse (2003; 2007) and Toshkov and de Haan (2013) are most applicable. The countries present different results in the transposition of the Return Directive 2008/115/EC on returning third country nationals to their country of origin. While Germany and Sweden show an overall convergence with the exception of two paragraphs, Italy presents a diverging corresponding legislation. It converges with less than half of the paragraphs. This does mainly apply due to the restrictive risk of absconding criteria, as it covers a wide range of provisions that are not always required by the Return Directive 2008/115/EC. Therefore, the application of voluntary departure is quite marginal. Further, it is not prioritized over forced return, which is contrary to the spirit of the Return Directive 2008/115/EC. Additionally, the national legislation of Italy modifies the meaning of important words like *may* or *shall*. This leads to an incorrect transposition. On the opposite, Germany transposed all paragraphs. However, it does not converge with the first two provisions on the entry ban. Further, Sweden converges with all provisions, except for two on the voluntary departure. All in all, a tendency towards convergence in terms of voluntary departure can be noted in Germany. Further, the entry ban is fully converged with by Sweden. Concerning the procedure on detention, convergence can be noted in Germany and Sweden as well. In contrast, Italy presents an attempt towards divergence in all of the paragraphs at hand.

In respect to previous research, the theory of Börzel and Risse (2007), which claims that Europeanization at best leads to partial convergence in policy outcomes, can be confirmed. In this context, it is preferred to the statement of Radaelli and Featherstone (2003); though both say that Europeanization may lead to policy convergence, the theory of Börzel and Risse is more precise. Therefore, it is more applicable for this study. The same holds for the research

of Toshkov and de Haan (2013). Within their study, they found out that convergence among the EU States increased, but differences still remained. These outcomes are in line with the findings of this thesis. A level of convergence is present among the examined countries. However, it is limited. Germany and Sweden are quite similar in their outcomes, while Italy is not. Hence, differences remain. On the contrary, the theory of Dimitrakopoulos (2001) can be denied in this case. The transposition of the Return Directive 2008/115/EC does not present similar outcomes among Germany, Italy and Sweden.

After linking the findings of this thesis to previous studies, it has to be noted that other factors can also be responsible for the differences and similarities among Germany, Italy and Sweden. The author Dimitrakopoulos (2001) believes that a transposition process is influenced by political factors, e.g. interests, institutions and individuals. Further, he claims similar outcomes in the transposition of EU legislation to happen as result of adaptational pressures. This is referred to as the "goodness of fit". The latter defines the pressure to adapt to a policy if the compatibility towards the EU is low (Cowles et al., 2001). The authors Börzel and Risse (2003) state that there are EU Member States which face similar pressures to adapt, while others confront different ones. This is also one reason why they argue for partial convergence in the transposition of EU legislation. On the contrary, Kerr and Hériter believe that policy convergence can also result without adaptational pressures (Héritier et al, 2001; Kerr, 1983). However, in this regard the "goodness of fit" can be one explanation why several Member States delay with the transposition of EU legislation. In this regard, they only transpose it after infringements are set by the EU. This can also be referred to the case of the Return Directive 2008/115/EC. While the date for its transposition was set in December 2010, only four Member States notified to have fully complied with this obligation by that time. The others followed after several infringement procedures. The examined countries Germany, Italy and Sweden also transposed it after the deadline. In this regard, the authors Bennet (1991) and Hay (2004) observed different durations of transposition of EU legislation among the European Member States. This is underlined by Knill (2007), who says that policy convergence is a change over a certain period of time.

Another reason for the different outcomes in the asylum legislations of Germany, Italy and Sweden can be vagueness (Dimitrakopoulos, 2001). Often, the EU does not clearly define the directives which have to be transposed. They are only seen as "framework legislation" (Börzel and Risse, 2007: 496; Craig & De Búrca, 2011). Hence, Member States have a broad scope of how to transpose EU legislation in particular, as no universal model of policy is given. This can be best visualized by the risk of absconding criteria in Italy. As mentioned earlier, it is extensively defined in the Italian asylum legislation. This is due to the fact that Member States can freely determine this criterion. In this sense, there is little guidance provided by the Return Directive 2008/115/EC (No Point of Return, 2014).

Concluding, both hypotheses of this thesis can be confirmed. The transposition of the Return Directive 2008/115/EC is done in different ways in Germany, Italy and Sweden in the time period from 2008-2012. It only leads to similar outcomes in Germany and Sweden, however

different results in Italy. Thus, the transposition leads to partial convergence. In respect to that, the process of Europeanization can be said to have mixed impact on the policy convergence of asylum policies. It can lead to policy con- or divergence, while other factors, e.g. adaptational pressures or vagueness, can be reasons as well.

