



Detention and Alternatives to detention in international protection and return procedures

Common Template for EMN Study 2020

Fina Version, 4 January 2020

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*.¹ 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.²

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*.³ These measures, having an impact on the person's rights,⁴ are subject to human rights standards and 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 mandatory residence at an assigned place, etc.⁵ Alternatives to detention

¹ EMN Glossary

² Articles 6, 52(3) and 53 of the EU Charter. Articles 8 and 11 of the Reception Directive (recast). Recital 16 and Article 8(1) Return Directive.

³ EMN Glossary

⁴ 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).

⁵ Article 8(4) of the Reception conditions directive (recast)

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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.⁶ 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.⁷ 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.⁸ 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

⁶ Detention of applicants for international protection in the context of the Common European Asylum System, EASO 2019

⁷ 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.

⁸ A.B. and Others v. France, No. 11593/12, 12 July 2016, § 124

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actors in the field - the Council of Europe,⁹ the UN¹⁰ and the EU¹¹ – while confirming this trend, identified different reasons for this.

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. 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.¹²

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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

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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?
 - 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)¹³ 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.¹⁴

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.

¹³ 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

¹⁴ Article 8(2) of the Reception conditions directive (recast)

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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,¹⁵ 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, 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),¹⁶ "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 Directive¹⁷ 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

¹⁵ 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

¹⁶ 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.

¹⁷ 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.

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objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient".¹⁸

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 mandatory residence 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 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

¹⁸ 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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- 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.
- 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

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6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v6.0¹⁹ 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).²⁰

'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).

¹⁹ 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

²⁰ 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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'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.

7 ADVISORY GROUP

An 'Advisory Group' (AG) has been established within the context of this Study for the purpose of (i) developing the (common) specifications for the study, (ii) providing support to EMN NCPs during the development of the national contributions to the Study, as well as (iii) providing support to the drafting of the Synthesis Report. In addition to COM (DG HOME) and

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the EMN Service Provider (ICF-Odysseus), the members of the AG for the Study include EMN NCPs from BE, DE, FR, EE, LU, LT, LV, PL, SE, SI.

Advisory Group

- COM (Alexander Smits, DG HOME)
- COM (Ioana Pellin, DG HOME)
- COM (Martina Belmonte, DG JRC)
- COM (Simon McMahon, DG JRC)
- FRA (Julia Behrens)
- BE NCP (Isabelle Raes)
- DE NCP (Friederike Haberstroh, and Janne Grote)
- FR NCP(Anne-Cécile Jarasse, and Christelle Caporali-Petit)
- EE NCP
- LU NCP (Adolfo Sommaribas)
- LT NCP
- LV NCP
- PL NCP (Joanna Sosnowska)
- SE NCP – AG lead (Marie Bengtsson)
- SI NCP (Luka Žigante)
- Odysseus network expert (Lilian Tsourdi, Philippe DE BRUYCKER)
- IC/ EMN Service Provider (Sara Bagnato, Roberta Vasile, Martina Griffo)

8 TIMETABLE

The following timetable is proposed for the next steps of the Study:

Date	Action
Study specifications	
27 February	First AG meeting
20 April	Circulation of the first draft to the AG
w/c 5 October	Circulation of the second draft to the AG (one-week deadline for review)
12 October 2020	Second AG meeting
w/c 22 October	Circulation of the third draft to NCPs (two weeks deadline for review)
w/c 4 January 2021	Launch of the study
Synthesis report	
5 April 2021	<u>Submission of national reports</u> by EMN NCPs
7 May 2021	First synthesis report (SR) to COM & AG members (1 week to provide comments)
14 May	Deadline for comments (1 week to address comment and finalise)

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Date	Action
28 May	Circulation of the first SR to all NCPs (2 weeks to comment)
14 June	Deadline for comments
28 June	Circulation of the second draft to all NCPs (2 weeks to comment)
12 July	Deadline for comments
26 July	Circulation of the third (final) draft to all NCPs (2 weeks to comment)
9 August (tbc, depending on holidays period)	Deadline for comments
4 September	Finalisation of the synthesis report, publication and dissemination

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs and Norway to this Study. The indicative number of pages to be covered by each section is provided in the guidance note. For national reports, the total number of pages should ideally not exceed **50 pages** (excluding the Annex). A limit of **25 pages** (excluding the Annex) will also apply to the synthesis report, in order to ensure that it remains concise and accessible.

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National Contribution from [Italy]

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]

The top-line factsheet will serve as an overview of the **national reports** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers.

Please provide a concise summary of the main findings of Sections 1-4:

With Law 129/2011 implementing the European Directive 115/2008, the so-called "Return Directive", Italy introduced in its national legislation a new return procedure, i.e. an expulsion mechanism with a gradually increasing intensity, if the conditions for immediate return are not met. This procedure, called "voluntary return", is based on the granting by the Prefect of a term of between seven and thirty days for the voluntary departure of the irregular non-EU citizen. In the case of activation of this procedure, the Chief of Police may order, in addition to requesting adequate financial guarantees, a series of measures to guarantee the voluntary repatriation:

- I. obligation to report to a police office on certain days (signature requirement)
- II. mandatory residence
- III. surrender of the passport

These measures are defined by our legal system as the main alternative measures to detention at a Repatriation Centre (CPR, Centro di Permanenza per il Rimpatrio) and among the **most used** with reference to the aforementioned measure are: **the obligation to sign and the surrender of the passport to the Public Security authorities**. The possession of an identification document suitable for expatriation is in fact a prerequisite for the application of the alternative measure; the other most used alternative measure is the obligation to sign, as a tool to prevent the risk of absconding.

Such measures, in fact, cannot be applied to third-country nationals who are not in possession of an identity document, who have been expelled for reasons of public order or State security or who are socially dangerous or if there is a risk of absconding (this element is evaluated according to the criteria set out in Art. 13, paragraph 4 bis of the Consolidated Act on Immigration - Legislative Decree No. 286/98). Regarding third-country nationals applying for asylum, it is possible to determine detention at Repatriation Centres (CPRs) only in cases strictly regulated by Italian legislation in transposing Directive 2013/33/EU (Art. 6 of Legislative Decree 142/2015). By Law No. 132/2018, the law converting Decree Law No. 113/2018, **two new hypotheses of detention** motivated by the need to **determine or verify the identity or citizenship** of the foreigner seeking international protection in determined places and for defined times have been introduced (art. 6, co. 3-bis, Legislative Decree 142/2015). In particular, detention is authorised for the purpose of determining or verifying the identity or citizenship of the foreigner seeking international protection, for the time strictly necessary, and in any case not exceeding 30 days, in special premises within the hotspot areas (crisis points).

