



Detention and Alternatives to detention in international protection and return procedures

National contribution for the Netherlands

Final version (with statistics)

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1 BACKGROUND AND RATIONALE FOR THE STUDY

In the context of migration, detention is a *non-punitive administrative measure applied by the state to restrict the movement through the confinement of an individual for another immigration procedure to be implemented*.² EU legislation regulates in detail the detention of migrants within the context of international protection and return procedures, setting the grounds on which an individual can be deprived of liberty and the relevant principles governing the matter. At both European and International levels, legal sources agree on the fact that detention should be used as a "last resort" and encourages the use of alternatives to detention, as an application of the principles of necessity and proportionality in order to avoid arbitrary deprivation of liberty.³

Although there is no common legal definition of alternatives to detention, they can be defined as *non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory*.⁴ These measures, having an impact on the person's rights,⁵ are subject to human rights standards and

¹ Version updated on 4 November 2021 to add statistics on the use of an alternative to detention (*borgsom*), see statistical annex.

² EMN Glossary

³ Articles 6, 52(3) and 53 of the EU Charter. Articles 8 and 11 of the Reception Conditions Directive (recast). Recital 16 and Article 8(1) Return Directive.

⁴ EMN Glossary

⁵ These rights include: the right to family life (Article 2 ECHR; Article 9 CFREU; Article 12(2) 1951 Refugee Convention), the right to privacy (Article 8 ECHR), prohibition of torture (Article 3 ECHR) the prohibition on inhuman or degrading treatment (Article 3 ECHR).

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have to be imposed, on a case-by-case basis, by taking into consideration individual factors. Examples of such alternative measures include the obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.⁶ Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.⁷ As a general principle, it is essential to clarify that the consideration of alternatives is only relevant and legal when there are legitimate grounds to detain.

Both international and EU law guarantee and protect the **right to liberty and security** as a core component of an individual's fundamental rights. The European Convention of Human Rights (ECHR) in its Article 5(1) states the principle that "Everyone has the right to liberty" while Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that: "[...] everyone has the right to liberty and security of person. No one shall be subjected to **arbitrary** arrest or detention. No one shall be deprived of his liberty except on such grounds and following such procedure as are established by law". In summary, all the measures that might have an impact on the person's human rights should be imposed on a **case-by-case basis**.

The principles of **necessity** and **proportionality** should be observed as a core part of the decision to detain a third-country national under EU law. Nevertheless, it should be noted that the principle of necessity, while applying in EU law in relation to the grounds for detention that must be justified, is not taken into consideration by the ECHR. Also, the principles of **non-arbitrariness** and legality provide that detention should be based on grounds for detention established by law.⁸ Moreover, as the European Court of Human Rights has underscored in several judgments (see section 5 below), in practice, domestic authorities shall **effectively verify** and provide with **evidence** whether an alternative measure less coercive than detention is possible.⁹ In this sense, the administrative detention of individuals can take place only in those cases where there are no alternatives.

Despite the legal obligation to consider the use of alternatives to detention, in practice, the widespread use of alternatives is hampered by the scarce availability of tools and for alternatives to detention that could achieve the same goal of detention especially in the context of return procedures – notably to ensure compliance with the migration procedures and prevent absconding. Alternatives to detention are considered to bring **effective advantages compared to detention**, specifically considering their reduced costs as compared to detention, the reduced interference with fundamental rights, and the fact that they can significantly relieve the pressure on national detention systems. Nevertheless, among Member States alternatives to detention remain often unused, and the findings of different actors in the field - the Council of Europe,¹⁰ the UN¹¹ and the EU¹² – while confirming this trend, identified different reasons for this.

⁶ Article 8(4) of the Reception Conditions Directive (recast)

⁷ Detention of applicants for international protection in the context of the Common European Asylum System, EASO 2019

⁸ The use of detention and alternatives to detention in the context of immigration policies, EMN 2014.

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.

⁹ A.B. and Others v. France, No. 11593/12, 12 July 2016, § 124

¹⁰ Legal and practical aspects of effective alternatives to detention in the context of migration, *Analysis of the Steering Committee for Human Rights (CDDH)*, 7 December 2017; Commissioner for Human Rights, Human Rights Comment, High time for states to invest in alternatives to migrant detention, 31/01/2017; Parliamentary Assembly, Resolution 2020 (2014), § 8.

¹¹ Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, § 48.

¹² European Commission, Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, Brussels, 28.3.2014, p. 15.

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The lack of **empirical research** on the practical applicability of alternative measures and which takes into account all related costs, has been identified as one of the main challenges for their implementation. date, there are several alternative measures, and some information is available on which measures work better than others. However, there is lack of clear evidence-based information on the effectiveness of these measures in achieving compliance with migration procedures and in particular to prevent **absconding**. In this sense, improving the overall quality of the assessment procedures, while boosting a greater legal clarity and objectivity in terms of criteria for assessing such risks could be crucial to ensure the most accurate decision on an appropriate alternative. Another issue identified is linked to the availability of alternatives that correctly match the individual circumstances because they are limited in scale or because the individual concerned cannot meet the requirements, for instance, this is the case of using bail where the lack of financial resources constitutes a limit in applying this scheme.

2 STUDY AIMS AND OBJECTIVES

The 2020 EMN study on detention and alternatives aims to identify similarities, differences, practical challenges and best practices concerning the use of detention and alternatives used by Member States and Norway in the framework of international protection and return procedures.

It follows the publication in 2014 of the EMN study on "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies" and aims to:

- Provide a comparative overview of the scale of detention and available alternatives to detention in each Member State in the context of international protection and return procedures and challenges Member States face to implement the alternatives to detention in practice;
- Give a comparative overview of the process and criteria used by national authorities to assess whether placing a third-country national in detention or instead applying an alternative to detention, in the context of international protection and return procedures;
- Assess the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures. This impact is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.¹³

Categories of third-country nationals considered in the study will include international protection applicants and individuals who have been issued a return decision. The study will focus on detention for asylum/return purposes only and will not include in its scope detention of third-country nationals who have committed a criminal offence. The study will give special attention 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 will consider legal and practical approaches related to provision of detention and alternatives **available during the reporting period January 2015- December 2020**.

MAIN RESEARCH QUESTIONS

The study seeks to address two primary questions:

- *To what extent are different options for alternatives to detention available and used across Member States and Norway?*
 - What type of alternatives are currently available and in use across Member States and Norway?

¹³ Effective Alternatives to the Detention of Migrants, International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 2019. Cost-effectiveness is intended as the financial costs of alternatives to detention as compared with the costs of detention, taking into consideration their outcomes (effects). For instance, reducing the length of time a migrant is detained is a factor that might reduce the costs associated with detention.

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- What are the challenges and advantages in the use and implementation of alternatives to detention?
- What processes and criteria are used to assess the opportunity to use an alternative instead of detention (provided that grounds for detention exist)?
- *What evidence exists about the impact of different types of coercive measures on the effectiveness of return policies and international protection procedures?*
 - What are the different impacts of detention and alternatives, when considering:
 - Compliance with relevant migration procedures
 - Respect for fundamental rights
 - The cost-effectiveness *ratio*?
 - Which factors (e.g. personal characteristics such as gender, origin or age; design of the ATD) are found to increase the impact of detention or alternatives to detention?

3 OVERVIEW OF THE EU ACQUIS

Detention and alternatives to detention in the context of international protection procedures

The Reception Conditions Directive (recast)¹⁴ requires Member States to consider alternatives to detention before subjecting asylum seekers to detention. Recital 15 provides that "applicants [for international protection] may be detained only under very **clearly defined exceptional circumstances** laid down in the Directive and subject to the principles of **necessity** and **proportionality** concerning both to the manner and the purpose of such detention". Under this Directive, Member States may detain an applicant only if other less coercive alternative measures cannot be effectively applied based on a case-by-case evaluation.¹⁵

The Reception Conditions Directive foresees a list of six 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;
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.

Moreover, according to Article 18 of the Asylum Procedures Directive,¹⁶ it is not lawful to detain a person solely for the reason that s/he has lodged an asylum application.

To guarantee the **non-arbitrariness** of detention and the respect of fundamental rights of applicants for international protection, the the list above is exhaustive. (Article 8). Several procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further,

¹⁴ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive)

¹⁵ Article 8(2) of the Reception Conditions Directive (recast)

¹⁶ COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and its recast Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

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the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10). Furthermore, according to the Dublin Regulation (Article 28),¹⁷ "when there is a significant risk of absconding, Member States may detain the person concerned to secure transfer procedures following this Regulation, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively."

Detention and alternatives to detention in the context of return proceedings

The Return Directive¹⁸ allows Member States to detain a migrant only to **prepare his/her return** and/or carry out the **removal process** if the application of less coercive measures is not sufficient. Article 15(4) specifies that detention is only justified as long as there is a **reasonable prospect for removal**. Furthermore, according to Article 15(5), each Member State shall set a limited period of detention, which may not exceed **six months**. Article 15(6) also allows Member States to **extend detention** for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third country.

Recital 16 of the Return Directive states that: "detention for the purpose of removal should be limited and subject to the principle of proportionality concerning the means used and objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient".¹⁹

However, the Return Directive does not impose explicitly Member States to establish national rules concerning alternative schemes, nor does it provide a list of examples of such alternative measures. Nevertheless, Article 7, within the context of voluntary return, lists specific measures that could be imposed on a third-country national benefiting from a period of voluntary departure to avoid the **risk of absconding**, such as regular reporting to the authorities, a deposit of a financial guarantee, submission of documents or the obligation to stay at a specific place. However, these measures cannot be considered alternatives to detention as there is no ground for detention within the context of voluntary return.

4 RELEVANT CASE LAW FROM THE COURT OF JUSTICE OF THE EU AND ECHR

Obligation to consider alternatives to detention

Given the fact that the detention is an exceptional measure of last resort, States have to examine first alternative measures and resort to detention only if such alternatives are considered as not adequate to achieve the result pursued. The legal obligation to consider alternatives to detention has also been reaffirmed by the Court of Justice of the European Union (CJEU). Specifically, in the case of *El Dridi* the Court stated that removal should be carried out using a gradation of measures which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility. Only if, in the light of an assessment of each specific situation, the enforcement of the return decision risks being compromised by the conduct of the person concerned, Member States may deprive that person of his/her liberty and detain him/her.

Risk of absconding

Case C-528/15 *Al Chodor* relates to the interpretation of Article 28 of the Dublin III Regulation on the conditions of the detention of asylum seekers pending a transfer to another Member State. The Court affirmed that, some of the provisions of this Regulation necessitate the adoption of measures by

¹⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms 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.

¹⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹⁹ C-61/11 relates to the interpretation of Articles 15 and 16 of Directive 2008/115. The court specifically concluded that such Articles must be interpreted as precluding a Member State's legislation, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

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national authorities for their implementation. In that sense, Article 2(n) of the Dublin III Regulation requires the criteria to establish a 'risk of absconding' to be 'defined by law'. The CJEU concluded that Article 2(n) and Article 28(2) of the Dublin III Regulation must be interpreted as requiring Member States to establish, in a binding provision of general application, **objective criteria** underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond. In the absence of that, Article 28(2) is inapplicable, and detention on this ground is unlawful. The Court also noted that the meaning of Article 6 of the Charter of Fundamental Rights should be defined in light of the established case-law of the ECtHR, which requires any measure on deprivation of liberty to be accessible, precise and foreseeable.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and Ad-hoc Queries

- EMN synthesis report of the EMN study "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies", 2014
- EMN synthesis report on the EMN study "The effectiveness of Return in EU Member States", 2017
- EMN Ad-Hoc Query on Asylum Proceedings and Detention, Requested by HU EMN NCP on 31 July 2012
- EMN Ad-Hoc Query on detention of asylum seekers, Requested by HU EMN NCP on 30 January 2013.
- EMN Ad-Hoc Query on detention and removal of minors Compilation produced on 19 January 2015
- EMN Ad-Hoc Query on detention and material detention conditions Requested by FR EMN NCP on 21 February 2018
- The AHQ 2020.59 on detention of minors requested by BE EMN NCP on 26 August 2020

Other relevant sources

- British Institute of International and Comparative Law, "Immigration Detention and the Rule of Law: Safeguarding Principles", 2013
- Council of Europe, Twenty Guidelines on Forced Return, 2005
- Council of Europe, "Legal and practical aspects of effective alternatives to detention in the context of migration", 2017
- Council of Europe, "Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results", 2019
- Council of Europe, European Commission and the European Migration Network, conclusion from the Conference "Effective Alternatives to the Detention of Migrants", April 2019
- European Asylum Support Office (EASO), Detention of applicants for international protection in the context of the Common European Asylum System, 2019
- European Commission, Return Handbook, C(2017) 6505, 2017
- European Law Institute, Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards, 2017.
- European Union Agency for Fundamental Rights, Detention of third-country nationals in return procedures, 2013
- European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, 2015
- Odysseus Academic Network, Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, 2015.

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- UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, 2011.
- UNHCR, Option Paper no 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015.
- UNHCR, Compilation of International Human Rights Law and Standards on Immigration Detention, 2018
- UNHCR, Beyond Detention - A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2019

6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v6.0²⁰ unless specified otherwise in footnotes.

'Absconding' refers to action by which a person seeks to avoid administrative measures and/or legal proceedings by not remaining available to the relevant authorities or to the court.

'Alternatives to detention' refers to non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of forced return or deciding on the individual's right to remain in the Member State, such as regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring. 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.

'Applicant for international protection' is defined as third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

'Application for international protection' is defined as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU (Recast Qualification Directive), that can be applied for separately.

'Asylum procedure': see definition for 'Procedure for international protection'.

'Beneficiary of international protection' is defined as a person who has been granted refugee status or subsidiary protection status.

'Country of origin' is the country or countries of nationality or, for stateless persons, of former habitual residence.

'Degrading treatment or punishment' refers to treatment that humiliates or debases an individual, showing a lack of respect for, or diminishing, their human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.

'Detention' is defined as a 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).²¹

²⁰ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf

²¹ For the purpose of this study, the criminal detention, which is the deprivation of liberty which applies to a citizen or non-citizen due to criminal charges or convictions, is excluded. The administrative detention which is here considered is an administrative or civil decision taken by (usually) immigration authorities that operates separately to the powers given to the police and criminal courts.

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'Detention facility' is defined as a specialised facility used for the detention of third-country nationals in accordance with national law.

'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).

'Examination of an asylum application': see definition for 'Examination of an application for international protection'.

'Examination of an application for international protection': Any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU (Recast Asylum Procedures Directive) and Directive 2011/95/EU (Recast Qualification Directive) except for procedures for determining the EU Member State responsible in accordance with Regulation (EU) No 604/2013 (Dublin III Regulation).

'Forced return' in the global context refers to compulsory return of an individual to the country of origin, transit or third country (i.e. country of return), based on an administrative or judicial act. In the EU context, refers to the process of going back – whether in voluntary or enforced compliance with an obligation to return to: one's country of origin; or a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

'Fundamental rights' are universal legal guarantees without which individuals and groups cannot secure their fundamental freedoms and human dignity and which apply equally to every human being regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status as per the legal system of a country without any conditions.

'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".

'Irregular migrant' in the global context, refers to a person who, owing to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU context, a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code), or other conditions for entry.

'Procedure for international protection': Set of measures described in the Directive 2013/32/EU (Recast Asylum Procedures Directive) which encompasses all necessary steps for granting and withdrawing international protection starting with making an application for international protection to the final decision in appeals procedures.

'Return' is the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.

'Return decision' is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

'Voluntary return' is the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

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National Contribution from The Netherlands

Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.

Top-line factsheet [max. 2 pages]

This EMN study seeks to determine (1) to what extent different options for alternatives to detention are available and used across Member States and Norway, as well as (2) to establish what evidence exists about the impact of different types of coercive measures on the effectiveness of return policies and international protection procedures. The reporting period is January 2015 – December 2020, as this study is a follow-up to a previous EMN study on detention and alternatives to detention conducted in 2014.²²

Methodology

In order to answer both questions for the Netherlands, the National Contact Point of the EMN in the Netherlands conducted legal and policy analysis and a literature study. Secondly, information was gathered through interviews, an expert group meeting and written communication with the organisations cooperating in the immigration procedure: the Aliens Police, Identification and Human Trafficking Division (AVIM) of the National Police, the Royal Netherlands Marechaussee (KMar), the Custodial Institutions Agency (DJI), the Repatriation and Departure Service (DT&V) and the Immigration and Naturalisation Service (IND), as well as two researchers (Mieke Kox, University of Utrecht and Galina Cornelisse, Free University of Amsterdam). In addition, an interview was conducted with Amnesty International. All abovementioned parties were provided a draft of this study and given the opportunity to comment. Written information was furthermore provided by the Central Agency for the Reception of Asylum Seekers. Statistics were provided by the Ministry of Justice and Security.

While preparing this study, two key issues were noted. First of all, the demarcation of “alternatives to detention” in the Netherlands presented an issue. Though the definition according to the EMN Glossary²³ corresponds to so-called “less-coercive measures” (*lichtere middelen*) in the Netherlands, the requirement that such measures are applied as an alternative to administrative detention presented an analytical challenge. Less-coercive measures may also be used as supervisory measures or measures to prevent absconding, and there is no requirement on the imposing official to motivate whether the third-country national would otherwise be detained, i.e., whether the measure is applied as an alternative to detention. Secondly, during the literature analysis that served to answer research question 2, it was noted that while extensive research has been done on the topic of detention in the Netherlands, limited studies and evaluations had been conducted on alternatives to detention.

Detention and alternatives

In the Netherlands, the grounds and maximum periods for the detention of migrants are laid down in the Dutch Aliens Act (*Vreemdelingenwet* (Vw) 2000). This law is based on European regulations and directives and is, among others, in line with the Geneva Convention and the European Convention on Human Rights. In the Aliens Act, a distinction is made between territorial detention (art. 59, 59a and 59b) and border detention (art. 6).

The obligation to consider alternatives to detention in the context of territorial detention is established in art. 59c of the Aliens Act (Vw 2000). The article does not specify which alternatives can be applied. Furthermore, an alternative is foreseen in the context of the Border Procedure (art. 6 Aliens Act). In this study, the alternatives identified are:

²² EMN synthesis report of the EMN study "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies", 2014.

²³ Non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of return or deciding on the individual's right to remain in the Member State.

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- (1) reporting requirements;
- (2) submission of a financial deposit;
- (3) surrendering documents;
- (4) freedom-restricting measure on the basis of art. 56 Aliens Act combined with residence in a Freedom Restricting Location (VBL); and
- (5) freedom-restricting measure on the basis of art. 6, paragraph 1 Aliens Act: obligation to stay in a space or place designated by the officer charged with border control

Depending on the type of immigration procedure and the location where the third-country national is apprehended, detention can be imposed by the Acting Public Prosecutor of the AVIM (National Police), the Acting Public Prosecutor or Designated Official of the KMar, or the Executing Official of the DT&V, and in some cases designated caseworkers of the IND. When imposing detention, these officials are required to assess whether a less-coercive alternative may be used instead. Alternatives should thus always be considered before imposing detention. On the other hand, the measures that may serve as alternatives to detention do not necessarily have to be considered in conjunction with detention, as they can also be used as supervisory measures or measures to prevent absconding. Furthermore, they may be imposed by officials who are not authorised to impose detention.

Assessment procedures and criteria

In the assessment on whether or not to detain, alternatives can be rejected if they are not effective in the individual case and if there are no other criteria which would make detention disproportional. However, there is a margin of discretion for the official in deciding on detention, and researchers note that in practice alternative measures are not always fully considered before ordering detention.²⁴ There are certain criteria indicating the risk of absconding (see Annex II), which are used to determine whether detention is necessary. There are no set criteria based on which an alternative is applied; the necessity and proportionality of detention is determined based on the individual circumstances. Some factors that may be considered in the balancing of interests are the possibility of return (in return procedures) as well as the third-country national's level of cooperation with authorities.

In recent years, NGOs have expressed concerns regarding the attention for health risks of detention and the vulnerability of third-country nationals in the assessment before imposing detention.²⁵ Vulnerability should be considered in the balancing of interests for detention, but vulnerable groups are not excluded from detention because usually (medical) care can be provided in detention. For minors and families with minors, depending on the applicable immigration procedure, detention is applied sparingly or not at all. Furthermore, all alternatives to detention are also available to vulnerable groups. For families with minors without legal stay, shelter is provided in the Family Centre (*Gezinslocatie*, GL). Families staying at the Family Centre are subject to reporting requirements and a freedom-restricting measure (Art. 56 Aliens Act). However, in this context, these measures are not applied as an alternative to detention but as measures to prevent absconding.

Advantages and challenges of alternatives to detention

The following advantages and challenges regarding alternatives to detention in the Netherlands were identified based on interviews with experts from the government organisations cooperating in the immigration procedure, which are responsible for imposing detention and/or alternatives. In general,

²⁴ Besselsen, E., 'De nieuwe zaaksbehandeling in de *habeas corpus-procedure*', 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., 'Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

²⁵ Amnesty International. (2018). Geen cellen en geen handboeien - Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie. Available at: https://www.amnesty.nl/content/uploads/2018/02/AMN_18_05_Rapport-Geen-cellen-en-handboeien_DEF_web.pdf?x81110; Amnesty International, Dokters van de Wereld, Stichting LOS – Meldpunt vreemdelingendetentie. (2016) Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie. Available at: https://www.stichtinglos.nl/sites/default/files/los/AMN_16_20_kwetsbaar%20in%20vreemdelingendetentie_WEB_300dpi.pdf.

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they considered alternatives less invasive than detention as the third-country national is less limited in their freedom; this has the obvious counterpart that less coercive measures do not prevent a third-country national from absconding.

