

# The use of detention and alternatives to detention in the context of immigration policies

Synthesis Report for the EMN Focussed Study 2014



based on the National Contributions from 26 (Member) States: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK and NO

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## Disclaimer

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## Explanatory note

The Synthesis Report was prepared on the basis of National Contributions from 26 EMN NCPs (**Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

National contributions were based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports as well as information collected from national authorities. Statistics were sourced from national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN NCPs in the National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned (Member) States up to and including 2014 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available [National Contributions](#) on the EMN web-site and it is strongly recommended that these are consulted as well.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

## Executive summary

### KEY POINTS TO NOTE:

- ★ Immigration detention is a non-punitive administrative measure applied by the state to restrict the movement of an individual through confinement in order for an immigration procedure to be implemented.<sup>1</sup> Recognising the severity of the measure against the right to liberty, a number of **procedural safeguards** are in place in international law and the EU *acquis*, including the principles of necessity, proportionality, brevity, non-arbitrariness, lawfulness, access to legal aid and judicial review.
- ★ **Legal instruments of the EU asylum and migration *acquis***, most notably, Directive 2008/115/EC ('Return Directive') and Directive 2003/9/EC and its recast 2013/33/EU ('Reception Conditions Directive') stipulate that immigration detention is justified only for a set of specific grounds applied in specific situations, such as preventing unauthorised entry into the territory of a Member State, preventing absconding in return procedures and under certain conditions within the asylum procedure. (See Section 2)
- ★ National legal frameworks do show **variations across (Member) States** with regard to the categories of third-country nationals that can be placed in detention and the corresponding grounds for detention. The most common grounds for detention are '**risk of absconding**' (in force in 25 (Member) States of the 26 participating in this study); '**establishing identity of the third-country national**' (in the national legislation of 22 (Member) States) followed by '**threat to national security and public order**'; '**non-compliance with the alternatives to detention**'; '**presenting destroyed or forged documents**' and '**reasonable grounds to believe that the person will commit an offence**'.
- ★ In the vast majority of Member States, **detention of vulnerable persons**, including *unaccompanied minors, accompanied minors and families with children, pregnant women and victims of trafficking in human beings and torture*, is either explicitly prohibited or possible **only in exceptional circumstances**.
- ★ Comprehensive and robust **assessment procedures** for placing third-country nationals in detention are essential for ensuring non-arbitrariness, necessity and proportionality. Some form of individual assessment to determine the appropriateness of detention exists in **all** (Member) States, although it is foreseen in national legislation in 21 (Member) States, while in a number of other (Member) States the assessment is not set out in legislation but implemented in practice. Challenges associated with implementing assessment procedures in (Member) States include a lack of clear assessment criteria and/or indicators; complex legal framework; the 'automatic' placement of particular categories of third-country nationals in detention; challenges related to extending the period in detention; and lack of judicial review on the appropriateness of a detention measure.
- ★ While differences exist across (Member) States in the **types of detention facilities** and the **basic material conditions** provided to detainees, some common patterns are also discernible, notably related to the provision of basic services such as medical care, legal aid, language support and the right to have contact with the outside world.
- ★ The majority of (Member) States (24 in total) have developed **alternatives to detention**, which can include: reporting obligations; residence requirements; the obligation to surrender identity or a travel document; release on bail; electronic monitoring; provision of a guarantor; and release to care workers or under a care plan. The study has shown that community management programmes<sup>2</sup> are not currently available in any of the 26 (Member) States participating in this study.

<sup>1</sup> See further EMN Glossary 3.0

<sup>2</sup> Community management or supervision arrangements could include a wide range of practices in which individuals live independently in the community and are attached to a case manager, who follows their case and helps them to seek resolution. (UNHCR 2012 Revised Guidelines on Detention); see also Alice Edwards (2011), Measures of First Resort: Alternatives to Immigration Detention in Comparative Perspective", The Equal Rights Review, vol. 7.

- ★ The impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of (Member) States’ return policies and international protection procedures is difficult to measure. Very little data appear to be available to evaluate this question, especially in so far as the impacts of alternatives to detention are concerned.

### What did the study aim to do?

The study aimed to identify similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of (Member) States’ immigration policies<sup>3</sup>. More specifically it aims to:

- ★ Provide information on the **scale of detention and alternatives to detention** in each Member State by collecting statistics available on the number of third-country nationals (by category) that are subject to these measures;
- ★ Identify the **categories of third-country nationals** that can be subject to detention and/or provided an alternative to detention;
- ★ Compare and contrast the **grounds** for placing third-country nationals in detention and/or providing alternatives to detention outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions on detention in individual cases;
- ★ Identify and describe the different **types of detention facilities** and **alternatives to detention** available and used in (Member) States;
- ★ Collect any evidence of the way detention and alternatives to detention contribute to the **effectiveness of return policies and international protection procedures**.

Special attention was given to detention and/or alternatives to detention in respect of vulnerable persons such as minors, families with children, pregnant women and persons with special needs. The study focuses on detention for immigration/asylum purposes only and does not include in its scope detention of third-country nationals who have committed a criminal offence.<sup>4</sup>

<sup>3</sup> The study was based on contributions from 26 (Member) States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom and Norway).

<sup>4</sup> Detention in the immigration framework is not a criminal punishment. However, criminal detention is possible under the same factual circumstances if illegal entry or stay is criminalised under national law. For more details, see European Union Agency for

### What is the scale of immigration detention and alternatives to detention in the EU?

Statistics collected for the period 2009-2013 show that on average in the 24 (Member) States that provided data, the total number of third-country nationals in detention has decreased by some 5% per annum – from 116,401 in 2009 to 92,575 in 2013.<sup>5</sup>

Statistics on the total number of third-country nationals granted alternatives to detention for the period 2009-2013 are available in 13 Member States. In 2013, the largest number of third-country nationals provided with an alternative to detention was in **France** (1,258), followed by **Austria** (771), **Belgium** (590) and **Sweden** (405).

Disaggregated statistics of number of persons in detention and granted alternatives to detention by categories of third-country nationals were not available in most (Member) States and only available for some categories in 10 countries for third-country nationals in detention and 6 countries for third-country nationals granted alternatives to detention. (See Annex 4)

Statistics on the average length of detention for the period 2009-2013 are available in 17 (Member) States. The average length of detention for 2013 across these (Member) States was around 40 days. The highest average detention period in 2013 was recorded in **Malta** (180 days) and **Estonia** (58 days), while the lowest average number of days was observed in **Sweden** (5 days) and **Finland** (11.8 days) and in metropolitan<sup>6</sup> **France** (11.9 days).

### Which categories of third-country nationals can be detained and what are the legal grounds for detention for these categories?

National legal frameworks do show variations across (Member) States with regard to the categories of third-country nationals that can be placed in detention, following the four broad categories: (i) international protection applicants; (ii) third-country nationals who have been issued a return decision; (iii) persons detained to prevent irregular entry and (iv) persons detained for reasons of irregular stay.

Fundamental Rights’ publication: “Criminalisation of migrants in an irregular situation and of persons engaging with them”, Available at: [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf)

<sup>5</sup> Statistics on the total number of TCNs in detention is not available for Latvia for 2011; Portugal for 2009 and 2013; and Norway for 2009, 2010, 2011 and 2012.

<sup>6</sup> Metropolitan France is the part of France located in Europe. It does not include French overseas territories

Most notably, **detention of applicants for international protection** is regulated by separate national legal provisions from detention of other categories of third-country nationals (such as persons subject to detention in the context of illegal entry, illegal stay or return) in all (Member) States, except in **Finland, Sweden, United Kingdom and Norway**, where the same national provisions equally apply for all categories of third-country nationals.

The most common ground for detention, in force in 25 (Member) States, is ‘risk of absconding’ which is applied mainly in the context of return. Another ground prescribed in the national legislation of 23 (Member) States is ‘establishing identity’ of the third-country national, applied mostly in the context of international protection. Further grounds applicable to all categories of third-country nationals are ‘threat to national security and public order’; ‘non-compliance with the alternatives to detention’; ‘presenting destroyed or forged documents’ and ‘reasonable grounds to believe that the person will commit an offence’.

#### Can vulnerable persons including unaccompanied minors be detained?

In the vast majority of (Member) States, **detention of vulnerable persons**, including *unaccompanied minors (UAMs); accompanied minors and families with children; pregnant women; and victims of trafficking in human beings and torture*, is either explicitly prohibited or possible **only in exceptional circumstances**.

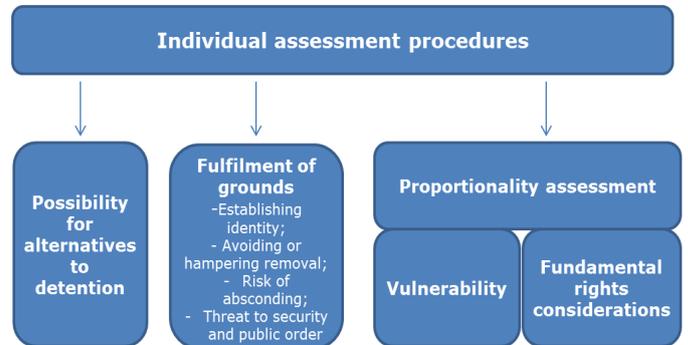
Detention of UAMs below a certain age is either explicitly prohibited in national legislation (**AT, BE, BG, CZ, ES, FR, HU, IE, LV, PL, SI, SK**) or applied only in “exceptional circumstances” (**CY, DE, EE, EL, FI, HR, LT, MT, NL, PT, SE, UK, NO**).

#### How are third-country nationals assessed for detention or alternatives to detention available in (Member) States?

Provisions in EU and international legal instruments stipulate that immigration detention should be based on due appraisal of the individual circumstances of the person concerned. Some form of **assessment to determine the appropriateness of detention exists in all (Member) States**. Individual assessment procedures can consist of a number of elements, including (i) the possibility to provide alternatives to detention; (ii) fulfilment of legal grounds for detention and (iii) a proportionality

assessment, which consists of vulnerability considerations and fundamental rights considerations.

**Figure 1: Elements of individual assessment procedures**



In most (Member) States, **the same national authorities which are responsible for deciding on the placement of a third-country national in detention also conduct the individual assessment** of whether the grounds for detention apply. In 9 (Member) States, judicial authorities are involved in the initial detention decision; however, the role of judicial authorities with regard to detention varies significantly across (Member) States.

#### What types of detention facilities for third-country nationals and basic material detention conditions are provided in (Member) States?

The use of **immigration detention facilities** is a consolidated practice across **all** (Member) States, with the exception of **Ireland** where third-country nationals are detained in prisons. In total **128** detention facilities exist across the participating 26 (Member) States.

The **organisation** of detention facilities varies across (Member) States. Third-country nationals may be detained in the same facility regardless of the circumstances for which they are detained in some Member States. In a few cases, third-country nationals may be detained in specialised facilities depending on their circumstances e.g. in **Hungary**, where applicants for international protection are kept in separate detention centres and in **Cyprus** where there are different types of detention facilities, according to, *inter alia*, the security risk posed by the detainee. These may include specialised facilities or police stations.

The **quality of life** experienced by applicants in detention facilities is affected by their access to basic material conditions. Where the detention of vulnerable groups is permitted, special care and accommodation that takes into account the specific needs of vulnerable groups are provided in a number of (Member) States.

Where **unaccompanied minors** (UAMs) can be detained, they are separated from adults and/or accommodated in separated facilities, adapted to their specific needs, in most (Member) States. **Accompanied minors** are normally not separated from their families, with the exception of some Member States (**BE, CY, DE, FI, LV, SK**) that allow children to be accommodated in childcare facilities mostly for protection reasons (and not in detention). However, this does not happen automatically: the right to family life and the best interests of the child are taken into consideration before a decision is made.

**Access to outdoor space** is allowed by all (Member) States on a **daily** basis. However, the frequency and the time permitted outdoors can vary significantly.

**All** participating (Member) States allow visitors in the detention centres; however, different rules apply as regards the type of visitors permitted, and the frequency and length of the visits. Legal advice to persons accommodated in detention centres is also provided in **all** (Member) States. **All** (Member) States provide some kind of **medical care** to detainees ranging from emergency care, essential medical care or secondary medical care (which includes more specialised treatments and transfers to hospital).

**What are the alternatives to detention available in (Member) States and what is their practical organisation?**

A total of 24 (Member) States provide **alternatives to detention**. In **Malta**, alternatives to detention are not currently provided, while in **Greece** alternatives to detention are provided for under national law but are not applied in practice.

**Table 1: Alternatives to detention in (Member) States**

Alternatives to detention	No. of (Member) States applying the alternative
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	23
Residence requirements (e.g. residing at a particular address)	18
Obligation to surrender a passport or a travel document	15
Release on bail (with or without sureties)	13
Electronic monitoring (e.g. tagging)	4
Guarantor requirements	4
Release to care worker or under a care plan	2
Other alternative measures: -Voluntary return programmes -Seizure of money for travel documents and tickets	2 1

-Accommodation in reception centres for asylum seekers	2
-Accommodation in departure facilities	1
-Guardianship of UAMs	1

In **all** (Member) States participating in the study, alternatives to detention are granted on the basis of a **case-by-case examination**. All (Member) States provide that **detention** should apply to third-country nationals **who do not comply** with the required conditions. All alternatives are provided for by legally binding acts on immigration and/or asylum. **Croatia** provides additional guidance in a book of rules.

The **authorities** responsible for deciding whether to grant an alternative to detention to third-country nationals vary across (Member) States; only in a few (Member) States (**DE, LT, PT**), and depending on the form of alternative, do they differ from the authorities responsible for the practical administration of the alternative.

**To what extent do detention measures and alternatives impact on the effectiveness of return policies and international protection procedures?**

The study has shown that it is difficult to measure the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of (Member) States’ return policies and international protection procedures. Very little statistics is available to evaluate this question, especially in relation to detention alternatives. Available statistics is often based on very small samples and gathered from sources that are not readily comparable. Overall, the statistics that has been gathered for the purpose of this study suggests however that:

- ★ the impact of detention and alternatives to detention on the ability of (Member) States to reach and execute prompt and fair return decisions may be rather insignificant (with other factors, e.g. whether the person to be returned is in possession of the required travel documents, playing a much greater role);
- ★ placing persons in an alternative to detention is less costly than placing them in a detention centre, although direct evidence is limited and not available in all Member States;
- ★ the fundamental rights of persons in detention are at greater risk than they are for persons placed in alternatives to detention; and
- ★ the risk of absconding could be greater in case of alternatives to detention, while as a whole this risk is very low or non-existent in the case of detention.

## 1 Introduction

### 1.1 STUDY AIMS AND RATIONALE

Immigration detention is a non-punitive administrative measure applied by the state to restrict the movement through confinement of an individual in order for another immigration procedure to be implemented.<sup>7</sup> The EU asylum and migration *acquis* provides that detention could be justified for a set of specific grounds in a number of situations, such as preventing unauthorised entry into the territory of a Member State, preventing absconding in return procedures and under certain conditions within the asylum procedure.

In all cases, EU legislation provides that detention should be used as a 'last resort' and encourages the use of alternatives to detention. Alternatives to detention are non-custodial measures that allow different degrees of freedom of movement, while requiring compliance with specified conditions during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory. The alternatives can include, *inter alia*, reporting obligations, residence requirements, the obligation to surrender identity or a travel document, release on bail, electronic monitoring, provision of a guarantor and release to care workers or under a care plan.

In practice, the procedures concerning detention and alternatives to detention vary greatly among (Member) States. While existing information suggests<sup>8</sup> that many (Member) States do not make the best use of such alternatives, little is known about the extent to which these are used and the extent to which detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures.

The aim of this EMN study is to identify similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of (Member) States' immigration policies. More specifically the study aims to:

- ★ Provide information on the **scale of detention and alternatives to detention** in each participating Member State and Norway by collecting statistics available on the number of third-country nationals (by category) that are subject to these measures;

- ★ Identify the **categories of third-country nationals** that can be subject to detention and/or provided an alternative to detention;
- ★ Compare and contrast the grounds for placing third-country nationals in **detention and / or providing alternatives to detention** outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions on detention in individual cases;
- ★ Identify and describe the different **types of detention facilities and alternatives to detention** available and used in (Member) States;
- ★ Collect any evidence of the way detention and alternatives to detention contribute to the **effectiveness of return policies and international protection procedures**.

Special attention is given to the possibility of detaining and/or providing alternatives to detention to vulnerable persons such as minors, families with children, pregnant women and persons with special needs. The study focuses on detention for immigration/asylum purposes only and does not include in its scope detention of third-country nationals who have committed a criminal offence.<sup>9</sup>

### 1.2 STRUCTURE OF THE REPORT

**Section 1.3** below provides a statistical outlook of the use of detention and alternatives to detention for the period 2009-2013. **Section 2** sets out an overview of EU law in the broader international legal framework. **Section 3** examines the categories of third-country nationals that can be detained and the corresponding legal grounds. **Section 4** provides an overview of the assessment procedures and criteria used to place third-country nationals in detention and in alternatives to detention. **Section 5** explores the type of detention facilities and conditions of detention that exist in (Member) States. The availability and practical organisation of alternatives to detention are explored in **Section 6**. **Section 7** focuses on the impact of detention and alternatives to detention on the effectiveness of international protection and return procedures. A Glossary of terms is provided in **Annex 1**; **Annex 2** lists the competent national authorities, while **Annex 3** provides a mapping of detention conditions and other quality criteria. **Annex 4** provides statistics on third-country nationals in detention, alternatives to detention and the average period of time in detention.

<sup>7</sup> See further EMN Glossary 3.0

<sup>8</sup> *Inter alia*: European Union Agency for Fundamental Rights (2013), Detention of third-country nationals in return procedures: <http://fra.europa.eu/en/node/1220>; Alice Edwards (2011), Measures of First Resort: Alternatives to Immigration Detention in Comparative Perspective", The Equal Rights Review, vol. Seven; Forced Migration Review (issue 44, September 2013), "Detention, alternatives to detention and deportation": <http://www.fmreview.org/detention>

<sup>9</sup> Detention in the immigration framework is not a criminal punishment. However, criminal detention is possible under the same factual circumstances if illegal entry or stay is criminalised under national law. For more details, see European Union Agency for Fundamental Rights' publication: "Criminalisation of migrants in an irregular situation and of persons engaging with them", Available at: [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf)

### 1.3 STATISTICAL OVERVIEW OF THE USE OF DETENTION AND ALTERNATIVES TO DETENTION

#### 1.3.1 STATISTICS ON THIRD-COUNTRY NATIONALS IN DETENTION

##### 1.3.1.1 Total number of third-country nationals in detention (2009-2013)

As presented in Annex 4.A, statistics on the total number of third-country nationals in detention for the period 2009-2013 are available in 24 Member States.<sup>10</sup> The total number of third-country nationals in detention for 2013 in the Member States, which provided statistics is 92,575.<sup>11</sup> As illustrated by Figure 1, the highest number of third-country nationals in detention for 2013 was recorded in **France**<sup>12</sup> (38,266), followed by **Spain** (9,020), **Hungary**<sup>13</sup> (6,496) and **Bulgaria** (6,303), while the lowest numbers have been recorded in **Estonia** (94), followed by **Slovak Republic** (204) and **Latvia** (221).

The highest increases of third-country nationals in detention for the period 2009-2013 are observed in **Bulgaria**, more than 600 % (from 832 in 2009 to 6,302 in 2013), **Hungary** by 226 % (from in 1,989 in 2009 to 6,496 in 2013) and **Sweden** by 66% (from 1,742 in 2009 to 2,893 in 2013).

The greatest decreases for the same period has been recorded in **the Slovak Republic** of 65% (from 582 in 2009 to 204 in 2013), in **the Netherlands** of 53% (from 7,870 in 2009 to 3,670 in 2013) and in **Germany** of almost 50% (from 8,366 in 2009 to 4,309<sup>14</sup> in 2013).

##### 1.3.1.2 Applicants for international protection in ordinary procedures in detention (2009-2013)

Disaggregated statistics on the number of applicants for international protection in ordinary procedures<sup>15</sup> in detention for the period 2009-2013 are available in 9 Member States (**AT**<sup>16</sup>, **HU**, **FI**<sup>17</sup>, **LV**, **MT**, **NL**, **SI**, **SK**, **SE**).

In these (Member) States, the highest number of third-country nationals, applicants for international protection in detention for 2013 was recorded in **Hungary** (1,762), which represented 9% of total applicants for international protection for 2013, followed by **the Netherlands** (780 or 5% respectively) and **Austria**<sup>18</sup> (374 or 2 % respectively).

The number and share of applicants for international protection in ordinary procedures in detention during 2013 are shown in Table 2.<sup>19</sup>

**Table 2: Number and share of applicants for international protection in ordinary procedures in detention in 2013**<sup>20</sup>

	Number of applicants for international protection	Number of applicants for international protection in detention	Share of applicants for international protection in detention
<b>AT</b> <sup>21</sup>	17,520	376	2%
<b>HU</b>	18,900	1,762	9%
<b>LV</b> <sup>22</sup>	195	166	85%
<b>MT</b> <sup>23</sup>	2,245	-	-
<b>NL</b>	17,160	780	5%
<b>SI</b> <sup>24</sup>	270	49	18%
<b>SK</b>	440	57	13%
<b>SE</b>	54,360	81	0.15%

Source: Eurostat (migr\_asyappctza) and National Reports to this EMN study, available on the EMN web-site

##### 1.3.1.3 Number of persons who have been issued a return decision and subsequently been placed in detention (2009-2013)

Disaggregated statistics on the number of third-country nationals who have been issued a return decision and subsequently have been placed in detention are available in 5 Member States (**BG**, **EE**, **LU**, **SI**, **SK**).

In 2013, the number of third-country nationals detained in the framework of a return procedure in these Member States is as follows: **Bulgaria** (6,303), **Estonia** (94), **Slovenia** (175), **Luxembourg** (165) and **Slovakia** (95).

<sup>10</sup> Statistics on the total number of TCNs in detention is not available for Latvia for 2011; Portugal for 2009 and 2013; and Norway for 2009, 2010, 2011 and 2012.

<sup>11</sup> 23 (Member) States provided statistics on detention for 2013: AT, BE, BG, CZ, DE, HR, EE, ES, FI, FR, HU, IE, LV, LT, LU, MT, NL, PL, SK, SI, SE, UK, NO

<sup>12</sup> Data provided concern Metropolitan France and French overseas territories.

<sup>13</sup> Sometimes the same third-country national can be found in the detention statistics of Police, statistics of Alien Policing Department of OIN and the statistics of Refugee Department of OIN as he/she could be apprehended due to different legal grounds for detention that a third-country national can be subject to. Such cases can significantly increase the statistics on the total number of third-country nationals in detention.

<sup>14</sup> Not including the numbers of the Federal State of Hesse

<sup>15</sup> Not including number of international protection applicants in Dublin procedures and fast-track asylum procedures in detention

<sup>16</sup> In the case of Austria, the statistics provided concerns numbers of decisions imposing detention based on grounds applicable to applicants for international protection.

<sup>17</sup> Statistics for Finland are not available for 2013.

<sup>18</sup> Ibid (see previous footnote regarding detention statistics in Austria)

<sup>19</sup> Statistics for 2013 are available in 8 Member States: AT, HU, LV, MT, NL, SI, SK and SE

<sup>20</sup> Calculated on the basis of Eurostat statistics on asylum applications 2013 (migr\_asyappctza)

<sup>21</sup> Ibid (see previous footnote regarding detention statistics in Austria)

<sup>22</sup> For Latvia, aggregated numbers are provided which include third-country national applicants for international protection in ordinary procedures, in fast-track international protection applicants (accelerated international protection procedures) and in Dublin procedures in detention.

<sup>23</sup> Asylum seekers are not detained in Malta. However illegal entrants are detained and these may subsequently apply for asylum

<sup>24</sup> For Slovenia, aggregated numbers provided include third-country national applicants for international protection in ordinary procedures, in fast-track international protection applicants (accelerated international protection procedures) and in Dublin procedures in detention. The authorities do not collect data on detention in different types of international protection procedures

### 1.3.2 STATISTICS ON THIRD-COUNTRY NATIONALS GRANTED ALTERNATIVES TO DETENTION

As illustrated in Table 3 below and Annex 4.B, statistics on the total number of third-country nationals granted alternatives to detention for the period 2009-2013 are available in 13 Member States.

In 2013, the largest number of third-country nationals provided with an alternative to detention was in **France** (1,258), followed by **Austria**<sup>25</sup> (771), **Belgium** (590) and **Sweden** (405).

**Table 3: Statistics on total number of third-country nationals granted alternatives to detention, 2009-2013**

	2009	2010	2011	2012	2013
<b>AT</b> <sup>26</sup>	1,877	1,404	1012	925	771
<b>BE</b>	206	221	463	485	590
<b>EE</b> <sup>27</sup>	153	96	223	257	193
<b>FI</b>	374	404	352	258	291 <sup>28</sup>
<b>FR</b> <sup>29</sup>	N/A	N/A	N/A	668	1,258
<b>HR</b>	13	10	4	6	9
<b>HU</b>	709	753	327	308	284
<b>LV</b> <sup>30</sup>	N/A	N/A	10	34	52
<b>LT</b> <sup>31</sup>	21	35	15	94	24
<b>LU</b> <sup>32</sup>	N/A	N/A	1	0	2
<b>SE</b>	288	270	289	396	405
<b>SI</b>	N/I	N/I	N/I	N/I	18
<b>SK</b>	N/A	N/A	N/A	0	2

Notes: "N/I" means no information available

"N/A" refers to not applicable in cases when alternatives to detention were not available for the specific year

Source: National Reports to this EMN study, available on the EMN web-site

### 1.3.3 STATISTICS ON AVERAGE TIME SPENT IN DETENTION

As illustrated in Table A4. C in Annex 4, statistics on the average length of detention for the period 2009-2013 are available in 17 (Member) States. The average length of detention for 2013 across these (Member) States was around 40 days. The highest average detention period in 2013 was recorded in **Malta** (180 days) and **Estonia** (58 days), while the lowest average number of days was observed in **Sweden** (5 days) and **Finland** (11.8 days) and in metropolitan<sup>33</sup> **France** (11.9 days).

<sup>25</sup> The statistics provided concerns numbers of decisions on alternatives to detention and not on the number of persons granted alternatives to detention.

<sup>26</sup> Ibid (see previous footnote regarding detention statistics in Austria)

<sup>27</sup> Statistics concerning Estonia refer to the number of times alternatives are used and not to number of persons granted alternatives to detention. It means that for some persons more than one alternative can be applied, which is very usual.

<sup>28</sup> Figures for Finland in this table consist of data from the Border Guard and the Police. Figures for 2013 are not available from the Police

<sup>29</sup> In France, alternative to detention was introduced by the law on immigration, integration and nationality of 16 June 2011.