<https://temi.camera.it/leg18/post/il-decreto-legislativo-n-142-del-2015-cd-decreto-a-coglienza.html>

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Hotspots, or crisis points, were introduced in Italy, as defined by Article 10 ter of the Consolidated Act on Immigration (Testo Unico sull'Immigrazione, TUI), i.e. equipped disembarkation areas near selected ports (or in the immediate proximity) where incoming migratory flows by sea are channelled and where migrants remain for the time strictly necessary for the definition of the first material and health assistance operations, by Decree-Law No. 13/2017, converted into Law No. 46/2017. Third-country nationals may be detained for a maximum of 30 days at these centres, where digital fingerprinting and signal detection operations are carried out. The repeated refusal of the foreigner to undergo the examinations constitutes a risk of absconding for the purposes of detention in the Repatriation Centres (CPRs). Detention is ordered on a case-by-case basis, by order of the Chief of Police (Questore), and remains effective for a maximum duration of 30 days from its adoption, unless the needs for which it was ordered cease to exist.

The number of Repatriation Centres (CPRs) in Italy is currently small. Thus far, there are CPRs in Bari, Rome, Gorizia, Turin, Brindisi, Macomer and Milan (for a total amount of 7 CPRs).

The application of an alternative measure to detention to third-country nationals is adopted by the Chief of Police and, in the case of asylum seekers, by the Prefect after consultation with the Chief of Police. These measures, as well as detention, are validated by the judicial authority (Justice of the Peace, territorially competent in the case of third-country nationals who are the subject of an expulsion order; by the Ordinary Court – Specialised Section on Immigration of the place where the asylum seeker is located).

According to the Italian legislation, the only alternative measure to detention applicable to an asylum seeker is the one provided for by art. 5, par. 4 and art. 6, par. 5 of the Legislative Decree 142/2015, i.e. “mandatory residence” (which consists in having a **place of residence or a geographical area where the applicant can move**), notified in a written and motivated act by the competent Prefect according to the place where the application is submitted or where the reception facility is located.

Finally, we can define as alternative measure to detention, in a broader perspective and in an overall interpretation of the legislative provisions, both national and international, the granting of temporary residence permits such as: residence permits for special cases such as medical treatment permit (art. 19, par. 2, lett. d) bis, natural calamities, minor age, pregnancy and assistance to pregnancy up to 6 months of age of the minor (art. 19, 2° lett. d), social protection (gender violence, victims of trafficking, labour exploitation), permits for acts of civil value, reasons of justice as provided for by the Consolidated Act on Immigration.

The number of alternative measures applied in Italy is indicated in Table Annex 1 (Alternative measures to detention applied since 2015 - as of 15/03/21 - Data source Ministry of the Interior - Department of Public Security - Central Directorate of Immigration and Border Police).

Section 1: National policy and legal framework: development since 2015²¹

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 Decemberr 2020, as well as an overview of the categories of third-country

²¹ 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

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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.

The primary source of reference in the field of immigration is the Consolidated Act on Immigration (Testo Unico sull'Immigrazione, TUI), introduced by Legislative Decree No. 286/98, which concentrates within it all the national regulations concerning the immigration sector. In particular, the procedures for the repatriation of non-EU citizens and the methods of execution are regulated in Chapter two of Title 2, in articles 13 and 14.

Over the years, these rules have undergone several modifications. In particular, Law No. 94/2009, determined an extension of the maximum detention time up to 6 months and a new denomination of the detention centres from CPT (*Centri di permanenza temporanea ed assistenza*, i.e. Temporary Stay and Assistance Centres) to CIE (*Centri di identificazione ed espulsione*, i.e. Identification and Expulsion Centres). Law 129/2011 issued following the implementation of the European Directive 115/2008, the so-called "Return Directive", in accordance with its spirit, **introduced a new return procedure, i.e. an expulsion mechanism with a gradually increasing intensity, in case the conditions for immediate return were not met, called "voluntary return"**, based on the granting by the Prefect of a period of between seven and thirty days for the **voluntary departure of the irregular non-EU citizen**. In the event of the activation of this procedure, the Chief of Police may order, in addition to requesting adequate financial guarantees, a series of measures to guarantee the voluntary execution of the repatriation:

- I. the obligation to report to a police office on certain days
- II. mandatory residence
- III. surrender of the passport

The aforementioned measures have also been provided for, in compliance with the directive, as alternative measures to detention for foreigners who cannot be detained due to lack of places in the centres, provided that they are in possession of a passport or equivalent document and have not been expelled for reasons of public order or State security or if they are socially dangerous subjects or if there is a risk of absconding.

The evaluation of the possibility of the foreigner attempting to escape must be based on the criteria enucleated from Art. 13, para 4 bis of the Consolidated Act on Immigration (Legislative Decree N° 286/989):

- Lack of a valid passport or equivalent document;
- lack of stable accommodation;
- having provided false personal details in the past;
- failure to comply with previous orders issued by the Authority;
- violation of the provisions relating to voluntary departure and measures less coercive than detention.

The most recent amendments to these rules were introduced:

- I. by Law 46/2017, the law converting the Decree No. 17 of 17 February 2017, which changed the name of the CIEs to CPRs (*Centri di Permanenza per il Rimpatrio*, i.e. Centres

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of Permanence for Return) – and provided for the reduction of the maximum detention time up to 90 days;

- II. by Law 132/2018, the law converting Decree No. 113 of 4 October 2018, with an extension from 90 to 180 days of the maximum duration of the foreigner's detention in Repatriation Centres (CPRs);
- III. by law No. 173/2020 converting Decree No. 130 of 21 October 2020, which again reduces to 90 days the maximum period of detention in Repatriation Centres (CPRs) and reinforces the principle of "*non-refoulement*", already binding for Italy as a signatory of the European Convention on Human Rights and provided for in EU law on migration, by including a ban on expulsion not only to countries where expelled foreigners would face the risk of torture but also to countries where they would risk inhuman and degrading treatment and a ban on expulsion due to the risk of violation of the right to safeguard for one's private and family life: in practice, all foreign citizens residing irregularly on Italian territory are protected from expulsion when they have close family ties within our Country.