An advantage of alternatives in comparison with detention is that the third-country national gets the possibility to return voluntarily. Voluntary departure is known for being more durable than forced departure carried out from detention. On the other hand, it was indicated that the alternatives are not always effective in promoting cooperation with authorities; in other words, compliance with the conditions of the alternative does not necessarily constitute compliance with the return procedure.

Regarding legal obstacles, the imposition of alternatives is bound to fewer restrictions than detention, which makes them easier to apply. However, for a few of the alternatives the possibility to impose the measure depends on the situation of the third-country national. For reporting obligations, it was noted that the KMar is not mandated to impose this measure on third-country nationals detected entering irregularly. In addition, limited financial resources (financial deposit) and no available documents (surrendering documents) may prevent the alternative from being applied. Especially for irregular migrants who are on the move these alternatives can often not be applied, as a result of which detention becomes the only coercive measure available.

Finally, some alternatives require fewer resources than detention, but this does not hold for all alternatives: the VBL, where the freedom-restricting measure is imposed, is a facility providing shelter and therefore requires availability of resources and capacity. Reporting requirements may also require more staff capacity as they can be applied for a longer period of time.

Effectiveness of detention and alternatives in literature

As noted, limited information was found on the effectiveness of alternatives in comparison with detention. Several reports indicated that the cost-effectiveness of alternatives in the Netherlands was not assessed or that no reliable data was available. However, some research into the effectiveness of detention and alternatives (without relating it to the costs), has been conducted. Regarding the use of detention and alternatives in return procedures, a forthcoming report of the Advisory Committee on Migration Affairs concludes that detention is more effective in realizing returns than all the alternatives grouped together, though this does not say anything about the effectiveness of individual alternatives. The same report also distinguishes certain characteristics that may render detention more or less effective to achieve return: whether the third-country national is subject to a Dublin procedure or other return procedure; the nationality of the third-country national; the third-country national procedural history, and international relations with the country of origin.²⁶ Another study presents that detention has a significant negative impact on immigration detainees' well-being, but only moderately impacts labour migrants' decision-making process regarding their departure. These effects are not found for family and asylum migrants.²⁷

²⁶ Adviescommissie voor Vreemdelingenzaken, 'Samen werk maken van terugkeer', <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/04/22/advies-samenwerken-aan-terugkeer>, last accessed on 12 March 2021

²⁷ Leerkes, A., and Kox, M. (2017). 'Pressured into a preference to leave? A study on the "specific" deterrent effects and perceived legitimacy of immigration detention' 2017, *Law & Society Review*, 51(4), p. 895-929.

Detention and alternatives to detention in international protection and return procedures**Preface – definition and main stakeholders**

In light of the amount of information in this template, a choice was made to add general information to this template in advance in a number of boxes. This is intended to make the template clearer and provide context for detention of third-country nationals in the Netherlands.

Box 1: Detention and alternatives in the Dutch context*Definition of alternatives*

In this study, the definition of an alternative to detention refers to non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of return or deciding on the individual's right to remain in the Member State.²⁸ This largely overlaps with what the experts from government organisations cooperating in the immigration procedure which were consulted for this study call “less-coercive measures”.

When imposing detention, the competent officials are required to assess whether a less-coercive alternative may be used instead. On the other hand, when imposing a less-coercive measure, the official is not required to motivate whether the third-country national would otherwise be detained, i.e., whether the measure is applied as an alternative to detention. Less-coercive measures may also be used as supervisory measures or measures to prevent absconding, and may be imposed by officials who are not authorised to impose detention. As a result, it is challenging to determine how often and in what situations less-coercive measures are used as an alternative to detention.

For the purpose of this report, we have included measures that may be used as an alternative to detention in immigration procedures according to the experts that we have consulted. However, in the description of these measures and in the data we gathered on their usage, it is not possible to differentiate between their use as an alternative to detention or as supervisory measures/measures to prevent absconding.

²⁸ EMN Glossary

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Box 2: Main stakeholders

The following organizations are the main actors when it comes to imposing detention or an alternative:

- *Aliens Police, Identification and Human Trafficking Division (AVIM) of the National Police*
The AVIM can detain third-country nationals detected on the territory. For instance, when performing checkups for irregular labour or after a violation. These are mostly irregular third-country nationals or third-country nationals whose residence application has been rejected in the past. On the grounds of article 50 of the Aliens Act (Vw) 2000 persons who have no lawful residence or who are unable or unwilling to identify themselves may be taken to a place of interview (usually a police station) and be detained for six hours, with a possible extension of another 48 hours. Within this timeframe authorized personnel (Assistant District Attorney (*Hulpofficier van Justitie* - HovJ) or Designated Official (*Aangewezen Ambtenaar* - (AB)) have to make a decision about imposing detention. The AVIM can also decide to impose an alternative, such as an obligation to report or surrendering documents. Imposing a financial deposit is often not an option because the AVIM is not involved with the departure procedure.
- *Royal Netherlands Marechaussee (KMar)*
The KMar checks at the border whether foreign nationals meet the conditions to enter the country. If a person at the airport is denied entry, he/she can apply for international protection at the application center of Schiphol. When applying for asylum the foreign national enters the border procedure and detention can be imposed. No alternatives to detention are provided in the border procedure. If detention is considered not proportionate or effective based on the individual case, the third-country national is transferred to the territorial procedure (this is a standard procedure for unaccompanied minors).
The KMar can also detect third-country nationals at the internal (Schengen) borders. If the person does not want to apply for asylum and has no lawful residence or is unable or unwilling to identify himself the person may be taken to a place of interview (usually a police station) and detained for six hours, with a possible extension of another 48 hours. If a person wants to apply for asylum, the person can be transferred to the application center in Ter Apel, or also be taken into custody if there are grounds to detain the third-country national according to the Aliens Act (Vw).²⁹ Within the timeframe of 48 hours authorized personnel HovJ or BBA) have to make a decision about imposing detention or an alternative.
- *The Repatriation and Departure Service (DT&V)*
The DT&V is responsible for the return of third-country nationals who are issued a return decision after their residence application is rejected, but can also handle Dublin procedures and return procedures of irregular migrants. Caseworkers of the DT&V provide return counselling (*vertrekgesprekken*) to third-country nationals subject to the return procedure. Return counselling is not considered an alternative to detention, but may imposed together with an alternative or with detention. When there is a risk that the third-country nationals will abscond and / or will not cooperate with the departure, detention or an alternative can be considered. If the caseworker wants to proceed to detention, the case is discussed in the Local Return Consultation (*Lokaal Ketenoverleg* - LKO). The LKO gives a proposition for detention via the caseworker to the Executive Officer (*uitvoerende ambtenaar*) of the DT&V. The Executive Officers make the final decision. As the

²⁹ On the grounds of article 59b persons who applied for asylum can be detained to establish the identity or nationality of the third-country national, if detention is considered necessary to obtain information for the processing of the application, if the applicant already completed the asylum procedure and received a return decision, and there are reasonable grounds for assuming that he/she submitted the applications merely to postpone or frustrating the process of the return or if third-country national is considered a danger to national security or public order.

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third-country national is already in the caseload of the DT&V and brought up for detention or alternative by the caseworker the DT&V can prepare and consider a decision to detain or impose an alternative without being limited to a certain timeframe (in contrast to the procedure of the AVIM and KMar who have no preparation period when detecting a third-country national).

Executive Officers of the DT&V can also help the AVIM and KMar with detention decisions when the AVIM or KMar has capacity problems (for instance, when a large group of irregular immigrants is detected).

- *Immigration and Naturalisation Service (IND)*

The IND manages the residence applications of third-country nationals. Third-country nationals who applied for asylum can be detained in accordance with article 8 of the Reception Conditions Directive. Detention of the third-country national is not carried out by the IND itself, but by the AVIM (National Police), KMar or DT&V. The IND is only involved if an existing detention measure is converted into a new detention measure, after the decision on the application.

- *Local Return Consultation (lokaal ketenoverleg-LKO)*

The LKO is a regional meeting for organizations cooperating in the immigration chain, in which the AVIM (National Police), Central Agency for the Reception of Asylum Seekers (COA), DT&V and IND participate. The LKO can be consulted when making a decision for detention or an alternative.

Detention and alternatives to detention in international protection and return procedures

Section 1: National policy and legal framework: development since 2015³⁰

This section aims at providing an update about the legal and policy framework on detention and the use of alternatives to detention since 2015 and until December 2020. Questions from 1 to 4 relate to both migration procedures, namely asylum and return procedures. As such, it gives an overview of the main legal and policy changes since 2015 and until December 2020, as well as an overview of the categories of third-country nationals that can be placed in detention in Member States and Norway according to national law and practice.

Q1. Please report any **changes** on the legal and policy framework on **detention concerning both international protection and return procedures** since 2015.

Please provide a short description of national provisions, grounds for detention or different typologies of detention, from 2015 onwards and the rationale for any changes introduced. Please elaborate on any type of detention available to specific groups e.g. women or families.

General legal framework

In the Netherlands, the grounds and maximum periods for the detention of migrants are laid down in the Dutch Aliens Act (Vw 2000). This law is based on European regulations and directives (such as the Return Directive) and is in line with International conventions (such as the Geneva convention and the European Convention on Human Rights). In the Aliens Act (Vw 2000), a distinction is made between territorial detention (Vw 2000, art. 59, 59a and 59b) and border detention (Vw 2000, art. 6). The Aliens Act prescribes that in all cases an individual assessment of the relevant grounds to detain should be made. Third-country nationals should only be placed in detention as a measure of last resort. The government must give priority to alternatives to detention and the risk of absconding must be determined on a case-by-case basis. In addition, it must be established that there is a risk that the third-country national will abscond and / or the third-country national will not cooperate with the departure (this is not applicable for border detention of persons applying for asylum).³¹ In 2015, the Dutch government commenced a legislative process to introduce a separate regulatory framework for administrative detention in immigration procedures, replacing the current framework as established in the Aliens Act 2000. The proposal has been adopted by the *Tweede Kamer* (House of Representatives) in 2019, and is currently under review of the *Eerste Kamer* (Senate). As the government sought to amend the proposal in 2020, the legislative process is currently suspended, until the amendments have also been adopted by the *Tweede Kamer*.³²

Changes in policy regarding detention centers

- In 2016, a Secure Family Facility (GGV) opened in Zeist. Families with minor children and unaccompanied minors can be placed in detention in this facility.³³
- Up to 2018 adult male third-country nationals could be detained at three different locations. From 2018 onwards, only the detention centre in Rotterdam is used for detaining adult male third-country nationals,³⁴ with the exception of third-country nationals in the border procedure.

³⁰ The latest EMN study on detention and alternatives to detention was published in 2014, therefore the study will cover the period between 2015-2020. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf

³¹ Ministry of Justice and Security, 'Beleidsdoorlichting van het begrotingsartikel 37.3 De terugkeer van vreemdelingen', 2019, [Beleidsdoorlichting van het begrotingsartikel 37.3 "De Terugkeer van Vreemdelingen" \(1\).pdf](#), last accessed 16 March 2021.

³² Eerste Kamer der Staten-Generaal, 34.309 Wet terugkeer en vreemdelingenbewaring, https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en, last accessed on 29 January 2021.

³³ Dienst Justitiële Inrichting, 'Detentiecentrum Zeist – Vreemdelingen', www.dji.nl/locaties/z/detentiecentrum-zeist-vreemdelingen, last accessed on 12 March 2021

³⁴ Families, unaccompanied minors, women and persons with certain health problems are placed at different facilities.

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Changes in regulations for vulnerable groups

- In 2020, an adjustment (addition) to the policy relating to detention of unaccompanied minors (UAM) was made for the purpose of preventing UAMs from absconding.³⁵ The amendment to the Aliens Act Implementation Guidelines (Vc) makes it possible to place a UAM, who is detected for the first time and whose departure can in principle be effected within four weeks, in the GGV. In the previous policy, UAMs that were not suspected of any crime and did not abscond before could only be detained for two weeks. The authorities considered this too short for the determination of their identity and arranging the departure and adequate reception in the country of origin. An expansion, under conditions, has been adopted to expand the possibility of detaining this group in order to return them to their country of origin.³⁶

Territorial detention (Vw 2000, art. 59, 59a and 59b)

The grounds of detention of third-country nationals are laid down in article 59 (safeguarding national security and public order), 59a (Dublin claimants) and 59b (Asylum seekers) of the Aliens Act (Vw 2000). The Return Directive (2008/115/EC) is transposed in article 59 Vw. The criteria for assessing the risk of absconding are laid down in article 5.1b of the Aliens Decree (Vb) (see annex II). More detailed guidelines about the appliance of the Aliens Act (Vw) are laid down in the Aliens Act Implementation Guidelines (Vc).

Changes in policy regarding territorial detention

- Article 59b was added to the Aliens Act (Vw) 2000 in July 2015 (see table 1).³⁷

Border detention (Vw 2000, art. 6)

Detention at the border can be imposed on third-country nationals who apply for asylum at the external border. Their application is handled in the so-called *border procedure*, and the decision on the entry of the Netherlands is postponed.³⁸ During the course of the border procedure detention is applied. The course of the border procedure is laid down in article 3 of the Aliens Act (Vw). Detention at the border is also applicable for the purpose of transfer to another Member State, subject to Article 28 of the Dublin Regulation, on the grounds of article 6a of the Aliens Act (Vw).

Changes in border detention

- In 2014 border detention could only be applied if an asylum seeker entered the country without a valid travel document or without sufficient financial means, or if there were grounds for detention on grounds of public order or national security, for example in the case of suspected war crimes. In July 2015 the border procedure was introduced in a separate regulatory framework (as an implementation of article 43 of the Asylum Procedures Directive). A provision was added to article 6 of the Aliens Act (Vw) to provide for the detention in the border procedure for asylum seekers as well, in which case the decision on the entry of the Netherlands is postponed.³⁹ The border procedure is elaborated further in the Aliens Decree (Vb), Article 3.109 b. The border procedure is linked to a custodial measure. Article 6, third paragraph, of the Aliens Act (Vw) was amended for this.

35 *Parliamentary Papers II*, 2018-2019, 19637, no. 2530.

36 *Government Gazette*, 2020, no. 15932

37 *Government Gazette II*, 2015, 292

38 By law, a decision of the asylum procedure has to be made no later than the 28th day after the start of the border procedure, otherwise the third-country national will be granted entry to the Netherlands. In this case the asylum application will be dealt in the regular asylum procedure. A measure of detention based on Article 59b, 1d of the Aliens Act can be imposed if the application takes longer than 28 days to process and when there are concerns regarding the safeguarding of the public order or national security.

39 *Government Gazette*, 2015, no. 292.

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The border procedure shows many similarities with the procedure which was formerly applied at the Application Centre (AC) Schiphol. However, the border procedure differs from the former procedure in the following aspects:

- Third-country nationals who apply for asylum at an external border can no longer be refused entry for the duration of the border procedure process. Admission is therefore suspended by the officer in charge of the border guards for the duration that IND processes the asylum application in the border procedure.
 - The following grounds may (further) be dealt with in the border procedure and be decided on: inadmissible and manifestly unfounded. Dublin claimants are treated in a separate (Dublin) procedure at the border.
 - To shorten unnecessarily long custody measures, tailor-made solutions are provided in the border procedure in respect of the Rest and Preparation Period.⁴⁰ The Rest and Preparation Period could therefore be shorter than 6 days. Dublin claimants are exempt from a Rest and Preparation Period.
- In April 2020 the provision in article 6 of the Aliens Act (Vw) regarding the border procedure was changed as a result of the *Gnandi* judgment⁴¹, the decision in the Case C. et al.⁴², and the related judgments of the Administrative Law Division of the Council of State (ABRvS) of 5 June 2019.⁴³ The judgments of CJEU have considerable consequences for current legislation.⁴⁴ These judgments necessitate amendment of the legal basis for the residence of third-country nationals who are in appeal against a rejection of their asylum application in the border procedure. The ABRvS held that at present, national legislation does not have a suitable basis for imposing a custodial order at the border on third-country nationals whose asylum applications have been rejected. This means that third-country nationals who submit an asylum application at the border can no longer be held in border detention after the decision to reject their application. Consequently, these third-country nationals would gain entry to the Netherlands. In order to ensure that border detention remains possible, an amendment was made on 13 May 2020.⁴⁵ In addition, a new separate model (M17A) was added that allows denial of entry after the third-country national has no right to stay according to the Asylum Procedures Directive.⁴⁶

Q2. Please report on any **legal and policy changes regarding the use of alternatives to detention** concerning both international protection and return procedures since the last EMN study on detention and alternatives to detention (2014)

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| <p>- The obligation to consider alternatives to detention in the context of territorial detention is established in art. 59c of the Aliens Act (Vw) 2000. Article 59c was introduced in 2015 with the transposition of Directives 2013/32/EU and 2013/33/EU.⁴⁷ The article states that detention on the</p> | |
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⁴⁰ After registration and identification, a third-country national who applies for asylum gets a so-called Rest and Preparation period (*rust- en voorbereidingstijd*) of at least six days before the asylum procedure starts. During this period, the third-country national is informed about the procedure and prepared for the procedure and a medical examination takes place.

⁴¹ CJEU, 18 June 2018, no. C-181/16 (*Gnandi*).

⁴² CJEU, 5 July 2018, no. C-269/18 PPU.

⁴³ Administrative Jurisdiction Division of the Council of State (ABRvS), 5 June 2019, no. 201808923/1/V3, ECLI:NL:RVS:2019:1710 and ABRvS 5 June 2019, no. 201808670/1/V3, ECLI:NL:RVS:2019:1843.

⁴⁴ Parliamentary Papers II, 2018/19, 35271, 3, p. 1.

⁴⁵ Government Gazette, 2020, 136.

⁴⁶ Government Gazette, 2020, no. 25589.

⁴⁷ Staatsblad 2015, no. 292.

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<p>basis of art. 59, 59a and 59b may only be imposed if no less-coercive alternative can be applied effectively.⁴⁸ The aim of the article is to guarantee the necessity and proportionality of detention.⁴⁹</p> <ul style="list-style-type: none"> - With the transposition of Directives 2013/32/EU and 2013/33/EU, the Netherlands furthermore introduced a separate framework for the Border Procedure, set out in art. 3 and art. 6 of the Aliens Act.⁵⁰ The Border Procedure does not provide for alternatives to detention, except for third-country nationals who are refused at the border and do not apply for international protection and for whom return can be arranged within a matter of days. Rather than being detained, this group may be ordered to stay in the airport lounge ex art. 6, first paragraph Aliens Act (see question 5.2).⁵¹ For applicants for international protection and persons subject to a Dublin procedure, detention in the border procedure is only foregone in case of exceptional individual circumstances leading to detention being disproportionately burdensome, as any measure other than detention would effectively provide access to the territory of the Member State.⁵² A general exception applies to unaccompanied minors and families with minors who make an application for international protection or who are subject to a Dublin procedure; these two groups are not subject to the Border Procedure.⁵³ - In addition to these changes, in 2015 the Dutch government commenced a legislative process to introduce a separate regulatory framework for administrative detention in immigration procedures, replacing the current framework as established in the Aliens Act 2000. The proposal has been adopted by the <i>Tweede Kamer</i> (House of Representatives) in 2019, and is currently under review of the <i>Eerste Kamer</i> (Senate). As the government sought to amend the proposal in 2020, the legislative process is currently suspended, until the amendments have also been adopted by the <i>Tweede Kamer</i>.⁵⁴ In the legal proposal, art. 57 of the Aliens Act 2000 would be amended to incorporate alternatives to detention. The available alternatives would be: restrictions on movement (<i>gebiedsgebod</i>); restrictions on movement together with reporting requirements, in combination with shelter; submitting sureties (submitting documents or financial sureties). Furthermore, these alternatives, as well as the assessment framework for detention (as ensuing from Article 59 of the Aliens Act) would be elaborated in a proposed amendment of the Aliens Decree (Vb) 2000.⁵⁵ The Senate has postponed its consideration of the legal proposal in anticipation of a different legal proposal that was submitted to Parliament in June 2020, regarding measures for asylum seekers causing nuisance.⁵⁶ Considering that the proposal has not yet been adopted, there have not been any consequences on the implementation of alternatives to detention so far. - In 2012, the policy framework for the provision of measures restricting liberty (<i>vrijheidsbeperkende maatregelen</i>) for irregularly staying third-country nationals on the ground of art. 56, first paragraph, under a of the Aliens Act was implemented in the Aliens Act Implementation Guidelines. In 2017, this section was expanded to include measures restricting 	
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⁴⁸ Ibid.

⁴⁹ Kamerstukken II, 2014-2015, 34088 no. 3, Memorie van Toelichting, 3.2.2

⁵⁰ Staatsblad, 2015, no. 294, 3.2.1

⁵¹ Information provided by IND on 18 March 2021.

⁵² Kamerstukken II, 2014-2015, 23088 no. 3, Memorie van Toelichting,

⁵³ Section A5/3.2 of the Aliens Act Implementation Guidelines (Vc) 2000.

⁵⁴ Eerste Kamer der Staten-Generaal, 34.309 Wet terugkeer en vreemdelingenbewaring, https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en, last accessed on 29 January 2021.

⁵⁵ Kamerstukken II, 2015-2016, 34309 no. 3, Memorie van Toelichting, p. 48.

⁵⁶ Eerste Kamer der Staten-Generaal, 34.309 Wet terugkeer en vreemdelingenbewaring, https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en, last accessed on 29 January 2021.