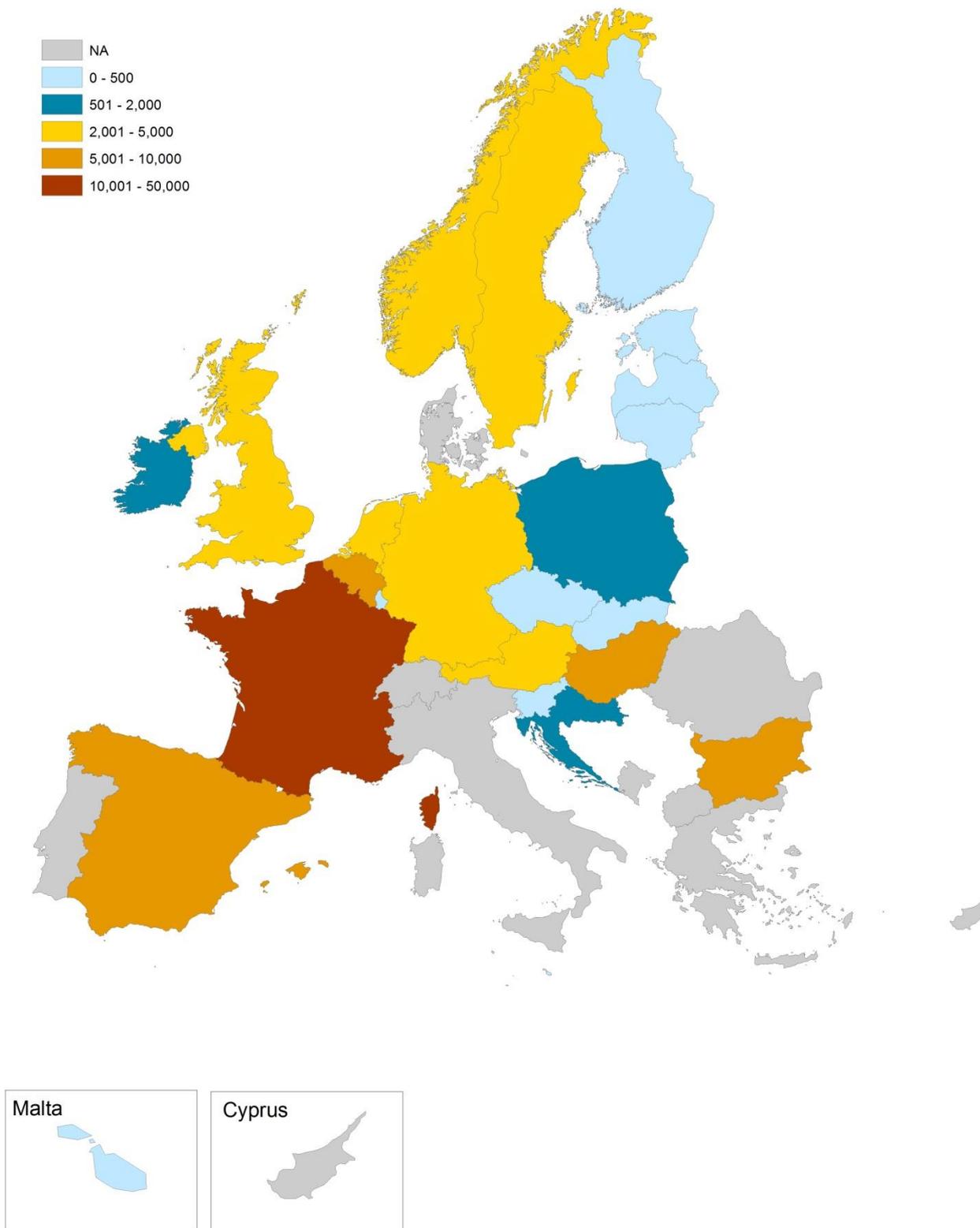
<sup>30</sup> In Latvia, alternatives to detention are applied since 16 June 2011.

<sup>31</sup> In majority of cases alternatives to detention were applied to UAMs.

<sup>32</sup> No alternatives to detention existed in Luxembourg in 2009 and 2010

<sup>33</sup> Metropolitan France is the part of France located in Europe. It does not include French overseas territories

**Figure 2: Total number of third-country nationals in detention (2013)**



**Notes:** Statistics on the number of third-country nationals in detention in 2013 have been provided by 23 (Member) States (AT, BE, BG, CZ, DE, ES, HR, EE, FI, FR, HU, IE, LV, LT, LU, MT, NL, PL, SK, SI, SE, UK, NO)  
 In the case of Austria, the statistics provided concern numbers of decisions imposing detention and not the number of persons in detention.  
 Statistics are not available for the countries highlighted in grey.

## 2 Overview of EU law in the broader international legal framework on immigration detention

International law contains limited provisions regarding the detention of migrants specifically. The rule is that a migrant, like any other person, benefits from the right to liberty and therefore detention cannot be arbitrary. The European Convention of Human Rights (ECHR) is rare among international treaties in containing an explicit provision about the detention of migrants. Article 5 (1)(f) states that:

*“Everyone has the right to liberty” and that “No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: 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”.*

This provision has given rise to important case law developed over the years by the European Court of Human Rights (ECtHR). Moreover, the Committee of Ministers of the Council of Europe has adopted in 2005 “Twenty guidelines on forced return”, including the issue of detention.

In EU law, there are two main instruments regulating the detention of migrants:

- ★ firstly, the so-called “Return Directive” (2008/115/EC) concerning the detention of irregular migrants in view of their return;
- ★ secondly, the so-called Reception Conditions Directive (2003/9/EC) and its recast (2013/33/EU) which relates only to applicants for international protection<sup>34</sup>.

Further EU legal instruments which contain provisions on the detention of third-country nationals include the Schengen Borders Code (Regulation 562/2006); the Asylum Procedures Directive (2005/85/EC and its recast Directive 2013/32/EU), Dublin III Regulation (No 604/2013) and the Trafficking Directive (2011/36/EU). It should be highlighted that **Denmark, Ireland** and the **United Kingdom** are not bound by some of the above EU legal instruments. (See *sub-section below*)

These instruments contain much more detail than international law because they have been shaped by

<sup>34</sup> The previous version of the Directive (2003/9/EC) contained a provision which related to detention, namely Article 7, para 3 which stated that: ‘When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law’. However, it did enumerate exhaustively the permissible detention grounds, neither did it contain a list of procedural guarantees or standards on detention conditions.

the case law of the ECtHR that must be respected by the EU and its Member States and also by the “Twenty guidelines of the Council of Europe on forced return”<sup>35</sup> that, despite not being legally binding, constitute a reference because they have been politically agreed by the governments of all EU Member States in their capacity as Members of the Council of Europe.

Migrants can be detained in view of their return and the detention decision is a measure adopted to prepare for the return or ensure that it will be possible to implement it in cases of forced return. Detention in the return framework is not a criminal punishment<sup>36</sup> and is in most cases decided by the administration and not by a judge. Asylum seekers can also be detained, on the basis of the grounds listed by the Reception Conditions Directive; however, detention is not permissible for the sole reason that an asylum request has been made.<sup>37</sup>

The grounds for detention are defined within this context in European Law. The Return Directive envisages detention only in order to prepare the return and/or carry out the removal process in particular in order to prevent a risk of absconding or when third-country nationals avoid or hamper the preparation of return. The Reception Conditions Directive foresees a limited exhaustive list of 6 grounds that may justify the detention of asylum seekers:

1. To determine the identity or nationality of the person;
2. To determine the elements of the asylum application that could not be obtained in the absence of detention (in particular, if there is a risk of absconding);
3. To decide, in the context of a procedure, on the asylum seeker’s right to enter the territory<sup>38</sup>;
4. In the framework of a return procedure when the Member State concerned can substantiate on the basis of objective criteria that there are reasonable grounds to believe that the person tries to delay or frustrate it by introducing an asylum application;
5. For the protection of national security or public order;
6. In the framework of a procedure for the determination of the Member State responsible for the asylum application under the so-called

<sup>35</sup> Council of Europe (September 2005), Twenty Guidelines on Forced Return; Available at: [http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20\\_Guidelines\\_Forced\\_Return\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf)

<sup>36</sup> Detention in the return framework is not a criminal punishment. However, criminal detention is possible under the same factual circumstances if illegal entry or stay is criminalised under national law. For more details, see European Union Agency for Fundamental Rights’ publication: “Criminalisation of migrants in an irregular situation and of persons engaging with them”, Available at: [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0\\_en\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf)

<sup>37</sup> Article 8(1) Reception Conditions Directive 2013/33/EU

<sup>38</sup> Article 31 (8) of Directive 2013/32 defines exhaustively the circumstances in which Member States may apply asylum procedures at the border, pursuant to Article 43.

“Dublin III” regulation when there is a significant risk of absconding.

As deprivation of liberty is a severe measure, strong guarantees must be foreseen, and in particular, strict control must be exercised by a judge on a detention decision decided by an administrative authority. Provisions in the Reception Conditions Directive and the Return Directive are quite detailed on that point:

- ★ Firstly, the principle of necessity which is not taken into consideration by the ECtHR applies in EU law in relation with the grounds for detention that must be justified;
- ★ Secondly, the principles of necessity and proportionality requiring in particular that less coercive but effective measures are considered in order to avoid detention as much as possible;
- ★ Thirdly, regarding the length of detention, the recast Reception Conditions Directive states that “an applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable”.<sup>39</sup> In the case of the Return Directive, the administration must act with “due diligence” to enforce the return and detention can only be maintained “as long as there is a reasonable prospect for removal”.<sup>40</sup> This Directive is more precise regarding the length of detention: the period of detention to be set by each Member State cannot exceed 6 months and can be extended for 12 more months in two cases: if there is a lack of cooperation of the returnee or if there are delays in obtaining the necessary documents from the third country of origin of the person. The maximum period of detention for the purpose of return can therefore never exceed 18 months<sup>41</sup>;
- ★ Fourthly, the detained person must have access to a speedy judicial control upon request or automatically and review must take place at reasonable intervals of time under the control of the judge who must check the lawfulness of the detention and where appropriate may order the immediate release of the person;
- ★ Fifthly, detained persons must have access to legal aid at the level of appeal against a detention decision;
- ★ There are also rules on the types of facility in which persons can be detained, and on vulnerable persons. Both Directives foresee that third-country nationals cannot be detained in prisons,

and in principle should be placed in specialised facilities; if they are exceptionally detained in a prison facility, they must be separated from ordinary prisoners.<sup>42</sup>

- ★ Finally, both directives foresee special guarantees are foreseen for vulnerable persons.<sup>43</sup>

Detention of vulnerable persons is not forbidden in the Return Directive but should be exceptional. Families with minors can only be detained as a measure of last resort and for the shortest period. They must be provided with separate accommodation guaranteeing their privacy and minors must have access to leisure activities as well as, depending on the length of their stay, to education. Unaccompanied minors must as far as possible be accommodated in institutions providing personnel and facilities adapted to the needs of their age.

The recast Reception Conditions Directive also contains a list of guarantees and perceives detention for vulnerable persons as exceptional.<sup>44</sup> Namely, it states that the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities. Minors are to be detained only “as a measure of last resort” and “for the shortest period of time” while “all efforts shall be made to release the detained minors and place them in accommodation suitable for minors”. Unaccompanied minors are to be detained only in “exceptional circumstances” while at the same time “all efforts shall be made to release the detained unaccompanied minor as soon as possible”. The recast Directive also states that unaccompanied minors can never be detained in prison accommodation.

#### THE POSITION OF DENMARK, IRELAND AND UNITED KINGDOM IN EU LAW RELATED TO JUSTICE, FREEDOM AND SECURITY

Freedom, Security and Justice is an area of EU law where a special legal regime has been foreseen for **Ireland** and the **United Kingdom**<sup>45</sup> as well as for **Denmark**.<sup>46</sup> Ireland and the UK have the possibility to decide whether they will “opt-in” in legislative measures pertaining to this area whereby in case of an ‘opt-in’ the measure becomes binding upon them as part of EU law. However, this possibility is not open for the UK and Ireland when the legal measures relate to the Schengen *acquis*.<sup>47</sup>

<sup>42</sup> See Articles 10(1) Reception Conditions Directive 2013/33/EU and 16(1), Return Directive.

<sup>43</sup> See Article 17, Return Directive.

<sup>44</sup> See Article 11, Reception Conditions Directive 2013/33/EU.

<sup>45</sup> See Protocols 19 and 21 to the TFEU

<sup>46</sup> See Protocol 22 to the TFEU

<sup>47</sup> See Protocol 19 to the TFEU. All EU policies on border control and large parts of policies on combating irregular migration are categorized as developments of the ‘Schengen acquis’.

<sup>39</sup> Article 9(1) Reception Conditions Directive 2013/33/EU

<sup>40</sup> Article 15(1) Return Directive

<sup>41</sup> See Article 15(5), (6), Return Directive

Denmark does not participate in the adoption of measures in this area, unless they build on the Schengen *acquis*.<sup>48</sup> In that case it implements the measures in its national law.<sup>49</sup> However, the measures then create an obligation not under Union law, but under international law between Denmark and the Member States bound by it.<sup>50</sup>

**Iceland, Liechtenstein, Norway and Switzerland** are not bound by EU law. However, as they have particular relations with the EU, they have decided to take part in the Schengen cooperation.

Having set out this general legal background, it is outlined below specifically which legal instrument is binding upon these (Member) States.

**Asylum Procedures Directive:** Both the United Kingdom and Ireland have opted in to the Asylum Procedures Directive (2005/85/EC), whereas they have opted out of the recast (Directive 2013/32/EU). Therefore, both Member States continue to be bound by the previous version of the Directive. Neither Denmark, nor any of the associated states are bound by this instrument.

**Reception Conditions Directive:** The United Kingdom had opted in the previous version of the Directive (2003/9/EC) but did not opt in the recast Directive (2013/33/EU) whereas Ireland has not opted in the Reception Conditions Directive at all. Thus, the UK is bound by the previous 2003 version of the instrument, whereas Ireland is not bound at all by this instrument. Neither Denmark, nor any of the associated States are bound by this legal instrument.

**Dublin Regulation:** The United Kingdom and Ireland opted in both the previous version of the Regulation (Regulation 2003/343 so-called 'Dublin II') and in the recast Dublin Regulation (Regulation so-called 'Dublin III') and are bound by it. The Protocol on the position of Denmark excludes it from participation in matters relating to asylum and immigration, and therefore from the Dublin Regulation. To remedy this situation, the Commission negotiated a 'parallel agreement' between the European Community and Denmark, concluded on 21 February 2006. Denmark does not participate to the adoption of amendments to this text but has the possibility to inform the Commission within 30 days of adoption of the amendments whether it has decided to apply them or not. It has done so in the case of 'Dublin III' thus it is bound by it. The Commission has signed relevant international

agreements also with Iceland, Norway, Switzerland and Liechtenstein. Therefore, also these States are bound by the Dublin III Regulation.

**Trafficking Directive:** Ireland and the United Kingdom have opted in the Trafficking directive (Directive 2011/36/EU) and are thus bound by it. Neither Denmark, nor any of the associated states are bound by this instrument.

**Return Directive:** The Return Directive (2008/115/EC) is a hybrid instrument and on the one hand is part of the *Schengen* *acquis*. Therefore, Denmark decided to implement it in its national law and Switzerland, Norway, Iceland and Liechtenstein are bound by it on the basis of their association agreements. On the other hand, the Return Directive is a development of the *acquis* covered by Title V of Part Three of the Treaty, into which UK and Ireland could opt into in accordance with Protocol 21. However, these Member States have not exercised such an opt-in. Thus, they are not bound by it.

### 3 Categories of third-country nationals that can be detained and legal grounds for detention

As highlighted in Section 2, pursuant to international and EU law, the principles of necessity and proportionality should be observed as part of the decision to detain a third-country national. In addition, the principles of non-arbitrariness and legality provide that detention should be based on grounds for detention clearly established by law.<sup>51</sup>

This section examines the categories of third-country nationals that can be subject to immigration detention and the corresponding grounds for their detention in national legislation. It also examines national rules regarding the possibility of detaining two cross-cutting categories of third-country nationals: (i) vulnerable persons and (ii) persons who cannot be removed and/or have been granted tolerated stay.

#### 3.1 CATEGORIES OF THIRD COUNTRY NATIONALS THAT CAN BE DETAINED AND LEGAL GROUNDS FOR DETENTION

National legal frameworks differ across (Member) States with regard to the categories of third-country nationals that can be placed in detention.

<sup>48</sup> See Protocol 22 to the TFEU

<sup>49</sup> See Article 4, Protocol 22 to the TFEU.

<sup>50</sup> When it concerns measures which do not develop the Schengen *acquis*, such as measures on immigration and asylum, Denmark cannot simply decide to implement them but needs to negotiate a 'parallel agreement' with the EU, thus an agreement on the basis of international law.

<sup>51</sup> The principles of non-arbitrariness and legality are laid down in the following international law instruments: Art. 9 Universal Declaration of Human Rights (1948), Art. 9 (1) International Covenant on Civil and Political Rights (1966), Art 16(4) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990), Council of Europe (PACE), Resolution 1707(2010), 10 Guiding Principles on detention of asylum seekers and irregular migrants, §9.1.5.

Table 4 below provides a snapshot of the **most common grounds for detention** in (Member) States that could apply to all categories of third-country nationals: (i) international protection applicants; (ii) third-country nationals who have been issued a return decision; (iii) persons detained to prevent irregular entry and (iv) persons detained for reasons of irregular stay.

The most common ground for detention, in force in 25 (Member) States, is ‘risk of absconding’ which is applied mainly in the context of return. Another ground prescribed in the national legislation of 22(Member) States is ‘establishing identity’ of the third-country national, applied mostly in the context of international protection. Further grounds applicable to all categories of third-country nationals are ‘threat to national security and public order’; ‘non-compliance with the alternatives to detention’; ‘presenting destroyed or forged documents’ and ‘reasonable grounds to believe that the person will commit an offence’.

**Table 4: Grounds for detention in national law applicable for categories of TCNs<sup>52</sup>**

Grounds for detention in national law	Int. protection applicants	TCNs issued a return decision	Irregular entry of a TCN at the border	Irregularly staying TCN not (yet) issued a return decision
Risk of absconding	AT, CY, DE <sup>53</sup> , EE, FI, HR, HU, IE, LV, LT, NL, PL <sup>54</sup> , SK, SE, UK, NO	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LV, LT, LU, MT, NL, PL <sup>55</sup> , SI, SE, SK, UK, NO	AT, CY, DE, EE, FI, , LT, MT, PL <sup>56</sup> , SK, SE, UK, NO	AT, CY, DE, ES, FI, LV, LT, MT, PL <sup>57</sup> , SE, UK, NO
Establishing identity	BE, CY, DE <sup>58</sup> , EE, IE, EL, FI, HU, HR, NL <sup>59</sup> , LT, PL, SE, SI, SK,	BG, CY, CZ, DE <sup>60</sup> , FI, HU, HR, MT, NL <sup>61</sup> , LT, UK, NO	CY, DE <sup>62</sup> , FI, MT, NL, LT, LV <sup>63</sup> , LU <sup>64</sup> , UK, NO	CY, DE <sup>65</sup> , FI, MT, LT, LV <sup>66</sup> , UK, NO

<sup>52</sup> In the UK, grounds for detention are not set out in national law, although it is common practice for these factors to be taken into consideration in deciding whether or not to detain someone  
<sup>53</sup> Only in exceptional cases or in combination with other grounds  
<sup>54</sup> In Poland, the risk of absconding is not a ground for detention but it is a basis for issuance a return decision without the specified period for voluntary return, which subsequently could result in placing the person in a detention facility.  
<sup>55</sup> + <sup>55</sup>Ibid (see comment on Poland above)  
 Ibid (see comment on Poland above)  
<sup>57</sup> Ibid (see comment on Poland above)  
<sup>58</sup> Only in exceptional cases or in combination with other grounds  
<sup>59</sup> In the Netherlands, the detention for the purpose of establishing identity is restricted to a maximum length of 6 hours. This period can be extended for maximum 48 hours.  
<sup>60</sup> Only in exceptional cases or in combination with other grounds  
<sup>61</sup> Ibid (see comment above for Netherlands)  
<sup>62</sup> Only in exceptional cases or in combination with other grounds  
<sup>63</sup> The grounds mentioned are not grounds for detention as such in Latvia, because they are circumstances that justify the grounds for detention which are: risk of absconding, there are grounds to believe that foreigner will avoid the removal procedure or impede the removal  
<sup>64</sup> In practice, however, in Luxembourg, applicants for international protection are placed in reception facilities. In general only if they are already in detention at the time they apply for international protection, they will continue to stay in detention.

	UK, NO			
Threat to national security and public order	CY, CZ, DE, EE, EL, HR, HU, IE, LT, LV, PL, SI, SK, UK, NO	BE, CY, CZ, DE, EE, EL, ES, LT, LU, LV <sup>67</sup> , PL, UK, NO	CY, DE, LT, LV <sup>68</sup> , MT, PL, UK, NO	CY, DE, ES, LT, LV <sup>69</sup> , MT, PL, UK, NO
The person has not complied with the alternatives to detention	AT, CY, FI, HR, IE, LT, PL, UK, NO	AT, CY, CZ, DE, ES, FI, HU, IE, LV <sup>70</sup> , LT, LU, PL, UK, NO	AT, CY, FI, LT, LV <sup>71</sup> , LU, PL, UK, NO	AT, CY, ES, FI, LT, LV <sup>72</sup> , PL, UK, NO
Destroyed or forged identity documents	BE, CY, CZ, DE <sup>73</sup> , IE, LT, LV <sup>74</sup> , UK	CY, DE <sup>75</sup> , IE, LT, LV <sup>76</sup> , UK	CY, DE <sup>77</sup> , LT, UK	CY, DE <sup>78</sup> , LT, LV <sup>79</sup> , UK
Reasonable grounds to believe that the person will commit a crime/offence	CY, DE, FI, IE, SE, UK, NO	CY, DE, FI, HU <sup>80</sup> , SE, UK, NO	CY, DE, FI, SE, UK, NO	CY, DE, FI, SE, UK, NO

Source: EMN NCP National Reports

In addition to the common grounds that apply to all categories of third-country nationals, specific grounds that apply to particular categories of third-country nationals are examined in the following sub-sections.

### 3.1.1 APPLICANTS FOR INTERNATIONAL PROTECTION

The deadline for the transposition periods for Member States of the Recast Asylum Procedures Directive (2013/32/EU) and Recast Reception Conditions Directive (2013/33/EU) is July 2015. As outlined in Section 2 above, the Recast Reception Conditions Directive exhaustively enumerates six detention grounds.<sup>81</sup> At the time of drafting this report, detention grounds are in force pursuant to national provisions that may or may not have yet transposed the Recast Directives.

#### 3.1.1.1 Applicants for international protection in ordinary procedures

Applicants for international protection in ordinary procedures can be detained in all Member States with the exception of **Bulgaria, France, Malta, Portugal and Spain**, where detention of this group is prohibited. In **France**, applicants for international protection in

<sup>65</sup> Only in exceptional cases or in combination with other grounds  
<sup>66</sup> Ibid (footnote for LV above)  
<sup>67</sup> Ibid (footnote for LV above)  
<sup>68</sup> Ibid (footnote for LV above)  
<sup>69</sup> Ibid (footnote for LV above)  
<sup>70</sup> Ibid (footnote for LV above)  
<sup>71</sup> Ibid (footnote for LV above)  
<sup>72</sup> Ibid (footnote for LV above)  
<sup>73</sup> Only in exceptional cases or in combination with other grounds  
<sup>74</sup> Ibid (footnote for LV above)  
<sup>75</sup> Only in exceptional cases or in combination with other grounds  
<sup>76</sup> Ibid (footnote for LV above)  
<sup>77</sup> Only in exceptional cases or in combination with other grounds  
<sup>78</sup> Only in exceptional cases or in combination with other grounds  
<sup>79</sup> Ibid (footnote for LV above)  
<sup>80</sup> If a person was released from imprisonment to which he was sentenced for committing a deliberate crime  
<sup>81</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

ordinary procedures cannot be detained except when applying for international protection at the border. In the vast majority of (Member) States where detention is possible, specific provisions apply for applicants for international protection, which are usually laid down in national asylum law or outlined in a separate provision in residence or immigration law (**AT, BE, CY, CZ, DE, EE, EL, HR, HU, IE, LV, LT, LU, NL, PL, SK, SI**).

The most common grounds for detaining international protection applicants are listed in Table 3 above which apply to all categories of third-country nationals. The most common ground is 'establishing identity' (applied in 17 (Member) States in the context of international protection); followed by 'threat to national security and public order' (applied in 15 (Member) States). (See Table 4 for further grounds)

In addition to the grounds for detaining international protection applicants listed in Table 3, a number of (Member) States have defined specific grounds for detention that are applicable only in the context of international protection.

In 11 Member States, applicants for international protection can be detained on the basis of 'a suspicion of abuse of the asylum procedure'. In 6 Member States, detention is possible for the purposes of 'ascertaining the facts that constitute the basis of the asylum application'. Further grounds are listed in Table 5 below.

**Table 5: Grounds for detention applicable only in the context of international protection**

Grounds for detention in national law	(Member) States
Suspicion of abuse of the asylum procedure	BE, CY, EE, HU, HR, LV, LT, LU, MT, PL, SI
To ascertain the facts that constitute the basis of the asylum application	EE, EL, HU, LV, LT, SK
Upon the introduction of a subsequent application	AT <sup>82</sup> , BE
The person received an entry ban less than 10 years ago, which has not been lifted	BE, CY
The person submitted an application after the prescribed time	BE
If the asylum application has been submitted at an airport	HU
The asylum seeker has left the initial reception centre without permission	HR <sup>83</sup>
The person endangered the safety in the	PL

<sup>82</sup> In addition, in Austria the "protection from deportation" must have been lifted.

<sup>83</sup> Croatian Asylum Act does not explicitly prescribe possibility to detain asylum seeker if the asylum seeker has left the initial reception centre without permission. However, in practice this ground is used for detention in reference with the provision of the Croatian Asylum Act that stipulates that an asylum seeker may be detained for his/her leaving or attempting to leave Republic of Croatia before completion of the procedure.

reception facility	
The asylum-seeker has violated their duty to report more than once <sup>84</sup>	AT
The asylum-seeker, against whom a procedure for the issuance of a measure terminating residence was initiated, has violated the duty to cooperate <sup>85</sup>	AT
A notification was made and the asylum-seeker has violated the territorial restrictions <sup>86</sup> (limited to area of regional administrative body)	AT

### 3.1.1.2 Persons placed in detention who have subsequently applied for international protection

In some (Member) States, specific provisions apply to persons in detention who subsequently apply for international protection (e.g. **AT, BG, CZ, DE, EE, EL, HR, MT, NL, PL**). In **Bulgaria** and **Ireland**, a detained person who has subsequently applied for international protection will be released from the detention centre on the basis of being an applicant for international protection, while in **Hungary**, the applicant for international protection is often transferred to a closed, guarded asylum reception centre. In **Czech Republic, Cyprus, Germany, France, Luxembourg** and **the Netherlands**, an applicant for international protection can remain in detention if prior to applying for international protection an enforceable return decision has been made.