It should be noted that the principle of "*non-refoulement*" is achieved by the competent national authority acquiring all the information from the foreigner regarding his/her status by means of a questionnaire in pluringue filled in in the presence of a mediator.

In light of the above-mentioned changes, the updated text of Articles 13 and 14 of the Consolidated Act on Immigration is attached (Annexes 2 and 3).

Time limits for detention

The average detention period in Italy's long-term detention centres during 2015 was 25.5 days.

Time limits for of detention at Repatriation Centres have changed over the years:

- from 2015 to 2017 the maximum period for detention was 180 days;
- since 2017, with Decree-Law No. 17 of 17 February 2017, converted into Law No. 46/2017, the limit was a maximum of 90 days;
- in 2018, with Decree-Law No. 113 of 4 October 2018, converted into Law No. 132/2018, the time limit was reverted to 180 days;
- in 2020, Decree-Law No. 130 of 21 October 2020, converted into Law No. 173/2020, again reduced the maximum time limit to 90 days.

<https://www.interno.gov.it/it/notizie/nuova-legge-sullimmigrazione-lamorgese-rimodulati-i-delicati-meccanismi-dellaccoglienza-e-dellintegrazione>

With Decree-Law No. 130/2020, converted into Law No. 173/2020, important changes have been introduced on the issue of the reduction of the maximum period of detention, with the new article 14, paragraph 5 of the Consolidated Act on Immigration, that provides that the maximum period of detention of a foreigner in Repatriation Centres (CPRs) **cannot exceed 90 days and can be extended only if the foreigner is a citizen of a country with which Italy has signed agreements on repatriation, without prejudice to the peculiarities of the discipline provided for released prisoners, which provides for the detention of up to 30 days, extended by another 15 days.**

The reduction of the time limits for detention of socially dangerous detainees, i.e. for those who have been in prison for more than 180 days, is justified by the need to activate the identification procedures by the Public Security Authority during the period of detention in order to provide for the immediate execution of the repatriation upon release, thus avoiding detention, in consideration of the scarce availability of places in CPRs on the national territory.

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With regard to asylum seekers, the maximum length of detention is 12 months (Decree 142/2015, Article 6.8). The Chief of Police may prolong the detention of an applicant for international protection for periods that do not exceed 60 days. In any case, in addition to the procedures for challenging any detention order or other alternative measure already provided for by the national legislation, foreigners in detention may address requests or complaints to the National Ombudsman for the rights of persons deprived of their liberty (Art. 14, par. 2bis - Legislative Decree No. 286/1998).

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)

With regard to the legal changes since the last EMN study, it is necessary referring to the Decree-Law No. 13/2017 (converted into Law No. 46/2017) which provided for the establishment of 26 specialized sections on immigration, international protection and free movement of EU citizens in the Courts located in the capital of the district of the Court of Appeal.

The members of these sections are magistrates with a specific competence on the subject. The specialized sections are competent for a number of issues and disputes:

- the non-recognition of the right to stay and the expulsion of EU citizens and their families; the recognition of international protection and humanitarian protection;
- the denial of the nulla osta for family reunification and the issuance/renewal/revocation of the residence permit for family reasons;
- the non-issuance, renewal or revocation of the residence permit for humanitarian reasons;
- the verification of the status of statelessness, Italian citizenship and for all proceedings related to the previous ones.

The Decree introduces the establishment of a single level of judgment on the merits (to the Specialized Sections) and therefore the abolition of the second level of judgment about the recognition of international protection in case of rejection of the application (although the possibility remains to appeal to the Court of Cassation), introducing art. 35 bis to Legislative Decree No. 25/2008.

In addition, faster methods have been introduced to notify the acts to those who apply for international protection and to record the interviews at the National Commission and at the Territorial Commissions for the recognition of international protection.

Some changes involve new tools: the use of certified e-mail in notifications or video-recording of the personal interviews of asylum seekers. Also, new changes include the transcription helped by automatic means for voice recognition instead of verbalization. In this case, amendments have been made to Articles 11 and 14 of the Legislative Decree No. 5/2008. The Centres for Identification and Expulsion (CIEs) changed their name into Repatriation Centres (CPRs, Centres of Permanence for Return) throughout the national territory. The person requesting international protection in the reception centers must be included in the register of the resident population. Moreover, he/she can carry out socially useful activities. This innovation has been introduced by the art. 5 bis of Legislative Decree n.142/2015.

The Decree-Law No. 13/2017 also introduced changes to the reception system for migrants (disciplined by Legislative Decree n.142/2015 and known as the "reception decree" and

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adopted in implementation of European Directives 2013/32/EU and 2013/33/EU). In this regard, particular importance is given to art. 10 of the Consolidated Act on Immigration (Legislative Decree No. 286/98), which foresees a first reception inside the Hotspots (Law No. 563/95) for foreigners rescued during rescue operations or crossing the border as irregular immigrants (they do not need to be applicants for international protection). Inside the Hotspots, they are subject to fingerprinting and photo-signaling. In these structures, the foreigner must receive information on the international protection procedure, on the relocation program in other EU Member States and on the possibility of Assisted Voluntary Return.

In addition, pursuant to the new paragraph 1.2 of art. 19, in case of refoulement prohibition and since the application for international protection has already been rejected, the Territorial Commission shall forward the acts to the Chief of Police granting a residence permit for special protection (restoring the residence permit for humanitarian reasons). The amendment to art. 19, paragraph 2 extends the prohibition of refoulement (previously provided for foreigners suffering from particularly serious health conditions) also to foreigners suffering from psychiatric pathologies. Art. 2 of the decree lays down provisions on the procedure for the recognition of international protection, affecting the Legislative Decree No. 25 of January 28, 2008, and rewriting the discipline of the priority examination and accelerated procedure, as well as the powers of Territorial Commissions. Of particular interest is art. 3 of the Decree Law, which makes a number of changes regarding the administrative detention of foreigners.