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<p>liberty (<i>vrijheidsbeperkende maatregelen</i>) on the ground of art. 56 first paragraph under b, which concerns regularly staying third-country nationals. Furthermore, a section was added to set out the possibility of placing third-country nationals causing nuisance in a separate facility (<i>extra begeleidings- en toezichtslocatie</i>, EBTL).⁵⁷ The EBTL was a pilot programme which lasted from 2017 until 2020, after which it was replaced by the Enforcement and Monitoring Location (<i>Handhaving- en Toezichtlocatie</i>, HTL). As the EBTL and HTL are not considered alternatives to detention but shelter facilities, they are not discussed in this report.</p>	
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Q3. Please complete the table below with regard to the **categories of third-country nationals that can be detained** in your (Member) State. You can refer to the same information reported in the 2014 EMN study on Detention and Alternatives. Please highlight any changes since then.

Note: Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q5) after the table.

Table 1. Categories of third-country nationals that can be detained

	Categories of third-country nationals	Can third-country nationals under this category be detained? Yes/No	If yes, what is the legal basis for detention? <i>List the ground for detention</i>	Which alternatives to detention are available for this category? <i>List in bullet point the alternatives to detention available for each category. Further details on each measure will be collected in section 2.</i>	What are the (judicial and non-judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?
<i>International Protection</i>	Applicants for international protection in ordinary procedures	Yes	<p>Article 59b of the Aliens Act⁵⁸ and article 5.1c of the Aliens Decree (Vb)</p> <p>On the grounds of article 59b persons who applied for asylum can be detained in the following cases:</p> <ul style="list-style-type: none"> - To establish the identity or nationality of the third-country national, and if at least two of the serious or lighter grounds as laid down in article 5.1b of the Aliens Decree (Vb) (see Annex II) for detention are applicable. 	<p>1. Reporting requirements (meldplicht)</p> <p>3. Surrendering documents</p>	<ul style="list-style-type: none"> - KMar - AVIM (National Police) - IND - DT&V⁵⁹

⁵⁷ Staatscourant 2017, 53847, C.

⁵⁸ Art. 59b corresponds with article 8 of the Reception Conditions Directive.

⁵⁹ The Repatriation and Departure Service (DT&V) is only involved if the third-country national was already in the caseload of the DT&V prior to entering the asylum procedure.

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		<ul style="list-style-type: none"> - If detention is considered necessary to obtain information for the processing of the application, in particular if there is a risk of withdrawal, and at least two of the serious or lighter grounds as laid down in article 5.1b of the Aliens Decree (Vb) (see Annex II) for detention are applicable. - If the applicant already completed the asylum procedure and received a return decision, and there are reasonable grounds for assuming that he/she submitted the applications merely to postpone or frustrating the process of the return. - The third-country national is considered a danger to national security or public order. This is certainly the case if an appeal on the application can be made to Article 1F of the Geneva Convention. 		
<i>Applicants for international protection in border procedures</i>	Yes	<p>Article 6 of the Aliens Act and article 3 of the Aliens Act</p> <p>On the grounds of article 6 of the Aliens Act detention at the border can be imposed on third-country nationals who apply for asylum at the external border. Their application is handled in the so-called <i>border procedure</i>, and the decision on the entry of the Netherlands is postponed.⁶⁰ During the course of the border procedure detention is applied. If it is established in the border procedure that the third-country national falls under the scope of a postponement (moratorium) of the decision or departure, or is likely to be eligible for an asylum residence permit, detention can be lifted.⁶¹ If in the border procedure the application is denied and there is a risk that the third-country national will abscond or if the third-country national doesn't cooperate on the preparations of the</p>	Not applicable. If detention is considered not proportionate or effective based on the individual case, the detention must be lifted and the third-country national is transferred to an open centre to follow the ordinary asylum procedure. This is always the case for	<ul style="list-style-type: none"> - KMar - National Police (AVIM and Seaport Police) - IND

⁶⁰ By law, a decision of the asylum procedure has to be made no later than the 28th day after the start of the border procedure, otherwise the third-country national will be granted entry to the Netherlands. In this case, the asylum application will be dealt in the regular asylum procedure. A measure of detention based on Article 59b, 1d of the Aliens Act can be imposed if the application takes longer than 28 days to process and when there are concerns regarding the safeguarding of the public order or national security.

⁶¹ Detention is only lifted if there are no contraindications or 1F indications.

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			return procedure, access to the Netherlands will be refused when the applicant has no longer a right to stay (in accordance with the Reception Conditions Directives and Procedures Directive). In this case detention can be applicable if there is a prospect of return and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively (which is rarely the case because alternative measures entail entry to the Schengen area).	unaccompanied minors and families with minors.	
Return procedures	<i>Irregular migrants detected in the territory</i>	Yes	<p>Article 59 of the Aliens Act and article 5.1a and article 5.1b of the Aliens Decree (Vb)</p> <p>In article 59 of the Aliens Act (Vw) it is laid down that detention can be imposed if there are concerns regarding the safeguarding of the public order or national security. The concept of public order in the statutory provision of Article 59 of the Aliens Act (Vw) refers to the prevention of irregular stay in general. Article 59 is applicable in general to all third-country nationals without a right to legal residence, or with a temporary right to residence based on an application for a regular residence permit (in that case the detention is limited to 6 weeks). Thereby, a few regular grounds for migration are listed in which also third-country nationals with a residence permit can be detained. To impose detention on the grounds of Article 59 at least two of the serious or lighter grounds for detention as laid down in article 5.1b of the Aliens Decree (Vb) (see annex II) must be applicable. Detention must be terminated the moment the third-country national indicates that he/she wishes to leave the Netherlands and he/she has the opportunity to do so.</p>	<ol style="list-style-type: none"> 1. Reporting requirements 2. Financial deposit 3. Surrendering documents 4. Freedom-restricting measure with VBL 	<ul style="list-style-type: none"> - AVIM (National Police) - KMar⁶² - DT&V

⁶² For the Royal Netherlands Marechaussee the options to impose an alternative to detention to irregular migrants detected in the territory. The KMar is not authorised to impose a reporting requirement for this category.

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Persons who have been issued a return decision	Yes	Article 59 of the Aliens Act (Vw) and article 5.1a and article 5.1b of the Aliens Decree (Vb), article 6 of the Aliens Act (Vw) (border return detention) See previous column ' <i>Irregular migrants detected in the territory</i> ' and ' <i>Applicants for international protection in border procedures</i> ' for an explanation of the grounds)	1. Reporting requirements 2. Financial deposit 3. Surrendering documents 4. Freedom-restricting measure with VBL	- AVIM (National Police) - DT&V - IND ⁶³ - KMar
Dublin procedure	Yes	Article 59a of the Aliens Act (Vw) and article 5 of the Aliens Decree (Vb); On the grounds of article 59a of the Aliens Act (Vw), detention can be imposed for the purpose of transfer to another Member State, subject to Article 28 of the Dublin Regulation. According to article 29 of the Dublin Regulation Member States may detain a person in order to secure transfer procedures in accordance with this Regulation if there is a significant risk of absconding, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. To impose detention at least two of the serious or lighter grounds for detention as laid down in article 5.1b of the Aliens Decree (Vb) (see annex II) must be applicable. ⁶⁴	1. Reporting requirements 2. Financial deposit 3. Surrendering documents 4. Freedom-restricting measure with VBL	- AVIM (National Police) - DT&V - IND ⁶⁵
Irregular migrants detected at the border	Yes	Article 6 of the Aliens Act (Vw) and article 3 of the Aliens Act (Vw) for migrants who are detected at the border traveling into the Netherlands. ⁶⁶	5. Freedom-restricting measure (Art. 6, paragraph 1): obligation	- KMar - IND ⁶⁷ - Seaport police

⁶³ The IND is only involved if an existing detention measure is converted into a new detention measure.

⁶⁴ If the third-country national indicates that he will leave independently on his own initiative to the Member State that is responsible for handling his application for international protection, the IND will offer him a maximum period of ten working days after the decision has been issued to effect his departure. If this period has expired without the third-country national having left, there is a serious ground for detention. If the third-country national indicates that he will not cooperate with the transfer to the Member State responsible for examining his application for international protection, there is also a serious ground for detention.

⁶⁵ The IND is only involved if an existing detention measure is converted into a new detention measure.

⁶⁶ If an irregular migrant is detected at the border, traveling out of the country article 59 and 59a apply.

⁶⁷ The IND is only involved if an existing detention measure is converted into a new detention measure.

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			See previous column ' <i>Applicants for international protection in border procedures</i> ' for an explanation of the grounds of article 6)	to stay in a space or place designated by the officer charged with border control.	
	Dublin procedure for migrants detected at the border	Yes	Article 6a of the Aliens Act (Vw); In article 6a it states that detention on the grounds of article 6 can be continued for the purpose of a transfer to a responsible Member State, subject of Article 28 of the Dublin Regulation.	Not applicable. If detention is considered not proportionate or effective based on the individual case, the detention must be lifted and the third-country national is transferred to an open centre. This is always the case for unaccompanied minors and families with minors.	<ul style="list-style-type: none"> - KMar - IND⁶⁸ - Seaport police

Q4. Is it possible, within the national legal framework of your (Member) State, to detain (or to impose an alternative to detention to) persons belonging to **vulnerable groups**, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Yes/ No

If yes, under which conditions can vulnerable persons be detained?

International protection procedures	Return procedures
Please indicate if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided	Please indicate here if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided

⁶⁸ The IND is only involved if an existing detention measure is converted into a new detention measure.

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Unaccompanied Minors	<p>Yes, detention can be imposed in a Secured Family Facility (GGV), but not at the border. If an irregular UAM is detected on the territory and is not suspected of any crime and did not abscond before, detention can last no longer than four weeks.</p> <p>Yes, alternatives to detention are provided⁶⁹</p>	<p>Yes, detention can be imposed in a GGV, but not at the border. If an irregular UAM is detected on the territory and is not suspected of any crime and did not abscond before, detention can last no longer than four weeks.</p> <p>Yes, alternatives to detention are provided</p>
Disabled people	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>
Elderly people	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>
Families with children and single parents with minor	<p>Yes, detention can be imposed. Families with minor children can only be placed in territorial detention in a GGV only if they have previously withdrawn from supervision. In principle, detention does not last longer than 2 weeks (this can be extended under certain circumstances).</p> <p>Yes, alternatives to detention are provided.</p> <p>Minors under 12 who are not unaccompanied are exempt from reporting requirements in the international protection procedure.⁷⁰</p>	<p>Yes, detention can be imposed. Families with minor children can only be placed in territorial detention in a GGV only if they have previously withdrawn from supervision. In principle, detention does not last longer than 2 weeks (this can be extended under certain circumstances).</p> <p>Yes, alternatives to detention are provided.</p> <p>Families residing at a Family Centre (Gezinslocatie), which is a type of shelter, are subject to reporting requirements and a freedom-restricting measure (Art. 56 Aliens Act (Vw)). However, these are not applied as an alternative to detention but as a measure to prevent absconding.</p>
Persons with serious illnesses and persons with mental disorders	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>
victims of human trafficking	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).⁷¹</p> <p>Yes, alternatives to detention are provided</p>	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>
Pregnant women	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).⁷²</p> <p>Yes, alternatives to detention are provided</p>	<p>Yes, can be imposed, if medical care can be provided at the facility (see Q10.1).</p> <p>Yes, alternatives to detention are provided</p>

⁶⁹ There are no separate alternatives to detention for the vulnerable persons specified here. All alternatives listed in Table 1 can also be applied to vulnerable persons.

⁷⁰ Section A5/10.3.1 of the Aliens Act Implementation Guidelines (Vc) 2000.

⁷¹ If the third-country national presses charges, or is offered a reflection period, detention can be lifted on the grounds of Article 8 of the Aliens Act Implementation Guidelines.

⁷² A third-country national can get a suspension of departure on medical grounds six weeks before and after childbirth.

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Other vulnerable persons	<i>Detention can be imposed. In all cases, an individual assessment is made. Extra considerations are made for the position of vulnerable groups.</i>	<i>Detention can be imposed. In all cases, an individual assessment is made. Extra considerations are made for the position of vulnerable groups.</i>

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Section 2: Availability and practical organisation of alternatives to detention

This section explores the availability of different types of alternatives to detention for different categories of third-country nationals. For each, it explores the practical organisation of the alternative, including information on the authorities/organisations responsible for managing the implementation of the alternatives; the conditions that must be met by the third-country national to benefit from an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions.

EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.

Q5. Please indicate whether any **alternatives to detention for third-country nationals are available in your (Member) State** and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 2. 1 Available alternatives to detention for third-country nationals

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals) <i>Please provide information on how often and to which authority persons subject to this measure should report</i>	Yes Persons subject to this measure should report to AVIM (National Police). There is no set frequency. In practice, this can be daily, weekly, bi-weekly or monthly. ⁷³ If combined with the provision of shelter, the frequency of reporting is in principle set at once per week; a more frequent reporting requirement may only be applied for reasons of public order. ⁷⁴
A2	Obligation to surrender a passport, travel document or identity document	Yes
A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	No ⁷⁵
A4	Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.	Yes: freedom-restricting measure (art. 56 Aliens Act (Vw)). This measure may be combined with shelter in a Freedom Restricting Facility (<i>Vrijheidsbeperkende Locatie</i> , VBL). House arrest is not used in the Netherlands.
A5	Release on bail (with or without sureties) <i>Please provide information on how the amount is determined; whether this can be paid by a third person/entity r (e.g. family member, NGO or</i>	Yes Issue of a financial guarantee is used in the return procedure. The deposit amount is set at a maximum of € 1,500. The DT&V may

⁷³ Interview with AVIM on 8 February 2021.

⁷⁴ Information provided by DT&V on 10 March 2021.

⁷⁵ The requirement to communicate the address to authorities applies to all third-country nationals in immigration procedures. As it is the norm, this is not considered an alternative to detention.

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	<i>community group); and at what point the money is returned</i>	determine the amount depending on the individual case. The deposit will be returned by the DT&V if the third-country national reports to the KMar at the airport and actually leaves the Netherlands. ⁷⁶
A6	Electronic monitoring (e.g. tagging)	No
A7	<i>Release to a guardian/guarantor Please provide information on who could be appointed as a guarantor/guardian (e.g. family member, NGO or community group)</i>	No
A8	Release to care worker or under a care plan	No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	No ⁷⁷
A10		
	Other alternative measure available in your (Member) State. Please specify.	Yes. Freedom restricting measure (Art. 6, paragraph 1): obligation to stay in a space or place designated by the officer charged with border control.

Q5.1 Amongst the alternatives above indicated, please could you indicate which ones (amongst those defined by law) are the **most used and why**? Please indicate as relevant the specific time frame

It is not possible to indicate which measures are used most often as an alternative to detention. Data on the use of less-coercive measures in return procedures indicate that the requirement to reside in the VBL (paired with the freedom-restricting measure ex art. 56 Aliens Act (Vw)) was used most often, followed by reporting requirements.⁷⁸ However, these measures may also be applied as measures to prevent absconding, and do not necessarily always replace detention.

Q5.2 Please briefly describe each of the alternatives indicated above. Copy paste the table below as many times as necessary.

Table 2.2 Description of available alternatives to detention for third-country nationals

Alternative 1: Reporting requirements (*meldplicht*)

⁷⁶ Section A1/10.6 of the Aliens Act Implementation Guidelines (Vc) 2000.

⁷⁷ Caseworkers of the Repatriation and Departure Service (DT&V) provide return counselling (*vertrekgesprekken*) to third-country nationals subject to the return procedure. Return counselling is not considered an alternative to detention, but may be imposed together with an alternative or with detention.

⁷⁸ According to the following report, the requirement to reside in the VBL and the HTL are applied most often in the Return procedure: Ministry of Justice and Security, 'Beleidsdoorlichting van het begrotingsartikel 37.3 De terugkeer van vreemdelingen', 2019, [Beleidsdoorlichting begrotingsartikel 37.3. De terugkeer van vreemdelingen | Rapport | Rijksoverheid.nl](https://www.rijksoverheid.nl/onderwerpen/immigratie-en-integratie/rapporten/2019/09/18/beleidsdoorlichting-begrotingsartikel-37.3-de-terugkeer-van-vreemdelingen), last accessed on 15 March 2021

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<p><i>In what it consists, and maximum duration</i></p>	<p>Persons subject to this measure should report to the AVIM (National Police). There is no set frequency; third-country nationals may be required to report daily, weekly, biweekly or monthly. There is no maximum duration.⁷⁹</p> <p>If combined with the provision of shelter, the frequency of reporting is in principle set at once per week, while a more frequent reporting requirement may only be applied for reasons of public order.⁸⁰</p> <p>Return Procedure The reporting requirement is used for persons who cooperate with return counselling by DT&V. The reporting requirement can be combined with other supervisory measures.⁸¹</p> <p>International Protection Procedure There is no set frequency for the reporting requirement in the international protection procedure.</p>
<p><i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i></p>	<p>Return procedure</p> <ul style="list-style-type: none"> - Art. 54, first paragraph, f, Aliens Act (Vw) 2000 - Art. 4.51, first paragraph, b, Aliens Decree (Vb) 2000 - A5/10.3.2 Aliens Act Implementation Guidelines (Vc) 2000 <p>International protection procedure</p> <ul style="list-style-type: none"> - Art. 54, first paragraph, f, Aliens Act (Vw) 2000 - Art. 4.51, first paragraph, b, Aliens Decree (Vb) 2000 - A5/10.3.1 Aliens Act Implementation Guidelines (Vc) 2000
<p><i>Is it used in practice? Please provide any available data for the period 2015-2020</i></p>	<p>Return procedure Yes, it is used in practice: 429 (2015); 529 (2016); 447 (2017).⁸² However, it is not possible to specify how often it is applied as an alternative to detention (rather than a measure to prevent absconding).</p> <p>International protection procedure Yes, it is used in practice. No data available.</p>
<p><i>National authorities responsible to administer the alternative</i></p>	<p>Return procedure The reporting requirement is administered by AVIM (National Police). It can be imposed by AVIM.</p> <p>International protection procedure The reporting requirement is administered by AVIM. It can be imposed by AVIM and KMar.</p>

⁷⁹ Information provided by AVIM on 8 February 2021.

⁸⁰ Information provided by DT&V on 10 March 2021.

⁸¹ Section A5/10.3.2 of the Aliens Act Implementation Guidelines (Vc) 2000.

⁸² This data applies only to the return procedure. Ministry of Justice and Security, 'Beleidsdoorlichting van het begrotingsartikel 37.3 De terugkeer van vreemdelingen', 2019, [Beleidsdoorlichting begrotingsartikel 37.3. De terugkeer van vreemdelingen | Rapport | Rijksoverheid.nl](#), last accessed on 15 March 2021

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<p><i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i></p>	<ul style="list-style-type: none"> - Before imposing the measure cases are first discussed in the local meeting for organisations cooperating in the immigration chain (LKO), in which AVIM, the COA, DT&V and IND participate. - If the third-country national is staying independently in a municipality, cases can be discussed between the organisations cooperating in the immigration procedure, or in local co-consultation (<i>Lokaal Samenwerkingsoverleg</i>, LSO). Parties participating in the LSO are AVIM, DT&V, IND and municipalities. - If the measure is combined with shelter in the VBL, the COA can carry out an in-house registration (see below).
<p><i>Obligations attached to the granting of the alternative (if relevant)</i></p>	<p>Return procedure The reporting requirement is used for persons cooperating with return counselling by DT&V, and can be combined with other supervisory measures.⁸³ Furthermore, conditions can be attached to the reporting requirements, e.g. the third-country national can be required to provide certain documents the next time he or she reports to AVIM.⁸⁴</p> <p>If the measure is combined with shelter in the VBL, the reporting requirement is combined with a daily obligation (Monday – Friday) to report to the COA, which is responsible for managing the facilities. This process is called in-house registration, and it serves to check whether the third-country national is still residing in the facility and is therefore entitled to financial/material support.⁸⁵</p> <p>International protection procedure Applicants for international protection who are subject to a reporting requirement should also comply with the in-house registration at the reception centre where they are staying, for the reasons specified above. In addition, they are required to be available for the asylum procedure.⁸⁶</p>
<p><i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i></p>	<p>If a third-country national has not complied with the reporting requirement on two consecutive occasions, he or she is ordered by AVIM to provide personal information about the withdrawal from the reporting requirement. If the third-country national does not respond, the AVIM may conclude that the person has left the Netherlands or has definitively withdrawn from</p>

⁸³ Section A5/10.3.2 of the Aliens Act Implementation Guidelines (Vc) 2000.

⁸⁴ Interview with AVIM, 8 February 2021.

⁸⁵ Interview with DT&V, 25 February 2021; Information provided by COA on 15 March 2021.

⁸⁶ Art. 55 Aliens Act 2000.

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	<p>supervision. AVIM will process this information in the immigration administration.⁸⁷</p> <p>For third-country nationals who are staying in a reception facility, AVIM has an address check carried out by the police. The police must determine the actual departure of the third-country national. The AVIM may conclude that the third-country national has definitively left once this has been established beyond doubt. The AVIM must inform the IND and the DT&V about the (presumed) departure of a third-country national by means of a referral in the immigration database, the BVV (<i>Basisvoorziening Vreemdelingen</i>).⁸⁸</p> <p>For third-country nationals staying in a facility managed by COA, such as the VBL or a reception centre, the allowance may be suspended upon non-compliance with the in-house registration. However, this should be seen separately from the reporting requirement.</p> <p>If a person does not comply and a return procedure has been initiated, it can be examined whether forced departure is appropriate. Non-compliance with a supervisory measure is one of the criteria constituting a serious ground for detention according to art. 5.1b Aliens Decree (Vb) (see annex II). However, non-compliance does not automatically lead to detention, as detention is always based on an individual assessment.</p>
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The compliance is monitored by AVIM.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The Inspectorate of Justice and Security monitors the activities of the AVIM.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	In 2019, it was assessed how often persons subject to the various alternatives to detention had departed voluntarily in the period 2014-2017. However, due to the data provided it was not possible to separate persons who had been subject only to a reporting requirement from persons who had been subject to a reporting requirement followed by detention. ⁸⁹

Alternative 2: Financial deposit (<i>borgsom</i>)	
<i>In what it consists, and maximum duration</i>	<p>Return procedure</p> <p>Third-country nationals who are ordered to leave the Netherlands</p>

⁸⁷ A5/10.3.3 Aliens Act Implementation Guidelines 2000.