In **Austria, Latvia** and **Norway**, the person will be kept in detention if the particular grounds for the detention are still present; and in **Croatia, Cyprus, Estonia, Luxembourg, the Netherlands, Poland** and **the Slovak Republic** the person will remain in detention if there are reasonable grounds to believe that s/he has submitted the asylum application in order to postpone an obligation to leave or to avoid expulsion. In **Croatia, the Netherlands**<sup>87</sup> and **Sweden**, an assessment will be made on whether the person will continue staying in detention. In **the Netherlands**, detention of an asylum seeker in this case is limited to a maximum of 6 weeks whilst reaching a decision on his/her application.<sup>88</sup> In **Malta**, a migrant who is in detention for having entered the country in an irregular manner and who subsequently becomes an asylum seeker may continue to be

<sup>84</sup> In certain cases, for example, if the asylum-seeker has been informed that their application is likely to be rejected, they must report to the police periodically

<sup>85</sup> Reporting obligation for homeless asylum-seekers

<sup>86</sup> For example, if the authority intends to reject the application or intends to lift the protection of removal (limited to area of regional administrative body)

<sup>87</sup> Council of State, 22 August 2012, JV 2012/14 In Dutch legislation detention of an asylum seeker is limited to a maximum of six weeks of reaching a decision on his application

<sup>88</sup> Council of State, 22 August 2012, JV 2012/14

detained if the authorities are still determining his or her identity and/or if there is a risk of absconding.

**3.1.1.3 Applicants for international protection in fast-track (accelerated) procedures**

Recital 20 of the Recast Asylum Procedures Directive 2013/32/EU provides that in circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, third-country nationals can be subject to accelerated asylum procedures with shorter time limits for some procedural steps.

In most (Member) States where accelerated procedures are used,<sup>89</sup> the grounds applicable for persons in ordinary asylum procedures or general detention grounds apply (**AT, CY, CZ, DE, EE, EL, HR, IE, FI, LV, LT, PL, SE, SI, SK, NO**). Separate provisions for detention in the context of accelerated asylum proceedings exist in **Belgium, Bulgaria, Hungary, France, Luxembourg** and the **United Kingdom**. In **France**, applicants for international protection subject to an accelerated procedure cannot be detained while their application is being processed.<sup>90</sup> In **Belgium** and **Hungary**, applicants for international protection can be detained at the border and are in that case subject to an accelerated asylum procedure. In **Luxembourg**, applicants for international protection can be placed in detention when the authorities decide to apply the fast-track procedure in a number of cases involving suspicion of the abuse of the asylum system. In **the United Kingdom**, applicants whose claim is deemed straightforward and capable of a speedy resolution may be detained under the asylum Detained Fast Track Process (DFT). In **Bulgaria**, applicants for international protection in accelerated procedures are not detained unless the State Agency for Refugees raises objections.

**3.1.1.4 Applicants for international protection subject to Dublin procedures**

Article 28 of Regulation No 604/2013 ('Dublin III Regulation') regulates detention for the purpose of a transfer from one Member State to another, which is directly applicable in the national legislation of Member States.<sup>91</sup>

According to the Dublin III Regulation, Member States may detain the person in order to secure transfer procedures when there is a significant risk of

absconding. In some (Member) States, there are no specific grounds yet for detention of persons subject to Dublin procedures and the general grounds for detention of asylum seekers also apply in the context of Dublin cases (**BG, DE, EE, FI, LV, LT, SI, UK, NO**). In **Austria**, the general grounds for detention for asylum-seekers also apply to those under Dublin, although there are also specific grounds for Dublin cases.

Table 6 below provides an overview of the specific grounds for detention applicable in the context of Dublin procedures.

**Table 6: Grounds for detention applicable in the context of Dublin procedures**

Grounds for detention in national law	(Member) States
A <i>significant</i> risk of absconding	all
To avoid jeopardising the transfer for the purpose of re-admission under the Dublin Procedure	CY, CZ, LU, NO
The person did not mention that s/he already introduced an application for international protection in another country	BE
If the applicant repeatedly has failed to fulfil his obligation to attend procedural acts and thus hinders the processing of the Dublin procedure	HU
The applicant has a residence permit or a visa issued by another (Dublin) Member State that is no longer valid	BE
The applicant does not have the necessary entry documents and declares he resided in another (Dublin) Member State	BE
The applicant has violated the territorial restrictions <sup>92</sup>	AT

**3.1.2 CATEGORIES OF THIRD-COUNTRY NATIONALS IN RETURN PROCEDURES**

**3.1.2.1 Persons who have been issued a return decision**

In all (Member) States, persons who have been issued a return decision can be placed in detention. The most commonly applied ground for this category (applied in 24 Member States) is the existence of a risk of absconding (See Table 2 above as this ground is shared with other categories of third-country nationals). In 22 (Member) States, third-country nationals subject to a return decision can be detained for (attempt) to avoid or hamper the removal process (**AT<sup>93</sup>, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, LV, LT, LU, MT, NL, SE, SK, UK, NO**). Further

<sup>89</sup> In the Netherlands, no fast-track procedure exists, while in France, Malta, Portugal and Spain applicants for international protection in ordinary and fast-track procedures are not detained.

<sup>90</sup> In France, applicants for international protection subject to an accelerated procedure cannot be detained while their application is being processed by the OFPRA (the first instance jurisdiction). The OFPRA is competent to examine first-time applications.

<sup>91</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>92</sup> In Austria, applicants for international protection are not allowed to leave a certain geographical area during the first phase of the procedure.

<sup>93</sup> In Austria, this can be an indication for a risk of absconding.

specific grounds for detention in the context of return are provided in Table 7 below.

**Table 7: Grounds for detention in the context of return**

Grounds for detention in national law	(Member) States
Avoiding or hampering the removal process	AT <sup>94</sup> , BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, LV, LT, LU, MT, NL, SE, SK, UK <sup>95</sup> , NO
To execute the return decision/to effect removal	AT, BE, CY, DE, EE, FI, FR, HR, LT, LU, PL, PT, SE, <sup>96</sup> SK, UK
The person did not comply with the timeline of the return decision ( <i>incl. voluntary return option has not been used</i> )	AT <sup>97</sup> , BE, CY, CZ, FR, IE, LV, LU, LT, PL, PT, SI
Grounds related to obtaining the necessary travel documents to return	CY, DE, EE, HR, HU, LT
The application for stay or a residence permit has been considered fraudulent	CY, LU
Intends to leave the state and enter another state without a lawful authority	IE

**3.1.2.2 Rejected applicants for international protection**

In all (Member) States, detention of rejected applicants for international protection is not automatic and is only possible following the issuance of a return decision.

In the vast majority of Member States (**AT, BE, BG, CY, CZ, DE, EE, EL, ES, HR, HU, FR, IE, LV, LU, LT, MT, NL, PL, PT, SI, SK, SE, UK, NO**) following a return decision, the rejected applicant can be detained on the basis of grounds in the context of return (see Section 3.1.2.1 above).

**Box 1. Detention of rejected international protection applicants: examples of national provisions in Ireland, Germany and the Netherlands**

**Ireland**  
Irish legislation does not permit the detention of a person simply on the ground that s/he is a rejected applicant for international protection. However, rejected applicants for international protection can apply for **leave to remain temporarily** in the State. In the event of their application

<sup>94</sup> In Austria, this can be an indication for a risk of absconding.

<sup>95</sup> In the UK, grounds for detention are not set out in national law, although it is common practice for these factors to be taken into consideration in deciding whether or not to detain someone

<sup>96</sup> In Sweden, the ground “to execute the return decision” cannot be applied alone but must be combined with avoiding or hampering the removal process.

<sup>97</sup> In Austria, this can be an indication for a risk of absconding.

being refused, resulting in the issuing of a **deportation order** against them, they are liable to be detained.

**Germany and Netherlands**

A **departure period** is set after an asylum seeker’s application has been rejected, unless there are indications that the person is a threat to security or public order or will evade supervision. The rejected applicant cannot be detained within the departure period. Subsequently, s/he is supported in their departure and accommodation provided during this period, providing the individual cooperates in full.

**3.1.2.3 Rejected family reunification applicants**

Applications for family reunification are usually made from the country of origin. However, in case the person is present on the territory of the (Member) State and does not fulfil the conditions of stay, s/he will be issued a return decision. In this situation, following the issuance of the return decision, a rejected applicant for family reunification will be detained on the basis of grounds in the context of return (See 3.1.2.1 above for the (Member) States concerned).

**3.1.3 PERSONS DETAINED AT THE BORDER TO PREVENT ILLEGAL ENTRY WHO HAVE NOT APPLIED FOR INTERNATIONAL PROTECTION**

Under EU law, the Schengen Borders Code (Regulation No. 562/2006) provides that third-country nationals who do not fulfil the entry conditions are refused entry into the EU.<sup>98</sup> The national law of a number of Member States provides for short-term detention at the border, which often takes place in the transit area of an airport or at the border control point (**AT, BE, EE, FR, HR, HU, IE, LU, LV, NL, PL, PT, SI, UK, NO**) or a border police department (**SK**). The **United Kingdom** has dedicated port holding rooms for this purpose. In **Sweden**, depending on the airport of arrival, migrants can be detained in a detention facility or a remand prison. Table 8 below provides an overview of grounds for detention in the context of illegal entry. In a number of (Member) States, preventing illegal entry is a separate ground for detention (**BE, CY, DE, FR, HR, IE, LT, LU, LV, NL, PT, SI, SE**). Establishing identity upon arrival (**CY, DE, FI, HU, SE, UK, NO**) and deciding the person’s right to enter the territory (**CY, FI, MT, PT, SE, SI, UK**) are further grounds for detention in the context of illegal entry.

- ★ In **Austria, Estonia, Latvia, Luxembourg and Slovenia**, a person, who has been refused entry and cannot return immediately to the country of origin, can be detained at a specific place within the border control area, such as a waiting area or an airport transfer zone, for a maximum period of 48 hours.

<sup>98</sup> Ireland and the United Kingdom are not Member States to the Schengen area.

- ★ In **Latvia, Luxembourg and Slovenia**, if the person cannot be returned within 48 hours, s/he will be issued a return decision and placed in detention.
- ★ In **France**, third-country nationals can be detained at the border when they do not present the necessary documents to legally enter France, and are considered to be a threat to the public order or are subject to a removal order for a maximum period of 20 days.
- ★ In **Germany**, in order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately<sup>99</sup>, the third-country national concerned may be detained.
- ★ In **Croatia, Czech Republic and Poland**, it is not possible to detain persons at the border to prevent illegal entry.

No specific grounds for detention for persons detained at the border to prevent illegal entry who have not applied for international protection exist in some (Member) States (e.g. **BG, EL, NL, SK, UK**). In these cases, persons will be issued a return decision and may be detained on grounds in the context of return.

**Table 8: Grounds for detention in the context of illegal entry**

Grounds for detention in national law	Member States
To prevent illegal entry	BE, CY, DE, FR, IE, LT, LU, LV, NL, PT, SE, SI
Establishing identity upon arrival	CY, DE, FI, HU, SE, UK, NO
To decide on the person’s right to enter the territory	CY, FI, MT, PT, SE, SI, UK <sup>100</sup>

**3.1.4 PERSONS FOUND TO BE ILLEGALLY PRESENT ON THE TERRITORY OF THE (MEMBER) STATE WHO HAVE NOT APPLIED FOR INTERNATIONAL PROTECTION AND ARE NOT (YET) SUBJECT TO A RETURN DECISION**

The legal provisions in force in (Member) States with regard to the detention of persons found to be illegally present who have not (yet) been issued a return decision can be categorised as follows:

- ★ In some (Member) States, irregular stay on the territory is a ground for detention (**CY, IE, PT, SI, SK**<sup>101</sup>). In the **United Kingdom**, irregular stay is not a ground for detention in national legislation but it is taken into consideration when deciding on detention on the basis of other grounds.
- ★ Persons found to be illegally present cannot be detained without being issued a return decision in some (Member) States (**BE, BG, EE, FR, HR, LU, NL**). This is also the case for **Germany**, with the exception that the authority responsible for detention may detain a person in temporary custody under certain conditions without a prior judicial order, although the person must be brought before the court without delay and by the end of the following day at the latest. Detention of the category of persons for whom a decision on administrative expulsion has not yet been issued is possible if a notice of commencement of the proceedings on expulsion has been issued (**CZ**) and if the circumstances of the case indicate that issuance of the decision is probable (**PL**).
- ★ In some (Member) States, there are no specific grounds for this category of third-country nationals and thus, illegally staying persons are subject to general grounds applicable for all third-country nationals (**AT, EE, FI, LT, MT, SE, UK, NO**). The applicable grounds for detention in these cases are to establish identity (**FI, MT, UK, NO**); suspicion that the person will commit an offence (**FI, SE**); protection of national security (**MT, NO**) and risk of absconding (**AT, EE, LT, SE, UK**). The **United Kingdom** which is not bound by the Return Directive also detains to facilitate the return of individuals illegally present but they do not need to be issued with a return decision prior to detention.

**3.2 DETENTION OF VULNERABLE PERSONS**

The EU and international legal frameworks prescribe that particular attention should be paid to the situation of vulnerable persons in detention.<sup>102</sup> According to the Return Directive, vulnerable persons include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. To this non-exhaustive list the recast of the Reception Conditions Directive adds

<sup>99</sup> Third-country nationals cannot be refused entry immediately if, for instance, authorities cannot be reached regarding urgently required information or if they are in urgent need of medical treatment. Other grounds may apply if the third-country national does not hold the necessary identification documents or exit documents and it is necessary to procure a passport substitute.

<sup>100</sup> In the UK, grounds for detention are not set out in national law, although it is common practice for these factors to be taken into consideration in deciding whether or not to detain someone

<sup>101</sup> In the Slovak Republic it is a ground for detention in connection with his/her return under an international treaty (readmission agreement).

<sup>102</sup> *Inter alia*: EU Return Directive 2008/115/EC, Art 14(1)(d); recast Reception Conditions Directive, Articles 11, 21, 33 and 34; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principle 24; Council of Europe (PACE), Resolution 1707(2010), 10 guiding principles on detention of asylum seekers and irregular migrants, §9.1.9.

victims of trafficking, persons with serious illnesses, persons with mental disorders and victims of female genital mutilation.<sup>103</sup>

In general terms, in the vast majority of Member States, detention of vulnerable persons is possible only in exceptional circumstances. The following subsections provide an overview of the grounds that apply to specific categories of vulnerable groups.

### 3.2.1 UNACCOMPANIED MINORS

Detention of unaccompanied minors (UAMs) below a certain age is either explicitly prohibited in national legislation (**AT, BE, BG, CZ, ES, FR, HU, IE, LV, PL, SI, SK**) or applied only in “exceptional circumstances” (**CY, DE, EE, EL, FI, HR, LT, MT, NL, PT, SE, UK, NO**).

**Estonia, the Netherlands and Poland** reported that although detention of UAMs is not prohibited, in practice UAMs are detained only in very exceptional circumstances and not detained in the case of **Luxembourg**. In **Luxembourg**, if the staff of the detention centre believes that a detainee is an UAM, s/he will be released after consultation with the Directorate of Immigration and accommodated in a reception centre.

★ In some Member States, detention of individuals below a certain age is prohibited: from under 14 years of age in **Austria** and **Latvia**<sup>104</sup>; to under 15 years of age in **Czech Republic**<sup>105</sup> and **Poland** and to under 18 years of age in **Belgium**<sup>106</sup>, **Bulgaria, Czech Republic**<sup>107</sup>, **France, Ireland, Slovenia, Slovak Republic** and **Spain**.

★ In four Member States (**CY, CZ, PL** and **SI**), **different provisions apply for UAMs applying for international protection and UAMs not applying for international protection**. In **the Czech Republic** and **Poland**, while UAMs under the age of 18 years old who are applying for international protection cannot be detained, UAMs not applying for international protection aged at least 15 years old can be placed in a guarded centre (**PL**) or a detention centre (**CZ**) on special grounds and for a limited period. In **Cyprus**, and **Slovenia**, detention of UAMs applying for international protection is prohibited, while

detention of UAMs not applying for international protection is possible.

★ In **Austria**, detention of all minors below the age of 14 is prohibited. For minors between 14 and 16, in general alternatives to detention shall be provided.

★ In **Germany** two Federal *Länder* prohibit detention of UAMs explicitly under the age of 18 (Bavaria, Rhineland-Palatinate), several Federal *Länder* prohibit detention of UAM in principle under the age of 16 (Berlin, Hesse, Saxony, Schleswig-Holstein, Thuringia) and several Federal *Länder* prohibit detention of UAM under the age of 14 (Baden-Württemberg, Bremen, Saxony-Anhalt). Though, in most of the Federal *Länder* exceptions can be made, especially if the UAM concerned committed a crime.

### 3.2.2 ACCOMPANIED MINORS AND FAMILIES WITH MINOR CHILDREN

It is possible to detain accompanied minors and families with children in most Member States except **Ireland**<sup>108</sup> and **Austria** for minors above 14 years of age as a measure of last resort, provided that special safeguards are in place taking account of the best interests of the child and family life. In **Czech Republic**, applicants for international protection belonging to vulnerable groups, including parents or families with disabled minors, are not subject to detention. In **Belgium**, the legislation provides that families with children are in principle not detained except for a short period when detention facilities are adapted to the needs of families with minor children. In practice families with minor children are brought to ‘family units’ as an alternative to detention. In **Cyprus** and **Germany**, the head of the family may be detained (mostly the father) while the rest of the family will be accommodated in the community. In **Cyprus**, they will be advised to apply for Public Benefits Allowance so that the family is guaranteed that they receive the minimum living standards.

### 3.2.3 PREGNANT WOMEN

In the majority of (Member) States, pregnant women from third countries fall within the category considered as vulnerable, and who may be detained only in exceptional circumstances (e.g. **CY, DE, EE, EL, HR, LT, LU, NL, PL, SE, SK, UK**). In **the Czech Republic**, pregnant women applicants for international protection are not detained.

#### Box 2. Poland: Detention of pregnant women and

<sup>103</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>104</sup> In accordance with the Article 59 of the Immigration Law minors who are at the age of 14 to 18 years and are unaccompanied may be detained and placed in the special premises of the State Police or in a child care centre.

<sup>105</sup> Refers to UAMs not applying for asylum

<sup>106</sup> There is only one exception: if there is doubt about the age of the person claiming to be a minor (doubt on the fact that the person is below the age of 18 years), he or she can be detained during an age assessment for a maximum of 3 working days, renewable once

<sup>107</sup> Refers to UAMs applying for asylum

<sup>108</sup> In Ireland, detention of minors for the purpose of deportation and removal of persons refused leave to land respectively is prohibited by s. 5(4)(a) of the Immigration Act 1999 and s. 5(2)(b) of the Immigration Act 2003.

**women who have recently given birth**

Pursuant to a recently adopted Act on Aliens in Poland, a pregnant woman may be detained prior to removal until the fourth month of pregnancy. The Act obliges the Border Guard supervising the arrest for foreigners<sup>109</sup> to apply before the end of the third month of pregnancy to the court with a request for placing the woman in a closed, guarded centre. Guarded facilities are designed to accommodate third-country nationals, requiring special treatment. Pregnant women and women who have recently given birth are provided with adequate gynaecological and medical care and appropriate conditions during the breastfeeding period.

**3.2.4 VICTIMS OF TRAFFICKING IN HUMAN BEINGS AND TORTURE**

Specific provisions for victims of trafficking in human beings, torture or other forms of serious mental, physical or sexual violence are in force in some Member States (**CY, CZ, EE, ES, HU, LT, PL, SK, UK**). In **Cyprus, Czech Republic** (for applicants for international protection), vulnerable persons falling into this category cannot be placed in detention, while in **Estonia** special protection must be provided in detention. In **Lithuania** and **United Kingdom** victims of trafficking can be detained in very exceptional circumstances. In case of the **Slovak Republic**, if a detained person is identified as a victim of trafficking in human beings, the decision on detention would become invalid upon the victim’s inclusion in the programme of support and protection of victims of trafficking in human beings. In **Germany**, there is not yet any regulation at national level but some of the Federal *Länder* have issued decrees and administrative regulations governing the above mentioned persons. In principle, these persons should not be detained.

**3.3 DETENTION OF PERSONS WHO CANNOT BE REMOVED AND/OR ARE GRANTED TOLERATED STAY**

Pursuant to Article 15 (4) of the Return Directive, when it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned should be released immediately.

National provisions stipulate that the third-country national will be released in the following circumstances:

- ★ if there is no prospect for removal<sup>110</sup> (e.g. **AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HR, HU, IE, LT, LU, LV, MT, NL, PL, PT, SE, UK**);

- ★ if the purpose of detention has ceased to exist (e.g. **AT, CY, DE, EE, EL, ES, FI, FR, IE, NL, LT, LU, LV, SE, SK, UK**);
- ★ when the period of detention has expired (e.g. **AT, CY, DE, EE, EL, ES, FI, HR, IE, FR, LT, LV, LU, MT, NL, PL, SE, SK, NO**);
- ★ on the basis of a valid court decision (e.g. **AT, CY, DE, EE, EL, ES, FR, HR, IE, LT, LU, LV, NL, PL, SE, SK, UK**);
- ★ lack of due diligence by the competent authorities to identify the persons and for obtaining the travel documents (e.g. **LU, UK**);
- ★ if the detention decision ceased to be effective upon the inclusion of the person in the programme of support and protection of victims against trafficking in human beings (e.g. **CY, IE, LV, SK**).

In a number of (Member) States, a tolerated stay can be granted in the circumstances listed above (**AT, CY, CZ, DE, FR, LT, PL, SE, SI, SK, UK**) upon the release of the third-country national in the community. Tolerated stay refers to the right to stay granted to persons whose removal is impossible either for practical reasons (such as lack of documents or the country of origin’s refusal to accept the person) or because their removal would be tantamount to *refoulement*. Tolerated stay status is granted in a number of Member States with differing definitions and regulated by different legal instruments.

**4 Assessment procedures and criteria for placing third-country nationals in detention and for providing alternatives to detention**

This section examines the assessment procedures and criteria that are used in (Member) States in order to decide whether detention and/or alternatives to detention are justified in individual cases. In particular, the section outlines: (i) the existence of individual assessment procedures; (ii) how these individual assessment procedures are implemented; (iii) provision of information to TCNs regarding their detention; and (iv) challenges and good practices associated with these procedures.

**4.1 INDIVIDUAL ASSESSMENT PROCEDURES**

Provisions in international legal instruments<sup>111</sup> stipulate that immigration detention should be based

<sup>109</sup> This kind of facility with stronger regime than guarded centre, and is used in cases when there exists a risk that foreigner will not obey the rules in guarded centre

<sup>110</sup> No prospect of removal refers to situations where the return of the person is not possible due to practical reasons, such as lack of documents; medical condition of the person hindering their removal or other objective circumstances preventing return, such as natural or other disasters, occurred in the country of origin.

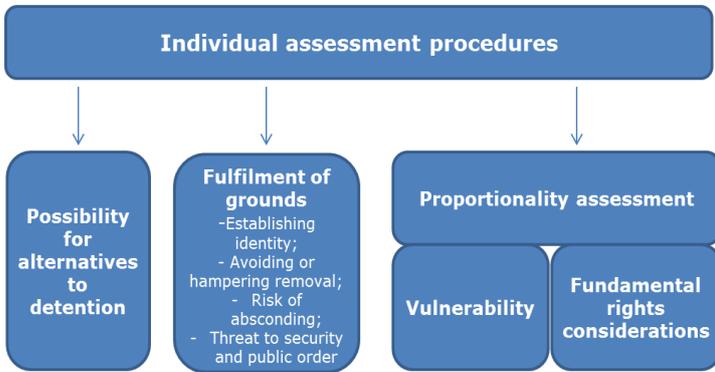
<sup>111</sup> International Covenant on Civil and Political Rights, Article 9, UN Human Rights Committee Jurisprudence *A v Australia*, HRC CCPR/C/59/D/560/1993 [1997] §9.4; *Shams v Australia*, HRC CCPR/C/90/D/1255 [2007] §11; Recast Reception Conditions Directive, Article 8 para 2; the Equal Rights Trust, Guidelines to

on due appraisal of the individual circumstances of the person concerned. Some form of individual assessment to determine the appropriateness of detention exists in **all** (Member) States, although it is foreseen in national legislation in 21 (Member) States (**AT, CY, CZ, DE, EE, EL, ES, HR, HU, IE, FI, LU, LV, LT, MT, NL, PL, PT, SI, SK, NO**). In other (Member) States, the national legislation does not expressly provide for individual assessment, but it is applied in practice (e.g. **SE, UK**).

**4.1.1 ELEMENTS OF INDIVIDUAL ASSESSMENT PROCEDURES**

Acknowledging that in most cases elements of individual assessment can be interlinked, Figure 3 provides an overview of the main elements that are considered as part of the individual assessment in (Member) States.

**Figure 3: Elements of individual assessment procedures**



**4.1.1.1 Examination of the possibility to provide alternatives to detention**

Recital 16 and Article 15 of the Return Directive and Article 8 of the recast Receptions Conditions Directive stipulate that detention is justified only if the application of less coercive measures would not be sufficient or only if less coercive measures cannot be applied effectively.<sup>112</sup> Thus, the possibility to grant alternatives to detention should be considered first, and third-country nationals should only be detained where the alternatives are not considered appropriate in the circumstances of their particular case.

According to information provided by (Member) States, consideration of the possibility of granting alternatives to detention is expressly set out in the assessment procedures in a number of (Member) States (**AT, BG<sup>113</sup>, CY, CZ<sup>114</sup>, DE, EE, ES, FI, HR, HU, IE, LV, LT,**

**NL, PL, PT, SE, SI, SK, UK, NO**). This is not the case in **Czech Republic** for applicants for international protection, **Greece** and **Malta** where no systematic examination of possibilities to provide alternatives to detention is carried out. In **the Czech Republic**, although the Asylum Act does not currently provide for alternatives to detention for applicants for international protection, an amendment is currently under preparation in connection with the transposition of the recast Reception Conditions Directive (2013/33/EU).

Three broad sets of factors are taken into account in the assessment: (i) whether the provision of alternatives to detention will be sufficient and the person is likely to comply with the measures; (ii) vulnerability considerations and (iii) practical considerations, such as the feasibility of a particular alternative and cost of the alternative to detention.

*Compliance considerations*

In 17 (Member) States, consideration is made as to whether the person is likely to comply with the alternative to detention and the likelihood of absconding (**AT, BE, CY, CZ, DE, EE, ES, FR, HR, LV, LT, LU, NL, SE, SI, UK, NO**). In most (Member) States, if the risk of absconding is considered high, the person will be placed in detention. (See also 'risk of absconding' below under Section 4.1.1.2)

*Vulnerability considerations*

Vulnerability consideration include assessing whether the person has special needs (**AT, BG, CY, CZ, DE, EE, HU, SI, UK**); whether minor children are present (**AT, BE, CY, DE, EE, FI, FR, LT, UK, NO**) and the health status of the persons concerned (**AT, CY, DE, EE, ES, FI, HU, SI, UK, NO**).