Firstly, the Decree-Law adds to art. 10 ter co. 3 of the Consolidated Act on Immigration (article inserted in 2017 by Law Decree No. 13/2017) the provision that the foreigner, who is detained in a Repatriation Centre (CPR) following a repeated refusal to submit to digital fingerprinting and signal detection measurements, shall be promptly informed of the rights and faculties arising from the validation procedure of the detention decree in a language known to him/her. Through the insertion of a reference to art. 14, the deprivation of liberty is then equated to the detention in the CPR, which takes place - according to art. 13, par. 5 bis - in different and suitable facilities available to the public security authorities or in suitable premises at the border office. This possibility is foreseen only if detention during the validation of the expulsion order by the judge cannot take place in a CPR due to lack of available places. Five changes have been made to art. 14 of the Consolidated Act on Immigration, which is the cornerstone of the entire system of administrative detention.

The first amendment provides the possibility to instruct the Chief of Police to submit a specific request to the Central Directorate of Immigration and Border Police of the Department of Public Security of the Ministry of Interior, if the foreigner destined to a CPR cannot be transferred immediately.

In case of a shortage of places, the second amendment introduces a mechanism of priority detention that gives priority to those who are considered a threat to public order and security or who have been convicted (even with a non-definitive sentence) for the crimes referred to in art. 4, par. 3, third sentence and art. 5 para. 5 bis (the same conditions that prevent the issuance of visas and residence permits). The priority is also given to citizens of (or simply

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coming from) third-countries with which there are cooperation agreements or other agreements on return.

The third amendment concerns art. 14, par. 5 and, in particular, the maximum detention period restored to 90 days (Decree-Law No. 113/2018 had raised this term to 180 days), which can be extended by a further 30 days if the foreigner is a citizen of a country with which Italy has signed agreements on return. However, for the foreigner already detained in prisons for 90 days (previously 180 days), it is noted that the maximum term of detention in the CPR (30 days) becomes extendable by an additional 30 days if the foreigner is a citizen of a country with which Italy has signed agreements on return.

The fourth amendment provides for an improvement of the detention conditions in the Repatriation Centres (CPRs) by ensuring: adequate hygienic and sanitary standards and housing, the necessary information on his/her status, assistance, full respect of his/her dignity (according to the provisions of art. 21, par. 8, of the Decree of the President of the Republic No. 394 of August 31, 1999) and freedom of correspondence with the outside world, including by phone.

Finally, the fifth amendment introduces, in favour of the foreigner, a complaint procedure regarding the detention conditions, which can be implemented through oral or written petitions or complaints, even in sealed envelopes, to the National Ombudsman (and to the regional or local Ombudsmans) of the rights of persons deprived of their liberty. The National Ombudsman, after examining the merits of the petitions, may make recommendations to the administration concerned.

On the political profile, during the XVII legislature (March 15, 2013- March 22, 2018), the Italian Parliament and Government have adopted several measures to cope with the high number of migrants arriving in the national territory. In the last year of the XVII legislature, Decree-Law No. 13 of 2017 has been adopted, which focused on the issue of international protection and the fight against illegal immigration. At the same time, the Parliament gave the green light to Italy's participation in the bilateral mission of assistance and support in Libya. The objective was to assist the Libyan Government of National Unity through the performance of a series of tasks including the control of illegal immigration. A Code of Conduct for NGOs engaged in rescue operations of migrants at sea has also been drawn up by the Government and it is open for signature by the NGOs concerned. Particularly important are the Government's 2017 Immigration Plan and the Immigration Decree-Law. In the early months of 2017, with the protracted emergency situation, the Parliament approved the Decree-Law No. 13 of 2017, which introduced urgent provisions on immigration and an organic law on measures for the protection of unaccompanied foreign minors. The content of the measure and the lines of action of the Government in the last year of the legislature (Immigration Plan 2017) were exposed to Parliament by the Minister of the Interior Minniti during the hearing on the programmatic lines of his department on February 8, 2017.

These include:

- Implementing an efficient forced return activity while incentivizing the use of Assisted Voluntary Return;

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- transforming Centres for Identification and Expulsion (CIEs) into Repatriation Centres (CPRs, Centres of Permanence for Return) with a total national capacity of 1,600 persons, one per region, small in size, outside urban centers, close to transportation infrastructure, with transparent governance and unlimited access by the Ombudsman for personal liberties.

Source: <https://documenti.camera.it/leg17/dossier/pdf/D17013.pdf>

During the current legislature (XVIII), in office since March 23, 2018, an important institutional and public debate has concerned the issues of immigration with a specific focus on the issue of landings of third-country nationals on the Italian territory and has led to the amendment of the rules concerning in particular the procedures for requesting international protection and the reception of asylum seekers. Also, it has been announced the adoption of measures such as the abolition of the humanitarian permit and the strengthening of forced returns of irregular third-country nationals.

In particular on the detention of third-country nationals in Repatriation Centres (CPRs) it can be reported that, despite the appeals of many organizations, detention in CPRs has not been suspended during the health emergency. In a Circular dated April 2, 2020, the Ministry of the Interior ordered the Covid-19 swab test for newly admitted persons and, in any case, their isolation for the first 14 days. Hearings for validation and extension of detention continued within the CPRs.

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? List the ground for detention	Which alternatives to detention are available for this category? List in bullet point the alternatives to detention available for each category. Further details on each measure will be collected in section 2.	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</i>	<i>Applicants for international protection</i>	Yes	Legislative decree 142/2015 Art. 14, Consolidated	Mandatory residence ex. Art. 5, par. 4 e art. 6, par. 5, Legislative Decree 142/2015	For detention: The Chief of Police with territorial jurisdiction and validation by the

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<i>in ordinary procedures</i>		<p>Act on Immigration (TUI)</p> <p>Detention is ordered by the Chief of Police in the following hypotheses:</p> <ul style="list-style-type: none"> suspected to have committed serious crimes; subjected of an expulsion order for reasons of public order or state security; expelled as belonging to one of the categories to which the prevention measures provided for by the anti-mafia code apply; expelled for reasons of prevention of terrorism; constituting a danger to public order and security; existence of the risk of absconding pending the decision on the application for international protection. 	<p>Depending on the place of submission of the application (or the location of the accommodation facility), the competent Prefect may establish a place of residence or a geographical area where the applicant may move. The action established by the Prefect should be done by a means of written and reasoned act notified to the applicant in accordance with the procedures referred to in Article 6, par. 5, a place of residence or a geographical area where the applicant may move.</p>	<p>Immigration Section of the Ordinary Court.</p> <p>For alternative measures to detention:</p> <p>Prefect territorially competent on the basis of the place where the third-country national has expressed the will to apply for international protection, at the request of the Chief of Police and validation by the Immigration Section of the Ordinary Court.</p>
<i>Applicants for international protection in border procedures</i>	Yes	<p>Detention</p> <p>Art. 10 ter Consolidated Act on Immigration (TUI)</p> <p>Art. 14, Consolidated</p>	<p>The detention of the asylum seeker is exceptional with respect to the general rule established by art. 6, paragraph 1 of</p>	<p>Detention: Chief of Police and validation Section Specialized Ordinary Court Territorially competent.</p>