⁸⁸ Aliens Act Implementation Guidelines, A5, 10.3.3.

⁸⁹ Ministry of Justice and Security, 'Beleidsdoorlichting van het begrotingsartikel 37.3 De terugkeer van vreemdelingen', 2019, [Beleidsdoorlichting begrotingsartikel 37.3. De terugkeer van vreemdelingen | Rapport | Rijksoverheid.nl](#), last accessed on 15 March 2021

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	<p>within four weeks on the ground of art. 62, first paragraph, Aliens Act (Vw) 2000, can be ordered to pay a financial deposit (issue sureties) in order to mitigate the risk of absconding. This measure can also be imposed if the voluntary or forced departure is postponed.⁹⁰</p> <p>A deposit may be imposed by the DT&V on third-country nationals who are subject to an obligation to leave and who in any case meet all of the following conditions:</p> <ul style="list-style-type: none"> - the third-country national is demonstrably working on return; - the third-country national has signed a return contract with the DT&V in which the rights and obligations of the third-country nationals with regard to return and the deposit are laid down. <p>The return contract in any case contains a period of, in principle, 28 days within which the third-country national must have fulfilled his obligation to leave. The deposit amount is set at a maximum of € 1,500. The DT&V may determine the amount depending on the individual case. The deposit will be returned by the DT&V if the third-country national reports to the KMar at the airport and actually leaves the Netherlands.⁹¹</p> <p>International protection procedure Not applicable.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>Return procedure</p> <ul style="list-style-type: none"> - Art. 54, first paragraph, h, Aliens Act (Vw) 2000 - Art. 4.52a and 4.52b Aliens Decree (Vb) 2000 - A5/10.4 Aliens Act Implementation Guidelines (Vc) 2000
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	<p>Return procedure</p> <p>Yes, please refer to the statistical annex.</p>
<i>National authorities responsible to administer the alternative</i>	<p>DT&V, AVIM (National Police), KMar.</p>
Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)	<p>If the third-country national is staying at a facility managed by COA, before imposing the measure cases are first discussed in the LKO, in which AVIM, the COA, DT&V and IND participate.</p> <p>If the third-country national is staying independently in a municipality, cases can be discussed between the organisations cooperating in the immigration procedure, or in local co-consultation (<i>Lokaal Samenwerkingsoverleg</i>, LSO). Parties participating in the LSO are AVIM, DT&V, IND and municipalities.</p>
<i>Obligations attached to the granting of the alternative (if relevant)</i>	<p>The imposition of the deposit can be combined with other supervisory measures.</p>
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	<p>If a person does not comply and a return procedure has been started, it can be examined whether forced departure is possible. Non-compliance with a supervisory measure is one of the criteria constituting a serious ground for detention according to art. 5.1b Aliens Decree (Vb) (see annex II). However, non-compliance does</p>

⁹⁰ Art. 4.52a, Aliens Decree 2000.

⁹¹ Section A1/10.6 Aliens Act Implementation Guidelines (Vc) 2000.

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	not automatically lead to detention, as detention is always based on an individual assessment.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Not applicable.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The Inspectorate for Justice and Security monitors the activities of the AVIM, DT&V and KMar.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	In 2019, it was assessed how often persons subject to the various alternatives to detention had returned voluntarily in the period 2014-2017. For the submission of a financial deposit (<i>Borgsom</i>) no data on voluntary return was provided, however it was stated that 'In most cases, the deposit will lead to demonstrated departure.' ⁹²

Alternative 3: Surrendering documents (<i>inname documenten</i>)	
<i>In what it consists, and maximum duration</i>	<p>All immigration procedures Officials responsible for border control and immigration control are authorised to order the third-country national to surrender travel or identity documents. The purposes for which the measure can be imposed are listed in the Aliens Decree (Vb) 2000.⁹³</p> <p>This measure is not necessarily used as an alternative to detention. It can also be applied for the purpose of identity research or to stamp the document, and may for example be imposed together with detention.⁹⁴ However, on the ground of art. 4.23 Aliens Decree (Vb) it can be used if a third-country national is apprehended by the police and there are reasons to believe he or she is staying irregularly, but it is not possible to transfer the third-country national to a location where a hearing can take place right away.⁹⁵ In this context, the measure can be defined as an alternative to detention.⁹⁶</p> <p>The travel or identity paper will be returned to the third-country national if they indicate that they wish to leave the Netherlands and actually leave. In case of forced return, the travel and identity paper can be handed over to the person</p>

⁹² Ministry of Justice and Security, 'Beleidsdoorlichting van het begrotingsartikel 37.3 De terugkeer van vreemdelingen', 2019, [Beleidsdoorlichting begrotingsartikel 37.3. De terugkeer van vreemdelingen | Rapport | Rijksoverheid.nl](#), last accessed on 15 March 2021

⁹³ Article 4.23, first and second paragraph of the Aliens Decree (Vb) 2000.

⁹⁴ Article 4.23, first paragraph, c, of the Aliens Decree (Vb) 2000.

⁹⁵ Article 4.23, first paragraph, b, of the Aliens Decree (Vb) 2000.

⁹⁶ Defined in the EMN Glossary as: non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory.

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	<p>in charge of border control in the country where the admission is guaranteed.⁹⁷</p> <p>Return procedure</p> <p>Third-country nationals who are ordered to leave the Netherlands within four weeks on the ground of art. 62, first paragraph, Aliens Act (Vw) 2000, can be ordered to surrender documents (issue sureties) in order to mitigate the risk of absconding. This measure can also be imposed if the voluntary or forced return is postponed.⁹⁸</p> <p>Possible documents to be surrendered are:</p> <ul style="list-style-type: none"> - travel or identity document; - travel ticket; - a statement from a solvent third party who guarantees the payment of travel costs; - proof of possession of an insurance policy that fully covers medical expenses in the Netherlands.⁹⁹
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>All immigration procedures</p> <ul style="list-style-type: none"> - Art. 52, first paragraph, Aliens Act (Vw) 2000 - Art. 4.23, Aliens Decree (Vb) 2000 <p>Return procedure</p> <ul style="list-style-type: none"> - Art. 54, first paragraph, I, Aliens Act (Vw) 2000. - Art. 4.52a, Aliens Decree (Vb) 2000
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	No data available.
<i>National authorities responsible to administer the alternative</i>	KMar and AVIM (National Police)
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	<p>The organisations cooperating in the immigration procedure (AVIM, COA, DT&V, IND) can be consulted in the LKO.</p> <p>If the third-country national is staying independently in a municipality, cases can be discussed between the organisations cooperating in the immigration procedure, or in local co-consultation (<i>Lokaal Samenwerkingsoverleg</i>, LSO). Parties participating in the LSO are AVIM, DT&V, IND and municipalities.</p>
<i>Obligations attached to the granting of the alternative (if relevant)</i>	The obligation to surrender documents can be imposed with other supervisory measures.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	If a person does not comply and a return procedure has been started, it can be examined whether forced return is possible. Non-compliance does not automatically lead to detention, as detention is always based on an individual assessment.

⁹⁷ Art. 52, second paragraph, Aliens Act 2000.

⁹⁸ Art. 4.52a, Aliens Decree 2000.

⁹⁹ Art. 4.52a, Aliens Decree 2000.

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<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Not applicable.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The activities of the AVIM and KMar are monitored by the Inspectorate for Justice and Security.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No, this measure has not been evaluated to assess the effectiveness.

Alternative 4. Freedom-restricting measure (Art. 56 Aliens Act (Vw))	
<i>In what it consists, and maximum duration</i>	<p>Third-country nationals can be imposed a freedom-restricting measure in accordance with Article 56 of the Aliens Act (Vw) 2000. The freedom-restricting measure is often combined with a reporting obligation (see above, Alternative 1). The measure is in principle applied as a restriction of movement to the municipality or an area within the municipality where the third-country national resides¹⁰⁰, but there is no legal limit to the area in which a freedom-restricting measure can be imposed. Therefore, it can be imposed in various situations, for instance at the lounge of the airport. The measure is also applied at several shelter and reception facilities.¹⁰¹ However, it is not always applied as an alternative to detention, but may also be used as a measure to prevent absconding. At the Freedom-restricted Location (<i>Vrijheidsbeperkende locatie</i>, VBL), the freedom-restricting measure may sometimes act as an alternative to detention, therefore we will focus on this usage of the measure in this report.</p> <p><i>Freedom-restricted Location (Vrijheidsbeperkende locatie, VBL):</i></p> <p>Third-country nationals who have to leave the Netherlands and are no longer entitled to reception by the government can be placed in a VBL in preparation for their departure.¹⁰² A condition for placement in the VBL is that the third-</p>

¹⁰⁰ Paragraph A5/5, Aliens Act Implementation Guidelines (Vc) 2000.

¹⁰¹ The measure is also applied at the Family Centre (*Gezinslocatie*, GL) and the Enforcement and Supervision Location (*Handhaving- en toezichtlocatie*, HTL).

In the GL families with minor children can be offered shelter after they are issued a return decision, because by law, the accommodation of families with minor children may not be terminated as long as the departure from the Netherlands has not taken place. The main purpose of the facility is to offer shelter to minor children and their parent(s) and/or caregiver(s) to avert a humanitarian emergency and therefore third-country nationals staying at the GL are not placed at the GL as an alternative to detention.

The HTL is a facility where irregular third-country nationals and asylum seekers who cause nuisance at the reception centres can be placed. It is compulsory for residents of the HTL to follow an intensive day programme. They are confronted with their nuisance behaviour and are given tools to improve it, for example through behavioural training. They can leave the facility but the freedom is restricted to the premises of the HTL and a small area around it. Most third-country nationals staying at the facility are not placed in the facility as an alternative to detention.

¹⁰² This applies to third-country nationals who have completed an asylum application and to third-country nationals who have completed a regular (asylum-related) procedure (for example postponement of departure on the basis of Article 64 of the Aliens Act 2000). In addition, third-country nationals can also request the State Secretary for Justice and Security (JenV) to stay in the vbl, regardless of whether they have submitted a previous application for residence (side entry).

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	country national cooperates with the departure ¹⁰³ or that the departure can, in principle, be realized within 12 weeks. The aim is that when someone is placed in the VBL his/her return is realized within 12 weeks, however, there is no maximum legal duration. Placement in the VBL can be imposed as an alternative to detention.
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<ul style="list-style-type: none"> - Article 56 of the Aliens Act (Vw) 2000 - Article 59c of the Aliens Act (Vw) 2000 - Article 5.1 of the Aliens Decree (Vb) (Vb) 2000 - A5/5 Aliens Act Implementation (Vc) Guidelines 2000
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Yes, see statistical annex.
<i>National authorities responsible to administer the alternative</i>	The freedom-restricting measure (art. 56 Aliens Act) is administered by AVIM, DT&V or IND.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	<p>The measure can be imposed in different situations by the DT&V, KMar and AVIM.</p> <p>Specifically for the VBL the following partners are involved:</p> <ul style="list-style-type: none"> - The COA, IND and DT&V can propose to place an asylum seeker at the VBL. - Before placement the national meeting for organisations cooperating in the immigration chain (lokaal ketenoverleg LKO), in which AVIM, the Central Agency for the Reception of Asylum Seekers (COA), DT&V and IND participate, is consulted. - The AVIM can impose a reporting obligation. - The DT&V is responsible for the return procedure. - The COA is responsible for the facility. - Service groups (IOM, VWN) and NGO's can be present at the facilities.
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Third-country nationals are imposed a freedom-restricting measure in accordance with Article 56 of the Aliens Act (Vw) 2000. Third-country nationals on whom such a measure has been imposed must be within the designated area. For residents of the VBL, this area comprises the municipality where the shelter is located.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	If there are indications of withdrawal from supervision and/or if the third-country national does not cooperate it can be examined whether forced departure is possible. Imposition of detention always depends on the individual circumstances of the case.

¹⁰³ In 2017, a ruling in the Court stated that an exception to this must be made if the third-country national has such psychological health problems that he/she cannot foresee the consequences of not cooperating with his/her return. Afdelingsuitspraken van 5 juli 2017, ECLI:NL:RVS:2017:1741 (productie), 1825,1826 en 1828.

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<p><i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i></p>	<p><i>Monitoring of the freedom-restricting measure:</i> At the VBL, third-country nationals are not allowed outside the municipal boundaries of the VBL without permission. However, their movement is not constantly monitored. The freedom-restricting measure is often combined with a reporting obligation imposed by the AVIM (National Police), a measure based on Article 54 of the Aliens Act (Vw) 2000.</p> <p><i>Monitoring of the cooperation with return:</i> sometimes the alternative is imposed with the condition that the third-country national cooperates with the departure, or that the departure can be realized within a certain timeframe, as is the case with placement in the VBL. A DT&V return counsellor will conduct interviews with a third-country national after the measure had been imposed. The adult third-country national(s) and the(ir) return counsellor will discuss any obstacles and options the third-country national has in organising his or her departure from the Netherlands. Specific agreements are made on the actions to be taken by the third-country national in order to organise the departure.¹⁰⁴</p>
<p><i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i></p>	<p>The Inspectorate of Justice and Security (Inspectie J&V) supervises the quality and the compliance with rules and standards. In addition, third-country nationals have the ability to file a complaint to the IND or to file an appeal to the court.</p>
<p><i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i></p>	<p>No.</p>

Alternative 5. Freedom-restricting measure (Art. 6, paragraph 1 Aliens Act): Obligation to stay in a space or place designated by the officer charged with border control

<p><i>In what it consists, and maximum duration</i></p>	<p><i>Detection of irregular entry at the border</i></p> <p>The third-country national who has been refused entry may be obliged to stay in a space or place designated by the officer charged with border control. A third-country national who applies for asylum at the border will never be placed in this area.¹⁰⁵ The third-country national cannot enter the Netherlands, but in principle, they could take a flight somewhere if they have a ticket and are able to enter that country.¹⁰⁶ The measure is primarily applied in the international area (lounge) of Schiphol Airport.¹⁰⁷</p> <p>There is no maximum duration of this measure. However, the designated place is not suitable for long stays and therefore it is usually applied only if departure is possible within a few days, with a maximum of two weeks. When there is an expectation that the stay will take a couple of days, the</p>
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¹⁰⁴ <http://www.dienstterugkeerenvertrek.nl/het-terugkeerproces/verblijfslocaties/vrijheidsbeperkende-locatie>

¹⁰⁵ This information was provided by experts from IND on 19 March 2021.

¹⁰⁶ This information provided by experts from DT&V on 23 March 2021.

¹⁰⁷ This information provided by experts from IND on 19 March 2021.

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	third-country national will have the choice to either go to the detention centre or stay in the lounge. ¹⁰⁸
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Art. 6(1) Aliens Act (Vw) 2000 A5. Para. 3.1 Aliens Act Implementation Guidelines (Vc) 2000
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Yes, it is used in practice. It is mostly used at the international lounge at Schiphol Airport, since it is the only airport that has a suitable space for longer stay. Other airports in the Netherlands do not have designated places that are suited for stays that exceed one day. Additionally, those airports close at night which means that there are no facilities and that there is no supervision. If people are denied entry at other airports such as Eindhoven and they cannot leave the Netherlands within one day, they will be brought to Judicial Complex Schiphol (<i>Justitieel Complex Schiphol, JCS</i>) where a detention measure will be imposed until they can return. ¹⁰⁹
<i>National authorities responsible to administer the alternative</i>	KMar The Seaport police (<i>Zeehavenpolitie, ZHP</i>) only for the harbour in Rotterdam
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	The designated place at Schiphol is a place where other travellers board their flights, i.e. the lounge. Facilities such as shops, restaurants, toilets, hotels and showers are available as they are for other travellers. In principle, any costs that are made are for the third-country nationals themselves. If the third-country national does not have any resources to buy food or drinks, the KMar can provide the third-country national with a food pass. ¹¹⁰
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	The third-country national cannot leave the designated area to enter the Netherlands. When the third-country national does not cooperate and cannot be held in the designated area until departure, a detention measure will be imposed. It can also occur that third-country nationals do not report themselves before the flight, authorities then do not know where they are. Later on, they will reappear. ¹¹¹ When they do not report themselves before the flight, there will be an announcement at the airport calling them to report themselves at the gate. Other possibilities to find the third-country nationals are to check the hotels within the international lounge, to spread copies of the passport to other border points and to ask to report when other points found them, physically trying to find the person in the lounge, cancel the booked flight or

¹⁰⁸ This information provided by experts from IND on 19 March 2021.

¹⁰⁹ This information was provided by experts of IND on 19 March 2021.

¹¹⁰ Ibid.

¹¹¹ Ibid.

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	to find out if the person applied for asylum. If the person is not found, they will be registered as absconded. ¹¹²
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The third-country national cannot leave the area other than by plane and has to report him or herself before the flight. There are no additional monitoring mechanisms, but the KMar is in charge of the supervision of the third-country national and the departure. ¹¹³ During quiet times at Schiphol airport, random checks can be done to see who is staying in the lounge. If there are indications that someone has absconded, supervisors can search for a specific third-country national. ¹¹⁴
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	Not applicable.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.

Q6. Please identify any **practical challenges associated with the implementation of each alternative** to detention available in your (Member) State, based on existing studies or evaluations or information received from competent authorities, specifically in relation to (add more column as needed). Please elaborate your answer by providing a short description. Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q8.

Challenge ¹¹⁵	Alternative 1 (Meldplicht)	Alternative 2 (Borgsom)	Alternative 3 (Surrendering passport)	Alternative 4 (Freedom-restricting measure with VBL ¹¹⁶)	Alternative 5: (Obligation to stay in a designated area)	General ¹¹⁷ (all alternatives)
Availability of facilities related t					Not all airports have a suitable designated area. If there is no	

¹¹² This information was provided by experts of DT&V on 23 March 2021.

¹¹³ This information was provided by IND on 19 March 2021 and KMar on 24 March 2021.

¹¹⁴ Information provided by experts of KMar on 24 March 2021.

¹¹⁵ The information in this table was gathered through interviews with the government organisations cooperating in the immigration procedure (see Box 1).

¹¹⁶ The freedom-restricting measure (art. 56 Aliens Act 2000) can be imposed in various situations. The VBL is a shelter where the measure is imposed and which may be applied as an alternative to detention. Information provided in this column only concerns the VBL, and not other situations where the freedom-restricting measure is imposed.

¹¹⁷ During the research, some challenges were found that did not belong to a specific measure, but were more generic. Therefore, we decided to add a separate general column to distinguish generic challenges from those that belong to specific alternatives

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accommodation (i.e. beds)					such area, the third-country national will have to be transferred to a detention center. ¹¹⁸	
Availability of staffing and supervision	The reporting obligation is mostly applied for a longer period of time. Depending on the frequency, it requires availability of staff on a daily, weekly, biweekly or monthly basis. Therefore, compared to surrendering passport and financial deposit, the reporting obligation costs more capacity. ¹¹⁹			The imposition of a freedom-restricting measure combined with placement in the VBL requires more resources (shelter, staff capacity) than other alternatives. ¹²⁰		The demands on officials of AVIM, KMar and (to a lesser extent) DT&V ¹²¹ who are responsible for making the decision on whether or not to detain is considered challenge. Decision-making has to be carried out within six hours, and the requirements on the motivation have become more legally complex in recent years. ¹²² AVIM advocates a judicial review upfront. ¹²³
Administrative costs						
Mechanisms to control movement of the person					Since there are no periodically imposed reporting obligations, the person is not monitored until they have to appear for their flight. It can happen that persons are not present when they are supposed to depart,	When imposed with an alternative it is possible that the third-country national absconds. ¹²⁵

¹¹⁸ Information provided by experts from KMar on 24 March 2021.

¹¹⁹ Information provided by AVIM, during expert group meeting on 24 February 2021.

¹²⁰ Information provided by IND during expert group meeting on 24 February 2021.

¹²¹ Often, officials of the DT&V have the possibility prepare the decision to detain in advance, as the third-country national is already known to authorities. Information provided by DT&V, 10 February 2021.

¹²² Information provided by AVIM, 8 February 2021; and by DT&V and IND, 10 February 2021.

¹²³ Information provided by an AVIM, 8 February 2021.

¹²⁵ There is no data available on if and how often third-country nationals abscond when imposed with an alternative.

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					but that they reappear later on. ¹²⁴	
Legislative obstacles	The KMar is not mandated to impose reporting obligations to third-country nationals detected irregularly at the borders. ¹²⁶ However, the KMar can instruct the third-country national to report to AVIM, which may subsequently impose reporting obligations. ¹²⁷					
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)		Third country nationals do not always have the means to pay the financial deposit. ¹²⁸	Returnees do not always have a passport or concerns exist that documents are forged. ¹²⁹			
Other challenges						- As specified below in Q7, the availability of different alternative measures increase the options for the officials enforcing the immigration procedure. However, it is noted that alternatives are not always effective in promoting cooperation with authorities; compliance with

¹²⁴ Information provided by IND on 19 March 2021.

¹²⁶ Information provided by KMar on 12 March 2021.

¹²⁷ Information provided by IND on 1 April 2021.