*Practical considerations*

Practical considerations include the financial cost of the decision (**HU**); the feasibility of implementation of particular measures such as having social, family and professional ties in the (Member) States (**AT, DE, EE, HU, LV, LT**) and having accommodation and places of residence (**AT, DE, ES, HR, LU, LT, SI, SK, NO**).

**4.1.1.2 Examination of the fulfilment of detention grounds**

In all (Member) States, the individual assessment includes an appraisal of whether the legal grounds for detention have been fulfilled.

Section 3.1 and table4 on page 15 above provide an overview of the grounds for detention in force in (Member) States. The remainder of this sub-section

Protect Stateless Persons from Arbitrary Detention, (2012) §30(i)); Council of Europe, Twenty Guidelines on Forced Return (2005), Guideline 6(1); UNHCR Detention Guidelines (2012), Guideline 4;

<sup>112</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>113</sup> In the context of return only

<sup>114</sup> Only in case of third country nationals who fall within the Act on the Residence of Foreign Nationals in the Territory of the CZ; accordingly this does not apply in case of applicants for international protection falling within the Asylum Act.

examines the **criteria and indicators** used to determine whether detention is justified for the four most common detention grounds in (Member) States: (i) establishing identity, (ii) risk of absconding, (iii) avoiding or hampering the removal process and (iv) threat to national security and public order.

*Risk of absconding*

Risk of absconding is a ground for detention in 25 (Member) States (**AT, BE<sup>115</sup>, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LV, LT<sup>116</sup>, LU, MT, NL, PL, SI, SK, SE, UK, NO**). In **Poland**, the risk of absconding is not a ground for detention but it is a basis for issuance a return decision without the specified period for voluntary return, which subsequently could result in placing the person in a detention facility.

To establish whether the risk of absconding is present, objective criteria and indicators exist in (Member) States which are subsequently outlined in table 9 below. In **Ireland** and **the United Kingdom**, there is no set list of objective criteria and indicators to determine the risk of absconding, while in **Austria** and **Germany**, there is no exhaustive list of criteria; but rather the entirety of the case will be taken into account within the individual assessment procedure.

**Table 9: Indicators to determine the risk of absconding**

Indicators used to determine the risk of absconding	(Member) States
Lack of or false identity documents	AT, BE, BG, CY, DE, EE, ES, FR, HU, MT, NL, LU, LV, PL, SE, SI, SK, NO
Lack of fixed residence	AT, CY, ES, FI, FR, HU, MT, LU <sup>117</sup>
Non-compliance with an entry ban	AT, BE, BG, CY, DE, EE, ES, HU, LV, MT, NL, PL, SE, SI, SK
Staying on the territory after the voluntary return period foreseen in the return decision	AT, BE, BG, CY, EE, ES, FR, HU, LU, LV, MT, NL, SI, SK, NO
The person has stated that s/he will not return to the country of origin	AT, CY, DE <sup>118</sup> , EE, ES, HU, LV, MT, NL, PL, SE, SK, NO
Non-compliance with entry and stay requirements	AT, BE, CY, DE, FR, HU, LU, NL, PL, SI
Refused to cooperate to establish	AT, BE, CY, DE,

<sup>115</sup> The Belgian legislation foresees that the Immigration office decides on the basis of objective and serious elements, and examples are given in the explanatory memorandum of the law - but the objective elements are not listed in the law itself.

<sup>116</sup> In Lithuania, courts decide whether the risk of absconding exists taking into account all circumstances. However specific indicators will be defined in the amendments to the Law.

<sup>117</sup> This does not mean that the person has no fixed residence, but that the person did not declare his/her residence

<sup>118</sup> In Germany, if a person refuses to leave the federal territory categorically and this is confirmed by certain behaviour this may be used to justify the suspicion that the person concerned intends to evade deportation and to detain him/her. However, the mere denial of a voluntary departure is no sufficient ground for detaining a person.

identity	ES, FR, MT, NL, LU, LV, SE, SI, NO
Previous record of absconding or attempt to abscond from detention	AT, CY, DE, ES, FI, HU, LV, LU, MT, SE, SK, UK
The person has been sentenced for a crime	AT, BG, CY, DE, EE, ES, LV, NL <sup>119</sup> , SE, SI, UK, NO
The person cannot be found on the declared residence address	AT, BE, BG, CY, DE, , ES, LV, NO
Non-compliance with alternatives to detention	AT, CY, DE, ES, EE, FR, HU, LU, LV, SK, NO
Lack of family, social or professional bonds	AT, DE, ES, HU, UK

*Establishing identity*

Establishing the identity of the third-country national is a ground for detention in 22 (Member) States (**BE, BG, CY, CZ, DE, EE, IE, EL, FI, HU, HR, MT, LT, LV, LU, NL<sup>120</sup>, PL, SE, SI, SK<sup>121</sup>, UK, NO**). In some (Member) States, placing a third-country national in detention cannot be justified simply by the fact that he or she cannot present an identity document (e.g. **AT, DE, FI, HU, LV, SE, SI, NO**). In addition, the person must refuse to cooperate with efforts to clarify his/her identity or there must be specific grounds for suspecting that the person has given a false identity. Relevant factors in the assessment include whether the foreign national has provided differing information about his/her identity, whether s/he has contributed to obtaining or has obtained valid travel documents, whether s/he is from a country where obtaining identity and/or travel documents is regarded as easy and thus, there is no obvious reason pertinent to the country of destination for the lack of identity and/or travel documents.

*Avoiding or hampering the removal process*

Avoiding or hampering the removal process is a detention ground in the context of return in 22 (Member) States (**AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, LV, LT, LU, MT, NL, SE, SK, UK, NO**). Avoiding or hampering the removal process refers to obstructing the adoption or implementation of a return decision and is interpreted by the following criteria:

- ★ Preventing or stalling the return process (**BE, BG, CY, CZ, DE, EE, EL, HR, IE, LU, LT, LV, NO**);
- ★ Failure to cooperate with the authorities to establish identity (**BE, CY, CZ, DE, EE, FI, HR, LU, LT, LV, MT, SK**);

<sup>119</sup> The crime must be linked to the risk of absconding.

<sup>120</sup> Limited to 6 hours, which can be extended to maximum of 48 hours

<sup>121</sup> This ground is applicable only in international protection cases.

- ★ The third-country national is not at the disposal for deportation and that s/he cannot be contacted by the authority (**BE, CY, DE, LU, MT**);
- ★ The third-country national does not communicate with authorities and/or gives false information (**CY, DE, FI, HU, LT, LV, LU, SK, NO**);
- ★ The third-country national pretends to have health problems (**SK**).

In **Austria**, avoiding or hampering the removal process is a criterion which may be considered within the general assessment of the risk of absconding.

#### *Threat to national security and public order*

Threat to national security and public order is a ground for detention in 18 (Member) States (**BE, CY, CZ, DE, EE, EL, ES, HR, HU, IE, LT, LV, LU, MT, , PL, SI, SK, NO**). It is also a factor that would influence a decision to detain in the **United Kingdom**.

In **Ireland**, the concept of 'public order' is narrowly interpreted as constituting a serious threat to fundamental State interests, and does not include breaches of immigration law.<sup>122</sup>

As illustrated in table 10, a number of indicators are used in (Member) States to determine whether the third-country national can be considered a threat to national security and public order.

**Table 10: Indicators used to determine threat to national security and public order**

Indicators used to determine a threat to national security and public order	Member States
Criminal activity related to state security (e.g. terrorism, smuggling of arms)	BG, CY, CZ, DE, EE, HU, LT, LU, SK
The third country national committed a serious crime	BG, CY, CZ, DE, EE, EL, HU, HR, IE, FI, LT, LU
Infringements and other administrative offences in the field of border control and stay related to public order.	SK
Previous behaviour and non-abidance to law	CY, CZ, EE, FI, LU
The third country national behaves aggressively	CY, HU, LU
When a person is released from imprisonment to which s/he was sentenced for committing a deliberate crime	CY, DE, HU, LU
Large number of arrivals reaching the (Member) State within a short timeframe that would threaten national security	MT
With his/her activities the person has discredited the state or has discredited the prestige and the dignity of the state or harmed relations with another country	BG, CY, DE

#### *4.1.1.3 Proportionality assessment*

The legal principle of proportionality requires that detention should be proportionate to the means used and objectives pursued.<sup>123</sup> Observance of the proportionality principle is part of the individual assessment in a number of (Member) States (e.g. **AT, CY, CZ, DE, EE, ES, FI, HU, IE, LT, LV, NL, PL, SE, SK, NO**). Vulnerability and taking into account fundamental rights considerations form part of the proportionality assessment.

Consideration of **vulnerability** is part of the individual assessment in 20 (Member) States (e.g. **AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HU, LT, LU, NL, PL, SE, SI, SK, UK, NO**). However, none of the (Member) States concerned uses a comprehensive vulnerability assessment as a separate step in the assessment procedure. In practice, in **Cyprus, Greece, Hungary, Latvia** and **Luxembourg**, vulnerability is assessed through an interview with the person concerned. Social workers are involved in the vulnerability assessment in **Cyprus, Estonia, Finland** and **Germany** in relation to the detention of children.

## 4.2 IMPLEMENTATION OF INDIVIDUAL ASSESSMENT PROCEDURES

### 4.2.1 AUTHORITIES RESPONSIBLE FOR CONDUCTING INDIVIDUAL ASSESSMENT PROCEDURES AND DECIDING ON DETENTION

#### *4.2.1.1 Administrative authorities*

In most (Member) States, the same national authorities which are responsible for deciding on the placement of a third-country national in detention also conduct the individual assessment. These authorities include: immigration and asylum authorities (**AT, BE, CY, EE**<sup>124</sup>, **FR, HU, IE, NL, SE, UK**); Ministries of Interior (**BG, CZ**<sup>125</sup>, **HR, SI, UK**); Border Guards (**EE, FI, IE, LV, PL**) and Police (**CY, CZ**<sup>126</sup>, **EE, EL, FI, IE, NL, SI, SE, SK**<sup>127</sup>, **NO**). In **Cyprus**, the Social Welfare and Mental Health Services are also involved in the procedure.

Annex 2 provides an overview of the responsible authorities in (Member) States, including when different authorities are responsible for the detention of different categories of third-country nationals

#### *4.2.1.2 Judicial authorities*

<sup>123</sup> Recitals 16 of Return Directive and 15 of the Reception Conditions Directive

<sup>124</sup> In Estonia there is one institution- Police and Border Guard Board, which carries the responsibility for deciding on the placement of a TCN in detention and also conduct the individual assessment. The Board carries out the responsibilities of police, border guard and immigration. <sup>125</sup> for applicants for international protection

<sup>126</sup> for nationals who are subject to treatment under the Act on the Residence of Foreign Nationals

<sup>127</sup> It can be either the aliens police department, or the border police department, or the asylum department

<sup>122</sup> *Li v. Governor of Cloverhill Prison* [2012] IEHC 493

The role of judicial authorities with regard to detention varies significantly across (Member) States, as follows:

- ★ **Decision to detain (DE, EE, ES, FI, IE, LT, PL, PT, SE):** In **Estonia** and **Lithuania**, a decision to detain for more than 48 hours is made by an administrative court having regard to the circumstances of the individual case. In **Germany**, immigration and asylum authorities, Border Guards and Police conduct the individual assessment and file an application for detention of a third-country national with the competent Local Court, but the final decision to detain a person can only be made by the Court. In exceptional cases, a person obliged to leave the federal territory may be detained temporarily even without a judicial order by the Border Guards or the Police. Though, the third-country national shall be brought before the court without delay and on the following day at the latest. In **Finland**, all cases of detention that continue for more than four days are automatically brought up to a district court to be assessed with regard to the lawfulness of detention. In **Portugal**, the first individual assessment procedures are a judicial responsibility of the lower criminal courts or district courts, from which the legal conditions of detention are corroborated and the possible options of detention or alternatives to detention appraised.
- ★ **Prolongation of detention period (DE, EE, EL, FR, HR, HU, IE, LV, LT, PL):** In these Member States, judicial authorities should decide whether the detention period can be extended. For example, in **Latvia**, the State Border Guard has the right to detain a foreigner for up to 10 days. Following this period a decision on detention shall be taken by a court.
- ★ **Judicial review of the detention decision:** Automatic, ex officio judicial review of the administrative detention measure is available in 9 (Member) States (**AT**<sup>128</sup>, **EE, FI, HR, HU, LV, NL, SI, NO**). Periodic, automatic judicial review is the practice every 60 days in **Hungary** every 2 months in **Latvia** and every 3 months in **Croatia**. For example, in **Croatia**, at latest 10 days before the expiration of a detention term of 3 months, the detention centre should submit the case to the administrative court and the court should decide within 10 days of the date of submission of the case file whether the person should be released from the centre.<sup>129</sup> In **Cyprus**, once a person is

detained, s/he can file a habeas corpus application for release or an application against the return decision, and detention orders at the Supreme Court of Cyprus. The filing of such applications before the Supreme Court do not automatically suspend the execution of the return and detention orders, unless a parallel application for interim measures to this effect is also filed.

- ★ In **Ireland**, a decision of a district judge to continue detention of an applicant for refugee status can be judicially reviewed in the High Court.

### **Box 3. Mandatory notification of detention to judicial authorities and judicial review in Finland**

In Finland, the official responsible for a decision on detention should without delay **notify a district court**. The District Court that received the notification should hear the matter no later than four days from the date of detention. The official responsible for the decision on holding third-country national in detention or the person delegated by the official shall be present at the hearing of the matter at a District Court. When the matter is heard by a District Court, the Court shall be presented with a statement on the requirements for detention. A third-country national held in detention shall be brought before the District Court to answer questions concerning the requirements for holding him or her in detention. If the release of the person who has been held in detention has not been ordered, the District Court of the place of detention shall, on its own initiative, always rehear the matter concerning the detention no later than two weeks after the decision under which the District Court ordered continuation of the detention.

In 16 Member States (**BE, BG, CY, CZ, ES, FR, IE, EL, LT, LU, MT, PL, PT, SE, SK, UK**) there is no automatic judicial review and administrative courts are only involved in response to a legal action by the third-country national. In these cases, judicial authorities are involved in assessing detention if a person files a legal remedy against the detention decision. In **Bulgaria, France** and the **Slovak Republic**, there is a certain period when the third-country national can file a legal remedy, namely 48 hours in **France**, 14 days in **Bulgaria** and 15 days in the **Slovak Republic** following the delivery of the decision on detention. In some (Member) States judicial review of the detention decision does not suspend the return decision (e.g. **BE, BG, HU**).

In **Bulgaria** and **Luxembourg**, although there is no automatic judicial review of the detention decision, an automatic administrative review is in place, whereby the competent authorities are obliged to conduct an official assessment every month (**BG**) and every month for persons detained based on the Immigration Law and every three months for persons detained based on the Asylum Law (**LU**) in order to ascertain the existence of grounds for the placement in detention centre.

- ★ **Judicial appeal against a court decision to detain:** Judicial appeal is possible at a higher instance in some (Member) States (e.g. **AT, BE,**

<sup>128</sup> Only if the duration of detention is more than 4 months

<sup>129</sup> Law on foreigners, Article 127

**BG, CY, DE, EE, ES, NL, LT, LV, PL, SE, SI, SK).** For example, in **Germany**, a third-country national against whom detention has been issued by the Local Court can lodge an appeal against the ruling within one month in the regular procedure and within two weeks in respect of interim injunctions by themselves or through their legal representatives. The Regional Court takes a decision on the appeal. In the event that the appeal is dismissed, an appeal can be lodged with the Federal Court of Justice within one month<sup>130</sup>. In **Finland**, judicial appeal against a court decision on detention is not possible, but one can make a complaint about the decision of a District Court. In the **United Kingdom**, an individual can challenge the lawfulness of their detention through judicial review or submit an application for a writ of habeas corpus.

- ★ **Application for bail:** In the **United Kingdom**, a detained person can apply for bail to the First Tier Asylum and Immigration Chamber.

#### 4.2.2 PROCESS OF CARRYING OUT INDIVIDUAL ASSESSMENT PROCEDURES

In those Member States that carry out individual assessment procedures, different processes are in place, including:

- ★ In some Member States, such as **Austria, Luxembourg** and **Slovenia**, rules for interpreting the legal grounds have been developed in the jurisprudence of the national courts. Internal guidelines for deciding officers involved in detention assessment procedures may also be available.
- ★ Interviews with the third-country national prior to deciding on detention are carried out in 11 (Member) States (**CZ, DE, EE, ES, IE<sup>131</sup>, HU, FI, LU, NL, PT, SK, UK**).
- ★ In the **Czech Republic, Finland, Lithuania** and the **Slovak Republic** before a decision is issued, the third-country national is given an opportunity to comment on the evidence on which the decision is based.
- ★ In **Germany**, an application for detention at the Local Court must indicate, *inter alia*, the identity of the third-country national, usual place of residence, obligation to leave the federal territory, requirements for return, grounds for detention, proportionality of detention, required duration of

deprivation of freedom, plus any other information about the individual case that is important for examining the application for detention.

- ★ In **Hungary** and **Luxembourg**, information obtained during the international protection procedure can be used to decide whether to place an individual in detention.

#### 4.3 PROVISION OF INFORMATION TO THIRD-COUNTRY NATIONALS REGARDING THEIR DETENTION

Article 15 (2) of the Return Directive and Article 9(2) of the Recast Reception Conditions Directive provide that detention shall be ordered in writing with reasons being given in fact and in law.

- ★ Information is provided in an oral form in many Member States (e.g. **AT, CY, EE, EL, HR, LV, LU, NL, PT, SK** and **SE**). This is either provided by the official conducting the interview (e.g. in **Croatia**) or by an interpreter. In **Sweden**, the guidelines of the Swedish Migration Board state that the Board should act openly towards a third-country national when it comes to questions regarding detention.
- ★ Information is provided in a written form (e.g. in **AT, CY, CZ, DE, EE, EL, FR, HR, IE, LV, LT, LU, PL, SE, SK**). Third-country nationals are provided with written reasons for the detention (e.g. **CY, CZ, LT, LU, LV, SK<sup>132</sup>, UK**); possibilities to appeal (e.g. **DE, CY, LV, LU, SK<sup>133</sup>**) or an exemplar of the detention decision (e.g. **LV, LU, SK**). In **Germany**, the third-country national must be provided with a copy of the application for detention in advance of the interview. If necessary, the copy may need to be translated in order to safeguard their right to a legal hearing.

#### Box 4. Provision of information in oral and written form during the decision procedure in Slovak Republic

In Slovak Republic, a third-country national is informed by the police department through an interpreter about the fact that a detention procedure has commenced against him/her. During the decision procedure, all documents related to detention (e.g. record, request for legal assistance, detention decision) are interpreted to the third-country national by the interpreter. Once documents have been interpreted, they are signed by the third-country national and by the interpreter. After the execution of all required actions, the third-country national is handed over the detention decision in the presence of the interpreter.

<sup>130</sup> Appellant needs to be substituted by one of the 40 lawyers registered with the Federal Court of Justice.

<sup>131</sup> An interview may take place but Irish law does not require an interview in all such cases.

<sup>132</sup> This information is included in the detention decision.

<sup>133</sup> This information is included in the detention decision.

#### 4.4 CHALLENGES AND GOOD PRACTICES IN ASSESSING THE APPROPRIATENESS OF DETENTION

##### 4.4.1 CHALLENGES ASSOCIATED WITH THE IMPLEMENTATION OF ASSESSMENT PROCEDURES

A number of challenges associated with the implementation of current assessment procedures for detention have been reported by (Member) States, as follows:

###### *Lack of clear assessment indicators/criteria*

The lack of clear assessment indicators and criteria presents a challenge for a number of (Member) States (e.g. **BE, CY, FR, IE, LT, LU, SI, NO**). In **Luxembourg**, where individual interviews are carried out, the lack of criteria for an in depth individual assessment pose a challenge to the competent authorities in their assessment. In **Lithuania**, national legislation currently does not explicitly stipulate criteria for assessing the risk of absconding, presenting challenges in how to interpret the risk of absconding. However the draft law passed to the Parliament defines criteria for assessing the risk of absconding. In **Ireland** and **Norway**, the many different factors that are relevant for assessing whether detention is a proportionate measure present a challenge for the competent authorities, who must apply discretion in decision-making based on the factors presented. Also in **Belgium**, there is room for improvement to be able to identify all relevant aspects of an individual case before a person is placed in detention. In **Cyprus**, the main challenge is the lack of a formal mechanism for assessing the vulnerability.

###### *Complex legal framework*

Extensive legislation and case law on detention have created a complicated legal framework which has been reported as presenting challenges in some Member States (e.g. **AT, NL, SI**).

###### *'Automatic' placement of particular categories of third-country nationals in detention*

**Belgium** and **Luxembourg** reported that particular categories of third-country nationals are often (BE) or almost always (LU) placed in detention. In **Belgium**, this situation applies in the case of asylum seekers at the border. In case of asylum seekers in the context of the Dublin Regulation, around 50 % of Dublin cases for whom a transfer agreement has been received and for whom a refusal decision has been made, are detained in Belgium. In **Luxembourg**, the legal presumption of the risk of absconding is present in nearly all cases where a third-country national has no valid identity, travel or residence documents. According to the Consultative Commission of Human Rights, the lack of a formal mechanism for assessing the vulnerability before and after the decision of placement presents a challenge to the authorities.

###### *Challenges related to extending the period in detention*

**Sweden** reported that difficulties can be encountered when calculating the maximum duration of periods for detention or supervision, in particular when an authority makes a decision on detention on new grounds rather than extending an existing detention decision.

###### *Lack of judicial review on the appropriateness of a detention measure*

Another challenge identified by certain organisations<sup>134</sup> in **Belgium** is the lack of automatic judicial review on the appropriateness of a detention measure and lack of expertise as the same judges deciding on administrative detention of migrants decide on common preventive detention in criminal matters.

##### 4.4.2 GOOD PRACTICES IN RELATION TO THE IMPLEMENTATION OF ASSESSMENT PROCEDURES

A number of good practices in relation to the implementation of assessment procedures have been identified, as reported below:

###### *Involvement of different authorities in the assessment and decision stages*

The involvement of different authorities in the assessment and decision stages has been identified as a best practice in **Belgium, Cyprus, the Czech Republic, Estonia, the Netherlands** and **Spain**. In **the Czech Republic**, as part of the examination of possible barriers to expulsion, the police are obliged to request a binding opinion from the Ministry of the Interior for the purpose of evaluating whether departure of the foreign national is possible. This decision impacts the actual detention of the person, which cannot be carried out if it is not possible to issue or execute a return decision. In **Estonia**, the initial assessment is carried by the Police and Border Guard Board and the final decision is taken by an administrative court. In **the Netherlands**, in case of illegally staying third-country nationals, individual assessments are made both by the police and the Repatriation and Departure Service. In **Belgium**, the assessment procedure is improved through cooperation between the Immigration Office and local authorities. In **Spain**, there is a double assessment procedure, involving the National Police and an independent decision by the judge.

###### *Due judicial review*

Due judicial review has been indicated as a good practice in **Estonia, Finland, Lithuania** and **Norway**. In **Estonia** and **Lithuania**, an administrative court makes a judgement of the detention of the third-country national. In **Finland**, the fact that all cases of detention that continue for more than four days are

<sup>134</sup> E.g. the Federal Migration Centre, [www.diversitybelgium.be](http://www.diversitybelgium.be)

automatically taken to a District Court to be assessed with regard to the lawfulness of detention is significant for monitoring lawfulness. In **Norway**, the automatic judicial review takes place the day after the detention.

*Prohibition of re-detention*

In **Portugal**, re-detention is not allowed and thus, it is illegal to maintain in a detention facility an illegally-staying foreign citizen who has already been detained for the maximum period permitted by law.

*Verification of accommodation conditions when deciding to grant an alternative to detention*

In **Bulgaria**, when considering whether to grant a third-country national who has been imposed a return decision with an alternative of detention, the address at which the person will reside is first checked and an assessment is made as to whether it allows for appropriate living conditions.

## 5 Types of detention facilities and conditions of detention

This section provides a summary overview of the types and detention facilities for third-country nationals (Section 5.1) and on provisions for basic material detention conditions (Section 5.2). Such conditions are provided to meet the subsistence and basic needs of detainees during their stay at detention facilities.

### 5.1 TYPES OF DETENTION FACILITIES

**Article 16.1** of Directive 2008/115/EC (“Return Directive”) stipulate that “*detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners*”. Similar provisions on detention conditions in the context of applicants for international protection are enlisted in Article 10 (1) of the recast Reception Conditions Directive.<sup>135</sup> In addition, on 17<sup>th</sup> July 2014 the European Court of Justice judged<sup>136</sup> that a Member State cannot rely on the fact that there are no specialised facilities in a part of its territory to justify detaining third-country nationals separately in prisons pending their deportation, removal or refusal of entry if specialised detention facilities exist in other parts of that Member State.

#### 5.1.1 IMMIGRATION DETENTION FACILITIES

The use of **immigration detention facilities**<sup>137</sup> is a consolidated practice across **all** (Member) States, with the exception of **Ireland** where third-country nationals

are detained in prisons. In total **128** detention facilities exist across the participating 24 (Member) States.

**Table 11: Number of detention facilities in the (Member) States**

Number of facilities	Member States
0	IE
1	CY, CZ, EE, HR, LV, LU, LT, SI, NO
2	BG, FI, MT, SK
3	NL
5	BE, EL, SE
6	PL, PT
7	HU
8	ES
10	UK
15 <sup>138</sup>	AT
18	DE <sup>139</sup>
23 <sup>140</sup>	FR

In general, such facilities tend to be located near large/main cities (where the highest share of returnees is present) or relevant EU external border crossing points (i.e. airports, harbours or specific sensitive sections of land borders). For example, in **Belgium**, in addition to the five detention facilities provided for in table 9, there are “zones” for inadmissible passengers in five regional airports recognised as Schengen Border posts, while **Luxembourg** hosts a “waiting area” at the airport where third-country nationals can be detained for a maximum of 48 hours (never used so far).

The organisation of detention facilities varies across (Member) States. In some (Member) States (**BE, BG, CZ, DE, EL, FR, HR, LU, MT, PT, SE, SI, SK**<sup>141</sup>, **UK, NO**), third-country nationals are normally detained in the same place regardless of the circumstances for which they are detained. Specialised detention facilities depending on the categories of third-country nationals exist in a few (Member) States e.g. in **Hungary**,

<sup>138</sup> In Austria, most facilities are used for the purpose of immigration detention or other administrative offences. These facilities differ from ordinary prisons and are under the administration of the Federal Ministry of the Interior. The number 15 refers to all facilities where migrants can be detained and which are not prisons

<sup>139</sup> In Germany, the accommodation and enforcement of detention pending deportation comes exclusively under the remit of the 16 Federal *Länder*. As at 31 December 2013 six specialised detention facilities existed in six of the Federal *Länder* and at least 12 special detention quarters within the state’s regular prison facilities where detainees are separated from ordinary prisoners existed in ten of the Federal *Länder*. Saarland did not run an own detention centre since 1999 but cooperates ever since with Rhineland-Palatinate.