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			Act on Immigration (TUI) Legislative decree 142/2015 Detention in the Hotspots – within 30 days – if the identification procedure and the formalization of the application for international protection are not completed, the foreigner is transferred to a Repatriation Centre (CPR).	Legislative Decree 142/2015.	
<i>Return procedures</i>	<i>Irregular migrants detected in the territory</i>	Yes	Art. 14, Consolidated Act on Immigration (TUI)	Withholding of passport Mandatory residence Obligation to sign with the ps authorities	Detention: Prefect, Chief of Police, and Justice of the Peace validation Alternative measure: Chief of Police and Justice of the Peace validation
	<i>Persons who have been issued a return decision</i>	Yes	Art. 14, Consolidated Act on Immigration (TUI)	They are not available, as there is a danger of escape because of non-compliance with the return decision. In such cases the alternative measure to detention is not applicable.	Detention: Prefect, Chief of Police, and Justice of the Peace validation.
	<i>Irregular migrants</i>	Yes	Art. 14, Consolidated Act on	Alternative measures to detention are not applicable. In fact,	Detention: Prefect / Chief of Police

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<i>detected at the border</i>		Immigration (TUI)	the foreigner, if provided with a valid identity document, can be rejected at the border.
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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

	International protection 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	Return procedures 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
Unaccompanied Minors	<i>NO</i>	<i>NO</i>
Disabled people	NO, EXCEPT IN CASE OF PEOPLE WITH A CRIMINAL RECORD AND ELEMENTS OF SOCIAL DANGEROUSNESS Alternative measures to detention can be taken (request to the Prefect to circumscribe the place of movement)	YES FOR DETENTION YES FOR APPLICATION OF ALTERNATIVE MEASURE (obligation to sign, surrender of passport and mandatory residence)
Elderly people	NO, EXCEPT IN CASE OF PEOPLE WITH A CRIMINAL RECORD AND ELEMENTS OF SOCIAL DANGEROUSNESS Alternative measures to detention can be taken (request to the Prefect to circumscribe the place of movement)	Yes, if they have no particular serious pathology YES FOR APPLICATION OF ALTERNATIVE MEASURE (obligation to sign, surrender of passport and mandatory residence)
Families with children and single parents with minor	NO Alternative measures to detention can be taken (request to the Prefect to circumscribe the place of movement)	NO YES FOR APPLICATION OF ALTERNATIVE MEASURE (obligation to sign, surrender of passport and mandatory residence)

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<p>Persons with serious illnesses and persons with mental disorders</p>	<p>MAY BE DETAINED PROVIDED THAT THERE IS A PLACE SUITABLE FOR DETAINING THIS TYPE OF FOREIGNER WITH THE RESPECTIVE MEDICAL STAFF.</p> <p>IF THERE ARE NO CONDITIONS FOR TREATMENT IN A REPATRIATION CENTRE (CPR), PEOPLE IN THIS VULNERABLE CATEGORY MAY BE ACCEPTED TEMPORARILY IN HOSPITALS WITH PSYCHIATRIC DEPARTMENTS</p>	<p>NO</p> <p>Alternative measures to detention = hospital facilities pending return</p>
<p>victims of human trafficking</p>	<p>NO</p> <p>The right to reception in ad hoc centres/structures is provided for (art. 18 Consolidated Act on Immigration)</p>	<p>NO</p> <p>The right to reception in ad hoc centres/structures is provided for (art. 18 Consolidated Act on Immigration)</p>
<p>Pregnant women</p>	<p>NO</p> <p>Issuing a provisional residence permit</p>	<p>NO</p> <p>Prohibition of expulsion and right to stay until the child is 6 months old and subsequent issue of a provisional residence permit.</p>
<p>Other vulnerable persons</p>		<p>Granting of a residence permit if in possession of certain requirements or in the presence of certain conditions (e.g. residence permit for natural disasters - Art. 19 - in this case, the conditions for obtaining the residence permit are determined by a ministerial decree recognising the state of natural disaster in the country of origin...).</p>

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

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). The competence of the Police Headquarters is determined according to the practices of the competent local Police Headquarters and varies from once a week to every other day - often in conjunction with the availability of the carrier.	Yes, more used to avoid the danger of absconding and to ensure effective return.
A2	Obligation to surrender a passport, travel document or identity document. The competence belongs to the Police Headquarters.	Yes, most used because it is a prerequisite for implementing the measures.
A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address). The competence belongs to the Police Headquarters.	Yes
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, no we do not consider house arrest as an alternative measure to detention.
A5	Release on bail (with or without sureties) Please provide information on how the amount is determined; whether this can be paid by a third person/entity r (e.g. family	No

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	member, NGO or community group); and at what point the money is returned	
A6	Electronic monitoring (e.g. tagging)	No
A7	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).	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
A10	Other alternative measure available in your (Member) State. Please specify. Issuing of provisional residence permits.	Yes, whenever the requirements determining the temporary non-removability of the third-country national are met.

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

The alternative measures to detention are adopted whenever it is established that the recipient of the alternative measure meets certain requirements or conditions.

The most used alternative measures are the surrender of the passport or equivalent document to the competent law enforcement authority and the obligation to sign: the possession of an identification document is in fact a prerequisite for the application of the alternative measure; the other most used alternative measure is the obligation to sign, as a tool to prevent the risk of absconding and to ensure the presence of the foreigner on the day in which the carrier is potentially available for repatriation (the day in which the foreigner is invited to present himself by the law enforcement authorities is in fact determined on the basis of the presence of flights to the country of origin from the place of residence of the foreigner).

It is important to remember that whenever the conditions are met, in the case of certain categories of third-country nationals, particularly characterised by conditions of vulnerability, the Italian legislation provides for the issuance of provisional residence permits lasting 6 months or more, according to the specific cases regulated.