¹²⁸ Interview provided by IND during an expert group meeting on 24 February 2021.

¹²⁹ Interview with DT&V, 10 February 2021. Information provided by IND during an expert group meeting on 24 February 2021.

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						the conditions of the alternative does not necessarily constitute compliance with the return procedure. ¹³⁰
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Q7. Please identify any **practical advantage associated with the implementation of each alternative** to detention available in your (Member) State in comparison with detention, based on existing studies or evaluations or information received from competent authorities specifically in relation to (add more column as needed). Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q7:

Advantage ¹³¹	Alternative 1 (Meldplicht)	Alternative 2 (Borgsom)	Alternative 3 (Surrendering passport)	Alternative 4 (Freedom-restricting measure with VBL ¹³²)	Alternative [6]: (Obligation to stay in a designated area)	General ¹³³ (all alternatives)
Availability of facilities related to accommodation (i.e. beds)	No facilities needed	No facilities needed.	No facilities needed		No transfer needed from the airport to an accommodation and back. ¹³⁴	
Availability of staffing and supervision	Reporting obligation costs less capacity than detention or VBL, GL or HTL (but more than the financial deposit at surrendering a passport). ¹³⁵	Requires little capacity.	Requires little capacity.			Only authorised personnel of the AVIM, KMar, IND and DT&V can impose detention. It can occur that there is not enough staffing available to impose detention within the required timeframe. This especially occurs when large groups

¹³⁰ Interview with DT&V, 11 February 2021.

¹³¹ The information in this table was gathered through interviews with the government organisations cooperating in the immigration procedure (see Box 1).

¹³² The freedom-restricting measure can be imposed in various situations. The VBL is a shelter where the freedom-restricting measure is imposed and which may be applied as an alternative to detention. Information provided in this column only concerns the VBL, and not other situations where the freedom restricting measure is imposed.

¹³³ During the research, some advantages were found that did not belong to a specific measure, but were more generic. Therefore, we decided to add a separate general column to distinguish generic advantages from those that belong to specific alternatives

¹³⁴ Information provided by experts from DT&V on 23 March 2021

¹³⁵ Information provided by AVIM during an expert group meeting on 24 February 2021.

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						of irregular third-country nationals are detected at once, but also due to the increased complexity of legislation and administrative workload. In this context, it can be seen as an advantage that more employees are authorised to impose an alternative, than employees who can impose detention. ¹³⁶
Administrative costs	There are fewer costs to this alternative than to detention.	There are fewer costs to this alternative than to detention.	There are fewer costs to this alternative than to detention.			
Mechanisms to control movements of the person					The third-country national cannot leave the airport lounge. This makes it easier to trace their whereabouts. ¹³⁷	
Legislative obstacles						– The demands on officials who are responsible for making the decision on whether or not to detain is considered a challenge, in particular for AVIM and KMar. ¹³⁸

¹³⁶ Expert meeting on 24 February 2021; Interviews with National Police on 8 February 2021, DT&V on 10 February 2021 and IND on 10 February 2021; information provided by KMar on 12 March 2021.

¹³⁷ Information provided by experts of DT&V on 23 March 2021

¹³⁸ Often, officials of the DT&V have the possibility prepare the decision to detain in advance, as the third-country national is already known to authorities. Information provided by DT&V, 10 February 2021.

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						<p>Decision-making has to be carried out within six hours, and the requirements on the motivation have become more legally complex in recent years. If the decision is not motivated thoroughly, this may lead to it being terminated by a judge, or by the legal representative of the IND.¹³⁹ AVIM therefore advocates a judicial review upfront.¹⁴⁰ Because alternatives are less invasive for the third-country nationals than detention, they require less strict motivation, which makes it easier applicable than detention. Compared to detention imposing alternatives is less complex,</p>
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¹³⁹ Interview with AVIM on 8 February 2021, and DT&V and IND on 10 February 2021; Information provided by IND on 9 March 2021

¹⁴⁰ Interview with AVIM, 8 February 2021.

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						and the decision is reversed less often. - Prospect of return is not a requirement to impose an alternative (as is the case with detention).
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	Reporting obligations are available to a wider range of third-country nationals than the other alternatives to detention. ¹⁴¹				For third-country nationals, it is a less intrusive measure where they are free to stay within the designated area. If they do not have resources to buy food, they will be provided with a food pass. ¹⁴²	
Other advantages			When a passport is surrendered, the authorities can use this document to book a flight ticket for the return of the third-country nationals. ¹⁴³	More time will be available (in principle a maximum of 12 weeks) to obtain substituting travel documents and to conduct return counselling. ¹⁴⁴		- Alternatives are less intrusive than detention. ¹⁴⁵ - The availability of different alternative measures increase the options for the officials enforcing the immigration procedure. Measures can be tailored to the individual case, rather than

¹⁴¹ Information provided by IND during an expert group meeting on 24 February 2021.

¹⁴² Information provided by IND on 19 March 2021.

¹⁴³ Interview with AVIM on 8 February 2021.

¹⁴⁴ Bocker, A.G.M., Grutters, C.A.F.M., Laemers, M.T.A.B., Strik, M.H.A., Terlouw, A.B., & Zwaan, K.M., 'Evaluatie van de herziene asielprocedure', 2014, *Radboud Universiteit-Onderzoekscentrum voor Staat en Recht*; interview with DT&V on 11 February 2021.

¹⁴⁵ Interviews with DT&V on 10 February 2021 and 11 February 2021; Interview with AVIM on 8 February 2021.

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						<p>having to choose between detention or no measure at all.¹⁴⁶</p> <ul style="list-style-type: none"> - Compared to detention, for persons in the return procedure there is more support available by NGOs when they are subject to less-coercive alternatives, as many NGOs providing reintegration and return assistance only do so in case of voluntary return.¹⁴⁷ - Voluntary departure is often more durable than forced departure carried out from detention.¹⁴⁸
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Section 3: Assessment procedures and criteria used for the placement of third-country nationals in detention or alternatives to detention

This section examines the assessment procedures and criteria/benchmarks that are used by Member States and Norway in order to decide whether placing the third country national in detention or to instead use an alternative. The section will also explore how authorities decide which alternative to detention is most suitable to an individual case.

The section starts from the assumption that the grounds for detention exists and does not specifically analyse how the existence of such grounds are assessed.

The section begins with an overview of the steps taken to decide to use an alternative instead of placing the individual in detention. Questions then explore the timing of this assessment, whether an individual assessment is

¹⁴⁶ Interview with DT&V, 11 February 2021.

¹⁴⁷ Interview with DT&V, 10 and 11 February 2021.

¹⁴⁸ Interview with DT&V, 10 February 2021.

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conducted, which authorities are involved in the assessment procedure and which criteria are used to determine whether to use detention or an alternative.

The session will assess how vulnerability factors are assessed when taking a decision for detention and when making an assessment to opt for detention or an alternative.

Q8. Please provide an **overview of when and how the decision** about placing a person in an alternative instead of in detention is made. Please respond considering the following elements

- i. Is the assessment between detention or alternatives to detention made at the same time as when the grounds for detention are considered or at a different time?
- ii. In what circumstances are the grounds for detention rejected in favour of an alternative to detention?
- iii. Does the procedure vary depending on the categories of third country nationals or their country of origin (e.g. because of the specific situation in the country)?
- iv. Which authorities are involved in the procedure, please specify the respective role (i.e. consultative, decision maker)?

a) International protection procedure

i. See below under b).

ii. See below under b).

iii. Unaccompanied minors and families with minors subject to the international protection procedure are, in principle, not detained. However, if the unaccompanied minor or family was already detained when they applied for international protection, detention can be continued under the conditions specified below under b).

iv. See below under b).

b) Return procedure

i. When ordering detention, officials are required to motivate why an alternative to detention does not suffice. However, the less-coercive measures that may be used as an alternative do not necessarily have to be considered simultaneously with detention. This is also evident from the fact that more officials are authorised to impose less-coercive measures compared to detention. The latter can only be ordered by the Acting Public Prosecutor of AVIM, the Acting Public Prosecutor or Designated Official of the KMar, or the Executing Official of the DT&V, and in some cases the caseworker of the IND. Therefore, it can occur that an individual has already been subject to a less-coercive measure before detention is considered.

ii. In the assessment on whether or not to detain, alternatives can be rejected if they are not effective in the individual case and if there are no other criteria which would make detention disproportional. There are certain criteria indicating the risk of absconding (see Annex II), which are used to determine whether detention is necessary. If the third-country national (or their lawyer) launches a judicial review against the detention order on the argument of necessity or proportionality, the court may decide to reject the detention order in favour of an alternative. There are no set criteria based on which an alternative is applied; the necessity and proportionality of detention is determined based on the individual circumstances.¹⁴⁹ In the balancing of interests, there is a margin of discretion for the Acting Public Prosecutor and other officials deciding on detention.

iii. The detention of minors and families with minors is considered a measure of last resort, even more so than for adults, and should be applied as briefly as possible.¹⁵⁰ Therefore, for minors and families with minors extra attention is paid to the possibility of imposing less-coercive alternatives as opposed to detention. If however detention is deemed necessary to facilitate the (forced) return, the official imposing detention will need to

¹⁴⁹ Interview with AVIM, 8 February 2021; interview with DTV, 10 February 2021; interview with IND, 10 February 2021.

¹⁵⁰ Section A5/2.4 of the Aliens Act Implementation Guidelines (Vc) 2000.

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include additional factors in the motivation of necessity and proportionality, i.e. the medical background, the age of the children and, in the case of a family with minors, the composition (completeness) of the family.¹⁵¹

For unaccompanied minors, detention is only imposed on the ground of art. 59, 59a or 59b Aliens Act (Vw) in the following cases: the UAM is suspected of or convicted for committing a crime; the UAM has previously absconded or breached the conditions of an alternative to detention; the return of the UAM can be organised within two weeks; the UAM has not previously been registered on the territory and their return can be organised within four weeks.¹⁵²

There are no other categories for which the procedure differs. In general, persons who cooperate with the procedure are more likely to be subjected to an alternative as opposed to detention.¹⁵³ Nationals from countries who are known not to cooperate with the return procedure are more likely to be subjected to an alternative measure rather than detention, as return is often not foreseeable in the near future.¹⁵⁴

iv. The AVIM (National Police), KMar and DT&V are authorised to impose detention or an alternative. The IND is also authorized to impose detention measures (in practice the IND imposes detention measures if a third-country national is already detained on certain grounds and the detention is being continued on another legal basis).

The AVIM, DT&V, IND and COA participate in a local network for organisations cooperating in the immigration chain (LKO), where they can consult each other on individual cases in the immigration procedures.

Municipalities can also be consulted. Furthermore, the IND can give advice to the authority imposing detention.

c) Border procedure

i. Yes, although third-country nationals who apply for asylum in the Border Procedure, are in principle detained. It is nonetheless required to motivate whether detention is disproportionate and a less-coercive measure should be applied. Unaccompanied minors and families with minors who apply for asylum at the border are not detained (see below).

For third-country nationals who are refused at the border and do not apply for international protection, there is an option to apply an alternative to detention, i.e. the freedom-restricting measure on the basis of Art. 6, first paragraph Aliens Act (Vw) (see above Q5.2). This measure is imposed using the same form (model M19) as is used for detention. The two measures are thus considered at the same time.

ii. Detention at the border may be rejected in favour of an alternative in the following cases:

- Families with minors who do not apply for asylum and who have arrived at Schiphol Airport, are placed in the Lounge where they are subject to a freedom-restricting measure on the basis of art. 6, first paragraph, Aliens Act (Vw). If return is not expected to be possible within 24 hours, the family is detained in the Closed Family Facility. Families who have arrived at Eindhoven Airport are not placed in the Lounge but are detained in the Closed Family Facility on the basis of art. 6, first and second paragraph...¹⁵⁵

- For third-country nationals who are refused at the border and do not apply for international protection: if return is possible within several days the third-country national may be ordered to stay in the lounge, i.e. a freedom-restricting measure is ordered on the basis of art. 6, first paragraph, Aliens Act (Vw).

iii. Unaccompanied minors applying for international protection are not subjected to the Border Procedure but are transferred to the international protection procedure in an open centre. UAMs who are refused at the border and do not apply for international protection may only be detained if there are doubts regarding the age and the age has not yet been established by the IND, in which case they are transferred to a Closed Family Facility.¹⁵⁶ Families with minors can only be detained at the border if return is foreseeable within two weeks, therefore less-coercive measures will usually be preferred.¹⁵⁷ If return is foreseeable within 24 hours, families

¹⁵¹ Section A5/2.4 of the Aliens Act Implementation Guidelines (Vc) 2000.

¹⁵² Section A5/2.4 of the Aliens Act Implementation Guidelines (Vc) 2000.

¹⁵³ Interview with DT&V, 11 February 2021.

¹⁵⁴ Interview with IND, 10 February 2021.

¹⁵⁵ Section A5/3.2 of the Aliens Act Implementation Guidelines (Vc) 2000.

¹⁵⁶ Section A5/3.2 of the Aliens Act Implementation Guidelines (Vc) 2000.

¹⁵⁷ Section A5/3.1 of the Aliens Act Implementation Guidelines (Vc) 2000; Interview with the IND, 10 February 2021.

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with minors will in principle be ordered to stay in the Lounge on the grounds of art. 6, first paragraph Aliens Act (Vw) (see above Q5.2).

iv. The National Police (AVIM or Seaport Police), KMar and DT&V are authorised to impose detention or an alternative. The IND is also authorized to impose detention measures (in practice the IND imposes detention measures if a third-country national is already detained and this measure is being continued on another legal basis). Furthermore, the IND can give advice to the authority imposing detention.

Q9. Is the possibility to provide alternatives to detention **systematically considered** in your (Member) State when assessing whether to place a person in detention? Please respond separately for international protection and return procedures.

International protection procedures:

Yes. Whenever a detention order is imposed, the official needs to justify the necessity and proportionality of the measure based on the individual circumstances, as detention should be a measure of last resort. In doing so, the official needs to motivate why a less-coercive measure does not suffice. Therefore, detention should always be assessed together with an alternative measure.¹⁵⁸ However, there is a margin of discretion for the official in deciding on detention and researchers note that in practice alternative measures are not always fully considered.¹⁵⁹

Return procedures:

Yes. Whenever a detention order is imposed, the official needs to justify the necessity and proportionality of the measure based on the individual circumstances, as detention should be a measure of last resort. In doing so, the official needs to motivate why a less-coercive measure does not suffice. Therefore, detention should always be assessed together with an alternative measure.¹⁶⁰ However, there is a margin of discretion for the official in deciding on detention and researchers note that in practice alternative measures are not always fully considered before ordering detention.¹⁶¹

Border procedure

Yes, see above under a). Although alternatives are rare in the border procedure (as any alternative to detention effectively grants access to the territory), in individual cases detention may not be necessary or proportionate. Therefore, it should always be motivated why an alternative measure does not suffice.¹⁶²

Q10. When there are grounds for authorising detention, which **considerations or criteria** are used to decide whether to place the third-country national concerned in detention or instead provide an alternative?

¹⁵⁸ Interview with AVIM, 8 February 2021; interview with DTV, 10 February 2021; interview with IND, 10 February 2021.

¹⁵⁹ Besselsen, E., 'De nieuwe zaaksbehandeling in de *habeas corpus-procedure*', 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., 'Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

¹⁶⁰ Interview with AVIM, 8 February 2021; interview with DTV, 10 February 2021; interview with IND, 10 February 2021.

¹⁶¹ Besselsen, E., 'De nieuwe zaaksbehandeling in de *habeas corpus-procedure*', 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., 'Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

¹⁶² Interview with IND, 10 February 2021.

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Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	<p><i>Yes, in all cases an individual assessment needs to be made.</i></p> <p>However, there is a margin of discretion for the official in deciding on detention and researchers note that in practice alternative measures are not always fully considered before ordering detention.¹⁶³</p>	<p><i>Yes, in all cases an individual assessment needs to be made.</i></p> <p>However, there is a margin of discretion for the official in deciding on detention and researchers note that in practice alternative measures are not always fully considered before ordering detention.¹⁶⁴</p>
Cost-effectiveness	No	No
Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)	<p><i>Yes.</i></p> <p><i>For detention of applicants for international protections on the ground of art. 59, first paragraph under c, Aliens Act (Vw)¹⁶⁵, it should be considered whether the country of origin of the third-country national is designated as a “safe country of origin”.¹⁶⁶</i></p>	<p><i>Yes. If for nationals of a certain third country there is no prospect of forced return, detention is not applied and a less-coercive measure may instead be imposed.¹⁶⁷</i></p>
Level of the risk of absconding	<p><i>Yes, there are certain criteria indicating the risk of absconding laid down in article 5 Vb (see Annex II).¹⁶⁸</i></p>	<p><i>Yes, there are certain criteria indicating the risk of absconding laid down in article 5 Vb(see Annex II).</i></p>

¹⁶³ Besselsen, E., ‘De nieuwe zaaksbehandeling in de *habeas corpus*-procedure’, 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., ‘Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

¹⁶⁴ Besselsen, E., ‘De nieuwe zaaksbehandeling in de *habeas corpus*-procedure’, 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., ‘Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

¹⁶⁵ Detention on this ground is used for applicants who: were already detained in a return procedure; have previously had the opportunity to apply for international protection; and for whom it can be assumed that the application for international protection merely serves to frustrate the return procedure.

¹⁶⁶ Article 59b (1) (c), Aliens Act (Vw) 2000; Section A5/6.3, ad c, Aliens Act Implementation Guidelines (Vc) 2000.

¹⁶⁷ Interview with IND, 26 February 2021.

¹⁶⁸ According to research on detention in the international protection procedure, if detention is contested in a judicial review, the court will usually uphold the detention if a risk of absconding has been motivated well. See: van der Spek, W., ‘Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

Detention and alternatives to detention in international protection and return procedures

Criteria	International protection procedures	Return procedures
Vulnerability	<i>Yes, vulnerability is considered in the assessment of proportionality of the measure (see question 10.1)</i>	<i>Yes, vulnerability is considered in the assessment of proportionality of the measure. (see question 10.1)</i>
Less-invasive legal measures impacting on human rights	Yes	Yes
Other	<p>Yes:</p> <ul style="list-style-type: none"> - <i>The level of cooperating with the procedure.</i> - <i>For detention of applicants for international protections on the ground of art. 59, first paragraph under c, Aliens Act (Vw)¹⁶⁹, the circumstances under which a third-country national has been detected or under which a third-country national has made a claim for international protection (e.g. the sincerity of the claim) should be considered.¹⁷⁰</i> - <i>In addition to the elements listed above, Van der Spek (2018) notes that the existence of criminal records¹⁷¹ may also affect the decision to detain.¹⁷²</i> 	<i>Yes: The level of cooperating with the procedure.</i>

Q.10.1. If **vulnerability** is one of the criteria used to assess whether placing the person under an alternative instead of detention, please **describe how the vulnerability assessment is made** (e.g., the responsible authority and the procedures followed). Please respond separately for international protection and return procedures.

Elements of vulnerability considered (unaccompanied minors, families with children, pregnant women and persons with special needs, victims of violence etc.)

- Are vulnerability assessments conducted on a case-by-case basis, or is the assessment based on pre-defined categories/groups?
- Authorities / organisation conduct the assessment?
- Procedures followed

¹⁶⁹ Detention on this ground is used for applicants who: were already detained in a return procedure; have previously had the opportunity to apply for international protection; and for whom it can be assumed that the application for international protection merely serves to frustrate the return procedure.

¹⁷⁰ Article 59b, first paragraph, ad c, of the Aliens Act (Vw) 2000; Section A5/6.3, ad c, Aliens Act Implementation Guidelines (Vc) 2000.

¹⁷¹ If severe, criminal records can lead to detention for reasons of public order and security or can be reason to assume a risk of absconding. Van der Spek (2018) here refers to criminal records of a lesser severity.

¹⁷² van der Spek, W., 'Inbewaringstelling van asielzoekers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

Detention and alternatives to detention in international protection and return procedures

a) International protection procedures:

Case-by-case assessment

A detention or alternative is preceded by an individual assessment on a case-to-case basis. For some groups certain policy is applicable (see procedures followed).

Authorities

The assessments are conducted by the AVIM or the KMar. The IND, COA and municipalities can be consulted. Furthermore, individual cases can be discussed in the LKO in which COA, AVIM, DT&V and IND take place.

Procedure followed

According to the policy, the assessment on whether or not to detain a person must include any special, individual aspects, such as an illness. Extra considerations should be made for the position of vulnerable groups. There are no groups that are or are not placed in detention categorically, but the following procedures must be followed:

- Families with minors are placed in detention in return procedures. When applying for international protection families with minors can only be detained if they started the procedure when already being detained. As mentioned under question 8 detention of families with minor children has to be extra motivated.¹⁷³ Families with minors can only be placed in territorial detention if they have previously withdrawn from supervision or if there is a risk to abscond. In 2016 a Closed Family Centre (GGV) opened in Zeist. Families with minor children are detained in this facility.¹⁷⁴
- As mentioned under question 8 unaccompanied minors (UAMs) are placed in territorial detention only under certain circumstances.¹⁷⁵ UAMs are also placed in the secured family facility in Zeist.

In the assessment preceding a decision to detain, individual circumstances such as illness must be taken into account. Each of the Dutch detention centres where migrants are detained have a medical service which, in most cases, can provide the necessary care to the third-country national. There are also specialist facilities available such as the Judicial Center for Somatic Care or a Penitentiary Psychiatric Center. Upon placement a medical check takes place by the medical staff of the detention centre. The risk of damage to health that may arise as a result of continued detention must explicitly taken into account. Amnesty International has published several reports in which they look at health damage in relation to detention.¹⁷⁶

b) Return procedures:

The assessment of vulnerability in the return procedure is identical to the assessment in the international protection procedure (see above under a).