<sup>140</sup> There are 23 detention centres in France excluding waiting areas and detention premises. Detention premises are temporary premises located in police stations. TCNs cannot be held in detention premises more than 48 hours before being transferred to a detention center

<sup>141</sup> In Slovak Republic, third-country nationals are placed in detention facilities on the basis of the geographical location of their apprehension and according to the occupancy of the facilities and their equipment, while taking into account the age, health conditions, family relationships, and the religious, ethnic or national background of the third-country national.

<sup>135</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>136</sup> C-473/13, C-514/13 and C-474/13

<sup>137</sup> See the Glossary in Annex 1 for the Definition of ‘detention facility’.

where applicants for international protection are kept in separate detention centres. In **Cyprus** there are different types of detention facilities, according, *inter alia*, to the security risk posed by the detainee. These may include specialised facilities or police stations.

In other (Member) States (**CY, EE, FI, HU, LT, LV**), third-country nationals in different circumstances are detained in dedicated sections within the same facilities. Persons in return proceedings can be held in specific units of detention facilities (**FI, HU**), or according to the geographical location of their apprehension (**CY, EL, SK**) or even at hospitals (**EE**). In the **United Kingdom**, only families being returned under the Family Returns process are held in specific detention units.

In **Austria**, a special facility (Vordernberg) was established which shall provide particularly human conditions. Persons who represent a security risk are not held in this facility, while in **Sweden** this category of detainees is held in remand prisons.

In a number of (Member) States, third-country nationals can be held in police or border stations for a short period of time (e.g. **EE, NL, UK**).

(Member) State authorities responsible for the day-to-day running of detention facilities can be clustered as follows:

- ★ Authorities related to the Ministries in charge of home affairs (**AT, BE, BG, CZ, DE, FI, HR, LU, PT, SK, UK, NO**);
- ★ Authorities related to police administration (**AT, CY, DE, EL, HU, SI**);
- ★ Border guards/police (**EE, ES, FR, LT, LV, PL, PT**);
- ★ Own administration (**MT, NL, LU<sup>142</sup>**);
- ★ Ministry of justice (**SE**);
- ★ Private security services (**AT<sup>143</sup>, DE<sup>144</sup>**).

In some cases other actors are also involved.

Many (Member) States operate within the limits of the actual **capacity** of their detention system. To ensure sufficient capacity they have also adopted a number of mechanisms or alternatives to deal with the deficit of available places.

- ★ (Temporary/emergency) **additional places / facilities** are created/used to cope with exceptional higher number of third-country nationals (**BG, CZ, EL, HR, HU, NL, SI, SK**)
- ★ **Mechanisms exist to distribute / reallocate** categories of third-country nationals in other available facilities (**DE, FR, PT**) or to release some persons in the community according to lower priority criteria (**LU, UK**), by continuously evaluating the progress of the specific situation.
- ★ Detainees are accommodated in **police detention facilities /prisons/border stations** (**EE, EL, FI, FR, LV, NO**);
- ★ In **Sweden**, a **prioritisation system** exists whereby enforceable cases are prioritized in the event of a deficit of places;
- ★ Use of **mobile homes** (**MT**)

### 5.1.2 DETENTION IN PRISONS

With the exception of **Germany** and **Ireland**, detention in prison is only allowed under very specific circumstances:

- ★ If the third-country national has committed a criminal offence according to the national criminal code (e.g. **AT, BE<sup>145</sup>, BG, FR, HR, HU, IE, LT, LU, SE, SI, SK, UK, NO**);
- ★ If the third-country national is subject to an expulsion order/ (**CZ, SE<sup>146</sup>**). In the **Czech Republic**, third-country nationals detained for the purpose of return are not detained in prisons with the exception of those who were specifically committed to detention by the court;
- ★ If the third country-national represent a security risk (**NL, SE, UK**);
- ★ In case of insufficient capacity (**FI, NO**).

However, third-country nationals detained administratively for the purposes of immigration detention (and not third-country nationals who are convicted of crimes) in prisons are always held separately from ordinary prisoners. (Member) States have specific mechanisms for this: for example **Austria** and **Germany** provide for separated wings/quarters of the prison, while in the **United Kingdom** immigration detainees are held with un-convicted prisoners.

## 5.2 CONDITIONS OF DETENTION

The quality of life experienced by applicants in detention facilities is affected by their access to basic material conditions. These conditions are reviewed in

<sup>142</sup> The administration depends on the Ministry of Foreign and European Affairs

<sup>143</sup> In Austria, a private security firm is responsible for certain tasks related to the day-to-day running of the specialised facility in Vordernberg.

<sup>144</sup> In Germany, in those facilities, where private security services are hired by state authorities, they co-work with employees of police administration and state employees and are not "responsible" for the day-to-day running exclusively, but rather responsible for specific tasks within the facility.

<sup>145</sup> For as long as the person is under the responsibility of the Justice Department

<sup>146</sup> In Sweden, not all expulsion orders, only those in accordance with a criminal conviction, since they are presumed to be a security risk

the following sub-sections. Table A3.A in Annex 3 provides an overview of the available data in each (Member) State.

### 5.2.1 CONDITIONS OF DETENTION OF VULNERABLE GROUPS

Section 3 identifies the vulnerable groups that cannot be detained in certain (Member) States. Where the detention of vulnerable groups is permitted, special care and accommodation that takes into account the specific needs of vulnerable groups are provided in a number of (Member) States.

**Article 17.1** of the Return Directive states that unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time. According to **Art 17.2**, families that are detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. In the same vein, **Article 11** of the Recast of Reception Conditions Directive includes safeguards on the detention of vulnerable persons and of applicants with special reception needs.<sup>147</sup>

In almost all (Member) States where **unaccompanied minors** (UAMs) can be detained (**AT, CY, CZ<sup>148</sup>, DE, EE, EL, FI, HR, LT, LV, LU<sup>149</sup>, MT, NL, PL, PT, SE<sup>150</sup>, SI, UK, NO**), they are separated from adults and/or accommodated in separated facilities, adapted to their specific needs (**CY, HR, LT, LU, LV, NL, PL, SE, SI, NO**).

In **Germany**, as at 31<sup>st</sup> December 2013 some Federal *Länder* accommodated UAMs (in exceptional cases, e.g. if they committed a criminal offence) together with adults. This applies especially to UAMs who reach the age of 16.

Families are normally accommodated together in separate facilities adapted to their needs. This is always the case in the majority of (Member) States (**AT, BG, ES, FI, HR, HU, LV, MT, PL, SE, SI, SK, UK, NO**) or in separated units within the same centre (**CZ, EE, FR, LT, LU, NL, SK<sup>151</sup>, UK, NO**). In some

(Member) States this is possible only in a limited number of centres (**AT, DE, NL, PT, UK**), while some others determine the maximum number of family members allowed per room (**SE, NO**). In **Germany**, in general, detention pending deportation can only be filed for one parent (mostly the father) in families with underage children. In **Belgium, Cyprus** and **Greece** families are not detained.

**Children** are normally not separated from their families, with the exception of some (Member) States (**BE, CY, DE, FI, LV, SK**) that allow children to be accommodated in childcare facilities mostly for protection reasons (and not in detention). However, this does not happen automatically: the right to family life and the best interests of the child are taken into consideration before a decision is made.

**Single women** are always separated from single men in all (Member) States.

Special arrangements are offered to the following additional vulnerable groups: disabled persons (**EE, FI, FR, IE, HR, LU, LV, PL, PT, SI**), pregnant women (**EE, ES, FI, LU, NL, PT**), elderly (**EE, IE, LU, PT**) or victims of torture, trafficking in human beings or sexual violence (**EE, LU<sup>152</sup>, PL, PT**).

### 5.2.2 LIVING SPACE AND MOBILITY OF DETAINEES

Sixteen (Member) States provided data on the available surface area per detainee (**BG, CZ, DE, EE, FR, HU, LT, LU, LV, MT, NL, PL, SE, SI, SK, NO**) which ranges from less than 3m<sup>2</sup> (**MT, SI**) to a maximum of 63m<sup>2</sup> (**SE**); more than half of reported cases offer less than 5m<sup>2</sup> per detainee (**BG, HU<sup>153</sup>, LV, MT, PL, SK, SI**). The number of detainees per room varies across (Member) States, from a maximum of **one** (**FI, LU<sup>154</sup>, SE, NO**) to a maximum of **25** (**BG**).

In terms of **mobility** of detainees, three aspects can be highlighted:

★ **Access to outdoor space** is allowed by all (Member) States on a **daily** basis. However, the frequency and the time permitted outdoors can vary significantly: from a minimum of 1hr per day (**AT, EE, FI, UK**) and 13-15hr (CZ) or anytime of the day except at night and during meal times (**LU**). In **Estonia** and **the United Kingdom**, the stipulated minimum is 1 hour, however in practice third-country nationals spend longer periods outdoors.<sup>155</sup> Some (Member) States permit frequent access to outdoor spaces throughout the day (**EL**,

<sup>147</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>148</sup> The category of foreign nationals who are subject to treatment under the Act on the Residence of Foreign nationals and who are unaccompanied minor foreign nationals - from 15 to 18 years of age - can only be detained on special grounds (if there is a reasonable risk that they might threaten state security or might seriously disrupt public order) and only for a reduced period (i.e. 90 days).

Unaccompanied minor foreign nationals younger than 15 years are not subject to detention and are placed in a special facility for foreign children.

<sup>149</sup> According to the law, but unaccompanied minors are not detained in practice.

<sup>150</sup> In Sweden, UAMs have their own rooms but they share common areas with others, like the canteen and leisure area.

<sup>151</sup> In exceptional cases

<sup>152</sup> There have not yet been any cases of victims of torture, trafficking in human beings or sexual violence in Luxembourg, but if there were any, they would not be detained.

<sup>153</sup> Minimum average area in Hungary is 5m<sup>2</sup>

<sup>154</sup> In Luxembourg, there are single and double rooms, but in practice even in the double rooms only one person is detained.

<sup>155</sup> In Estonia up to 10 hours

**ES, LT, SK<sup>156</sup>, NO**). In **Poland**, access to outdoor space is allowed between 9 am and 9 pm with the exception of the meal times.

- ★ Third-country nationals are not **allowed to leave the detention facility** in seven (Member) States (**AT, BG, EL, FR, LT, MT, PT**) or only in very limited cases, such as for medical reasons (**BE, CY, CZ, DE, EE, ES, FI, HU, IE, LU, LV, PL<sup>157</sup>, SE, SK, UK**), to carry out administrative duties (**CZ, DE, EE, HU, LV, SK**) or for humanitarian reasons (**NL**). In some (Member) States, this right is reported to be granted only upon specific approval (**CY, CZ, HR, HU, NL, SE, SI, NO**), normally by the director of the centre (**EE**). This happens under surveillance (**CY, DE, EE, HU, LU, NL, PL, SE**), while it can also be limited only to certain categories (families with children) and for short periods of time (**UK**). In the **United Kingdom**, the temporary release of families with children requires prior authorisation from the centre manager and only takes place under supervision.
- ★ The right to move within the facility is normally granted to detainees (**AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HR, HU, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK, NO**); however, some exceptions may apply. In three (Member) States men are not allowed to visit areas restricted for women (**CZ, FI, SE**). In **Germany**, this depends on the individual facility in the Federal *Länder*.

### 5.2.3 RIGHT TO RECEIVE VISITS AND OTHER CONTACTS

**All** (Member) States allow visitors in the detention centres; however, different rules apply as regards the type of visitors permitted, the frequency and the length of the visits.

With the exception of a few countries where there is no limitation to the type of visitor (**AT, CZ, LU, SE, SI, SK, UK**), unless it is justified by security reasons (**SE**) or if the person is detained in prison (**UK**), **all** (Member) States grant access to the detention facilities to legal representatives, and to lesser extent to family members (**AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, HR, LT, LU, LV, NL, PL, PT, SE, SI, UK, NO**) and competent consular authorities (**AT, BG, CY, CZ, DE, EE, FI, FR, HR, HU, LU, LV, NL, PL, PT, SE, SI, UK, NO**).

In addition to those (Member) States that permit all types of visitors (**AT, CZ, LU, SE, SI, SK, UK**), other (Member) States permit visits from representatives of NGOs (**BE, BG, CY, DE, EE, ES, FI, HR, HU, LT, LV,**

**NL, MT, PL, PT, )**, international organisations, including international committees for the protection of human rights (**BE, CY, DE, EE, ES, FI, HU, LV, LT, MT, NL, PL**), national institutions (such as social protection services) (**BE, CY, DE, EE, ES, FI, LT, NL, PL**), religious organisations (**BE, CY, DE, EE, ES, HU, LT, NL**) and friends (**BE, CY, DE, HR, EL, ES, NL, PL, NO**).

The frequency of the visits varies considerably across (Member) States, who may set maximum thresholds which may range from daily (**BE, CY, EL, HU, LV, LU, PL**), twice a week (**CZ, HR, NO**), to weekly (**AT, NL**) or once every third week (**SK**). In terms of length, visits can last for 30 minutes (**AT, FR, SK**), one hour (**CZ, NL**), two hours (**BE<sup>158</sup>, LV**), or during specific hours set by the detention centre (**BE<sup>159</sup>, LU, PL**). In some cases, legal representatives (e.g. **AT, CZ, EL, NL, SK, NO**), representatives of NGOs or IOs (e.g. **SK**) and consular officials (e.g. **AT, NL**) are not subject to any time limitation. **Estonia** and **the Slovak Republic** restrict the number of visitors to a maximum of two persons at a time. In the **United Kingdom**, detainees are allowed to receive as many social visits as they wish, within reasonable limits.

Variations also exist as regards the type of contact permitted with the outside world. **All** (Member) States allow detainees to use **telephones** installed in the facilities, while **mobile** phones are permitted in a limited number of cases (**BE, EL, FI, MT, PL, SE, SK<sup>160</sup>**). In four of these Member States (**BE, FI, PL, SE**) video recording functions should be turned off. **Mail** is allowed by the majority of (Member) States (**BE, BG, CZ, EE, ES, HR, HU, LT, LU, MT, SE, SK, LU, UK**), though it can be screened for security reasons (**LU, SE**) or opened under strict surveillance (**CZ<sup>161</sup>, EE, HR**). **Internet** access is granted only in ten Member States (**EL, FI, HU, LT, LU, NL, PL, SE, SI, SK, UK**), although in some cases the navigation can be subject to restrictions (**LU, NL, PL, SI, SK, UK**). The use of **e-mail** is allowed only in **Belgium, Luxembourg, Slovenia** and **Sweden**.

### 5.2.4 ACCESS TO LEGAL ADVICE

**All** (Member) States provide access to legal advice to persons accommodated in detention centres. In all cases this is free of charge, with the exception of

<sup>156</sup> In Slovakia, two walks per day at times specified in the internal rules. A walk takes not less than one hour. Also, the shift leader may permit a walk on fresh air during detainees' spare time after dinner, but only before dark.

<sup>157</sup> In Poland, third-country nationals are allowed to leave detention facilities only in the presence of border guards.

<sup>158</sup> Visits from legal representatives may take place every day, between 8am and 10pm (Article 26 and following of the Royal Decree on the Immigration Detention Facilities)

<sup>159</sup> Visits from family members may last a minimum one hour (Article 26 and following of the Royal Decree on the Immigration Detention Facilities)

<sup>160</sup> Upon the person's entry check, the person placed in detention is disposed of his/her own mobile phone. However, non-governmental organisations also provide a mobile phone that a detained third-country national may use upon request once a week during approx. 10 minutes.

<sup>161</sup> Only incoming packages (conversations and correspondence are not under surveillance).

**Hungary**, where legal aid is reported to be at the detainee's expense and, partially, **Luxembourg** where costs are covered only for persons with limited resources and **Germany**, where the costs of initial legal advice have to be borne by the third-country nationals themselves, depending on which Federal State they are in<sup>162</sup>. In some (Member) States, **NGOs** provide this service (**BG, DE, EL, HU**), at no cost for the third-country nationals. In **Estonia** and **Malta**, legal advice is provided solely for the purposes of an appeal against the return decision.

### 5.2.5 ACCESS TO EDUCATION PROGRAMMES AND LANGUAGE SUPPORT

Three broad types of **education programmes** are offered to detainees in certain (Member) States:

- ★ **Compulsory school education** is offered to minors in eleven (Member) States (**CZ, EE, HU, LT, LV, NL, PL, PT, SI, SK, UK**). In **Portugal**, courses are provided only for unaccompanied minors (UAMs), though in practice there is no evidence of any UAM being given such opportunities. In the **Slovak Republic**, courses are offered only for minors (under 15 years of age) are detained for longer than 3 months.
- ★ Detainees can be enrolled in tailored **language courses** in some (Member) States (**BE, EE, HU, LU, PL, SK, UK**). In a few cases languages other than the national ones are also taught (**HU, LU**), while in one case courses are only offered to minors (**PL**) or in individual detention centres only (**DE**).
- ★ Other **forms of apprenticeship** courses are available in a more limited number of (Member) States (**AT, CZ, LT, LU, NL**). These include sewing (**AT, CZ**), knitting (**AT**), music and arts (**CZ, LT, LU**), cooking classes (**NL**), cooking activities (**LU**) or e-learning activities (**NL**).

In **all** reported cases, education programmes are free of charge.

**Translation services** are offered to third-country nationals in most cases (**AT, CY, CZ, DE, EE, EL, ES, FI, HR, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, UK, NO**) and are delivered free of charge with the exception of a few (Member) States (**PT, SI**). In **France** charges are waived only for issues strictly related to the return decision, while NGOs which provide legal advice to detainees can also offer free translation services. **Interpretation** is provided by all (Member) States, and free of charge in a large

majority of cases (**AT, CY, CZ, EE, EL, ES, FI, HR, HU, IE, LT, LU, LV, MT, NL, PL, SE, SK, UK, NO**). In **Cyprus, France, Hungary, Latvia** and the **Slovak Republic** it is free of charge only for issues strictly related to the return decision and for issues relating to detention and placement in detention (**SK**). In **Belgium**, it is provided only by phone or through other residents (on request, official written translations of decisions can also be given), while this is one possibility in **Luxembourg**. **Bulgaria** received support for the provision of interpretation services under the European Return Fund. In **Germany**, interpretation free of charge is dependent on the occasion - detainees have the right however to access interpretation at their own expense when needed where costs are not covered. While in most cases this service is offered by the detention centre itself, in some cases (e.g. **EL, LU**) NGOs are contracted for this purpose.

### 5.2.6 ACCESS TO MEDICAL CARE

**Article 16.3** of the Return Directive and **Article 11** and **Article 19** of the recast Reception Conditions Directive oblige (Member) States to provide for emergency healthcare and essential treatment, paying particular attention to the situation of vulnerable persons.<sup>163</sup> **All** (Member) States provide some kind of **medical care** to detainees. However, the practical organisation and the level of service provided vary significantly across countries. It is not always easy to compare the type of care provided as (Member) States may use different terms to refer to services that may entail the same type of care.

Eighteen (Member) States (**AT, BG, CZ, DE, EE, ES, FI, HR, HU, LT, LU, LV, NL, PL, PT, SI, SK, UK**) provide **emergency assistance** (care), while 22 (Member) States (**AT, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE**<sup>164</sup>, **LT, LV, LU, NL, PL, PT, SI, SK, UK, NO**) provide **essential medical care** to detainees.

**Secondary care** (which includes more specialised treatments and transfers to hospital, other dedicated units or local doctors) is allowed in a more limited number of cases (**AT, BE, BG, CY, CZ, DE, EE, EL, FI, IE, LU, LV, LT, MT, NL, SK, UK**). Childbirth (**LV**) and maternity care (**SE**) are provided free of charge. In **Cyprus, Hungary** and **Poland**, transfers to hospitals outside the facility happen only under police surveillance; while in **Estonia**, detainees can also be transferred to the central hospital for prisons. In **the Netherlands** and **Latvia** detainees are screened for tuberculosis and are provided with health information.

<sup>162</sup> In Germany, some Federal Länder cover the costs of legal advice or subsidise them. Furthermore, in a large number of Federal Länder, persons in detention can avail themselves of legal advice provided free of charge by staff of Church social organisations (who provide their services free of charge), welfare associations, NGOs and regional refugee councils or by the bar association. Furthermore, in appellate proceedings against the deprivation of liberty, persons concerned can apply for legal aid.

<sup>163</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>164</sup> Detained asylum applicants are entitled to treatment; awaiting observations from Irish Prison Service and GNIB on other categories of detainees.

In **Sweden**, detainees involved in return procedures have access to the same level of health and medical care as asylum or international protection applicants, which includes emergency health and dental care, maternity care, care in the event of abortion, contraceptive advice, maternal health care and care under the Communicable Diseases Act.

In some (Member) States (**AT, BE, CZ, DE, EE, ES, FI, FR, HU, LT, LV, NL, SK, UK**) medical units/health offices are available within the facilities. In **Germany**, this is the case only in some of the detention facilities (in particular in detention quarters located within state prisons); other facilities have medical staff on duty for several hours a day. In **Austria** and **United Kingdom**, the units are open on a 24/7 basis, while in **Belgium** they are only open during daytime (with the exceptional possibility to call a doctor at night too). In **Czech Republic, Estonia** and **Lithuania**, general practice care is provided daily on working days. In **the Czech Republic**, also nurses are present in the weekends. While nursing is provided daily on working days/hours, a doctor's reception takes place at least twice a week in **Estonia**. Access to psychologists is foreseen by **Belgium, Cyprus, Estonia** (only twice a month and in EN and RU languages) and **the Netherlands** and psychiatrists in **Luxembourg**; while **Bulgaria, Portugal** and **the United Kingdom** refer more broadly to the care of detainees' mental conditions. In **Cyprus**, specific attention and priority is given to persons considered to be security risks for others and /or themselves. In case of security risks for themselves, psychiatrist diagnosis and treatment will be requested by the Public Mental Health Service. Special medical attention is available for **specific (vulnerable) groups**, including minors, pregnant women, disabled, the elderly, people who have been subject to torture, rape or other forms of psychological, physical or sexual violence in some (Member) States, such as **Germany, Luxembourg** and **Portugal**.

### 5.2.7 ACCESS TO LEISURE ACTIVITIES

Table A3.B in Annex 3 provides a list of leisure activities available in the detention facilities. **All** (Member) States provide some form of leisure activities. The most commonly provided include both **recreational** (sport, gym, indoor games) and **cultural** (access to library, TV, newspapers and religious functions) activities. The widest range of activities is reported in **Austria, Belgium, Estonia, Germany, Latvia, Luxembourg, Netherlands** and **United Kingdom**.

## 6 Availability and practical organisation of alternatives to detention

This section provides information on the availability and practical organisation of alternatives to detention for the different categories of third-country nationals that are entitled to as well as administrative and legal conditions of such measures.

### 6.1 ALTERNATIVES TO DETENTION IN THE (MEMBER) STATES

While the requirement to give priority to "less coercive measures" than detention is provided in Article 15(1) of the Return Directive, specific examples of such alternatives to detention are outlined in Article 7(3), which states that "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". The same alternatives to detention except for the submission of documents are also provided for in Article 8 in the recast Reception Conditions Directive.<sup>165</sup>

A total of 24 **(Member) States** provide for alternatives to detention, as illustrated in Table 10 below. In **Malta**, alternatives to detention are not currently provided, while in **Greece** alternatives to detention are provided for under national law but are not applied in practice.

**Table 13: Alternatives to detention in (Member) States**

Alternatives to detention	Member States
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	AT, BE, BG, CY, CZ <sup>166</sup> , DE, EE, ES, FI, FR, HR, HU, IE, LT, LV, NL, PL, PT, SE, SI, SK <sup>167</sup> , UK, NO
Residence requirements (e.g. residing at a particular address)	AT, BE, CZ <sup>168</sup> , DE, EE, ES, FI, FR, HR, HU, IE, LU, NL, PL, PT, SI, UK, NO
Obligation to surrender a passport or a travel document	CY, DE, EE, ES, FI, FR, HR, HU, IE, LV, NL, PL, SE, UK, NO
Release on bail (with or without sureties)	AT, BE <sup>169</sup> , CZ <sup>170</sup> , DE, FI, HR, HU, IE, NL, PL, PT, SK, UK
Electronic monitoring (e.g. tagging)	FR <sup>171</sup> , IE, PT, UK
Guarantor requirements	DE, HR, LT, UK
Release to care worker or under a care plan	DE, UK
Other alternative measures:	

<sup>165</sup> For the situation of Denmark, Ireland and the United Kingdom in relation to EU migration acquis, please see Section 2.

<sup>166</sup> In the Czech Republic, examination of the possibility of imposing alternative measures to detention is a part of the decision-making on detention in the case of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals. The Asylum Act currently does not provide for a possibility to impose alternative measures to detention on asylum applicants.

<sup>167</sup> Requirement to reside at a particular address forms a part of this alternative.

<sup>168</sup> Ibid (see footnote above)

<sup>169</sup> Belgium: theoretically possible (foreseen in the law) but not yet used in practice (practical issues to be resolved first).

<sup>170</sup> Whilst available in Czech Republic, release on bail as an alternative to detention has not been applied in practice

<sup>171</sup> In France, parents of minor children can be placed under house arrest with electronic surveillance when standard house arrest is not considered sufficient.

> Voluntary return programmes	NL, PT, UK
> Seizure of money for travel documents and tickets	HU
> Accommodation in reception centres for asylum seekers	LT, SI
> Accommodation in departure facilities	BE, DE <sup>172</sup>
> Guardianship of UAMs	LT

The following sub-sections discuss the different alternatives to detention in further detail.

## 6.2 PRACTICAL ORGANISATION OF ALTERNATIVES TO DETENTION

Some general trends and patterns are common to all alternatives to detention, provided they are available in a given (Member) State.

In **all** (Member) States alternatives to detention are granted upon a **case-by-case examination**. All (Member) States provide that **detention** should apply to third-country nationals **who do not comply** with the required conditions (see Section 4).

All alternatives are provided for by legally binding acts on immigration and/or asylum. **Croatia** provides additional guidance in a book of rules.

The **authorities** responsible for deciding whether to grant an alternative to detention to third-country nationals vary across (Member) States; only in a few (Member) States (**DE, LT, PT**), and depending on the form of alternative, do they differ from the authorities responsible for the practical administration of the alternative. The various authorities responsible for the decision and administration of alternatives to detention are shown below in Table 12.

**Table 14: Authorities responsible for the decision and administration of alternatives to detention**<sup>173</sup>

Category of authorities	Responsible for the decision	Responsible for the administration
Responsible Ministry / its local branches	AT, BE, BG, CY, DE, FR, HR, HU, LU, PT, SE, UK	AT, BE, BG, DE, HR, HU, LU, PT, SE, UK
Police	CZ <sup>174</sup> , EE, ES, FI, IE, NL, SE, SK, NO	AT, CY, CZ, DE, EE, ES, FR, HU, LT, NL, SE, SK, NO
Border guards	EE, FI, IE, LV, PL	DE, EE, LV, PL

<sup>172</sup> Accommodation in departure facilities („Ausreiseeinrichtung“) is possible in three of the Federal Länder: Bavaria, Lower Saxony and Schleswig-Holstein.