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

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Alternative measures to detention in the Repatriation Centre: Obligation to sign - Surrender of passport - Mandatory residence.	
<p><i>In what it consists, and maximum duration</i></p>	<p>Alternative measures to detention at Repatriation Centres were introduced in the national legislation through the implementation of Directive 115/2008/EC. This Directive, in Art. 15, par. 1, establishes that Member States may detain a third-country national undergoing return procedures only for the purpose of preparing the return and/or carrying out the removal, when there is a risk of absconding or when the third-country national avoids or hinders the preparation of the return or removal. This provision, however, is anticipated by the clarification "unless other sufficient but less coercive measures can be effectively applied in the specific case": it is precisely this provision that led the Italian legislator to insert in art. 14, Legislative Decree 286/98 - with Law 129/2011 - paragraph 1 bis, which regulates the measures under consideration, which until then were not provided for by our system.</p> <p>The Chief of Police of the place where the third-country national is located is entitled to adopt the alternative measures only if the foreigner is in possession of a valid passport or other equivalent document and, moreover, if the expulsion has not been ordered for the reasons of social dangerousness provided for by art. 13, para 2, lett. c), Legislative Decree 286/98, nor are we in the hypothesis of ministerial expulsions for reasons of public order or security of the State, pursuant to Art. 13, par 1, Legislative Decree 286/98, nor in those of prevention of terrorism, also international, referred to in Art. 3, Law 31st July 2005, No. 155.</p> <p>It follows that only the expelled foreigner who is identified by means of a valid passport or other equivalent document and in respect of whom an abrogative measure has been issued for reasons of administrative irregularity of the entry and/or stay (with the exclusion of the hypotheses of dangerousness just indicated - Art. 13, para 2, lett. a) and b).</p> <p>The provision of Art. 14, Consolidated Act on Immigration (TUI) provides that the Chief of Police may order - in place of the detention in the Repatriation Centre - one or more of the following measures against the foreigner:</p>

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1. surrender of the passport or other equivalent document in course of validity to the Police Headquarters, to be returned at the moment of departure;
2. mandatory residence in a previously identified place, where he/she can be easily traced;
3. the obligation to appear, on days and at times established, at a law enforcement office.

As far as the applicative procedure is concerned, the regulations provide that such measures are adopted with a motivated provision which becomes effective from the moment of notification to the interested party, with the guarantees provided for by Art. 3, par. 3 and 4, presidential decree 394/1999 (personal notification, indication of the modality of appeal, obligation of translation into a language known by the addressee, information on the right to be assisted by a trustworthy or official lawyer). Since these are measures affecting personal freedom, Art. 14, par. 1 bis of the Legislative Decree 286/98 requires that the measure must be communicated to the Justice of the Peace (or to the immigration section of the court if the measure is ordered against an applicant for international protection) within 48 hours from the notification, for validation within the following 48 hours. In order to allow the adversarial process, it is provided that the application measure must bear the notice that the person concerned has the right to submit - personally or through a lawyer - briefs and deductions to the validation judge, presumably before the decision, whose date is not known in advance, since no setting of a hearing is provided for, since it is a mandatory validation procedure, but merely on paper, therefore with a possible adversarial process. However, the interested party is allowed to ask for the modification or revocation of such measures, without any time limit, provided that the expulsion has not been carried out in the meantime.

Finally, the non-compliance with the execution of even only one of the imposed measures constitutes an offence attributed to the Justice of the Peace and sanctioned with a fine from 3,000 to 18,000 Euros, and may lead to the forced and immediate accompaniment to the border with the possibility of ordering the detention in the Repatriation Centre.

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<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Art. 14, comma 1 bis, Consolidated Act on Immigration (TUI).
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	See Annex I
<i>National authorities responsible to administer the alternative</i>	It is granted by the Chief of Police on the basis of the elements represented. The Public Security authorities of the Province (Section III of the Police Headquarters - Immigration) are competent for to the administration of the alternative measure.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No
<i>Obligations attached to the granting of the alternative (if relevant)</i>	1. surrender of the passport or other equivalent document in course of validity to the Police Headquarters, to be returned at the moment of departure; 2. mandatory residence in a previously identified place, where he/she can be easily traced; 3. the obligation to appear, on days and at times established, at a law enforcement office.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined or a case-by-case basis?)</i>	The infringement of even only one of the imposed measures constitutes an offence attributed to the Justice of the Peace and sanctioned with a fine from 3,000 to 18,000 euros and determines the forced and immediate accompaniment to the border with the possibility of ordering detention in the Repatriation Centre.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The Public Security authorities verify that the foreigner complies with the obligation to appear at a dedicated office on the days and at the times specified. In the event of non-compliance by the foreigner, the public security authorities, through the delegated office, enter a report in the database (SDI) in order to provide, if the foreigner is found, for the application of the sanction and the possible forced accompaniment to the border or detention.

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<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	No
<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

Circumscription of the residence or geographical area where the asylum seeker may move.	
<i>In what it consists, and maximum duration</i>	The Prefect who is competent on the basis of the place of submission of the application for international protection or of the location of the reception facility may establish, by means of a written and motivated act, communicated to the applicant for international protection in the manner set out in Article 6, paragraph 5, of Legislative Decree No. 142/2015, a place of residence or a geographical area where the applicant may move.
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Art. 5, comma 4 and art. 6 comma 5 of Legislative decree n. 142/2015
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Not available
<i>National authorities responsible to administer the alternative</i>	The Prefect competent for the place where the asylum seeker is, upon request of the Chief of Police, if detention in the Repatriation Centre is not available and there is no risk of absconding.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No
<i>Obligations attached to the granting of the alternative (if relevant)</i>	The person must not be considered dangerous. The person must not have been the subject of a expulsion order due to conviction or social dangerousness. There is no risk of absconding.

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<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 alternative measure is revoked and consequently the procedure for detention in the Repatriation Centre is activated.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	There are no ad hoc mechanisms. Monitoring is carried out according to the normal procedures of territorial control.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	No
<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>	Not available

Rilascio di un permesso provvisorio	
<i>In what it consists, and maximum duration</i>	<p>The Italian legislation provides that a third-country national cannot be removed from the national territory if he is in certain conditions (situation of exploitation, victim of domestic violence, pregnancy, etc.) or possesses certain requirements or a certain type of status (e.g. being a family member or spouse cohabiting with an Italian citizen). The Italian legislation provides for the following types of residency permits to be issued in these circumstances and upon request of the interested party:</p> <p>Residence permit for social protection: when situations of violence or serious exploitation of a foreigner are ascertained and concrete dangers for his safety emerge, as a result of attempts to escape from the conditioning of an association dedicated to one of these crimes or of the declarations made during the course of the preliminary investigation or trial (Art. 18 Consolidated Act on Immigration).</p> <p>Residence permit for victims of domestic violence: domestic violence is defined as one or more serious or non-episodic acts of physical, sexual, psychological or economic violence occurring within the family or household or between persons bound, currently or in the past, by marriage or emotional relationship, even</p>

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if they are not cohabiting (Art. 18 bis Consolidated Act on Immigration).