Assessments in the return procedure can also be conducted by the DT&V. If the DT&V makes an assessment for detention the individual cases can be discussed in the LKO in which COA, AVIM, DT&V and IND take place.

c) Border procedure

The assessment of vulnerability in the border procedure is identical to the assessment in the international protection procedure (see above under a). UAMs who apply for asylum are not placed in border detention.¹⁷⁷

¹⁷³ A5/2.4 Vreemdelingen circulaire 2000.

¹⁷⁴ DJI, 'Detentiecentrum Zeist-Vreemdelingen', www.dji.nl/locaties/z/detentiecentrum-zeist-vreemdelingen, last accessed on 16 March 2021.

¹⁷⁵ A5/2.4 Vreemdelingen circulaire 2000.

¹⁷⁶ Amnesty International, (2018) 'Het recht op vrijheid – vreemdelingendetentie: het ultimum remedium', 2018, , last accessed on 16 March 2021; Amnesty International, Dokters van de Wereld, Stichting LOS - Meldpunt Vreemdelingendetentie. (2015). 'Isolatie in vreemdelingendetentie', 2015, , last accessed on 16 March 2021 See also, the reaction letter from the Minister for Migration of 9 November 2020, 3038815.

¹⁷⁷ The Aliens Decree (Vb) does not describe that UAMs cannot be detained at the border, but in practice detention of UAMs at the border is never applied.

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Q11. Which **legal remedies** are available to the third-country national against a decision to opt for detention /instead of an alternative to detention? Please describe. Please respond separately for international protection and return procedures.

a) International protection procedures:

Third-country nationals can make an (administrative) appeal against a decision for detention or an alternative as well as the continuation of detention or an alternative at any moment, without having to pay any court fees. If the appeal is rejected, they can make a further appeal at the Council of State.

If the third-country national does not appeal against a decision on detention within 28 days, the authorities are obliged to notify the Regional Court of the detention order. The Regional Court decides whether the detention is lawful (this is only applicable when someone is detained, not when an alternative is imposed), in the same way as when an appeal is made by a third-country national. A hearing takes place within 14 days of the appeal and the Court has 7 days to decide.¹⁷⁸

b) Return procedures:

See above under a).

c) Border procedure

See above under a).

Q12. What **support (legal, social, psychological)** is available for migrants during the period when a decision is made about placing the individual in detention or to use an alternative to detention?

International protection procedures and Return procedures:

Detention

Legal support

- Legal assistance/representation must be provided to detainees by law. Lawyers are appointed to the third-country nationals and their fees are covered by the State. In principle before deciding on detention the third-country national is always interviewed. However, under certain circumstances it is possible to decide to hear the third-country national after deciding on imposing detention. If requested their lawyer can be present before or during the hearing. However, when the lawyer is not available within 2 hours the hearing can start without the presence of a lawyer.¹⁷⁹
- The third-country national has the opportunity to notify their embassy, although this happens very rarely.

Social and psychological support

- If necessary, the third-country national can make use of an interpreter during the interview (mostly by phone).
- The third-country national also has the opportunity to notify his/her family.

¹⁷⁸ For a study on the application of the appeal procedure in practice, see: Besselsen, E., 'De nieuwe zaaksbehandeling in de *habeas corpus-procedure*', 2015, *JNVR*, no. 1, p. 84 – 99

¹⁷⁹ For a study on the application of legal assistance/representation in practice, see: Amnesty International, (2018) 'Het recht op vrijheid – vreemdelingendetentie: het ultimatum', 2018, , last accessed on 16 Mar. See also, the reaction letter from the Minister for Migration of 9 November 2020, 3038815.

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- If the third-country national indicates that he/she is not feeling well, the third-country national can consult a doctor.
- There are additional measures for unaccompanied minors. Unaccompanied minors have a guardian addressed via Nidos (child protection organisation for refugees), who can assist during the interview.

Alternative to detention

Third-country nationals who are subjected to an alternative can be provided with a lawyer, although it happens very rarely that the third-country national makes use of a lawyer when they are subjected to an alternative.¹⁸⁰

Section 4: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

This section aims at comparing the different impact of detention and alternatives to detention on the effectiveness of international protection and return procedures.

The impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these aspects of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.

Ensuring compliance with migration procedures

Note: If it is possible please provide separately data related to international protection (Q13, Q14) and for return (Q14, Q16) procedures. If this is not possible, please clarify and respond to Q16 and Q17 covering both procedures.

Q13. Please provide **statistics** available in your country for the latest available year on the **number of asylum seekers** that were placed in detention and in alternatives to detention during the international protection procedures **who absconded**.

If possible, distinguish between the different types of alternatives to detention that are available in your country (add more rows as needed).

Flow number of third-country nationals in detention or in alternatives to detention in the context of international protection procedures who absconded during the year. Data expressed in absolute figures. Reference years: 2017, 2018, 2019 (Please provide data for each year)		
	# People in international protection procedures (including Dublin)	# of applicants who absconded
Detention for asylum seekers in the border procedure, based on art 6, third paragraph of the Aliens Act	Data is provided in the statistical annex, table 1	N/A

¹⁸⁰ Interview with DT&V, 11 February 2021.

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If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

Data for alternatives is not available.

Q14. Please provide any statistics available in your country on **the average length of time needed to determine the status of applicants for international protection** who are held in detention or are in an alternative to detention. Please also indicate the share of decisions which were appealed and the share of those which overturned the initial decision. Those MS who do not place asylum applicants in detention, shall indicate this at the beginning of the question and skip to the next question.

If possible, distinguish between the different types of alternatives to detention that are available in your country (add more rows as needed)

Average length of time needed to determine the status of applicants for international protection who were detained or in alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)

	Average length of time in determining the status of an applicant for international protection	Share of decisions which were appealed and of these, the share which overturned the initial decision
Detention (Absolute figures)	Data not available. See comments below (1)	Data not available

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

(1) According to the Asylum Procedures Directive border detention can be applied up to a maximum of 4 weeks. If the examination of the asylum application takes longer than 4 weeks, border detention should be lifted and the third-country national should be granted access to the Netherlands.

Data for alternatives are not available

Q15. Please provide any statistics that may be available in your (Member) State about the number of **irregular migrants including** failed asylum seekers placed in detention and in alternatives to detention during the return procedure, **who absconded**.

If possible, distinguish between the different types of alternatives to detention that are available in your (Member) State.

Flow number of third-country nationals in detention or in alternatives in the context of return procedures who absconded. Data expressed in absolute figures per year. Data expressed in absolute figures. Reference years: 2017, 2018, 2019 (Please provide data for each year)

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	# of irregular migrants in return procedures (including pre-removal)	# who absconded before removal is implemented
Detention, art 59 (Absolute figures)	Data on the influx is provided in the statistical annex, table 1	2017: 720 ¹⁸¹ 2018: 740 2019: 770 2020: 680
Alternatives to detention 4 (Freedom Restricting Location)	Data on the influx is provided in the statistical annex, table 1	2017: 890 ¹⁸² 2018: 590 2019: 440 2020: 380

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

Several alternatives to detention are applied. No data is available for the other alternatives (reporting requirements; submission of a financial deposit; surrendering documents; freedom-restricting measure on the basis of art. 6, paragraph 1 Aliens Act)

Q16. Please provide any statistics that might be available in your country on

- (i) the proportion of voluntary returns and
- (ii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention.

If possible, distinguish between the different types of alternatives to detention that are available (add more rows as needed)

Average length of procedures to issue a return decision, and number of voluntary return among third country nationals placed in detention or alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)

	Average length of time from apprehending an irregular migrant to issuing a return decision	Average length of time from issuing a return decision to the execution of the return	Number of voluntary returns (persons who opted to return voluntarily) (absolute figures)	Number of effective forced departures (absolute figures)
Detention, art 59 (Absolute figures)	(a)	N/A	2017: 140 ¹⁸³	2017: 1.680

¹⁸¹ Data is based on the caseload of the Repatriation and Departure Service. The numbers provided as "absconded" are the numbers registered as 'uncontrolled return' ["zelfstandig vertrek zonder toezicht"], which in practice means: left detention with unknown destination.

¹⁸² Data is based on the caseload of the Repatriation and Departure Service (*idem*).

¹⁸³ Based on the caseload of the Repatriation and Departure Service

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			2018: 380	2018: 1.640
			2019: 530	2019: 1.710
			2020: 340	2020: 900
Alternatives to detention 4 (Freedom-restricting centre (VBL))	(a)	N/A	2017: 440 ¹⁸⁴	N/A (b)
			2018: 280	
			2019: 410	
			2020: 220	

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

(a) *In principle, when an irregular migrant is apprehended, a return decision should be issued without delay. In case of a failed asylum seeker, a return decision is included in the negative decision on the asylum application.*

(b) *Not available. The stay in a Freedom Restricting Location ends either because the migrant leaves voluntarily (supervised or non-supervised) or is transferred to detention.*

Several alternatives to detention are applied. No data is available for the other alternatives.

Q17. Have any **evaluations or studies on the rate of absconding and degree of cooperation** of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details and if possible, distinguish between the international protection and return procedures.

International protection procedures

No studies were found on the rate of absconding and degree of cooperation of third-country nationals in detention and alternatives in international protection procedures.

Return procedures

Study 1: Adviescommissie voor Vreemdelingenzaken. ‘Samen werk maken van terugkeer’, <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/04/22/advies-samen-werken-aan-terugkeer>, Last accessed on 16 March 2021, p. 35.

The percentages of voluntary departure without supervision¹⁸⁵ differ per organization that can detain third-country nationals. For DT&V, the percentage of third-country nationals that abscond is much lower (7%) than for AVIM (25%) and KMar (32%). This has to do with the type of alien that they detain. For DT&V, the third-country nationals live at a reception center, so their address is known to the organization. For KMar and AVIM, they find the alien “spontaneously”. Therefore, DT&V has much more time to prepare the case of a third-country national that is about to be detained in comparison to third-country nationals that are found

¹⁸⁴ *Based on the caseload of the Repatriation and Departure Service*

¹⁸⁵ Third-country nationals subject to a return decision, who are no longer within the supervision of authorities. Therefore, it is uncertain if they actually left the Netherlands.

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by KMar and AVIM. For non-Dublin claimants, there is an 11% absconding rate for third-country nationals detained by DT&V, this is 35-42% for AVIM and KMar.

Study 2: Ministerie van Justitie en Veiligheid, 'Beleidsdoorlichting van het begrotingsartikel 37.3', 2019, [Beleidsdoorlichting begrotingsartikel 37.3. De terugkeer van vreemdelingen | Rapport | Rijksoverheid.nl](https://migratieweb.stichtingmigratierecht.nl/system/files/document/article_publication/2019/02/wodc_asielzoekers_veilige_landen.pdf), last accessed on 18 March 2021, p. 74-76.

This study found that it was impossible to provide a clear and unambiguous image of the effectivity and efficiency of the pilots of the alternatives to detention. The authors further add that they did not find any studies on the effectiveness of alternatives such as de reporting obligation (meldplicht) and financial deposit (borgsom). Furthermore, it is mentioned that statistics suggest that detention is far more effective than any other measures available to the government. 60-70% of third-country nationals leave after they have been detained. The study does not differentiate between different kinds of third-country nationals.

Study 3: WODC, 'Evaluatie maatregelen gericht op asielzoekers uit veilige landen', 2018, https://migratieweb.stichtingmigratierecht.nl/system/files/document/article_publication/2019/02/wodc_asielzoekers_veilige_landen.pdf, last accessed on 16 March 2021.

This study focused on asylum seekers from safe third countries. The researchers found that for this group, the following factors contributed to return: personal background, how the person was treated during procedures, and the execution of the departure and the situation of the country of origin.

Study 4: Leerkes, A., van Os, R., & Boersma, E. 'What drives "soft deportation". Understanding the rise in Assisted Voluntary Return among rejected asylum seekers in the Netherlands' (2017), *Population, Space and Place*, 23 (8).

In this study, the following factors proved to be contributing to voluntary return: the availability of native counsellors, heightened deportation risks and increased financial reintegration support

Study 5: Leerkes, A. 'Managing migration through legitimacy? Alternatives to the criminalization of unauthorized migration' (2016), *Irregular Migration, Trafficking, and Smuggling of Human Beings*.

In this study, the author looked at factors that are influencing the cooperation of third-country nationals with their return. A first conclusion of the author was that the duration of immigration detention had an effect on the rate of assisted voluntary returns (AVR). AVR rates were relatively low among those who had been rejected after quite some time (more than nine months) and who had been rejected quickly (after a few days or weeks). A second conclusion of the study was that for most third-country nationals' detention was not a factor that influenced their willingness to return. In a survey of the judicial service, it was found that a minority of 23.6% of respondents agreed or agreed strongly with the statement that the willingness to leave the Netherlands had increased during detention. 54.6% of the respondents disagreed or disagreed strongly and 20% were neutral. Respondents who had been detained repeatedly were more likely to report an increased willingness to leave the Netherlands than those who were detained for the first time. A third conclusion of the study was that cooperation is also linked to perceived legitimacy of the government and measures that are imposed: harsh and repressive measures (such as detention) do not necessarily lead to better outcomes and more cooperation.

Study 6: Kox, M., & Leerkes, A. 'Met de schrik vrij?', (2013), *Tijdschrift over Cultuur en Criminaliteit*, 3 (1), p. 58-64.

In this study, it was found that the stay in immigration detention was an extra factor in the decision process of willingness to return. How influential this factor was, differed per person. Respondents indicate that they experience their stay in detention as hard and as a punishment, but that does not necessarily contribute a lot to the willingness of people to return. For some people, (repeated) detention did lead to doubt about the future. Detention made it clear to the respondents that there are few possibilities for them to build a life in the Netherlands. However, these possibilities were also lacking in their country of origin. People that considered their country of origin as safe saw more opportunities in their country of origin. For that group, detention did contribute to their willingness to return. In conclusion, in some cases, detention did contribute to willingness to return, but this preparedness was more influenced by other factors such as conditions in the country of origin or health.

Study 7: WODC, 'Van bejegening tot vertrek. Een onderzoek naar de werking van vreemdelingenbewaring', 2013, <https://repository.wodc.nl/handle/20.500.12832/1258>, last accessed on 16 March 2021, p. 115

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The willingness to return is only partly influenced by the stay of third-country nationals in detention.

Additionally, repeatedly being detained results in detention losing its deterring effect. For people that at least have been detained for five times, detention has less impact on the willingness to return than on people who have been detained two, three or four times.

Study 8: ACVZ, 'Advies "Vreemdelingenbewaring of een lichter middel"', 2013,
<https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2013/5/25/vreemdelingenbewaring-of-een-lichter-middel>, last accessed on 16 March 2021.

The Advisory Committee on Migration Affairs (ACVZ) concluded that the effectivity of realizing return is the highest within three months of detention. 81% of the third-country nationals that were detained in 2012 for less than three months has left the Netherlands demonstrably. The longer the duration of detention, the lower the chance of a successful departure will be. For people that have been detained for longer than six months, only 17% has left the Netherlands demonstrably.

Study 9: Leerkes, A. 'Terugkeer of niet', (2011), *Mens en Maatschappij*, 86 (2), p. 142-143.

The duration of detention does not have a significant effect on the development of willingness to return. The preparedness of third-country nationals in detention will increase 8-12% when return counseling sessions are held with DT&V. When two of those sessions are held, this increases the preparedness with 18%. The alien will not think more positively about return, but will feel more forced to do so.

Alternatives to detention

Study 10: WODC, 'Evaluatie van de herziene asielpprocedure',
<https://repository.wodc.nl/handle/20.500.12832/2061>, last accessed on 16 March 2021, p. 161.

The extra time that a third-country national can spend in the freedom restricted location (*Vrijheidsbeperkende locatie* - VBL) can contribute to more voluntary returns. A part of the third-country nationals need more time to get used to the idea of returning to the country of origin. In this report, the guidance provided to third-country national during this time was evaluated as not sufficient. Residents of the VBL indicated that they were unsure what was expected of them by DT&V. Civil society organizations are skeptical of the influence of a stay in the VBL on the decision to return.

Q18. Is there any evidence, or empirical observation on **whether detention or alternatives to detention have a greater impact on migration procedures**, (e.g. whether they make return procedure more effective), **depending on certain characteristics of migrants** and specifically country of origin, nationality, family situation, gender, age.

Discuss separately for each available alternative to detention. If possible, provide examples and statistics.

Please discuss separately for international protection and return procedures

International protection

Detention: See below "Study 1"

Alternatives: See below "Alternatives: Study 1"

Return procedures

Detention:

Study 1: Advisory Committee for Alien Affairs, 'Samen werk maken van terugkeer', forthcoming.

The Advisory Committee on Migration Affairs (ACVZ) has identified several characteristics of migrants that have a greater impact on the return process.

First of all, the ACVZ observes that detention positively influences the return procedure depending on the type of detention that is imposed on a migrant. They state that departure rates for Dublin claimants are much higher (91%) than for non-Dublin claimants (50%). Thus, detention of migrants for the transfer to another EU Member State has a higher success rate than return to the country of origin (i.e., a non-EU Member State).

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In addition, the ACVZ point to major differences in the effectiveness of the return process depending on the country of origin of the third-country nationals. In the period 2015-2019, Albanians and Moroccans were amongst the most detained nationalities, followed by Algerians, Afghans and Nigerians. Amongst the non-Dublin claimants, 92% of the Albanians demonstrably left the Netherlands. Meanwhile, only 12% of the Algerians, 13% of the Moroccans, 38% of the Afghans and 50% of the Nigerians had respectively left the Netherlands. The differences in effectiveness are much smaller when it comes to the detention of Dublin claimants. The effectiveness then lies around 90% for Albanians, Moroccans, Algerians and Nigerians. Notably, the detention of Afghan Dublin claimants is less effective (66%). Thus, not only is detention less effective for non-Dublin claimants than for Dublin claimants, but non-Dublin claimants also show a greater variety in effectiveness depending on the country of origin of the migrant. According to ACVZ, this is related to both the cooperation of the third-country nationals and their countries of origin. For example, Albanians are often well documented eliminating any doubt about their nationality and identity. Consequently, the country of origin is motivated to engage and cooperate with the return process. On the other hand, Moroccans and Algerians more often state that they do not have any identity documents and avoid to actively engage in obtaining them or to obtain them again. The ACVZ concludes that it is not necessarily the nationality that determines the effectiveness of the detention process, but the lack of documents and cooperation.

Besides the above characteristics, the ACVZ notes that migrants with a procedural history have a more effective return process resulting from their detention. In such cases an investigation has already been carried out into their identity and nationality. Whereas, migrants who are 'spontaneously' encountered need a more thorough and additional investigation into their identification as they are encountered for the first time. This results in a more complex and less effective return process.

Study 2: Scholten, P., Van Zwol, R., & Myjer, E., 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', 2019.

Scholten, Van Zwol and Myjer (2019) noted in their report that the general director of the DT&V stated that detention is an effective measure for forced departure. Thus, stating that detention triggers a more effective return process as the foreigner is prevented from absconding during the return process. Furthermore, in the discussions conducted with the director of the DT&V, there were no alternatives that were found to have an effective impact on the return procedure.

After the publication of the report, the Minister of Migration responded in a parliamentary letter.¹⁸⁶

Study 3: Leerkes, A., and Kox, M., 'Pressured into a preference to leave? A study on the "specific" deterrent effects and perceived legitimacy of immigration detention', 2017, *Law & Society Review*, 51(4), p.895-929.

Kox and Leerkes (2017) have examined whether and how immigration detention affects detainees' decision-making process regarding their departure.

The study consisted of 81 semi-structured face-to face interviews with immigration detainees in the Netherlands. In order to understand and describe migrant respondents' immigration projects, the respondents were divided into three groups: family migrants, asylum migrants and labor migrants. Respondents were assigned to particular categories based on their reasons for leaving their respective country of origin:

- a. Family migrants (N=13): Migrants who left their country of origin because of their desire to reunify with a partner or family in the Netherlands
- b. Asylum migrants (N=39): Migrants who emigrated because of their desire to apply for asylum,
- c. Labour migrants (N=29): Migrants who came to Europe and who did not have a desire to reunify with family member nor the intention to apply for asylum.

The results illustrate that there was a 19 percent decrease in the number of respondents that showed a preference to stay during their time in detention (from 53 to 37 respondents). Thus, detention pressures "a notable minority into a preference to leave the country". More specifically, labor migrants without family

¹⁸⁶ Letter from the Minister for Migration of 15 November 2019, 2621710

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ties in the Netherlands developed a preference to return to their country of citizenship because of detention-related reasons.

Respondents gave several examples that influenced their decision to return to their country of origin. Firstly, labour migrants often have pre-existing return plans. Thus, detention or repeated detention affects the return process as it adds to the already existing plan to return. Secondly, the geographical location of their country of origin also plays a role: i.e., some prefer to go to the country of origin temporarily and then to return legally by arranging immigration documents. However, others also may return to their initial destination country.

Summed up, the above study presents that detention has a greater impact on labor migrants in comparison to family and asylum migrants, even though this impact is stated to being “moderate”.

Study 4: Leerkes, A., ‘Chapter 3: Managing migration through legitimacy? Alternatives to the criminalisation of unauthorised migration’, 2016, *Irregular Migration, Trafficking and Smuggling of Human Beings: Policy Dilemmas in the EU. CEPS Paperback*, 26.

Leerkes (2016) mentioned how detention has a greater impact on the migration procedures depending on the countries of origin. Deportation procedures that involved EU candidate countries have resulted in considerably more deportations than those involving other countries. For example, detainees who originated from potential EU candidates had a 72% chance of being deported, whilst those with similar migration preferences but from different countries of origin only had a 50% chance of deportation.