6.1. Recommendations

This thesis contributes to existing literature on EU Asylum Policies and on the theories of policy con- and divergence. It defines the similarities and differences in the transposition of the Return Directive 2008/115/EC in Germany, Italy and Sweden. Further, it concludes for the impact of Europeanization in the outcomes. As there are certain limitations in this study, which are referred to earlier, more research needs to be done in order to make this study universally applicable. Firstly, only three procedures of the Return Directive 2008/115/EC have been examined. Hence, further attention should be paid to the transposition of the remaining articles. In order to gain an insight on whether Germany, Italy and Sweden have fully transposed the entire Return Directive 2008/115/EC, all articles are recommended to be compared to the national asylum legislations of these countries. Additionally, a more in depth answer about the degree of change can be given by comparing these legislations before and after the transposition process. In respect to that, one can confirm whether Germany, Italy and Sweden present more or less restrictive asylum legislations after the transposition of the Return Directive 2008/115/EC.

Due to time factors, this thesis was only able to include three EU Member States into this study. In order to make this research universal applicable to the EU, it is suggested to compare the asylum legislations of all EU Member States to the provisions of the Return Directive 2008/115/EC. In this regard, more accurate conclusions for the policy convergence of EU asylum policies can also be made. Moreover, the time period shall be paid further attention to. This study looks at the transposition of the Return Directive 2008/115/EC in the period from 2008-2012. However, the duration of transposition differs from country to country. This is emphasized by the authors Bennet (1991) and Hay (2004). Thus, it needs to be examined whether Germany, Italy and Sweden needed longer than four years to transpose the Return Directive 2008/EC/115. In this regard, they might have amended their asylum legislations after the period from 2008-2012. Therefore, more converging or diverging outcomes could be the case by now. In respect to that, future research expanding the time period of investigation from 2008 to the present year is recommended. This will include possible changes and make this study more precise.

In order to understand why the outcomes of Germany, Italy and Sweden con- or diverged with the provisions of the Return Directive 2008/115/EC, the factors leading to policy convergence need to be taken into further consideration. This research shows that next to the process of Europeanization, other aspects, like adaptational pressures or vagueness, can also lead to policy con- or divergence. A closer study on the domestic policies of Germany, Italy and Sweden will emphasize whether the outcomes of these EU Member States can be referred to the process of Europeanization or whether other reasons are responsible for the similarities

and differences they present. Taken into account these recommendations, one can build up on the results of this thesis and make it generally more applicable.

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Annex

Definition: risk of absconding

Risk of absconding Germany

Section 62. 2, Residence Act
1. the foreigner is enforceably required to leave the Federal territory on account of his or her having entered the territory unlawfully,

1a. a deportation order has been issued pursuant to Section 58a but is not immediately enforceable,

2. the period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached,

3. he or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible

4. he or she has evaded deportation by any other means or

5. a well-founded suspicion exists that he or she intends to evade deportation.

Risk of Absconding Italy

Art. 13.4 bis UTI[181]

The risk of escape falls within what mentioned under paragraph 4, letter b), should at least one of the following circumstances occur from which the *prefetto* ascertains, case by case, the risk that the alien can avoid the voluntary execution of the expulsion measure:

a) the alien is not in possession of passport or other equivalent document, in course of validity;
b) the alien does not have proper documentation capable of proving the availability of a lodging where he can be easily traced;
c) the alien stated previously or falsely certified his personal data;
d) the alien did not comply with one of the measures issued by the cognizant authority, implementing paragraphs 5 and 13, as well as article 14;
e) the alien infringed also one of the measures as mentioned under paragraph

Or:

On the basis of at least one of the following circumstances, the Prefetto assesses the risk that the foreigner may try to avoid the voluntary departure procedure:

[181]Legislative Decree n 286 dated 25 July 1998

a) lacking of a valid passport;
b) lacking of documents concerning a house where the foreigner can be easily tracked down;
c) previous declaration of a fake identity;
d) previous violation of the voluntary departure procedure or of the entry ban;
e) previous violation of one of the measures provided for by **art. 13.5.2 UTI**.[182]

Risk of Absconding Sweden

Utlänningslag (2005:716):8 kap., 15§ (Swedish version):
Ska det vid tillämpningen av denna lag göras en bedömning av om det finns risk för att en utlänning avviker, får hänsyn endast tas till om denne
1. tidigare har hållit sig undan,
2. har uppgett att han eller hon inte har för avsikt att lämna landet efter ett beslut om avvisning eller utvisning,
3. har uppträtt under någon identitet som var felaktig,
4. inte har medverkat till att klarlägga sin identitet och därigenom försvårat prövningen av sin ansökan om uppehållstillstånd,
5. medvetet har lämnat oriktiga uppgifter eller undanhållit väsentlig information,
6. tidigare har överträtt ett meddelat återreseförbud,
7. har dömts för ett brott som kan leda till fängelse, eller
8. har utvisats av allmän domstol på grund av brott. Lag (*2012:129*).

Aliens Act (2005:716): Chapter 1, Section 15 (English version)[183]

1. has previously stayed away, gone into hiding
2. has stated that he or she does not intend to leave the country after a decision on expulsion
3. has occurred during any identity that has been false/incorrect
4. has not helped to clarify his or her identity and thereby hampered the examination of the application for a residence permit
5. has deliberately given false information or withheld material information
6. has previously been in violation of a re-entry ban
7. has been convicted of an offense punishable by imprisonment 8. has been expelled following a criminal conviction by a court

[182]Iyengar [et al.] 2013
[183]EMN 2013, Ad-Hoc Query on objective criteria to identify risk of absconding