<sup>173</sup> This table should be read taking into account the different alternatives to detention provided by each (Member) State

<sup>174</sup> Examination of the possibility of imposing measures alternative to detention is a part of the decision-making on detention in the case of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals. In the case of applicants for international protection, the Asylum Act currently does not provide for a possibility to impose measure alternative to their detention.

Judicial authorities/migration courts	DE, IE, LT, PL, SE	PL, SE
NGOs	-	AT <sup>175</sup>
Social institution	-	LT

Only **Austria** provides for an active role of NGOs in the administration of alternatives (see Box 5).

### Box 5. The case of Zinnergasse in Austria

In Austria, residence requirement is an alternative to detention. Accommodation is provided in a special facility in Vienna, **Zinnergasse**, run by the NGO **Verein menschen leben**. Third-country nationals are required to report daily to the local police officer present at the facility. This measure combines two forms of alternatives to detention and entails close cooperation between the NGO and state authorities.

### 6.2.1 REPORTING OBLIGATIONS AND RESIDENCE REQUIREMENTS

**Reporting obligations** require third-country nationals to report regularly at local police offices or at local premises of the competent national agencies, or different places specifically assigned for this purpose by the national legislation (houses, shelter accommodations, NGOs). This measure exists in 23 (Member) States. (**AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LT, LV, NL, PL, PT, SE, SI, SK, UK, NO**)

A **residence requirement** in premises specified by the authorities is an alternative to detention in the national legislation of 18 (Member) States.

While these alternatives are the most widely used among (Member) States, in practice, their organisation varies considerably between countries. With the exception of a few Member States (**BG, CY, LU, PL, SE**) **reporting obligations** usually go hand in hand with the **requirement to reside** at a particular location, therefore both alternatives are addressed simultaneously here.

The **frequency** (or regularity) of reporting requirements varies among (Member) States, which may range from daily (**AT, NL**), weekly (**BG, CY, CZ, NL**), bi-weekly (**SK**<sup>176</sup>), one to three weeks (**HU**) or monthly (**NL**). In some Member States, the reporting intervals can also be decided on an individual case-by-case basis (**AT, BE, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LT, LV, NL, PL, SE, SK**). Additional reporting conditions may be applicable. For example, in **Germany**, the foreigners' authorities must be notified if the immigrant plans to leave the district for more than 3 days. In **Luxembourg**, the law requires that the person granted the requirement to reside in a

<sup>175</sup> The NGO is responsible for organizational tasks related to the provision of care and the day-to-day function of the facility

<sup>176</sup> Twice a week is only recommendation.

place must present him/herself to the Directorate of Immigration when summoned by the Minister.

The practical organisation of these alternatives varies only to a limited extent for different categories of third-country nationals. A group of (Member) States (**AT, CY, DE, FI, NL, PL, UK, NO**) offers these alternatives to all the categories listed in Section 3, while some others apply restrictions by limiting this alternative only to certain categories of third-country nationals (see Table A3.C in Annex 3). For example in the **Czech Republic**, they apply only to persons who have been issued a return decision, while in the **Slovak Republic** it is not applicable to applicants under Dublin procedure and in **Sweden**, it is not a common practice to grant this alternative to rejected family reunification applicants. In **Belgium**, they apply to families who have been issued a return decision and at present to asylum seeking families at the border.

Residence requirements require third-country nationals to live in facilities provided by the state authorities (e.g. **BE**) or at an address specified by the third-country national (e.g. **LU, SK**). **Belgium** introduced specific open facilities (orientation and observation centres) tailored for unaccompanied minors arriving at the border. Accompanied minors also are not detained in Belgium (see box below). In addition, a project working with a limited number of families in return proceedings allows these families to reside in their own accommodation (under certain conditions) until they can return.

#### **Box 6. Family units assisted by case managers in Belgium**

*In **Belgium** families with minor children who are not (or no longer) legally staying on the territory and families applying for international protection at the border are accommodated for a short term in state-owned houses or apartments (for the time necessary for their identification and to prepare for their return, or during the accelerated asylum procedure). They are free to move with some restrictions (e.g. one person should stay in the house at all times). The families are assisted by a case manager/coach from the Immigration Office. The type of assistance offered concerns holistic social support (legal and logistical matters, preparation of the return and/or explanations of the on-going asylum procedure or looking into possibilities to stay in Belgium). At the end of 2013, there were 23 family units in 5 different locations, spread around the country, providing approximately 135 beds. A team of 9 coaches is available, plus a coordinator, one person for technical support and one person for logistical support. The EU Return Fund is sponsoring the family units.*

#### **6.2.2 OBLIGATION TO SURRENDER AN IDENTITY OR A TRAVEL DOCUMENT**

The obligation to surrender a passport or another identity or travel document to the responsible authorities as an alternative to detention exists in 14 (Member) States (see Table 6.1).

While in some (Member) States (**CY, DE, EE, FI, NL, PL, SE, UK, NO**) this alternative is provided for all categories listed in Section 3, in others, restrictions

apply as reported in Table A3.C. For example, in **Ireland** and **Latvia**<sup>177</sup> it normally applies to third-country nationals in international protection proceedings.

In **Belgium**, a variation of this measure exists in law but is not applied in practice. According to the Immigration Office, it is not very efficient as an alternative to detention since it imposes an obligation to surrender only a copy of the passport. In **Finland**, the obligation concerns the travel document (e.g. passport) and person's ticket to his/her country of destination until the order can be enforced; in **France**, it may concern the passport or other identity or travel documents and can go hand in hand with residence requirements. In **Sweden**, when a refusal-of-entry or return order issued, the enforcing authority may retain the alien's identity document or his/her ticket to his/her country of destination until the order can be enforced.

In the **Slovak Republic**, the surrendering of a travel document is not stated in the law as a specific alternative to detention. However, the travel document is withheld during the administrative return procedure, so that during the period the alternative to detention is used, the third-country national does not have his/her travel document at his/her disposal.

#### **6.2.3 RELEASE ON BAIL**

This alternative obliges the third-country national concerned to give a surety to the State for the expenses related to his/her residence and/or return. While the **deposit of a financial guarantee** is permitted in law in 13 (Member) States (Section 6.1), this alternative is rarely applied in practice (**AT, BE, HR, PT**) and has not been yet applied in practice in **Czech Republic**.

In some (Member) States the practical organisation of this alternative is regulated by national legislation (e.g. **CZ, FI**). However, this is not always the case (e.g. **HR**). While in some Member States (**AT, DE, FI, NL, PL, UK**) this alternative is provided for all categories listed in Section 3, others apply some limitations, for example, In the **Slovak Republic**, applicants under Dublin procedures are excluded.

The amount of the bail can be pledged by the third-country national concerned (**CZ, DE, NL, PL**) or by a third party (**CZ, NL, SK**<sup>178</sup>). In general terms, each case is assessed on individual merits and personal circumstances (**DE, HU, SK, UK**); however, the amount to be deposited may vary across countries, from € 500 (**HU, NL**) to €5,000 (**HU**) and between £ 2,000 and £5,000 (**UK**). In **Germany**, the bail is

<sup>177</sup> In Latvia, surrendering identity or travel documents apply in international protection proceedings not as alternative to detention  
<sup>178</sup> By a person close to the third-country national

calculated according to the amount needed to finance the return, and cannot fall below a minimum subsistence level.

#### 6.2.4 ELECTRONIC MONITORING

**Electronic monitoring** is used in only four countries (see Table 10) under specific circumstances. In **France**, parents of minor children can be placed under house arrest with electronic surveillance in cases where standard house arrest is considered insufficient.

In **Portugal**, it is used alongside the prohibition against leaving the house. In this case, as third-country nationals are not allowed to leave the house, this represents an alternative form of detention and not an alternative to detention.<sup>179</sup>

In **the United Kingdom**, electronic monitoring is used in the case of third-country nationals subject to residence restrictions. Minors, pregnant women, the elderly or those with mental health issues are not covered by this alternative. Electronic monitoring has not been found to be very effective in reducing the number of absconders in the Member States; nevertheless, it is considered a useful way to increase contact with individuals, to monitor compliance with reporting restrictions and to provide an early warning in case of an attempt to abscond.

#### 6.2.5 PROVISION OF A GUARANTOR

A **guarantor** is a person who ensures that the third-country national attends hearings, official appointments and meetings, etc. A citizen with permanent residence (**HR, LT, UK**), a lawfully residing third-country national (**LT, UK**) an international organization dedicated to the protection of human rights (**HR**) or a "person of trust" (DE, in two Federal *Länder* (Bremen and Brandenburg) can act as a guarantor. In the **United Kingdom**, a person must present credible reasons for being prepared to act as a guarantor (e.g. possession of sufficient resources to meet the bail obligation; over 18 years of age and lawfully resident; free from criminal records; a personal connection with the individual etc.)

#### 6.2.6 RELEASE TO CARE WORKERS / CARE PLANS

Release to care workers or under care plans is available as an alternative to detention only two (Member) States (**DE, UK**). In **Germany**, this is permitted only in one of the Federal *Länder*, North Rhine Westphalia, and under very specific circumstances. The types of care workers permitted include chaplains, social workers, and providers of psycho-social care). Unaccompanied minors are

generally taken into the care of a facility under the remit of the Youth Welfare Services.

The **United Kingdom** implements this alternative, however, the individual must still adhere to the restrictions imposed (e.g. remaining in contact with the Home Office), subject to any limitations resulting from possible medical conditions.

#### 6.2.7 OTHER ALTERNATIVES TO DETENTION

Other alternatives available in (Member) States include:

- ★ **Promoting voluntary return programmes:** In some (Member) States, voluntary return schemes are considered as an alternative to detention (e.g. **NL, PT, UK**). It should be noted that the link between the two and how they fit together legally and conceptually are still considered by international organisations and researchers.<sup>180</sup> For example, in the **Netherlands**, the Repatriation and Departure Service subsidises several voluntary return programmes implemented by (local) NGOs and IGOs with the aim of providing an alternative to detention.
- ★ **Seizure of money for travel documents and tickets:** In **Hungary**, the competent authority may seize the travel ticket or the equivalent amount of money required to purchase the ticket and to obtain a travel document.
- ★ **Accommodation in reception centres for asylum seekers:** **Luxembourg** is planning to establish a '*maison retour*', a specific open reception facility for families who can remain until their return can take place. In **Slovenia**, asylum applicants accommodated in a reception centre as an alternative to detention may be placed in an asylum home under the same arrangements as other asylum applicants and may move freely within its compounds, including the inside yard. However, s/he is not permitted to leave the asylum home.<sup>181</sup>
- ★ **Accommodation in return facilities/places:** In **Belgium**, 'open return places' in reception facilities exist for failed asylum seekers, and there is an

<sup>179</sup> According to the definition of detention (see Annex 1 Glossary below), detention represents a restriction of freedom of movement in a confined place.

<sup>180</sup> For example, this has been reflected in a number of publications, including: Centre for Migration Policy Research (2010), "Ending the detention of children: developing an alternative approach to family returns", available at: [http://www.swansea.ac.uk/media/Alternatives\\_to\\_child\\_detention.pdf](http://www.swansea.ac.uk/media/Alternatives_to_child_detention.pdf) ; Forced Migration Review (2013), available at: <http://www.fmreview.org/detention/koch> ; Jesuit Refugee Service, Alternatives to detention: [http://www.detention-in-europe.org/index.php?option=com\\_content&view=article&id=309&Itemid=262](http://www.detention-in-europe.org/index.php?option=com_content&view=article&id=309&Itemid=262) ;

<sup>181</sup> This represents an alternative form of detention rather than an alternative to detention since it constitute a restriction of freedom of movement.

'open return centre' for a specific group of irregularly staying families.

- ★ **Entrusting the guardianship of an unaccompanied minor to a relevant social agency:** In practice, alternatives to detention are systematically provided to unaccompanied minors in **Lithuania**. They are accommodated at the Refugees Reception Centre.

## 7 Impact of detention and alternatives to detention on the effectiveness of international protection and return procedures

Taking into consideration the legal principles of necessity and proportionality of detention, whereby detention should only be applied in situations when the aim of detention could not be achieved by a less coercive measure, this section aims at exploring whether, and to what extent, the placement of third-country nationals in detention or in alternatives to detention has an impact on the effectiveness of (Member) State return policies (in case the person is subject to a return decision) and international protection procedures (in case the person is allowed to stay in the Member State).

Four specific aspects of effectiveness are considered: effectiveness in relation to (i) reaching prompt and fair decisions on the immigration status of applications for international protection as well as persons subject to return; (ii) maximising cost-effectiveness; (iii) ensuring respect for fundamental rights; and (iv) reducing the risk of absconding.

Any attempt to identify the impact of detention and alternatives to detention on the effectiveness of (Member) State return policies and international protection procedures is fraught with difficulties. Multiple factors influence the processes and outcomes of (Member) State return and international protection procedures; it is therefore not usually possible to isolate the role played by detention and alternatives to detention. There is also the problem that any evidence of effectiveness may not be easily comparable across (Member) States, given the different forms of detention and its alternatives that exist in each country or, as in the case of **Germany**, the federal structure and the heterogeneous distribution of competencies resulting from this. Comparing the impact of detention and alternatives to detention may even be difficult within individual (Member) States, given the different populations of third-country nationals which are involved. A further problem is that in a number of countries, alternatives to detention have been set up very recently so that the population concerned is too small to draw meaningful conclusions (e.g. **Slovenia** and **Slovak Republic**).

For the above reasons, when reviewing the data provided by national reports, only tentative comparisons can be drawn between (Member) States; instead, the emphasis is placed on comparing any available data on the impact of detention on the effectiveness of return policies and international protection procedures, with that of alternatives to detention *within* individual (Member) States.

### 7.1 IMPACT OF DETENTION AND ALTERNATIVES TO DETENTION TO REACH PROMPT AND FAIR DECISIONS ON IMMIGRATION STATUS

This section examines the impact of detention and alternatives to detention on efforts to reach prompt and fair decisions on the immigration status of applicants for international protection and persons subject to return, and in executing these decisions. This aspect of the effectiveness of detention and alternatives to detention has only been the subject of a study or evaluation in two out of the 26 (Member) States participating in this study (**FI, NL**).

- ★ The Finnish study<sup>182</sup> examines the impact of interim measures (whether detention or alternatives to detention) on the period of time that it takes to determine the need for international protection. It concludes that there is no unambiguous answer to this question; however, as a general rule, detention appears to promote the effective handling of the case.
- ★ The Dutch study<sup>183</sup> focuses instead on the impact of detention (but not alternatives to detention) on the effectiveness of efforts to execute return decisions. The study concludes that the possible deterrent effect of detention – i.e. its ability to dissuade migrants from resisting removal – is less than expected. On the other hand, it finds that the extent to which third-country nationals experience their detention as legitimate positively influences their willingness to cooperate in their departure.

Statistical evidence providing insights on the impact of detention and alternatives to detention, on reaching prompt and fair decisions on the status of **persons subject to return procedures**, and in executing the returns, has been collected in three Member States (**BE, LV and SK**). This evidence also presents a mixed picture, suggesting that the impact of detention and alternatives to detention on the ability of Member States to reach and execute prompt and fair decisions regarding return may not be so significant. Indeed, experience suggests that the time it takes to execute

<sup>182</sup> The referred study is an internal document for law drafting purposes. The "memo" will not be published, only referred to in the Government Bill.

<sup>183</sup> 'Van Bejegening tot Vertrek' (From Treatment to Departure) and was conducted by the Research and Documentation Centre (*Wetenschappelijk Onderzoek en Documentatiecentrum*, WODC).

return decisions is influenced by other factors, in particular whether a readmission agreement with the third country has been signed, whether formalities regarding passage in transit require coordination, and whether the person to be expelled is in possession of the required travel documents.<sup>184</sup>

The existing statistical evidence can be divided into three groups:

★ The **share of persons in detention and in alternatives to detention who voluntarily returned** to their countries of origin:

In **Austria**, the share of persons in the alternative to detention facility in Vienna (*Zinnergasse*) who returned voluntarily was 23.4% (in 2013), which compares favourably to the share of persons in detention who returned voluntarily out of the total number of persons in detention receiving return decisions (12%) in the same year. It should be noted however, that the sources of information are different, rendering the existing data on this issue difficult to compare.

In **Latvia**, the share of persons in detention who returned voluntarily was 39.2% (in 2013) which was higher than the share of persons in Latvia's alternatives to detention who returned voluntarily that same year: 19.2%, but not significantly so (especially given the different sample sizes).

★ The **total number of removals completed** in relation to persons in detention and in alternatives to detention:

In **Belgium**, the success rate in the number of departures of persons in detention in the year 2013 (i.e. total number of removals completed compared to the total number of persons detained) was 79% (the remainder were either released-17%, or absconded-less than 1%), which compares favourably to the success rate in the number of departures of persons in family units which was 40% (the remainder were either released-30% or absconded-23%). It should be emphasised that different populations are concerned which also has an impact on the fact of the lower rate of return, i.e. "family units" also house families who claimed asylum at the border, a population for whom anyway return was not envisaged when they were placed there."

In the **Slovak Republic**, the success rate in the number of departures of persons in detention in the year 2013 (i.e. total number of removals completed compared to the total number of persons detained) was 81.05% compared to a 100% success rate in the number of departures of persons in alternatives to detention. Once again, however, the low number of

alternatives to detention used in the **Slovak Republic** so far (2) renders this comparison questionable.

★ The **average length of time that transpires from issuing a return decision to the execution of the return** for persons in detention compared to persons in alternatives to detention.

In **Latvia**, the average length of time between issuing a return decision and executing the return in 2013 varied for persons placed in two different types of alternative to detention. For those obliged to register regularly at the State Border Guard, the average time was 70 days compared to 19 days in the case of persons obliged to surrender a travel document and other personal identification documents. By comparison, the average length of time for persons in detention was 20 days. The longer average length of time for those under the first alternative to detention described above (70 days) may be accounted for by a number of factors, including (i) TCNs who do not have travel documents need to obtain travel documents with support under a voluntary return programme; (ii) in cases of vulnerable persons, due to special arrangements and (iii) the alternative is provided in cases when obtaining travel documents is expected to take long time.

In the **Slovak Republic**, the average length of time in 2013 from issuing an administrative expulsion or judicial expulsion decision to the execution of the return to persons who were detained and placed in a detention centre (PDCA) or in a police department was higher than for persons placed in an alternative to detention (19 days compared to 4 days). However, it should be noted that only a very low number of alternatives to detention were issued in the Slovak Republic (2 in total).

## 7.2 MAXIMISING COST-EFFECTIVENESS

Only two Member States have reported statistics which provide insights on the cost-effectiveness of detention as an interim measure compared to alternatives to detention (**Belgium** and **Slovenia**). The statistics suggest that placing persons in alternatives to detention is significantly less costly than placing them in a detention centre.

★ In **Belgium**, until December 2012, the average daily cost of a person in a family unit was € 90 whereas the average daily cost in a detention centre was between € 180 and € 190.<sup>185</sup>

★ In **Slovenia**, for the year 2013, the average daily cost per person in the case of asylum-seekers facing restrictions on their movement to the area of

<sup>184</sup> Lithuanian National Report

<sup>185</sup> These amounts refer to the daily cost and do not take into account the effectiveness of the measure.

the Asylum Home was € 9.29 for asylum-seekers, compared to € 15.10 in the case of asylum-seekers detained in the Centre for Foreigners. The cost differential is even greater in the case of persons subject to return procedures, where the cost per day for a person who is allowed to reside outside of the Centre for Foreigners is zero.

This conclusion is also evident in other Member States (e.g. **HU, LV, SE**) where, as a result of the nature of alternatives to detention in their countries, there are no associated costs, whereas the total costs of maintaining people in detention centres are significant. In the case of **Hungary**, third-country nationals who are released from a detention centre by the immigration authority are formally obliged to reimburse the costs of the accommodation and other services provided during their detention (with the exception of persons who have been provided refugee status, subsidiary protection or protection against *refoulement*). However, in practice, third-country nationals do not reimburse their costs.

### 7.3 ENSURING RESPECT FOR FUNDAMENTAL RIGHTS

Whilst numerous studies have been conducted across the (Member) States participating in this study on the fundamental rights situation of third-country nationals placed in detention centres, none of these include a comparison with the fundamental rights situation of third-country nationals held in alternatives to detention.

Two Member States have reported statistical evidence which provides such insights (**BE, LV**), based on the number of complaints of violations of fundamental rights lodged with (and/or upheld by) non-judicial bodies (e.g. Human Rights Commissioners / Ombudsman). In both cases, the evidence suggests that the fundamental rights of persons in detention are more difficult to protect than they are for persons placed in alternatives to detention.

- ★ In **Belgium**, 30 complaints of violations of fundamental rights were lodged with the Complaints Commission in 2013 by persons in detention, compared to zero in the case of persons placed in family units. On the other hand, of the 30 complaints lodged by persons in detention, 20 were deemed admissible and of these only one of them led to an arrangement (the remaining 19 were judged to be unfounded).
- ★ In **Latvia**, over the course of 2008-2014, the Ombudsman received no complaints at all from persons placed in alternatives to detention (whether obliged to register at regular intervals at the State Border Guard, or obliged to surrender a third-country national's travel and identity documents to the State Border Guard). During this period at least nine violations of fundamental rights

were lodged with the Ombudsman by persons placed in detention. These tended to concern complaints about detention conditions or about the availability of legal assistance. All complaints were subsequently inspected by the Ombudsman and in the majority of cases no violations were substantiated; in at least two cases, the Ombudsman concluded that all of the requirements had been fulfilled.

### 7.4. PREVENTING / REDUCING ABSCONDING

While no (Member) State has conducted studies or evaluations which compare the rate of absconding of persons held in detention with the absconding rate of persons placed in alternatives to detention, statistical evidence has been provided by four Member States which gives insights on this aspect of effectiveness (**BE, LV, SI, SK**). In some cases, evidence suggests that alternatives to detention present a significant risk of absconding, and that this risk is very low in the case of detention as long as the person can be detained. In **Slovak Republic**, it is not possible to draw any meaningful conclusions however due to the low numbers of cases involved.

- ★ In **Belgium**, in 2013, the rate of absconding from family units is 23% whereas it is less than 1% for persons held in detention.
- ★ In **Latvia**, the rate of absconding among persons obliged to register at regular intervals at the State Border Guard is 3.84%, whereas it is 1% for persons held in detention. On the other hand, the rate of absconding appears to be zero for persons obliged to surrender their travel and identity documents to the State Border Guard.
- ★ In **Slovenia**, 13 out of 17 persons (i.e. 92.9%) of persons involved in asylum proceedings facing restrictions on movement to the area of the Asylum Home absconded, whereas the rate of absconding for persons involved in asylum proceedings that were placed in detention that year was zero. On the other hand, the absconding rate of persons subject to return procedures was 4.6% among those placed in detention, compared to zero among those who were allowed to reside outside of the detention centre. It should be noted, however, that only four persons subject to return procedures were placed in this alternative to detention in 2013 (compared to 171 who were held in the detention centre).
- ★ In the **Slovak Republic**, in 2013, the rate of absconding of persons held in detention was 1.5% while the absconding rate of persons placed in an alternative to detention was zero. However, when interpreting these statistics, it should be noted that only two persons in total were held in an alternative

to detention in the Slovak Republic that year compared to 195 persons held in detention.

Whilst overall statistics on absconding rates for persons in detention compared to persons in alternatives to detention are not available in **Austria** and **Lithuania**, the significant risk of absconding associated with alternatives to detention is highlighted by the following information:

- ★ In **Austria**, one source estimates that more than 50% of individuals accommodated in the facility for alternatives to detention in Vienna, *Zinnergasse*, either absconded or the alternative was cancelled for other individual reasons.<sup>186</sup>
- ★ In **Lithuania**, between 2009 and 2013, 102 unaccompanied minors were provided accommodation at the Refugees Reception Centre under the Ministry of Social Security and Labour as an alternative measure to detention. As regards the implementation of this alternative, it has not been always verified whether a person is a minor as his/her oral testimony alone has been relied upon.. In most cases, such persons voluntarily departed from the facility, thus abusing this alternative to detention.

## 8 Conclusions

National legal frameworks do show **variations across (Member) States** with regard to the categories of third-country nationals that can be placed in detention. Most notably, detention of applicants for international protection is regulated by separate national legal provisions from detention of other categories of third-country nationals (such as persons subject to detention in the context of illegal entry, illegal stay or return) in all (Member) States, except in **Finland, Sweden, the United Kingdom** and **Norway**, where the same national provisions equally apply for all categories of third-country nationals. In all (Member) States persons who have been issued a return decision can be detained provided grounds for detention are met. "Irregular entry" and "irregular stay" could be separate grounds for detention in some (Member) States.

With regard to **detention of vulnerable persons**, in the vast majority of Member States, this is prohibited or only possible **only in exceptional circumstances**.

Separate national provisions also exist in respect of persons who cannot be removed and/or are granted

tolerated stay. Provisions in a number of (Member) States stipulate that the third-country national will be released in the community if there is no prospect for removal; if the purpose of detention has ceased to exist; when the period of detention has expired; on the basis of a valid court decision and in case of lack of due diligence by the competent authorities to identify the persons and for obtaining the travel documents.

Provisions in the EU and international legal instruments stipulate that immigration detention should be based on due appraisal of the individual circumstances of the person concerned. Some form of **assessment to determine the appropriateness of detention exists in all (Member) States**. Individual assessment procedures can consist of a number of elements, including (i) the possibility to provide alternatives to detention; (ii) fulfilment of legal grounds for detention; (iii) proportionality assessment, including vulnerability considerations and fundamental rights considerations.

Three broad sets of factors are taken into account in the assessment: (i) whether the provision of alternatives to detention will be sufficient and the person is likely to comply with the measures; (ii) vulnerability considerations and (iii) practical considerations, such as the feasibility of a particular alternative and cost of the alternative to detention are also assessed.

In most (Member) States, **the same national authorities which are responsible for deciding on the placement of a third-country national in detention also conduct the individual assessment of whether the grounds for detention apply**. The role of judicial authorities with regard to detention varies significantly across (Member) States. In 9 (Member) States, judicial authorities are involved in the initial detention decision. Automatic, ex officio judicial review of the administrative detention measure is the practice in 9 (Member) States.

Accommodation of third-country nationals in specialised detention facilities is a consolidated practice across the European Union, considered as a **measure of last resort**. While differences exist across (Member) States, some common patterns are also discernible, mostly related to the detention of specific groups of third-country nationals (such as family, children, unaccompanied minors, persons with disabilities, pregnant women, etc.) or to the provision of basic services such as medical care, language support, rights to have contacts with the outside world.