Permit for medical treatment (pregnancy): this prohibits the expulsion of women who are pregnant or during the six months following the birth of their child. Pregnant women can apply for a residence permit for medical treatment (pregnancy) from the moment their pregnancy is certified and for the six months following the birth of their child. The residency permit for medical treatment is revoked in the case of the voluntary interruption of a pregnancy, while it is renewed up to six months from the presumed date of birth of the child, even in the case of the death of the unborn child at the moment of birth. The residence permit for medical treatment does not allow work. The father of the unborn child married to the mother, thanks to the Constitutional Court's ruling in July 2000, declared the constitutional illegitimacy of Article 19, paragraph 2, letter d) in the part that does not provide for the same right in favour of the husband cohabiting with the pregnant woman. Therefore, the residency permit for medical treatment is also issued in favour of the husband cohabiting with the pregnant woman. Unmarried fathers are excluded from the issue of the PDS for medical treatment until the child is recognised (Art. 19, § 2, letter d, Consolidated Act on Immigration - Const. Court sentence n° 376/2000).

Permits for family reasons - ineligibility to expulsion of third-country nationals who are family members up to the second degree of kinship, or spouse, cohabiting with an Italian citizen (art. 19, par. 2, letter c, Consolidated Act on Immigration). Cohabitation must be effective and proven. A permit is issued for two years for family reasons and may be renewed or converted if certain requirements are met.

Permit for special cases - health reasons: these were introduced by Decree-Law No. 113/2018 on Immigration Security is issued to foreigners who "suffer from particularly serious health conditions, ascertained by means of suitable documentation issued by a public health facility or a doctor affiliated with the National Health Service, such as to determine a significant prejudice to their health, in the event of their return to their country of origin or provenance". In these cases, the Chief of Police issues a residency permit for medical treatment, for the period of time attested to by the health certificate, but not exceeding one year, which may be renewed as long as the

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particularly serious health conditions persist and are duly certified. The permit is valid only in the national territory and, as a general rule, allows the carrying out of work activities, always taking into account the state of health of the person concerned (Art. 19, 2nd paragraph lett d) bis of Legislative Decree No. 286/98 Ministry of the Interior Circular of 15/03/2019, No. 43323).

Residence permit for special cases - natural disaster: they have been regulated by Decree-Law No. 113/2018 on Immigration Security. They are to be applied for directly at the Police Headquarters, without applying for international protection. This permit is issued when "the country to which the foreigner should return is in a situation of contingent and exceptional calamity that does not allow the return and stay in safe conditions". These are mainly situations of natural disasters and serious environmental or health disasters. It is only valid in Italy, lasts for a maximum of six months and is renewable subject to verification that the conditions are met. It allows the holder to work but cannot be converted into a work permit (Art. 20 bis Consolidated Act on Immigration).

Residence permit for labour exploitation: it is issued "in the hypothesis of particular labour exploitation", i.e. when the irregularly staying workers employed by the same employer are: more than three; or minors of non-working age, or subject to other conditions of particular exploitation provided for by art. 603-bis of the Penal Code (pay clearly different from the national collective agreements, or in any case disproportionate; repeated violation of rules on working time, rest, leave, holidays, safety and hygiene; degrading working conditions and housing situations). It is valid for six months and renewable for another year. It allows to work and can be converted into a work permit. (Art. 22 paragraph 12 quater of Legislative Decree 286/98).

Permit for minor assistance - The authorisation of medical treatment and the consequent issue of a residence permit for medical treatment/assistance to minors (Art. 31 Consolidated Act on Immigration) allows the foreign parent, who is a third-country national, to regularise his/her position in the national territory, when there are serious reasons connected to the psycho-physical development of the minor who is in Italy.

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	<p>Permit for acts of particular civic value: governed by Decree-Law No. 113/2018 on Immigration Security, it is issued when "the foreigner has carried out acts of particular civic value", i.e. has exposed his life to concrete danger in order to save persons exposed to imminent and serious danger, to prevent or reduce the damage of a serious public or private disaster, to restore public order, to participate in the arrest of criminals, for the progress of science or in general for the good of humanity, or to uphold the name and prestige of the country. It is valid for two years and is renewable. It allows you to work and can be converted into a work permit (Art. 42-bis of Legislative Decree 286/98).</p> <p>Permit for reasons of Justice: it is issued upon request of the Judicial Authority, for the maximum duration of 3 months, extendable for another 6, in the cases in which the foreigner must be present on the territory in relation to criminal proceedings in course (Art. 11, para 1, letter c-bis presidential decree 334/99 - "[residence permit] for reasons of justice, at the request of the Judicial Authority, for a maximum duration of three months, extendable for the same period, in cases where the presence of the foreigner on the national territory is indispensable in relation to criminal proceedings in course for one of the offences referred to in Article 380 of the Code of Criminal Procedure, as well as for any of the offences referred to in Article 3 of Law No. 75 of 20 February 1958).</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	See box above.
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Not available.
<i>National authorities responsible to administer the alternative</i>	Police headquarters competent for the place where the third-country national is traced.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	<p>In the case of vulnerable persons, families and minors, reception and care mechanisms are activated for foreign citizens (victims of trafficking, persons suffering from serious pathologies, etc.).</p> <p>Participation of NGOs, hospitals, reception homes or refuge houses in charge of local public</p>

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	administrations and also managed by NGOs and the Third Sector.
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Third-country nationals must report any change of address/domicile.
<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>	Execution of expulsion with possible detention in the Repatriation Centre. Administrative sanction with a fine from 3,000 to 18,000 euros.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Renewal of the residence permit at the Immigration Office of the competent Police Headquarters.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	No
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternative to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	

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 cover here the same alternatives reported in Q8.