Study 5: Leerkes, A., and Kox, M., ‘Pressured into deportation? Detainees’ (un)willingness to ‘return’ and the moderating influence of international relations’, 2016, In R. Furman, D. Epps & G. Lamphear (Eds.), *Detaining the Immigrant Other: Global and Transnational Issues (pp. 15-26) (12 p.)*. New York: Oxford University Press, Oxford.

Another study by Leerkes and Kox (2016), also noted how detention has a greater impact of the migration process depending on the degree of cooperativeness of the state or country of origin. The states willingness to admit detainees seems to be more likely to shape the detention outcome than the detainee’s preferences. For example, Iraq and Afghanistan in 2011 were among the countries that admitted citizens on a regular basis. This was related to the presence of coalition forces, which included Dutch military troops. Thus, international relations can have a significant role as states want to keep doors to EU membership open or to achieve other benefits, e.g. related to trade or development aid.

Alternatives:

Study 1: Advisory Committee for Alien Affairs, ‘Samen werk maken van terugkeer’, forthcoming.

As noted by ACVZ, the Ministry of Justice and Security does not have reliable data on the effectiveness of alternatives to detention. Alternative measures are imposed and registered by separate authorities in a non-uniform manner, often imposed side by side with other measures and vary in duration. Furthermore, authorities often do not keep up to date information as to whether the measures are being complied with. This results in the absence of information needed for an evaluation on this topic.

Upholding fundamental rights

Q19. What **human rights safeguards** are available in detention and in alternatives to detention?

Note from EMN NL NCP: we decided to split the table to increase readability.

Table 19.a detention

Safeguards	Detention
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<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Yes.</p> <p>Detainees have their own lawyers, whose fees are covered by the State. Detainees can keep into contact with their lawyer by phone or post, and the lawyer can visit the detainee on working days during office hours. If necessary, the lawyer may request to be allowed to visit de detainee outside office hours. Duty lawyers always have access to the institution without an appointment.</p> <p>A legal counter is present at the institutions where employees give legal advice and a referral, free of charge. However, in the study of Van der Leun et al (2016) it is concluded that detainees are not always aware of the presence of the legal counter, and are not always satisfied with the service provided.</p>
<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</p>	<p>In principle, third-country nationals are always heard before imposing a detention measure. However, under certain circumstances it is possible to decide to hear the third-country national after deciding on imposing detention</p> <p>Third-country nationals have the ability to file a complaint about the way they are treated at the detention centre to the Supervisory Committee. They have to file the complaint within 7 days of the incident.¹⁸⁷ The contact point for immigration detention can help third-country nationals to file a complaint. It often takes a few months for a complaint to be handled, and a person mostly gets a financial compensation if the complaint is substantiated. If the complaint is rejected, they can make an appeal to The Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor Strafrechtstoepassing en Jeugdbescherming).</p> <p>Furthermore, the detainee can always contact their lawyer, or any party.</p> <p>In the study of Busser, Oosterhuis and Strik (2019)¹⁸⁸ the supervision and the submission of complaints in detention centers is criticized. The authors point out how the submission of complaints is a complicated process, often resulting in the rejection of complaints.</p>
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Yes, medical care is available.</p> <p>Each of the Dutch detention centers where migrants are detained have a medical service which, in most cases, can provide the necessary care to the third-country national. Medical care is comparable to care in the free society. Upon arrival, all detainees are seen by a nurse (intake interview). There are medical consulting hours, and medication is ordered and distributed at the expense of the institution.</p> <p>Secondary care may be provided where necessary. This could be an optician, physiotherapist or psychologist. If necessary, a third-country national may be referred to a hospital. Oral care is available in all institutions.</p> <p>Medical advisers of the Custodial Institutions Agency (DJI) can advise on the request of the governor and/or detainee on possible incapacity for detention.</p> <p>Amnesty International argues in several reports that it is difficult to provide adequate health in detention.¹⁸⁹</p>

¹⁸⁷ In the study of Busser, Oosterhuis and Strik (2019) it is concluded that in practice this period is too short.

¹⁸⁸ Busser, A., Oosterhuis, R., and Strik, T. 'Vreemdelingendetentie I. Detentie-omstandigheden onder huidig regime en onder wetsvoorstel getoetst aan internationale normen', 2019, *A&MR* 2019/8.

¹⁸⁹ Amnesty International, Dokters van de Wereld & Stichting LOS – Meldpunt Vreemdelingendetentie, 'Geketende zorg - Gezondheidszorgen in vreemdelingendetentie', 2014, [Geketende zorg. Gezondheidszorgen in vreemdelingendetentie -](#)

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<p>Please add any additional safeguard</p>	<p>Various services are based within the walls of the detention centres. The Repatriation and Departure Service (DT&V), the International Organisation for Migration (IOM) and the Dutch Council for Refugees (Vluchtelingenwerk Nederland) are present in the institutions. The IND (Immigration and Naturalisation Service) is also represented within the walls of the detention facility at Schiphol International Airport.</p> <p>NGOs may, through the director, apply for access and assist in the return. These organisations work under their own responsibility. They can play a facilitating role in the return process.¹⁹⁰</p> <p>Detainees are free to get into contact by post or phone with whomever they want. They have a phone in their cell. They can also receive visitors during visiting hours. Detainees also have limited access to the internet (social media are not accessible).</p> <p>Children of school age are provided with education, although this is limited given the short period of stay and the big fluctuation in the group at the institutions.</p> <p>The institutions have prayer rooms and religious assistance is available.</p> <p>Different authorities supervise the quality of the institutions and the compliance with rules and standards. There are also a number of interest groups who report on the quality of the institutions and the effect of detention on a person's wellbeing.</p>
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19.b Alternatives to detention 1-3: reporting requirements, surrendering documents and financial deposit.

Safeguards	Other alternatives to detention: reporting requirements, surrendering documents and financial deposit ¹⁹¹
<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Yes.</p> <p>Third-country nationals have their own lawyers, whose fees are covered by the State. The Dutch Council for Refugees may also provide legal support free of charge.</p>
<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify</p>	<p>The Third-country national is not heard before the imposition of reporting requirements, surrendering documents or a financial deposit.</p> <p>Third-country nationals have the ability to file a complaint to the IND or DT&V or to file an administrative appeal.</p>

[Dokters van de Wereld](#), last accessed 17 March 2021; Amnesty International, 'Geen cellen en geen handboeien - Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie', 2018, [AMN 18 05 Rapport-Geen-cellen-en-handboeien_DEF_web.pdf \(amnesty.nl\)](#), last accessed 17 March 2021; Amnesty International, Dokters van de Wereld, Stichting LOS - Meldpunt Vreemdelingendetentie, 'Isolatie in vreemdelingendetentie', 2015, [AMN 20 26 rapport-isolatie_digitaal.pdf \(amnesty.nl\)](#), last accessed on 17 March 2021.

¹⁹⁰ In the study of Busser et al. authors observe that NGO's not always gain access. See Busser, A., Oosterhuis, R., and Strik, T. (2019). Vreemdelingendetentie I. Detentie-omstandigheden onder huidige regime en onder wetsvoorstel getoetst aan internationale normen. Available at: <https://www.stichtinglos.nl/sites/default/files/los/140919%20A%26MR8%20artikel%20Vreemdelingendetentie.pdf>

¹⁹¹ Interviews with National Police, 8 February 2021; DT&V, 10 and 11 February 2021; IND, 10 February 2021; Information provided by DT&V on 2 March 2021 and by IND on 9 March 2021.

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Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.	Yes, the same access to health applies as to other third-country nationals subject to an asylum procedure ¹⁹² or return procedure.
Please add any additional safeguard	Not applicable.

¹⁹² See also EMN (2020), AHQ 2020.18 Health care provisions for asylum seekers, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/202018_health_care_provisions_for_asylum_seekers.pdf

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Table 19.c alternatives to detention 4: Freedom-restricting measure (Art. 56 Aliens Act (Vw)) with VBL

Safeguards	Alternatives to detention: Freedom-restricting measure with VBL ¹⁹³
<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Yes.</p> <p>Third-country nationals have their own lawyers, whose fees are covered by the State. Third-country nationals can keep into contact with their lawyer by phone or post, and the lawyer can visit the third-country national.</p> <p>The Dutch Council for Refugees (<i>Vluchtelingenwerk Nederland</i>) has a counter in the VBL where employees give legal advice and a referral, free of charge.</p>
<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify</p>	<p>Third-country national are always heard before imposing a freedom- restricting measure.</p> <p>Third-country nationals have the ability to file a complaint to the COA concerning the VBL. Thereby, third-country nationals can make an objection against the freedom- restricting measure to the DT&V. If the objection is rejected the third-country national can file an appeal to the court and possibly to the Administrative Law Division.</p>
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Yes, medical care is available.</p> <p>The VBL has a medical service which, in most cases, can provide the necessary care to the third-country national. There are medical consulting hours, and medication is ordered and distributed at the expense of the institution.</p> <p>If necessary, a third-country national may be referred to a hospital or a specialist. The freedom-restricting measure can be temporarily lifted to visit a specialist or hospital.</p>
<p>Please add any additional safeguard</p>	<p>Various services and interest groups are based within the VBL. These are the Repatriation and Departure Service (DT&V), the International Organisation for Migration (IOM) and the Dutch Council for Refugees (<i>Vluchtelingenwerk Nederland</i>). Other NGOs can also access the shelter and assist in the return. These organisations work under their own responsibility. They can play a facilitating role in the return process.</p> <p>Third-country nationals are provided shelter and money to provide in their own livelihood. They can get into contact by post or phone with whomever they want. Wifi and a shared computer is available at the VBL.</p> <p>Children have access to education.</p> <p>The inspectorate of Justice and Safety (Inspectie J&V) supervises the quality of the institutions and the compliance with rules and standards.</p>

19.d Alternative to detention 5: Freedom-restricting measure (Art. 6, paragraph 1 Aliens Act (Vw)): obligation to stay in a space or place designated by the officer charged with border control.

Safeguards	Freedom-restricting measure (Art. 6, paragraph 1 Aliens Act (Vw)): obligation to stay in a space or place designated by the officer charged with border control. ¹⁹⁴
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¹⁹³ The freedom-restricting measure can be imposed in various situations. The VBL is a shelter where the freedom-restricting measure is imposed and which may be applied as an alternative to detention. Information provided in this table only concerns the VBL, and not other situations where the freedom restricting measure is imposed.

¹⁹⁴ Information provided by IND on 18 March 2021 and by DT&V on 23 March 2021.

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<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Yes.</p> <p>Prior to implementing the measure, the third-country nationals will be made aware of their rights and the procedure will be explained. The decision will be issued to the third-country national as well as a leaflet detailing the remedies available.¹⁹⁵ No lawyer will be informed, but the third-country national can contact a lawyer if they wish to do so.¹⁹⁶</p>
<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify</p>	<p>Yes.</p> <p>The third-country national will be heard once by the KMar about the denial of entry and about the freedom-restricting measure art. 6 (1). The border guard will hear the third-country national as much as possible in the language of the third-country national, if necessary with help of a translator. A legal counsellor can also be present during the hearing, a right that the third country national will be made aware of. During the hearing, it will be asked what the third-country national thinks of the intention of the measure, their medical situation and they will be informed on the right to appeal against the measure.¹⁹⁷</p>
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Yes. A medical service is available at Schiphol airport. For emergency cases, the third-country national will be taken to the hospital. In that case, the denial of entry will be announced and the passport of the third-country national will be taken. When forms need to be filled out, they will be brought to the place where the third-country national is staying, such as the hospital. If necessary, the third-country national can be supervised by the KMar.¹⁹⁸</p>
<p>Please add any additional safeguard</p>	<p>Not applicable.</p>

Q20. Have **evaluations or studies** been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention, of mental and physical health)?

Alternatives

No studies or evaluations were found on this topic.

Detention

On the contrary, several reports and studies were conducted on the impact of detention on the fundamental rights of the third-country nationals, which present the following key findings (ordered by year of publication):

Study 1: Amnesty International, Dokters van de Wereld, Stichting LOS - Meldpunt Vreemdelingendetentie, 'Isolatie in vreemdelingendetentie', 2020, https://www.amnesty.nl/content/uploads/2020/09/AMN_20_26_rapport-isolatie_digitaal.pdf?x52822, last accessed 19 March 2021.

Amnesty International, *Dokters van de Wereld* and *Stichting LOS – Meldpunt Vreemdelingendetentie* published a new report concerning isolation measures in detention facilities, stating that both people with and without psychological vulnerability can be harmed by isolation. A previous report on this topic was published by the same authors in 2015, which concluded that isolation was applied “too widely” as a punitive and disciplinary measure. Furthermore, they noted that punitive measures have no place in detention facilities and that

¹⁹⁵ Information provided by experts of KMar on 24 March 2021

¹⁹⁶ Information provided by experts of IND on 19 March 2021

¹⁹⁷ Information provided by IND on 19 March 2021 and by KMar on 24 March 2021

¹⁹⁸ Ibid.

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isolation should be in line with mental health standards.¹⁹⁹ This new study has been published with the aim of providing an evaluation and up to date information on the effects of isolation: it addresses how isolation during detention has harmful health consequences and that there are significant shortcomings concerning the current monitoring mechanisms, legal protection and the amended legal proposal²⁰⁰ to create a separate administrative framework for immigration detention and return (see Q1 and Q2). The report discusses these aspects and expresses their concerns for the fundamental rights of detainees.

Isolation and health - The study states that isolation, health and care are deeply entangled. First, isolation is a drastic measure which can have harmful health consequences. Second, the basis for the placement in isolation may be a medical reason. Third, people with a psychiatric background are more likely to be placed in solitary confinement because of their unusual or undesirable behaviour. The authors suggested the objectives of mental health care should be followed when determining disciplinary measures such as isolation in immigration detention. They further recommend that policy should be aimed at preventing and ultimately banning solitary confinement, as the authors concluded that regardless of the differences between persons and their situations isolation has negative consequences for the health of a considerable amount of people.

Monitoring and legal protection – The authors also suggest how inspections should play a more active role when it comes to the reduction and elimination of isolation. Currently, the monitoring procedure by the authorities who are responsible for the supervision of immigration detention do not test for reducing and banning isolation. Furthermore, the authors state that the complaints procedure is rather complex and not sufficient as a legal remedy for the following reasons. First of all, the lawyer is not informed when a detainee is placed in detention. Second, when a complaint is submitted it has no suspensive effect, i.e., the placement in isolation is not terminated. A third concern, is that the Supervisory Committee has a very long statutory decision period, whereas the time to submit a complaint is very short (seven days). Fourth, detainees are not always aware of the possibility to submit a complaint or the possibility to speak to their lawyer. Thus, to improve the supervision and legal protection, the authors propose a more extensive inspection of the documentation underlying isolation measures, contact with lawyers and relevant NGOs, and random interview with detainees who have experienced isolation. This is aimed at improving the monitoring and complaints procedures.

Return and Aliens Detention Act – The authors criticize how the amendment of the legislative proposal by the state secretary has resulted in more power for the directors of detention centres and more restrictions for detainees. For example, in the event of serious order and security problems the director can institute a lockdown. During a lockdown, all detainees can stay in their cell for a maximum of period of four weeks for 23 hours a day. This is regardless of the type of ward, cell or their involvement in the event. The authors argue, that other possibilities for tackling events causing nuisances are undiscussed in the legislative proposal. Thus, they argue that such punitive measures such as isolation hardly contribute to the safety of detainees and employees. Instead, they suggest that more social contact, autonomy and meaningful daytime activities can lead to a positive living environment and less aggression, which is in the interest of both employees and detainees.

After the publication of the report, the Minister of Migration responded in a parliamentary letter.²⁰¹

Study 2: Busser, A., Oosterhuis, R., and Strik, T. 'Vreemdelingendetentie I. Detentie-omstandigheden onder huidig regime en onder wetsvoorstel getoetst aan internationale normen', 2019, A&MR 2019/8.

Busser, Oosterhuis and Strik (2019) criticized the supervision and the submission of complaints in detention centers. According to the authors, detention circumstances are inaccessible for the outside world as they

¹⁹⁹ Amnesty International, *Dokters van de Wereld, Stichting LOS - Meldpunt Vreemdelingendetentie, 'Isolatie in vreemdelingendetentie'*, 2015, [Isolatie in vreemdelingendetentie](#), last accessed 19 March 2021.

²⁰⁰ Eerste Kamer der Staten-Generaal, 34.309 Wet terugkeer en vreemdelingenbewaring, https://www.eerstekamer.nl/wetsvoorstel/34309_wet_terugkeer_en, last accessed on 29 January 2021.

²⁰¹ Letter from the Minister for Migration of 9 November 2020, 3038815.

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take place in a closed setting. Thus, they observed that NGO's barely gained access as the only way to enter a detention facility was through an organized tour. Consequently, they stated that an independent supervisory body is crucial. Since the ratification of the OPCAT (additional protocol to the anti-torture convention or *Aanvullende Protocol bij het Antifolterverdrag*), a separate supervisory institution is obligatory in the Netherlands. However, the authors stated how these independent supervisory bodies are organized in such a way that they fall under the responsibility of the government.

Furthermore, the authors pointed out how the submission of complaints is a complicated process, often resulting in the rejection of complaints. Detainees' sanctions or punitive measures are imposed by prison directors. However, complaints about their decisions are left untreated as they appear ambiguous. Moreover, complaints must be submitted within seven days to the supervisory committee (*Commissie van Toezicht*). However, in practice this period appears to be too short. Other difficulties that complicate this process are the detainees' knowledge of the procedure, language barriers, literacy and the capacity to express oneself.

In conclusion, the authors noted that a lack of independent supervisory bodies are involved in the supervision and submission of complaints' in detention facilities and therefore are concerned about the fundamental rights of the third-country nationals.

Study 3: Amnesty International, Dokters van de Wereld, Stichting LOS - Meldpunt Vreemdelingendetentie, 'Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie', 2016, [Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie](#), last accessed on 18 March 2021.

This report noted that the detention contact point received 338 complaints from the 1st of January until mid-December in 2015, of which 63 complaints were related to health or medical care. Previous studies²⁰² provided a background for the complaints, showing that:

- Several people in the research group had already undergone traumatic experiences and therefore were already undergoing psychiatric treatment prior to their detention.
- Several cases already experienced health problems and, consequently, detention caused further health risks.
- The continuity of care was not guaranteed during the entire detention process: i.e., from the moment upon entry, upon transfer, deportation or release.
- Despite the known health risks that come with isolation, it was still regularly used.
- Medical advice is not always followed as there is a balancing of interests between the health of the patient and the detention. Consequently, this can lead to harmful situations.

The report concluded that the individual assessment, which is made prior to detention, shows severe shortcomings when it comes to the examination of (special) personal circumstances. Vulnerable people are overlooked because they do not always fit in the predefined categorizations that are made for the identification of vulnerable people. Despite the improvements made in the newly amended legislative proposal (*artikel 58a Wet terugkeer en vreemdelingenbewaring*), the authors argue that vulnerable people are detained whilst experiencing medical issues. This can consequently lead to an increase in vulnerability and potential long-term effects. However, according to the law, medical care can be provided within the detention facility and therefore is not a ground to waive off detention. Thus, in order to avoid serious health damage and to ensure the fundamental rights of third-country nationals, the authors argue for a more thorough individual vulnerability assessment prior to detention. In addition, these assessments should be carried out regularly during detainees' time in detention as vulnerability may be enhanced during detention.

Several other relevant references noted the consequential negative impacts of detention, despite the substantial improvements that have been implemented:

- Amnesty International, Dokters van de Wereld & Stichting LOS – Meldpunt Vreemdelingendetentie, 'Geketende zorg - Gezondheidszorgen in vreemdelingendetentie', 2014, [Geketende zorg. Gezondheidszorgen in vreemdelingendetentie - Dokters van de Wereld](#), last accessed 17 March 2021

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- Amnesty International, 'Geen cellen en geen handboeien - Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie', 2018, [AMN 18 05 Rapport-Geen-cellen-en-handboeien](#), last accessed 17 March 2021
- De Gier, N., Kox, M., Boone, M., and Vanderveen, G., 'Ik verblijf in een gevangenis, daar is niets moreels aan.' Ervaren procedurele rechtvaardigheid bij binnenkomst in vreemdelingen bewaring', 2020, *Crimmigration & Recht 2020 (4) 2*.
- Kox, M., Boone, M., and Staring, R., 'The pains of being unauthorized in the Netherlands', 2020, *Punishment & Society*. Vol. 22 (4) 534-552.

Q21. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**²⁰³ and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention (please quote the relevant case law/decision). Please provide the statistics for 2019 or the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your country.

International protection procedures

N/A

Return procedures

N/A

Improving the cost-effectiveness of migration management.

Q22. Have any evaluations or studies in your (Member) State considered the **cost-effectiveness of using detention or alternatives to detention as part of the asylum procedure** (e.g. length of time to determine an international protection status and executing decisions, costs of procedures, etc)?

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

No studies on the cost-effectiveness of using detention or alternatives to detention as part of the asylum procedure were found.

Q23. **Have any evaluations or studies** in your (Member) State considered **cost-effectiveness of using detention and alternatives to detention as part of the the return procedures**. (e.g., the length of time that transpires from issuing a return decision to the execution of the removal, the share of voluntary returns out of the total number of returns, the total number of removals completed, costs of procedures,)?

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report

Detention

Study 1: Adviescommissie voor Vreemdelingenzaken. 'Samen werk maken van terugkeer', <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/04/22/advies-samen-werken-aan-terugkeer>, Last accessed on 16 March 2021, p. 31-33.