The majority of (Member) States (24 in total of the 26 participating in this study) have developed **alternatives to detention**. The decision to apply an alternative to detention is always preceded by an

<sup>186</sup> Information provided by Lukas Rehberger from the NGO Verein Menschen Leben (<http://www.menschen-leben.at/>)

individual assessment. Reporting obligations and residence requirements, normally complementing one another, are the alternatives adopted by the large majority of countries, though not all categories of third-country nationals examined by the study are offered this opportunity and their practical implementation may vary significantly. In some (Member) States, such as **Greece**, certain alternative measures exist in legislation but are never applied in practice.

It is difficult to measure the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of (Member) States' return policies and international protection procedures. Very little data appears to be available to evaluate this question, especially in so far as the impacts of alternatives to detention are concerned. The data that exists is often not reliable, based on very small samples and gathered from sources that are not readily comparable.

Overall, the data that has been gathered for the purpose of this study suggests however that:

- ★ the impact of detention and alternatives to detention on the ability of Member States to reach and execute prompt and fair decisions regarding return may be rather insignificant (with other factors, e.g. whether the person to be returned is in possession of the required travel documents, playing a much greater role);
- ★ placing persons in an alternative to detention is less costly than placing them in a detention centre, although direct evidence is limited and not available in all Member States;
- ★ the fundamental rights of persons in detention are at greater risk than they are for persons placed in alternatives to detention; and
- ★ the risk of absconding could be greater in the case of alternatives to detention, while this risk is very low or non-existent in the case of detention.

\*\*\*\*\*

## Annex 1 Glossary

The following terms used in the study are defined as follows:

**'Accelerated international protection procedure'** refers to "an expedited procedure to examine an application for international protection which is either already deemed manifestly unfounded, which involves serious national security or public order concerns, or which is a subsequent application" (Source: EMN Glossary 3.0).

**'Alternatives to detention'** refers to in the global migration context to non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented. In the EU context, pursuant Art. 2(h) of Directive 2013/33/EU (Recast Reception Conditions Directive) and Art. 26 of Directive 2013/32/EU (Recast Asylum Procedures Directive), detention is defined as confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty. (Source: EMN Glossary 3.0) Reception facilities can be considered an alternative to detention only in cases where the individual concerned has to report regularly to the competent authorities, or if there are residency requirements.

**'Detention'** is defined as "non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented." (Source: EMN Glossary 3.0).

**'Detention facility'** is defined as "a specialised facility used for the detention of third-country nationals in accordance with national law. (Source: EMN Glossary 3.0).

**'Dublin procedure'** is defined as "the process for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person". (Source: Article 1 of the Regulation 604/2013).

**'Dublin transfer'** is defined as "the transfer of an applicant to the Member State responsible for examining the application following a Dublin procedure" (Source: Article 26(1) of Regulation 604/2013).

**'Forced return'** is defined as "obligatory return of an individual to the country of origin, transit or third country (i.e. country of return), on the basis of an administrative or judicial act.". Synonym: Removal (UK) (Source: EMN Glossary 3.0)

**'International protection'** is defined in the global context as "the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries" and in the EU context as "protection that encompasses refugee status and subsidiary protection status". (Source: EMN Glossary 3.0)

**'Reception centre'** refers to a location with facilities for receiving, processing and attending to the immediate needs of refugees or asylum seekers as they arrive in a country of asylum.. (Source: adapted from the definition of 'reception centre' in EMN Glossary 3.0)

**'Tolerated stay'** refers to the right to stay granted to persons whose removal is impossible either for practical reasons (such as lack of documents or the country of origin's refusal to accept the person) or because their removal would be tantamount to *refoulement*. Tolerated stay status is granted in a number of Member States with differing definitions and regulated by different legal instruments. (Source: adapted based on the Journal of Forced Migration Review and review of national provisions on tolerated stay)

In addition, the following definitions of non-custodial alternatives to detention are used in the study. They are taken from the UNHCR's 'Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention':

**'Reporting obligations'** An individual may be released from detention on the condition that s/he reports regularly to a monitoring authority. Reporting obligations can include periodic reporting or reporting scheduled around particular appointments, such as asylum hearings. A monitoring authority can be the police, immigration authority, local authority, NGOs or private contractors within community supervision arrangements. (UNHCR 2012 Revised Guidelines on Detention)

**'Obligation to surrender a passport or a travel document'** This measure involves the obligation on the part of an individual to deposit or surrender identity and/or travel documentation (such as passports). In such cases, individuals need to be issued with substitute documentation that authorises their stay in the territory and/or release into the community. (UNHCR 2012 Revised Guidelines on Detention)

**'Residence requirements' (directed residence)**

An individual may be released from detention on the condition that s/he resides at a specific address or within a particular administrative region. The individual may also be required to obtain prior approval if they wish to move out of the designated administrative region or to inform the authorities if they change address within the same administrative region. (UNHCR 2012 Revised Guidelines on Detention)

**'Residence at open or semi-open reception centres'**

This involves an individual being released into an open or semi-open reception centre with the condition to reside at that address. Also termed "directed residence". Semi-open centres may impose some regulations of movement, such as curfews and/or signing in or out of the centre. (UNHCR 2012 Revised Guidelines on Detention)

**'Release on bail/bond'** Release from detention is granted if the individual can pay a specified bail sum. A guarantor/surety may also need to be

provided. (UNHCR 2012 Revised Guidelines on Detention)

**'Electronic monitoring'** An individual could be subject to electronic monitoring (such as tagging) in order to monitor his/her movements. (UNHCR 2012 Revised Guidelines on Detention)

**'Guarantor/surety requirements'** This requires an individual to provide a guarantor who would take responsibility for ensuring attendance at hearings, official appointments and meetings. Failure to do so could result in a fine against the guarantor. A guarantor, for example, could be a family member, NGO or community group. (UNHCR 2012 Revised Guidelines on Detention)

**'Community management programme'**

Community supervision arrangements could include a wide range of practices in which individuals live independently in the community and are attached to a case manager, who follows their case and helps them to seek resolution. (UNHCR 2012 Revised Guidelines on Detention)

## Annex 2 National authorities

**Table A2: National authorities responsible for individual assessment procedures and detention decisions**

	National authorities responsible for conducting individual assessment procedures	National authorities deciding on the placement of a third-country national in detention
AT	Federal Office for Immigration and Asylum (a subordinate authority of the Federal Ministry of the Interior)	Federal Office for Immigration and Asylum (a subordinate authority of the Federal Ministry of the Interior)
BE	Belgian Immigration Office (Home Affairs)	Belgian Immigration Office (Home Affairs)
BG	Ministry of Interior	Ministry of Interior
CY	<ul style="list-style-type: none"> <li>Civil Registry and Migration Department, Aliens and Immigration Unit of the Police, Social Welfare Service, Mental Health Service</li> </ul>	<ul style="list-style-type: none"> <li>Civil Registry and Migration Department</li> </ul>
CZ	<ul style="list-style-type: none"> <li>Police of Czech Republic partly in cooperation with the Ministry of the Interior for nationals who are subject to treatment under the Act on the Residence of Foreign Nationals</li> <li>Ministry of the Interior for applicants for <b>international protection</b></li> </ul>	<ul style="list-style-type: none"> <li>Police of Czech Republic partly in cooperation with the Ministry of the Interior for nationals who are subject to treatment under the Act on the Residence of Foreign Nationals</li> <li>Ministry of the Interior for applicants for <b>international protection</b></li> </ul>
DE	Detention can only be ordered by the competent Local Court after an application has been filed by the competent administrative authorities – which are the foreigners authorities, the police forces of the Federal <i>Länder</i> and the authorities charged with policing cross-border traffic.	Detention can only be ordered by the competent Local Court after an application has been filed by the competent administrative authorities – which are the foreigners authorities, the police forces of the Federal <i>Länder</i> and the authorities charged with policing cross-border traffic.
EE	Police and Border Guard Board	Administrative court upon request of the Police and Border Guard Board  after a recommendation of the Head of the respective review authority (Asylum Service)
EL	General Police Director  Detention of applicants for international protection: General Police Director after a recommendation of the Head of the respective review authority (Asylum Service)	General Police Director  Detention of applicants for international protection: General Police Director after a recommendation of the Head of the respective review authority (Asylum Service)
ES	National Police	Judicial authorities
FI	Police and Border Guard	<ul style="list-style-type: none"> <li>Police: a commanding officer at the local police department, the National Bureau of Investigation or the Finnish Security Intelligence Service;</li> <li>Border Guard: an official of the Border Guard entitled to arrest people or a Border Guard officer holding the rank of at least lieutenant</li> </ul>
FR	Prefect (local representative of the State administration)	Prefect (local representative of the State administration)
HR	Service for Foreigners and Asylum”, a division of the “Directorate for Administrative and Inspection Affairs” of the Ministry of the Interior	Service for Foreigners and Asylum”, a division of the “Directorate for Administrative and Inspection Affairs” of the Ministry of the Interior
HU	Regional Directorate Refugee and Alien Policing Departments of OIN	Regional Directorate Refugee and Alien Policing Departments of OIN and by the Police (if the detention was ordered by the Police)
IE	An immigration officer or a member of the <i>Garda</i> (Irish National Police)	An immigration officer or a member of the <i>Garda</i> (Irish National Police)  A District Court plays a role in ordering an alternative to detention for applicants for refugee status.
LV	State Border Guard	State Border Guard
LU	Foreigners Service of the Judicial Police and staff of the Directorate of Immigration	Minister of Immigration and Asylum
LT	<ul style="list-style-type: none"> <li>police or another law enforcement institution for detention for a period not exceeding 48 hours</li> <li>Court for a period exceeding 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>police or another law enforcement institution for detention for a period not exceeding 48 hours</li> <li>Court for a period exceeding 48 hours</li> </ul>
MT	Principal Immigration Officer and Immigration Appeals Board	The Principal Immigration Officer
NL	The police, KMar (Royal Dutch Military Constabulary). in consultation with the DT&V (Repatriation & Departure Service) and IND (Immigration and Naturalisation Service)	The police, KMar (Royal Dutch Military Constabulary).  The DT&V (Repatriation & Departure Service) and IND (Immigration and Naturalisation Service) have an advisory task concerning the decision to put an alien in detention.
PL	Border Guard	Border Guard, a court
PT	Lower criminal courts or district courts	Lower criminal courts or district courts

SI	<p><u>International Protection Procedures</u>: The “Sector for Accommodation, Care and Integration”, a division of the “Internal Administrative Affairs, Migration and Naturalisation Directorate” of the Ministry of the Interior  <u>Return Procedures</u>: Police Stations and Police Directorates                  Participation of an appointed guardian in case of UAMs</p>	<p><u>International Protection Procedures</u>: The “Sector for Accommodation, Care and Integration”, a division of the “Internal Administrative Affairs, Migration and Naturalisation Directorate” of the Ministry of the Interior  <u>Return Procedures</u>: Police Stations and Police Directorates;                  participation of an appointed guardian in case of UAMs</p>
SK	<p>The aliens police departments, the border police departments, or the asylum department under supervision and management of the Bureau of the Border and Aliens Police of the Police Force Presidium.</p>	<p>The aliens police departments, the border police departments, or the asylum department under supervision and management of the Bureau of the Border and Aliens Police of the Police Force Presidium.</p>
SE	<p>Swedish Migration Board, the Swedish police and the migration courts</p>	<p>Swedish Migration Board, the Swedish police and the migration courts</p>
UK	<p>Immigration officers and Home Office officials on behalf of the Secretary of State for the Home Department</p>	<p>Immigration officers and Home Office officials on behalf of the Secretary of State for the Home Department</p>
NO	<p>Head of the local police or a person authorised by the head of the local police</p>	<p>Head of the local police or a person authorised by the head of the local police</p>

### Annex 3 Detention conditions and other quality criteria

Table A3.A: Accommodation in detention facilities

Indicator (Member) State	Number of detention centres	Average surface area (m <sup>2</sup> ) per detainee	Number of detainees per room	Family accommodation in separate facilities	Children accommodation separated from their parents	Unaccompanied minors separated from adults	Single women separated from single men
<b>Austria</b>	15	-	-	Yes	No	Yes	Yes
<b>Belgium</b>	5	-	-	No. Families not detained	Yes	No. UAMs are not detained	Yes
<b>Bulgaria</b>	2	3	25	Yes	n/a	No. UAMs are not detained	Yes
<b>Croatia</b>	1		6-7	Yes	No	Yes	Yes
<b>Cyprus</b>	1					Yes	
<b>Czech Republic</b>	1	5.67	2	Yes	No	Yes	Yes
<b>Estonia</b>	1	7.7	2	Yes	No	Yes	Yes
<b>Finland</b>	2		Metsälä Detention Unit: 2 persons/ room Joutseno: 1 person/room, in exceptional cases 2	Yes	Yes	Yes	Yes
<b>France</b>	23	10	6	Yes but only in a limited number of centres.	No.	No. UAMs are not detained.	Yes
<b>Germany</b>	6 specialised detention centres (as at 31 July 2014)  At least 12 detention quarters within state's prisons (as at 31 December 2013)	-	1-6 (dependent on facility and the federal state, but mainly 1-2 persons per room)	As a rule, families are not detained together, only one parent (generally the husband) is detained. The facilities in Büren (North Rhine-Westphalia) and in Berlin have "family rooms"	No	In general, unaccompanied minors are not detained. but instead taken into care by youth welfare services; if, in exceptional cases UAM are detained, at many facilities they are separated from adults and at other facilities, they may be accommodated together with adults; a few pre-removal detention centres have separate facilities for minors available (e.g. Hesse and Schleswig-Holstein)	Yes
<b>Greece</b>	5			No. Families are not detained.	No	Yes	Yes
<b>Hungary</b>	7	Min 5	Between 2 and 9 (it is not specified in which of the two centres)	Yes. They also enjoy the rights to separate living spaces.	No	No. unaccompanied minors are not detained	Yes
<b>Latvia</b>	1	Min 3 (in temporary keeping place), Min 4 (in detained foreigners accommodation center)	Max 4( normally used for 2 persons)	Yes	No/Yes (Minors with parents are accommodated with their parents in the separate premises in the Accommodation centre. If it is in the best interests of the child or under the request of the adult family member a minor child can be separated from his/her adult and placed in the Child care centre or at the	Yes	Yes

					place of residence of foreigner's relatives residing in Latvia.		
<b>Lithuania</b>	1	5 (minimum)		Yes	No	Yes	Yes
<b>Luxembourg</b>	1	- 7.5 for single rooms - 9.6 for double rooms - 10 for isolation rooms	Max 2 ( used as single rooms)	No (in separate units)	No	Yes (separated from single adults. If they were detained, they could be detained in the family unit)	Yes
<b>Malta</b>	-	2.7		Yes	No	Yes	Yes
<b>Netherlands</b>	3	10	2	Yes, in the Rotterdam centre	No	Yes	Yes
<b>Poland</b>	6	Min 3 for men Min 4 for women and minors	2-8	Yes	Yes	Yes	Yes
<b>Portugal</b>	6			Only in 4 centres	No	n/a	Yes
<b>Slovak Republic</b>	2	Between 3.25 and 3.58	Max 4 within the PDCA Medvedov Max 8 within the PDCA Sečovce	Yes, preferably in the PDCA Sečovce	No (yes, only in the exceptional cases)	No. unaccompanied minors are not detained	Yes
<b>Slovenia</b>	1	2.8	Max 6 (normally not at full capacity)	Yes	No	Yes	Yes
<b>Spain</b>	8	-	-	Yes	No	No. UAMs are not detained	Yes
<b>Sweden</b>	5	63	1	Yes. Up to 4 family members per room. Should there be 5 in a family they are accommodated in the same room if possible	No	Yes	Yes
<b>UK</b>	10	n/a	Between 1 and 12	Yes, in certain centres.	No	Yes	Yes
<b>Norway</b>	1	9	1	Yes. Up to 5 family members per room (4 adults and 1 minor)	No	Yes	Yes

**Table A3.B: Quality of detention facilities**

<b>Indicator</b>	<b>Mobility</b>	<b>Contacts</b>	<b>Support</b>	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b>
<b>(Member) State</b>	<ul style="list-style-type: none"> <li>- Access to outdoor space</li> <li>- Right to leave the facility</li> <li>- Right to move within the facility</li> </ul>	<ul style="list-style-type: none"> <li>- Right to receive visitors</li> <li>- Contact with the outside world</li> </ul>	<ul style="list-style-type: none"> <li>- Education programmes (including compulsory education for children and language courses).</li> <li>- Translation/interpretation</li> <li>- Legal advice</li> </ul>			<ul style="list-style-type: none"> <li>- Vulnerable groups</li> <li>- Persons considered security risk</li> </ul>
<b>Austria</b>	<ul style="list-style-type: none"> <li>- Min 1h/day</li> <li>- No right to leave the facility.</li> <li>- Yes, if no risk of contagious disease</li> </ul>	<ul style="list-style-type: none"> <li>- Yes.</li> <li>In general, 30 min/week. Unrestricted e.g. for lawyers, embassy representatives, Ombudsman, UNHCR</li> <li>- Telephone calls (not recorded) and mail.</li> </ul>	<ul style="list-style-type: none"> <li>- Knitting and sewing classes</li> <li>- Translation or interpretation are provided</li> <li>- Free legal advice</li> </ul>	<ul style="list-style-type: none"> <li>- Sports, dancing classes, access to library, fitness courses, board games, table football.</li> </ul>	<ul style="list-style-type: none"> <li>- Curing service and medical opinions 24h/7 days.</li> </ul>	<ul style="list-style-type: none"> <li>- No</li> <li>- Possible accommodation in solitary cells</li> </ul>
<b>Belgium</b>	<ul style="list-style-type: none"> <li>- Min 2h/day</li> <li>- Only for medical reasons</li> <li>- Yes, depending on the facility</li> </ul>	<ul style="list-style-type: none"> <li>- Yes,</li> <li>(1) Family members (in first line, spouse or partner, brother and sister, uncle and aunt): every day, min 1h;</li> <li>(2) Legal representatives: every day, between 8 a.m. and 10 p.m.</li> <li>(3) Members from appointed organizations (i.e. UNHCR, Federal</li> </ul>	<ul style="list-style-type: none"> <li>- Basic language courses.</li> <li>- Only interpretation (by phone) in specific cases</li> <li>- Free of charge only for lawyers provided by the State</li> </ul>	<ul style="list-style-type: none"> <li>- Access to library, some sport options, television, a room for prayer. Entertainment activities provided by educators.</li> </ul>	<ul style="list-style-type: none"> <li>- A medical service available during the day (and at night a doctor can be called), and access to a psychologist.</li> </ul>	<ul style="list-style-type: none"> <li>- Persons who have special medical, psychological or psychiatric needs can receive specific accompaniment inside or outside the detention facility.</li> <li>- Adapted regime or isolation</li> </ul>

<b>Indicator</b>  <b>(Member) State</b>	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
		Migration Centre) and members of Parliament. (4) Accredited organisations: 25 NGO's are accredited to regularly visit detainees in detention centres. (5) Other persons: after authorization from the director of the facility - Yes (not screened), (1) Mail: unlimited. (2) Telephone: one free phone-call upon arrival, can call for free with their lawyer and can use their mobile phone (without camera), during the day. (3) Internet and e-mail: possible only in one facility (Caricole).				
<b>Bulgaria</b>	- Daily - No - Yes, apart from restricted areas	- Family members, relatives, lawyers, officials from the respective diplomatic and consular missions, NGO's representatives - Personal outgoing correspondence and telephone calls. Post parcels subject to the requirements of postal security	- No - Free interpretation services with support of the European Return Fund - Free legal advice provided by the Bulgarian Helsinki Committee	- Daily walking, religious activities, social activities, TV watching, sport activities	- Primary outpatient medical care as well as prevention, rehabilitation and sanitary-epidemiological activities to maintain and strengthen the physical and mental health of foreigners. If necessary, patients are turned to hospitals.	- Depending on case, vulnerable persons are accommodated in special premises. Persons for whom there is information or diagnosis made by a physician or by a psychologist are accommodated in the special premises for sick people. - Accommodation in individual premises with security measures.
<b>Croatia</b>	- Min 2h/day - Only upon special approval - Yes	- Family members, legal representatives, representatives of diplomatic missions, friends, NGOs can visit min twice a week - Telephone and mail. Packages are opened at the presence of security	- No - Free of charge - Free of charge	- (Daily) football, table tennis, various social games and outside recreation time	- Emergency health care and essential treatment of illness are provided	- Separate room, special medical care if necessary, special diet can be offered to people with disability, children, etc.) - Possible stricter police surveillance in police detention facilities (no visits and seized funds)
<b>Cyprus</b>	-daily access to outdoor space,for several hours in the morning and afternoon. -No right to leave the facility -right to move within the facility	- Visitors: family members, friends who are eligible to visit them, Attorneys, NGO Representatives (Police approval needed), Representatives of the Ombudsman Office, Consulate Representatives, UNHCR Representatives	- No - Yes for formal contacts concerning their appeal application process -Yes	-Outdoor: available infrastructure for exercise -Indoors: common space with TV, Game consoles and PCs with internet access	Basic Health care / Provision of Medicine free of charge	-In case the condition of a person is such that it is problematic to keep him/her in detention alternative measures to detention are used -In case a security risk is for the migrant himself/herself, psychiatrist diagnosis and treatment is requested by the Public Mental Health If there is a security risk for

<b>Indicator</b> <b>(Member) State</b>	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
						others internal regulation procedures are followed to prevent such actions and prohibit their repetition.
<b>Czech Republic</b>	- 7am till 8pm (winter); 7am till 10pm (June, July, August); 7am till 9pm (rest of the year) - Only for administrative (court) and medical reasons - No info	- Yes 1) Family and friends 1h twice a week 2) Legal representatives (anytime) - Public telephone and conventional mail (not screened) , only the incoming packages are checked by the Police in order to make sure that dangerous and prohibited items are not brought inside	- For children in compulsory education age - Free of charge - Free of charge	- Sports, gym, film screening facility, music workshop, visual arts workshop, sewing workshop, children´s centre	- Yes. A practitioner is present in the facility, specialized care is provided in a hospital nearby	- No - No
<b>Estonia</b>	- Min 1h/day, usually up to 10 h - Only upon permission of the head of the centre (i.e. medical reasons) - Detainee may move freely (in dwelling and residential corridors, dining and recreation room, restrooms, and walking yards on detention territory), from 8:30-22:00, but they have to follow the daily agenda	- Yes (max two person at time) 1) consular officers; 2) lawyers; 3) minister of religion (allowed by the head of the centre); 4) representatives of state authorities, international or non-governmental organisations. Upon permission from the head of the centre, and under surveillance, short personal meetings (with people not mentioned above, including minors) are allowed if they not obstruct execution of the expulsion. - Phone, Fax machine (upon permission of the head of the centre). Mail open by a surveillance official at the presence of the detainee. Internet is not allowed. Screening only upon court permission or if use can be a risk for the centre rules.	- Compulsory school education is guaranteed. Free of charge courses of Estonian - Interpretations - Yes to appeal against a decision on return	- Sports, access to library, TV, board games. Minors are provided with appropriate games/activities	- A doctor's clinic takes place at least once per month. In the course of the clinic, checks related to the state of health (both physical and mental) of the persons to be expelled are conducted, as well as elementary medical procedures. A detainee can be placed in the central hospital for prisons or to other medical facilities. Unavoidable help is guaranteed free of charge; while other request may entail personal financial contribution. A clinical psychologist visits the centre 2 times per month (only for EN and RU speakers).	- Yes - Yes, information is provided as soon as possible and in a language understood by the person concerned.
<b>Finland</b>	- 1h per day (more during summer time) - Only for medical reasons - Yes (men can't move in areas dedicate to women, while women can)	- National and international organisations - (Personal) phones (without camera), internet	- No - Free of charge translation and interpretation - Free of charge	- Gym, TV/DVD devices, billiards table, basketball. The use of personal laptop is allowed.	- Yes, a daily unit exist. In more severe cases, patients can be accompanied outside the facility.	- Visits to a child health clinic may be arranged for pregnant women. Mobility aids may be arranged for the disabled. - Possible isolation if: 1) the person causes a serious risk to the (own or others') safety or order of the detention unit; 3) it's needed to establish the alien's identity or fulfilment of the requirements for entry into the country. Re-assessments min every

Indicator	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
(Member) State						three days. Detention at police facilities are also allowed, if the measure above are unlikely to be met.
<b>France</b>	- Access to outdoor space (time slots depend on internal rules)	- Visits of family members, lawyers and consular authorities are allowed. Time slots for visits are defined by internal rules of each centre. A ministerial directive provides that visits can last for 30 minutes. - Five NGOs are accredited to provide legal advice to detainees. They hold a permanence in a separate room of the centre.	- Free of charge interpretation services are provided by the State for issues strictly related to the return decision and can be provided by the accredited NGOs on an ad-hoc basis.	- Basketball, tennis table, TV watching, video games (only in one centre).	- Medical units are available in every detention centre.	- In case of public disorder or threats to his/her own or others safety, a detainee can be subject to isolation in a room provided for this purpose in accordance with the internal rules of each centre.
<b>Germany</b>	- 1 to 1.5h per day at most detention centres. - Not on their own but for medical or administrative reasons yes, but in the latter case only under surveillance of Police or Border Guards - Often restricted to certain parts of the facility and depending on the daytime and centre of the individual Federal Länder	- Ranges between four hours per month, to several visits per week, to all-day visits and unlimited visiting rights - At all facilities, persons in detention are allowed to contact lawyers, family members, NGOs and consular authorities - Telephones are available, but detainees must generally pay for their calls. Use of mobile phones is permitted in five Federal Länder (without cameras and video recording function). Internet/video-telephony access is only allowed in three Federal Länder	- No institutional educational courses available; some facilities offer a number of courses which are delivered by social workers or free of charge by NGOs; nearly all facilities have libraries; one offers German language courses - Any judicial orders on the extension of or release from detention must be translated. Detainee shall have the right to call in, at his own expense, a suitable interpreter / translator of his choice in other situations - Yes, however, only free of charge in some Federal Länder; otherwise NGOs frequently offer legal advice free of charge	- Nearly all facilities offer television, table tennis, board games, football and basketball during periods of outdoor activity; some also give access to a gym, kicker, DVDs or the like, Possibility to rent video games	- Most facilities (particularly those at prisons) have physicians and/or nurses on duty, some have their own sick bay, some have medical staff on duty for several hours a day, external physicians may also be consulted, however, medical examinations are generally not initiated at their own initiative but are subject to the approval of the management of the detention centre.	- <i>Unaccompanied minors:</i> May request a single room in some Federal Länder (e.g. Brandenburg); some of these rooms are in youth detention facilities (e.g. Hesse) - <i>Families:</i> Some facilities have so-called "family rooms" with age appropriate toys and sleeping facilities" - <i>Pregnant women:</i> Accommodation in single rooms with medical care (Brandenburg) or transfer to a women's prison offering "gynaecological care from the 7th month of pregnancy" (Bavaria) - <i>Persons with disabilities:</i> Some facilities are equipped for the disabled (e.g. Hesse and Saxony) - No info
<b>Greece</b>	- Up to twice a day - No - Yes, depending on the daytime and centre	- Yes 1) Family and friends once a day 2) Legal representatives (anytime) - Card phones (all centres), internet and mobile depending on the facility	- No info - Free of charge translation and interpretation - In theory is provided free of charge by NGOs, in practice impossible to as NGOs have limited budgets.	- Sports (football, basketball, table-tennis), use of computers.	- Conditions are reported poor (contagious cases). In case of severe incidents, detainees are transferred to public hospitals.	- No info - No

<b>Indicator</b> <b>(Member) State</b>	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
<b>Ireland<sup>187</sup></b>	- No info - No info - No info	- Yes, at least with members of their family group - No info	- No info - Yes - Yes	- No info	- Accommodation in a hospital can be allowed under severe circumstances	- Yes, especially for elderly and disabled persons - Yes, they're separated from the rest of detainees.
<b>Hungary</b>	- Min 1h in guarded asylum reception centres; decided by house rules in other detention centres - Only for administrative (court) and medical reasons - Yes, according to the centre's internal rules	- Yes (daily visits from), (a) legal representative, (b) person providing legal aid, (c) representative of a non-governmental organization or a foundation, (d) member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, UN or CoE organs, (e) member of an organization authorized by Hungarian law to protect human rights and authority granted the power by Hungarian law to check the execution of detention (or to examine restrictions to freedom), (f) diplomatic representative or consular official, (g) representative of a church - Phone (at detainees' costs and with possible frequency restrictions), mail (unrestricted), packages (twice a week). Phone calls can be monitored for security reasons. - Access to phone, mail, internet	- Education programmes only to minors. Language course (HU and other EU languages) - Free interpretation only for issues related to the expulsion execution - Free of charge support from NGOs/international organisation; legal aid at detainee's costs.	- Sports and cultural facilities, access to library, radio and TV	- Yes, medical care is available to detainees inside the facilities. Consultation with the local medical specialist is allowed under Police surveillance	- Yes, for specific health reasons - Yes, upon notification of the Police to the Immigration service.
<b>Latvia</b>	- Daily, min 2h - Only for administrative (court) and medical reasons - Yes	- Yes (daily, not longer than 2h): 1) (communicate with) consular authority; 2) (inform and) meet family members or relative, 3) representatives of international and non-government human rights organisations. - Own technical devices (telephone, computer) upon permission	- Compulsory school education is provided - Free of charge communication of decisions in a language understood by the detainees - Free of charge - if legal support is provided by NGOs or international organization, or if detainee appeals against return decision.	- Daily use of Fitness room, rest room equipped with TV set, library, room for religious rituals and walking area including, playground for children and area for sport activities.	- Yes, 1) emergency medical assistance; 2) primary health care services (dental aid, in case of the acute dental pain); 3) secondary health care services. For pregnant women childbirth is provided free of charge.	- Ambulation of disabled people allowed by the use wheelchairs and lifts - Possible accommodation in specially equipped premises for up to 10 days with a written decision of the head of the detention centre.