From a policy point of view, detention is more effective than alternatives in effectuating returns. In 2015-2019, almost 2/3 of all third-country nationals staying in detention with the purpose of return actually returned. If you only look at third-country nationals that are not Dublin-claimants, this is about 50%. Detention that

²⁰³ Please consider appeals to a judge but also to a specific administrative commission or ombudsman

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leads to departure often lasts one or two months. For non-Dublin departures, detention is hardly effective after two months. Prolonging detention is thus not effective.

There is also a difference in effectivity depending on which authority detains the alien. The third-country nationals that are detained by DT&V are mostly already in the caseload of Repatriation and Departure Service (DT&V). Their identity and nationality is already known and they stay at a reception center of the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers* - COA), so their address is known as well. DT&V can therefore prepare the detention. The Aliens Police, Identification and Human Trafficking Division (*Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel* - AVIM) of the National Police and the Royal Netherlands Marechaussee (*Koninklijke Marechaussee* - KMar) have to detain third-country nationals that are found “spontaneously” and have to find out the identity within the given time frame and cannot prepare the detention. As a consequence, the effectivity of people leaving the Netherlands demonstrably is higher for people detained by DT&V (80%) than for AVIM and KMar (60%). For non-Dublin claimants, the effectivity of detention for DT&V is 67%, for AVIM and KMar this is 44-50%.

Study 2: Global Detention Project, ‘Immigration Detention in the Netherlands’, (2020),
<https://www.globaldetentionproject.org/wp-content/uploads/2020/02/GDP-Immigration-Detention-in-the-Netherlands-February-2020.pdf>, last accessed on 16 March 2021.

There are no studies found that specifically address the cost-effectiveness of detention, but according to the Custodial Institution agency, in 2017, one day of detention costs 255 euro on average.

Study 3: Busser, A., Oosterhuis, R., & Strik, T. ‘Gronden getoetst aan wetsvoorstellen en aan Europees en Internationaal recht’ (2019), *Asiel en Migrantenrecht*, 10 (9).

On average, a stay in detention lasted 100 days up until 2010. After implementation of the Return directive, this was brought back to 44 days. Since then, the average duration has remained around that number. However, outliers also become more common with on the one hand about 45 people that stayed in detention for more than 6 months in 2016, 50 in 2017 and even 110 in 2018. On the other hand, the short duration in detention of Dublin claimants and Albanese nationals counters these high numbers.

Study 4: Ministerie van Justitie en Veiligheid, ‘Beleidsdoorlichting van het begrotingsartikel 37.3’, (2019),
<https://www.rijksoverheid.nl/documenten/rapporten/2019/11/15/tk-bijlage-beleidsdoorlichting-begrotingsartikel-37-3-terugkeer>, last accessed on 16 March 2021, p. 27.

The following statistics are available of the type of return from 2011 to 2017 out of total departures from the Netherlands.

	2011	2012	2013	2014	2015	2016	2017
Percentage voluntary departure ²⁰⁴	19%	20%	23%	26%	28%	26%	14%
Percentage forced departure ²⁰⁵	32%	29%	31%	27%	27%	26%	29%
Percentage voluntary departure without surveillance ²⁰⁶	49%	51%	46%	47%	45%	48%	57%
Total persons	21.540	20.870	15.830	16.000	16.610	24.900	20.840

²⁰⁴ *Voluntary departure* is when an alien, often with support, leaves the Netherlands without coercive measures imposed by the government and the departure has been registered as such.

²⁰⁵ *Forced departure* is when an alien does not want to leave voluntarily. DT&V will try to motivate the alien as much as possible to leave independently with IOM, but when this does not succeed, coercive measures can be imposed.

²⁰⁶ *Voluntary departure without surveillance* is understood as absconding. A third-country national has left and the destination is unknown. It is therefore also unknown whether or not the third-country national has left the Netherlands and has returned to the country of origin.

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Study 5: Ministerie van Justitie en Veiligheid, 'Gedwongen vertrek in beeld',

<https://www.rijksoverheid.nl/documenten/rapporten/2018/06/22/tk-bijlage-gedwongen-vertrek-in-beeld>, last accessed on 16 March 2021, p. 8.

A complication within the current system is the possibility for detainees to apply for a residence permit. This suspends the ability to return a person. Per year, the percentage of voluntary returns out of total returns differ from around 18-28%: 19% (2011), 20% (2012), 23% (2013), 26% (2014), 28% (2015), 26% (2016) and 14% (2017).

Study 6: Kox, M., & Leerkes, A. 'Met de schrik vrij?', (2013), *Tijdschrift over Cultuur en Criminaliteit*, 3 (1), p. 65.

The costs of detention are high. These are not only the material costs, but also humanitarian. Detention did not influence the willingness to return for the majority of respondents, but their stay in detention has had an impact on their health.

Alternatives to detention

Study 1: Adviescommissie voor Vreemdelingenzaken, 'Samen werk maken van terugkeer',

<https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2021/04/22/advies-samen-werken-aan-terugkeer>, Last accessed on 16 March 2021, p. 34.

There is no reliable data about the effectivity of alternatives. However, you can see that out of the total group of third-country nationals that has to return, the part that has been detained departs more often. Of all alternatives together, 33% of third-country nationals leaves the Netherlands. For detention, this is 67%. The effectivity of the alternatives is thus lower than detention. This does not say anything about the effectivity of specific alternatives on their own.

Study 7: International Detention Coalition, 'There are Alternatives', <https://idcoalition.org/wp-content/uploads/2016/01/There-Are-Alternatives-2015.pdf>, 2015, last accessed on 16 March 2021, p. 54.

This publication reports on an NGO-run programme in the Netherlands assisting persons with return.²⁰⁷ This assisted return costs 6.000 euro, the equivalent of 30 days in immigration detention. In the end of September 2014, over half the people enrolled in the program had returned to their countries.

Conclusions

Please draft a short conclusion based on your responses to the template above, considering the following:

- i. To what extent are alternatives to detention applied in practice in your country?*
- ii. What are the challenges in the implementation and use of alternatives to detention?*
- iii. What are the concerns regarding the use of alternatives (if any) compared to detention in international protection and return procedures? In answering this question, please consider each aspect of effectiveness: 1) compliance with migration procedures including reduce the risk of absconding; 2) maximising cost-effectiveness; 3) ensuring respect for fundamental rights;*
- iv. What does evidence suggest about main factors identified which contributed to greater or reduced cost-effectiveness (e.g. personal characteristics of the third-country nationals affected, type of alternative provided, etc.)*

Availability and application of alternatives to the detention in the Netherlands

²⁰⁷ Assisted voluntary return programmes are not considered alternatives to detention for the purpose of this study.

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In this study, we identified the measures applied in immigration procedures in the Netherlands which can be considered alternatives to detention defined as *non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory*.²⁰⁸ In doing so, we distinguished between international protection procedures, return procedures, the Dublin procedure and irregular migrants detected in the territory, as well as between ordinary/territorial procedures and the border procedure.

In the border procedure, third-country nationals who apply for international protection are in principle always detained. Detention in the border procedure is only foregone in cases of exceptional individual circumstances leading to detention being disproportionately burdensome, as any measure other than detention would effectively provide access to the territory of the Member State. Nonetheless, the official imposing detention always has to motivate why a less-coercive measure does not suffice in the individual case. Border detention is always considered disproportionate for unaccompanied minors and families with minors who are subject to an international protection procedure or Dublin procedure. Third-country nationals who are refused entry and do not apply for asylum are also in principle detained. However, in return procedures at the border, an alternative is available, i.e. the freedom-restricting measure on the basis of art. 6, first paragraph Aliens Act (*Vreemdelingenwet, Vw*) 2000. This measure may be imposed if departure is possible within a matter of days, and entails an obligation on the third-country national to remain in the international area (lounge) of the airport.

Outside of the border procedure, alternatives to detention are more widely available. Possible measures to be applied are reporting requirements; submission of a financial deposit; surrendering documents; and a freedom-restricting measure on the basis of art. 56 Aliens Act. The latter may be applied in different situations and with different geographical limitations, but for the purpose of this report we have focused on its use in combination with shelter in a Freedom Restricting Location (*Vrijheidsbeperkende Locatie, VBL*), as this provides the main situation where the freedom-restricting measure is used as an alternative to detention. The VBL is available for third-country nationals subject to a return procedure. For third-country nationals receiving shelter in a VBL, the freedom-restricting measure means that they cannot leave the municipality without permission. This is usually combined with a weekly reporting requirement.

The reporting requirement can be applied in all immigration procedures (outside of the border procedure). When subject to this measure, third-country nationals must report to the National Police (AVIM) at set intervals. The required reporting frequency varies based on the individual case as well as the procedure. The imposition of a financial deposit is available in the return procedure and for other irregular migrants, but used very sparingly. Experts interviewed for this study confirm that surrendering documents is used in practice as well: this usually concerns the passport/ID or a travel ticket.

Challenges in the implementation and use of alternatives to detention

The advantages and challenges regarding alternatives to detention in the Netherlands were identified based on interviews with experts from the government organisations cooperating in the immigration procedure, which are responsible for imposing detention and/or alternatives. In general, they considered alternatives to be less invasive than detention, because the third-country national is less limited in their freedom. A less coercive measure does however not prevent a third-country national from absconding.

When imposing an alternative the third-country national gets the possibility to return voluntarily. Voluntary departure is known for being more durable than forced departure carried out from detention. On the other hand, it was indicated that the alternatives are not always effective in promoting cooperation with authorities; compliance with the conditions of the alternative does not necessarily constitute compliance with the return procedure.

Regarding legal obstacles, the imposition of alternatives is bound to fewer restrictions than detention, which makes them easier to apply. However, for a few of the alternatives the possibility to impose the measure depends on the situation of the third-country national. For reporting obligations, it was noted that the KMar is not mandated to impose this measure on third-country nationals detected entering irregularly.

In addition, limited financial resources (financial deposit) and no available documents (surrendering documents) may prevent the alternative from being applied. Especially for irregular migrants who are on the

²⁰⁸ EMN Glossary

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move these alternatives can often not be applied, as a result of which detention becomes the only coercive measure available.

Some alternatives require less resources than detention, but this does not hold for all alternatives: the VBL, where the freedom-restricting measure is imposed, is a facility providing shelter and therefore requires availability of resources and capacity. Reporting requirements may also require more staff capacity as they can be applied for a longer period of time.

Concerns regarding the use of detention and alternatives as identified in the literature

No concerns were found regarding the impact of alternatives to detention on fundamental rights, (cost-) effectiveness or cooperation with migration procedures in the literature consulted for this study. However, it should be mentioned that less research has been conducted on alternatives than on detention, which makes it difficult to compare the two. Furthermore, it should be noted that the reports that were found for this study mainly focused on detention in return procedures and often not on the international protection procedure.

Several concerns were mentioned by studies regarding the use of detention in ensuring respect for fundamental rights. Firstly, there is a lack of supervisory bodies that are involved in the supervision and submission of complaints' in detention facilities. Consequently, affecting the fundamental rights of third-country nationals as cases are rejected and remain untreated.²⁰⁹ A second concern addressed in the literature are the health implications of detention and particularly the placing in isolation during detention. Despite the known health risks, Amnesty International (2018) note that medical advice is not always followed as there is a balancing of interests between the health of the patient and the detention, which may lead to harmful situations.²¹⁰ Thirdly, a 2016 report from several NGOs concluded that there are severe shortcomings when it comes to the examination of (special) personal circumstances in the balancing of interests for detention.²¹¹ Finally, researchers note that in practice alternative measures are not always fully considered before ordering detention as there is a margin of discretion for the official in deciding on detention.²¹²

Main factors contributing to greater or reduced cost-effectiveness as identified in the literature

Several reports indicated that the cost-effectiveness of alternatives in the Netherlands was not assessed or that no reliable data was available. However, some research into the effectiveness of detention and alternatives (without relating it to the costs), has been conducted. For example, a (forthcoming) report of the Advisory Committee on Migration Affairs concludes that detention is more effective in realizing returns than all the alternatives grouped together, though this does not say anything about the effectiveness of individual alternatives.²¹³

The ACVZ report furthermore observes three factors related to personal characteristics. Firstly, evidence suggests that detention of migrants for the transfer to another EU Member State (i.e. Dublin procedure) has a higher success rate than return to the country of origin. Secondly, evidence show the relevance of the third-country national's country of origin. Out of the top five detained nationalities among non-Dublin claimants, Albanians most demonstrably left the Netherlands to their country of origin. However, the differences in effectiveness based on nationality are much smaller when it comes to the detention of persons subject to a Dublin procedure. The report notes that it is not necessarily the nationality that determines the effectiveness

²⁰⁹ Busser, A., Oosterhuis, R., and Strik, T. (2019). Vreemdelingendetentie I. Detentie-omstandigheden onder huidig regime en onder wetsvoorstel getoetst aan internationale normen. Available at:

<https://www.stichtinglos.nl/sites/default/files/los/140919%20A%26MR8%20artikel%20Vreemdelingendetentie.pdf>

²¹⁰ Amnesty International. (2018). Geen cellen en geen handboeien - Het beginsel van minimale beperkingen in het regime van vreemdelingendetentie. Available at: https://www.amnesty.nl/content/uploads/2018/02/AMN_18_05_Rapport-Geen-cellen-en-handboeien_DEF_web.pdf?x81110.

²¹¹ Amnesty International, Dokters van de Wereld, Stichting LOS – Meldpunt vreemdelingendetentie. (2016) Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie. Available at: https://www.stichtinglos.nl/sites/default/files/los/AMN_16_20_kwetsbaar%20in%20vreemdelingendetentie_WEB_300dpi.pdf.

²¹² Besselsen, E., 'De nieuwe zaaksbehandeling in de *habeas corpus-procedure*', 2015, *JNVR*, no. 1, p. 84 – 99; Specific to the asylum procedure, see: van der Spek, W., 'Inbewaringstelling van asielaanvragers. Over gevoel en niet-oprechte asielaanvragen, 2018, *A&MR*, no. 3 (2018), p. 104-111.

²¹³ Adviescommissie voor Vreemdelingenzaken (2021). Samen werk maken van terugkeer.

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of the detention process, but rather the lack of documents and cooperation. Therefore, a third and fourth characteristic that influences the effectiveness of returns are a third-country national's procedural history and international relations.²¹⁴ Another study presents that detention has a significant negative impact on immigration detainees' well-being, but only moderately impacts labour migrants' decision-making process regarding their departure. These effects are not found for family and asylum migrants.²¹⁵

²¹⁴ Adviescommissie voor Vreemdelingenzaken. (2021). Samen werk maken van terugkeer.

²¹⁵ Leerkes, A., and Kox, M. (2017). Pressured into a preference to leave? A study on the "specific" deterrent effects and perceived legitimacy of immigration detention. *Law & Society Review*, 51(4), 895-929.

Statistical annex

Statistics from EU-harmonised sources, such as Eurostat and the EMN Annual Policy Report, on inter alia the outcome of international protection applications and return, including voluntary return will be used in the Synthesis Report to contextualise the statistics provided in this annex.

Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category

Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year) or please use N/A if data is not available.

Please describe if you are counting persons or numbers of entries (if one person would be counted several times with multiple entries). We would prefer number of persons if both options are possible.

	2015	2016	2017	2018	2019	2020	Source / further information
<i>Statistics on number of third-country nationals in detention per category</i>							
Total number of third-country nationals in detention							Total number not available.
Number of applicants for international protection in ordinary procedures in detention (including Dublin)							N/A
Number of persons detained to prevent illegal entry at borders (1)	590	480	810	860	910	550	Influx of asylum seekers (first applicants) in the border procedure based on art 6, third paragraph of the Aliens Act <u>Number of persons per year</u> Source: Immigration and Naturalisation Service (IND)
Number of persons detained to prevent illegal entry at borders (2)	320	340	340	410	370	230	Border detention, art 6, first and second paragraph of the Aliens Act.

Detention and Alternatives to Detention

							Number of entries per year Source: Custodial Institutions Agency (DJI)
Number of person detained during return procedures (including pre-removal)	1.750	2.140	2.750	2.990	3.240	1.910	Detention, art 59 of the Aliens Act. Number of entries per year Source: Custodial Institutions Agency (DJI)
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							N/A
Vulnerable persons specified - minors	130	140	130	150	170	90	Minors that are part of a family. Primarily under art. 59 of the Aliens Act. Number of entries per year Source: Custodial Institutions Agency (DJI)
Vulnerable persons specified - unaccompanied minors	10	30	50	40	30	10	Detention, art. 59 Aliens Act only. Unaccompanied minors are not placed in border detention. Number of entries per year. Source: Custodial Institutions Agency (DJI)
Number of other third-country nationals placed in immigration detention							N/A
<i>Statistics on number of third-country nationals provided alternatives to detention</i>							
Total number of third-country nationals in alternatives to detention							Total number not available.
Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)							N/A

Detention and Alternatives to Detention

Number of persons given alternatives to detention to prevent illegal entry at borders							N/A
Number of person in alternatives to detention during return procedures (including pre-removal)	Several alternatives to detention are applied in the context of return. Data is not available for all alternatives. The following data is available.						
Freedom Restricting Location (VBL)	450	2.890	1.410	1.120	990	680	Annual influx. <u>Number of persons per year.</u> Based on the caseload of the Repatriation and Departure Service (DT&V).
Issue of a financial deposit (borgsom)	N/A	<5	<5	5	<5	<5	In total this measure has been administered 20 times between 2016-2020. Data are rounded. Number of measures per year. Based on the caseload of the Repatriation and Departure Service (DT&V.)
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							N/A
Vulnerable persons specified - minors	Several alternatives to detention are applied in the context of return. Data is not available for all alternatives. The following data is available.						
Freedom Restricting Location (VBL)	20	840	340	320	390	230	Minors that are part of a family. Annual influx. <u>Number of persons per year.</u> Based on the caseload of the Repatriation and Departure Service (DT&V).

Detention and Alternatives to Detention

Vulnerable persons specified – unaccompanied minors	Several alternatives to detention are applied in the context of return. Data is not available for all alternatives. The following data is available.						
Freedom Restricting Location (VBL)	10	30	10	10	<5	<5	Unaccompanied minors. <u>Number of persons per year.</u> Based on the caseload of the Repatriation and Departure Service (DT&V).

Table 2: Average length of time in detention

Please provide information on the methodology used to calculate the average length of time in detention, including whether the mean or the median was used to calculate the average.

Average length of time in detention	2015	2016	2017	2018	2019	2020	Source / further information
Average length of time in detention of all categories of third-country nationals in detention							Average time for all three forms of detention not available□.
Average length of time in detention of applicants for international protection in ordinary procedures							N/A
Average length of time in detention of persons detained to prevent illegal entry (1)							Detention of asylum seekers in the context of the border procedure, art 6, third paragraph of the Aliens Act: data not available.
Average length of time in detention of persons detained to prevent illegal entry (2)	26 days	38 days	32 days	29 days	22 days	22 days	Border detention, art 6, first and

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							second paragraph of the Aliens Act. Source: Custodial Institutions Agency (DJI).
Average length of time in detention of persons during return procedures	61 days	44 days	44 days	46 days	45 days	56 days	Detention, art 59 of the Aliens Act Source: Custodial Institutions Agency (DJI).
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category	Data is available only for families with minors:						
Families with minors	7 days	7 days	8 days	7 days	6 days	9 days	Includes all family members (adults and minors), primarily under art. 59 of the Aliens Act. Source: Custodial Institutions Agency (DJI).

Annex II – The criteria for assessing the risks of abscondings as laid down in article 5 of the Aliens Decree (Vb) 2000

- There are serious grounds for detention or for imposing a custodial measure if the third-country national:
 - o Has not entered the Netherlands in the prescribed manner or has attempted to do so;
 - o Has in violation of the Aliens Act (Vw 2000) withdrawn himself from the supervision of aliens for some time;
 - o has previously received a visa, decision, notification or notification indicating the obligation to leave the Netherlands and has not complied with this of his own accord within the period decided or set therein;
 - o does not or does not cooperate sufficiently in establishing his identity and nationality;
 - o has provided incorrect or contradictory information in connection with his application for admission with regard to his identity, nationality or the trip to the Netherlands or another Member State;
 - o has without necessity disposed of his travel or identity documents;
 - o has made use of false or forged documents in Dutch legal transactions;
 - o has been declared an undesirable alien as referred to in Article 67 of the Aliens Act (Vw 2000) or an entry ban has been issued against him in application of Article 66a, seventh paragraph, of the Aliens Act;
 - o has indicated that he will not comply with his obligation to return;
 - o has indicated at the border that he wishes to submit an application for a temporary asylum residence permit, and his application has not been processed under the border procedure, has been declared inadmissible or has been rejected as manifestly unfounded;
 - o has received a transfer decision and does not cooperate with the transfer to the Member State responsible for examining his application for asylum;
 - o has received a transfer decision, has been given a time limit on his initiative to leave on his own initiative to the Member State responsible for examining his application for asylum and he has not left on his own initiative within this time limit, or
 - o has received a transfer decision and immediate transfer or transfer at very short notice is necessary for the purpose of realizing the transfer within six months of the agreement of the Member State responsible for examining his asylum application
- There are lighter grounds for detention or for imposing a custodial measure if the third-country national:
 - o has not complied with one or more other obligations concerning border surveillance as laid down in article 4 of the Aliens Decree (Vb) 2000;
 - o has submitted several applications for the granting of a residence permit that did not lead to the granting of a residence permit;
 - o has no permanent domicile or residence;
 - o does not have sufficient means of support;
 - o is a suspect of any crime or has been convicted for it; or
 - o has performed work in violation of the Aliens Employment Act.