<sup>187</sup> This refers to general prison situation or conditions

<b>Indicator</b>  <b>(Member) State</b>	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
<b>Lithuania</b>	- Twice a day - No - Restricted to certain parts of the facility	- Family members, lawyers, interpreters, representatives of non-governmental and international organisations, representatives of various religious confessions - Landline phones and mail; mobile phones and e-mails are not allowed	- Compulsory school education is provided. Teachers of music, art, and physical training work at the Centre. - Free of charge - Free of charge	- Holiday events and theme parties, quizzes, board games, cultural awareness activities for ethnic groups, and daily social skills development sessions. Access to TV, press and books. Physical exercise.	- The general practitioner's office provides primary health care services (twice a week); general practice care is provided daily on working days. The general practitioner issues appropriate referrals and the alien is taken to other professionals accompanied by a nurse.	- A psychologist evaluates the psycho-emotional state of detainees, provides individual psychological counselling, organises group psychological and art therapy sessions, , play therapy sessions for children  -Persons considered security risk are separated from the rest of detainees
<b>Luxembourg</b>	- Anytime of the day, except at night and meal time - Only for health reasons and under Police surveillance - Yes, except authorised restrictions	- No restriction as to the type of visitor (doctors and lawyers do not undergo obligatory security check). Visits are allowed every day, min twice a week (8h-12h and 13h-18h) - Mail, public phone, fax, e-mail. Calls to lawyers are free of charge, while detainees get €10 a week for personal calls. Internet access is limited to up to 1.5h/day. Written mail are scanned for security reasons.	- No, minors can only be detained for max 72h. Tailored EN and FR language classes are provided for adults. Material for DE and LU courses are available. Art courses ; Cooking activities (every 6-8 weeks) - Free of charge interpretation and translations - Free of charge for those with no sufficient resources	- Daily access to table soccer, darts, a sports hall with sports gear, a fitness room, pool tables, table tennis, a library, board games, television in each room, newspapers.	- Dental treatment is limited to urgent and necessary care; -Medical care is free of charge and detainees have free access to medical care in the interest of their health and necessary treatment of their illnesses. -A nurse is present from Mo-Fr 4 hours a day. -5 general practitioners are present twice a week for 4 hours. -Detainees can register for appointments with a doctor or a psychiatrist.	- Special attention is paid to vulnerable persons, such as minors, unaccompanied minors, handicapped persons, elderly persons, pregnant women, single parents with minor children and persons, who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence. - Yes, but not used in practice
<b>Malta</b>	- Daily - No /- Yes	- NGOs and international organisations - Phone, mobile phones and mail (not screened)	- Language classes - Free of charge - Free of charge at appeal stage	- Football, table soccer, board games, cable television.	- All kind of medical care, not only emergency	- They are not detained Accommodated in isolation units
<b>Netherlands</b>	- Min 1h/day - For medical or humanitarian reasons - Yes	- Family visits; privileged visits (e.g. by a lawyer, consul) are allowed to visit outside visiting hours. At least 1h/week - Telephone and card phones. Possible use of mobile phones. Internet navigation only on permitted websites. No e-mail.	- E-learning via a computer or self-education via the library - Free of charge - Free of charge - Unaccompanied minors detained in a youth institution are provided with education.	- Sports (twice a week), access to library (once a week), prayer service (once a week), and to perform recreational activities (once a week). This may be accompanied by more group oriented activities (i.e. cooking, football, dancing, singing).	- Necessary (also) secondary medical assistance provided if needed. Detainees are screened for tuberculosis and are provided with health information.	- Customised care can be provided. Pregnant women and families receive additional facilities. - Possible accommodation in isolation cells/special unit
<b>Poland</b>	- Yes (between 9am and 9pm) - No Yes (between 9am and 9pm)	- Relatives (in specially designed rooms), upon approval of the Border Guard in charge of the facility. Also right to contact NGOs providing assistance to foreigners, including legal assistance. Possible every day, at restricted times. - Private mobile phones without the	- Compulsory school education is provided. Languages courses of PL to minors. - Assistance for interpretation and translation. - Free of charge	- Daily recreational and sports activities	- General medical care, including emergency care	- Yes for unaccompanied minors, persons with disabilities, victims of trafficking, persons with special needs - Yes, for max 48h

<b>Indicator</b> <b>(Member) State</b>	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
		video recording function; Cameras without the video recording function; Internet. Internet navigation can be subject to limitations.				
<b>Portugal</b>	- Yes - No - Yes	- Legal representatives, family members and competent consular authorities. Possibly, human rights organizations/associations - Only public phones available	- Tailored programmes for unaccompanied minors - Yes. Internal rules translated in EN and FR - May be free of charge	- Access to TV's, DVD's books and some written press.	- Right to emergency care and essential treatment of illnesses.	- No special arrangements, but particular attention to minors, disabled people, elderly, pregnant women, people who have been subject to torture acts, rape or other forms of psychological, physical or sexual violence - Preventive measures may be applied
<b>Slovak Republic</b>	- Min 1h/twice a day - Only e.g. for administrative (court) and medical reasons - Yes	- No restriction as to the type of visitor. Not more than 2 visits every three weeks (max 30min per visit) International Organization for Migration (IOM), other non-governmental or inter-governmental organisations, and persons providing legal assistance to third-country nationals have access without time or frequency restrictions. - Mail, telephone (mobile phone provided by NGOs used for approx. 10 minutes), internet (no e-mail). Phone calls are not monitored, internet use is supervised.	- Compulsory school education is provided if detainees (minor under 15 years old) stay longer than 3 months. Language course for minors, adults can join the course. - Free of charge translation and interpretation related to detention process - Free of charge	- Daily cultural, sport and recreational activities	- Yes. Fast access to emergency care and specialised medical care is ensured.	- Vulnerable persons are subject to different arrangements related to walks, leisure activities or accommodation/placement - Placement in premises with a separate detention regime (possibly isolation)
<b>Slovenia</b>	- Min 1h/day - Only under permission - Yes	- No restriction as to the type of visitor. Legal representatives can be beyond allowed hours - Phones, e-mails. Restricted use of internet (3 times a week, max 20min per time).	- Compulsory school education is provided - Yes, but not all languages - Free of charge	- Yes	- Yes	- Separated facilities are provided for women, families, children, unaccompanied minors and elderly, severely ill and other vulnerable persons - Possible detention under stricter Police surveillance
<b>Spain</b>	- Yes, at least 4 hours per day - Yes, for medical assistance or treatment, when not available at the detention centre. - Movements are restricted, depending on the day period	-Yes. Unlimited within visiting hours -Yes, public phones are available	-Social assistance is provided -Yes -Yes	-Yes	-Yes	-Yes -Yes. They can be isolated through a motivated decision of the Director, notified to the detainee and to the judge, who will decide whether to maintain this measure or not
<b>Sweden</b>	- Min 3h/day	- Restriction as to the type of visitor	- Yes	- TV room, board	- Access to the same level of	- Families are given their own

Indicator	<b>Mobility</b> - Access to outdoor space - Right to leave the facility - Right to move within the facility	<b>Contacts</b> - Right to receive visitors - Contact with the outside world	<b>Support</b> - Education programmes (including compulsory education for children and language courses). - Translation/interpretation - Legal advice	<b>Leisure activities</b>	<b>Medical care</b>	<b>Special arrangements</b> - Vulnerable groups - Persons considered security risk
(Member) State						
	- Only for medical reasons or upon permission - Men aren't allowed to women areas.	are allowed only for security reasons - Phone, mail and e-mail. Phone with cameras are not allowed. Access to internet 24h/7. Mail screened only for security reasons.	- Provided in practice, free of charge - Free of charge	games, pool table, gym, tennis table. Prayer-rooms with access to religious literature.	health and medical care as a person who has applied for asylum or international protection even if the alien has not applied for such a permit	room; unaccompanied minors are kept in separate parts of the detention facilities etc. Unaccompanied minors are accommodated in detention centres with access to staff and premises that provide tailored assistance. UAMs have their own room but share common spaces like leisure room and canteen with others - Separated (locked) rooms can be used.
<b>United Kingdom</b>	- Min 1h/day - Upon approval, only children and families for short periods, under supervision - Yes, apart from those held for removal from association or temporary confinement.	- No restriction as to the type of visitors (possible only for detainees held in prison) - Phone, mail, e-mail and fax are accessible (restrictions for detainees in prison). Communication monitoring is not routinely done. Internet navigation can be subject to limitations.	- Adult education programmes, including language classes. Pre-school children are provided with opportunities to learn through play - Free of charge - Free of charge	- Daily access to library and detainee information room; cardio fitness area; internet suite; pool tables; outside recreational area for sport; arts and crafts facilities; educational programmes.	- 24h/7 on-site primary healthcare services equating broadly to community-based General Practices. Some centres have in-patient facilities with dedicated healthcare staff.	- Vulnerable groups are normally not detained - Yes
<b>Norway</b>	- Min 3 times/day - Only upon release order - Limited to the wing where the detainees is placed.	- Friends and family (twice a week), legal representatives (every day) - Mobile phones not allowed. Messages / calls are screened upon authorisation by competent authorities.	- No - Free of charge - Free of charge	- Gym, sports centre, TV, internet, volleyball, football, badminton).	- All are entitled to "essential health care"	- Placement in a special wing - Placement in a dedicated wing

**Table A3.C: Type of alternative to detention by categories of third-country national in the (Member) States**

Type of alternative to detention	Reporting obligation	Residence requirement	Obligation to surrender a passport or a travel document	Release on bail	Electronic monitoring	Guarantor requirement <sup>188</sup>	Release to care worker <sup>189</sup>	Other
<b>Categories of third-country nationals</b>								
<b>Applicants for international protection in ordinary procedures</b>	AT, DE, EE, FI, HR, HU, IE <sup>190</sup> , LV, LT, NL, PL, SE, SK, UK, NO	AT, CY, DE, EE, FI, HR, HU, IE, NL, PL, UK, NO	CY, DE, FI, IE, LV, NL, PL, SE, UK, NO	AT, DE, FI, HR, HU, NL, SK, UK	UK	DE, HR, LT, UK	DE, UK	DE, HU, LT, NL, SE, SI
<b>Applicants for international protection in fast-track (accelerated) procedures</b>	AT, EE, FI, HR, HU, IE <sup>191</sup> , LV, LT, NL, PL, SE, SK, UK, NO	AT, CY, EE, FI, HR, HU, IE, NL, PL, UK, NO	CY, FI, IE, LV, NL, PL, SE, UK, NO	AT, FI, HR, HU, NL, SK, UK	UK	HR, LT, UK	UK	BE, HU, LT, NL, SE, SI
<b>Applicants for international protection subject to Dublin procedures</b>	AT, CZ, DE, EE, FI, HR, HU, IE, LV, LT, NL, PL, SE, UK, NO	AT, CY, CZ, DE, EE, FI, HR, HU, IE, NL, PL, UK, NO	CY, DE, FI, HR, IE, LV, NL, PL, SE, UK, NO	AT, CZ <sup>192</sup> , DE, FI, HR, HU, NL, UK	UK	DE, HR, LT, UK	DE, UK	DE, HU, LT, NL, SE, SI
<b>Rejected applicants for international protection</b>	AT, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LV, LT, NL, PL, PT, SE, SK, UK, NO	AT, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LU, NL, PL, PT, UK, NO	CY, DE, ES, FI, FR, LV, NL, PL, SE, UK, NO	AT, CY, CZ, DE, FI, HR, NL, PT, SK, UK	FR, PT, UK	DE, HR, LT, UK	DE, UK	DE, HU, LT, NL, PT, SE
<b>Rejected family reunification applicants</b>	AT, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, NL, PL, PT, SK, UK, NO	AT, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LU, NL, PL, PT, UK, NO	CY, DE, ES, FI, FR, NL, PL, UK, NO	AT, CY, CZ, FI, DE, HR, NL, PT, SK, UK	FR, PT, UK	DE, HR, LT, UK	DE, UK	DE, HU, NL, PT
<b>Other rejected applicants for residence permits on basis other than family reunification</b>	AT, CY, CZ, DE, EE, FI, FR, HR, LT, NL, PL, PT, SE, SK, UK, NO	AT, CY, CZ, DE, EE, FI, FR, HR, LU, NL, PL, PT, UK, NO	CY, DE, FI, FR, NL, PL, SE, UK, NO	AT, CY, CZ, DE, DE, FI, HR, NL, PT, SK, UK	FR, PT, UK	DE, HR, LT, UK	DE, UK	DE, NL, PT, SE
<b>Persons detained at the border to prevent illegal entry (e.g. airport transit zone)</b>	CY, DE, EE, FI, NL, PT, SE, SK, UK, NO	CY, DE, EE, FI, LU, NL, PT, UK, NO	CY, DE, FI, NL, SE, UK, NO	CY, FI, NL, PT, SK, UK	PT, UK	DE, UK	DE, UK	DE, NL, PT, SE
<b>Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision</b>	AT, CY, CZ, DE, EE, ES, FI, HR, LV, LT, NL, PT, SE, SK, UK, NO	AT, CY, CZ, DE, EE, ES, FI, HR, LU, NL, PT, UK, NO	CY, DE, ES, FI, LV, NL, SE, UK, NO	AT, CY, CZ, DE, FI, HR, NL, PT, SK, UK	PT, UK	DE, HR, LT, UK	DE, UK	DE, NL, PT, SE
<b>Persons who have been issued a return decision</b>	AT, BE, BG, CY, CZ, DE, ES, FI, FR, HR, HU, IE, LV, LT, NL, PL, PT, SE, SK, UK, NO	AT, BE, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LU, NL, PL, PT, UK, NO	CY, DE, ES, FI, FR, IE, LV, NL, PL, SE, UK, NO	AT, CY, CZ, DE, FI, HR, NL, PL, PT, SK, UK	FR, PT, UK	DE, HR, LT, UK	DE, UK	BE, DE, HU, NL, PT, SE

<sup>188</sup> In Germany, guarantor requirements are onnly possible in two of the 16 Federal Länder (Bremen and Brandenburg).

<sup>189</sup> In Germany, a release to care workers is a general procedure for unaccompanied minors. Furthermore, in one of the Federal Länder, North Rhine-Westphalia, an option exists also for adults: If a third-country national has been detained for three months and the prolonging needs to be acknowledged by the Local Court on the grounds whether it will be possible to carry out deportation within the next three months for reasons beyond the immigrant's control, the immigrant may be released if: a third person whom the third-country national in detention has confidence in and who has the trust of the foreigners authorities (chaplain, a social worker focusing on psycho-social care or a person offering their services free of charge at the pre-removal detention centre) declares his intention to look after the immigrant after he has been released from detention and other prerequisites are mentioned.

<sup>190</sup> Refugee status only, no provisions to detain applicants for subsidiary protection

<sup>191</sup> Refugee status only, no provisions to detain applicants for subsidiary protection

<sup>192</sup> In general, the release on bail is not frequently used in the CZ.

## Annex 4 Statistics

**Table A4.A: Statistics on total number of third-country nationals in detention (2009 – 2013)**

	AT <sup>193</sup>	BE	BG	CZ	DE	EE	ES	HR	HU <sup>194</sup>	IE	FI	FR <sup>195</sup>	LT	LV	LU	MT	NL	PL	PT	SI	SK	SE	UK	NO	
<b>Total number of third-country nationals in detention</b>	<b>2009</b>	5,996	6,439	832	1,177	8,366	55	17,203	460	1,989	1,374	55,538 <sup>196</sup>	212	248	177	793	7,870	1,943	NI	439	582	1,742	2,457	NI	
	<b>2010</b>	6,153	6,553	973	822	7,495	40	11,915	559	3,509	1,279	58,267 <sup>197</sup>	132	187	200	61	7,810	2,311	248	340	319	1,810	2,372	NI	
	<b>2011</b>	5,155	7,034	1,048	370	6,466	62	13,241	649	5,715	973	460	48,553 <sup>198</sup>	241	NI	207	652	6,100	1,823	235	289	286 <sup>199</sup>	1,941	2,274	NI
	<b>2012</b>	4,566	6,797	2,047	320	5,064 <sup>200</sup>	93	11,325	784	5,434	914	410	39,989 <sup>201</sup>	375	251	305	497	5,420	1,416	196	402	180	2,564	2,520	NI
	<b>2013</b>	4,171	6,285	6,303	352	4,309 <sup>202</sup>	94	9,020	533	6,496	836	444	38,266 <sup>203</sup>	363	221	243	482	3,670	1,754	NI	426	204	2,893	2,571	2,939

**Notes:** Statistics for the whole period not available for Cyprus and Greece. Italy and Romania have not participated in this study.

Disaggregation by categories of third-country nationals is available for some categories in the National Reports of AT, BG, HU, FI, LV, LU, MT, NL, SE and UK, which are available on the EMN web-site [at this link](#).

<sup>193</sup> Austria has provided data on the total number of third-country nationals who received detention decisions. The number does not refer to persons in detention but to decisions imposing detention.

<sup>194</sup> Regarding HU data 2009-2013: Sometimes the same third-country national can be found in the detention statistics of Police, statistics of Alien Policing Department of OIN and the statistics of Refugee Department of OIN as he/she could be apprehended (this results from the different legal grounds for detention). Such cases can significantly increase the number of third-country nationals in detention.

<sup>195</sup> Data provided concern Metropolitan France and French overseas territories.

<sup>196</sup> In 2009, 31,608 TCNs were detained in Metropolitan France whereas 23,930 were detained in French overseas territories.

<sup>197</sup> In 2010, 27,450 TCNs were detained in Metropolitan France whereas 30,817 were detained in French overseas territories.

<sup>198</sup> In 2011, 24,544 TCNs were detained in Metropolitan France whereas 24,009 were detained in French overseas territories.

<sup>199</sup> For 2011-2013 statistics also include third-country nationals who were placed in a PDCA in the given period (irrespective of the year in which they were issued a return decision (AE/JE)) and third-country nationals who were temporarily placed in a police department and were surrendered over within seven days from detention pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens, specifically per years: 2011= 44 persons, 2012 = 5 persons, 2013 = 9 persons.

<sup>200</sup> Not including Hesse (2011: 752).

<sup>201</sup> In 2012, 23,394 TCNs were detained in Metropolitan France whereas 16,595 were detained in French overseas territories.

<sup>202</sup> Not including Hesse (2011: 752) and Hamburg up to and including 9 December 2013.

<sup>203</sup> In 2013, 24,176 TCNs were detained in Metropolitan France whereas 14,090 were detained in French overseas territories.

**Table A4.B: Statistics on total number of third-country nationals provided alternatives to detention (2009 – 2013)**

		AT	BE	EE <sup>204</sup>	HR	HU	FI	FR <sup>205</sup>	LT	LV <sup>206</sup>	LU <sup>207</sup>	SI	SK	SE
<b>Total number of third-country nationals provided alternatives to detention</b>	<b>2009</b>	1,877	206	153	13	709	374	N/A	21	NA	NA	NI	NI	288
	<b>2010</b>	1,404	221	96	10	753	404	N/A	35	NA	NA	NI	NI	270
	<b>2011</b>	1,012	463	223	4	327	352	N/A	15	10	1	NI	NI	289
	<b>2012</b>	925	485	257	6	308	258	668	94	34	0	NI	0	396
	<b>2013</b>	771	590	193	9	284	291 <sup>208</sup>	1,258	24	52	2	18	2	405

**Notes:** Statistics for the whole period not available for CY, CZ, DE, EL, ES, IE, MT, NL, PL, PT, UK and NO. Italy and Romania have not participated in this study. Disaggregation by categories of third-country nationals is available for some categories in the National Reports of BG, FI, LT, LV, SI, SE which are available on the EMN web-site [at this link](#).

**Table A4.C: Average period of time in detention (in days)**

		AT	BE <sup>209</sup>	BG	CZ	DE	EE	FI	FR <sup>210</sup>	LT	LV	LU	MT	NL	SI	SK	SE	UK <sup>211</sup>
<b>Average period of time in detention of all categories of third-country nationals in detention</b>	<b>2009</b>	24	Closed centres: 12.7-37.3 Inad <sup>212</sup> :2.1	NI	60	NI	156	NI	10.2	66	38	NI	180	97.1	NI	NI	13	29-60
	<b>2010</b>	20.82	Closed centres: 19.1-34.5 Inad: 2.6	NI	79	NI	84	11.3	10.03	61	21	NI	180	102.7	NI	NI	11	29-60
	<b>2011</b>	17.44	Closed centres: 21.7-32.4 Inad: 2.4	Detention centre Sofia 77 Detention centre Liubimets 59	83	NI	92	12.6	8.7	51	20	21 <sup>213</sup>	180	99.3	NI	NI	10	29-60
	<b>2012</b>	16.63	Closed centres:	Detention	77	Baden-Württemberg: 32,5	80	11.2	11	40	18	33.5	180	110.5	NI	NI	7	29-60

<sup>204</sup> Statistics concerning Estonia refer to the number of times alternatives are used and not to number of persons granted alternatives to detention. It means that for some persons more than one alternative can be applied, which is very usual.

<sup>205</sup> In France, alternatives to detention were introduced by the law on immigration, integration and nationality of 16 June 2011.

<sup>206</sup> Alternatives to detention are applied since 16 June 2011

<sup>207</sup> No alternatives to detention existed in Luxembourg in 2009 and 2010

<sup>208</sup> Figures for Finland in this table consist of data from the Border Guard and the Police. Figures for 2013 are not available from the Police

<sup>209</sup> Average depending on the closed centre. Numbers are given for the closed centre with the shortest average duration and the closed centre with the longest average duration

<sup>210</sup> Data provided only concern metropolitan France. Metropolitan France is the part of France located in Europe. It does not include French overseas territories.

<sup>211</sup> The UK only publishes figures on length of detention by bands and not as averages. As the majority of detainees are held for short periods, the small number of people detained for the longer periods tend to distort the average figure. Furthermore, individuals may be counted in more than one quarter depending on how long they are detained. The length of time captured here is taken from the last quarter of every year. Data are taken from Immigration Statistics October to December 2013, Detention tables dt\_11 (People in detention by sex and length of detention).

<sup>212</sup> Inad stands for the centre for inadmissibles and the fundamental rights of foreigners Het INAD-centra en de grondrechten voor vreemdelingen

<sup>213</sup> Since 22.08.2011

		AT	BE <sup>209</sup>	BG	CZ	DE	EE	FI	FR <sup>210</sup>	LT	LV	LU	MT	NL	SI	SK	SE	UK <sup>211</sup>	
			18.6- 33.9 Inad: 2.5	centre Sofia 61 Detention centre Liubimets 31		Brandenburg: 25 Bremen: 10,5 North Rhine-Westfalia: 35 in Rhineland-Palatinate: 29 Saarland: 29 Schleswig-Holstein: 28 Thuringia: 49													
	2013	14.62	Closed centres: 13.5- 37.6	Detention centre Sofia 58 Detention centre Liubimets 30	51	Baden-Württemberg: 35,5 Berlin: 17,5 Brandenburg: 24 Bremen: 21,5 Mecklenburg-Western Pomerania: 37 North Rhine-Westfalia: 31 in Rhineland-Palatinate: 22 Saarland: 22 Schleswig-Holstein 25 Thuringia 28	58	11.8	11.9	38	20	36.5	180	NI	17.8	2 <sup>214</sup> 10-15 <sup>215</sup> 19 <sup>216</sup>	5	NI	

**Notes:** Statistics for the whole period not available for CY, EL, ES, HR, HU, IE, PL, PT, NO. Italy and Romania have not participated in this study. Disaggregation by categories of third-country nationals is available for some categories in the National Reports of FI, MT, LU, LV, SI, SK, SE, NO

<sup>214</sup> Administrative expulsion - Legal period for issuing a decision on administrative expulsion. The Police Force department is due to issue a decision on AE to the apprehended person detained in the police department in the shortest period of time which may not exceed 48 hours.

<sup>215</sup> Judicial expulsion - The average length of time from apprehending an irregular migrant who was detained pursuant to the Act on Residence of Aliens or the Act on the Police Force or apprehended under the Criminal Code to imposing the punishment of expulsion by court.

<sup>216</sup> Average length of time from issuing in 2013 a AE/IE decision to persons which were detained and placed in a PDCA or in a police department under Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens in 2013, irrespective of the time the person was apprehended, to the execution of expulsion from the territory of the SR in 2013.