Challenge	Alternative 1 SURRENDER OF PASSPORT OR EQUIVALENT DOCUMENT - OBLIGATION TO SIGN AND STAY AT HOME	Alternative 2 SURRENDER OF PASSPORT OR EQUIVALENT DOCUMENT - OBLIGATION ON THE APPLICANT FOR PROTECTION TO SIGN	Alternative 3 GRANTING A PROVISIONAL RESIDENCE PERMIT
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Detention and alternatives to detention in international protection and return procedures

		AND RESIDE IN A CERTAIN TERRITORY	
Availability of facilities related to accommodation (i.e. beds)	No	No	No, only for vulnerable people.
Availability of staffing and supervision	No	No	No
Administrative costs	There is no data.	There is no data.	There is no data.
Mechanisms to control movements of the person	Obligation to sign	Obligation to notify change of address/domicile	Obligation to communicate any change of residence or domicile
Legislative obstacles	It cannot be applied if there is a risk of absconding or if expulsion has been ordered pursuant to Article 13(1) and (2)(c) of the Consolidated Act or pursuant to Article 3(1) of Decree-Law No 144 of 27 July 2005, converted, with amendments, by Law No 155 of 31 July 2005 (expulsion for social persecution or membership or alleged membership of terrorist groups)	Difficulties and delays in the delivery of a valid identity document for repatriation by consular authorities.	Possession of a valid identification document for the issue of a residence permit.
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	The measure cannot be applied if the third-country national does not have adequate resources or provide a valid address where to stay.	No	A provisional permit is granted as long as the third-country national meets certain requirements or is in certain conditions: e.g. a permit for 'natural disasters' is granted as long as the emergency situation for which the

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			<p>permit was issued does not occur in the country of origin.</p> <p>If the third-country national is the victim of exploitation, trafficking or gender-based violence, he/she is taken into special centres and granted a residence permit.</p>
Other challenges	No	No	Convertibility of provisional residence permits under certain conditions.

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:

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 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?

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- 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)?

International protection procedure

The assessment is made at the same time as the possible detention or adoption of the alternative measure is being considered.

The detention of the applicant for international protection must be adopted only in the cases strictly regulated by the current legislation.

The cases are indicated in art. 6 paragraphs 1 and 2 of Legislative Decree 142/2015. The situation does not vary according to the origin of the foreign citizen.

The assessment regarding the adoption of detention is decided by the Police Headquarters, while the application of the alternative measure, i.e. the restriction of residence/domicile or circulation area, is carried out by the Prefect (decision-making power), while the competent Chief of Police has advisory functions.

Return procedure

The assessment is made at the same time as the possible detention/forced repatriation of the foreign national in a condition of irregularity or the adoption of alternative measures.

It is sufficient that the foreign national is in possession of an identification document (not only a passport, but any document useful for identification and the consequent issue of a document by the consular authorities) and that he/she is able to provide a domicile where he/she can be traced.

If the abovementioned conditions are met and there are no obstacles to the application of the measures (in particular, that the person is not socially dangerous), the Chief of Police grants the alternative measure to detention in the Repatriation Centre (obligation to sign, mandatory residence, surrender of the passport or other equivalent document).

The procedure does not vary according to the third-country national's country of origin, but it may vary with reference to the degree of vulnerability of the subject which may lead to the issuance of a temporary residence permit (e.g. special cases, medical treatment, natural disasters).

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

Details: With regard to foreign citizens seeking asylum, the cases in which the foreigner is detained in the Repatriation Centre are absolutely imperative and strictly regulated by the legislation (See art. 6, paragraphs 1 and 2 of Legislative Decree 142/2015).

Return procedures:

Yes

Detention and alternatives to detention in international protection and return procedures

Details: The authority responsible for the adoption of detention measures (Chief of Police), according to the principle of increasing gradualness in the application of the instruments restricting the personal freedom of the foreign citizen, always evaluates the possibility of granting the third-country national an alternative measure to administrative detention in order to allow the respect of his/her dignity during the procedures of removal from the national territory.

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?

Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	Yes	Yes
Cost-effectiveness	No, detention only takes place in the cases strictly provided for.	Yes
Nationality or country of origin/return (e.g. considerations about the specific situation in the Country of origin)	No, the cases are those strictly provided for, regardless of the country of origin or provenance	Yes
Level of escape risk	Yes The assessment of the existence of the risk of absconding is carried out, on a case-by-case basis, when the applicant has previously systematically resorted to false statements or declarations concerning his/her personal details for the sole purpose of avoiding the adoption or execution of an expulsion measure or has failed to comply with one of the measures referred to in Article 13, paragraphs 5, 5.2 and 13, as well as Article 14 of the Consolidated Act on Immigration.	Yes
Vulnerability	Yes	Yes

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Criteria	International protection procedures	Return procedures
Less intrusive legal measures affecting human rights	Yes, issue of a provisional residence permit	Yes, issue of a provisional residence permit
Other	Yes/No further explain Details:	Yes/No further explain Details:

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

Vulnerability is undoubtedly one of the criteria underlying the decision to grant the third-country national an alternative measure to detention.

International protection procedures

The assessment is adopted by the Chief of Police on a case-by-case basis based on investigations carried out by the authority competent to order the measure, also with the help of specialised personnel (e.g. medical personnel or social workers/educators working in the field of the vulnerability detected - e.g. psychiatric patients, victims of trafficking, elderly people, etc.).

Return procedures

The assessment is adopted by the Chief of Police on a case-by-case basis on the basis of investigations carried out by the authority competent to order the measure, also with the help of specialised personnel (e.g. medical personnel or social workers/educators working in the field of the vulnerability detected - e.g. psychiatric patients, victims of trafficking, elderly people, etc.).

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.

International protection procedures

With the detention for identification purposes (which expressly concerns only asylum seekers), an attempt was made to provide legal coverage to practices that until recently were totally lacking. In fact, by inserting the provision in the body of art. 6 of the Legislative Decree 142/15 (expressly dedicated to the detention of asylum seekers), a real and proper detention of the asylum seeker at the hotspot is foreseen for a maximum time determined by law (30 days), after which the detention continues, without interruption, at the Repatriation Centre (CPR) for another 60 days, until the identification of the applicant.

In compliance with Art. 13 of the Italian Constitution, the abovementioned detention is subject to the jurisdictional guarantees provided for by paragraphs 5 and following of Art. 6 mentioned above; that is to say, the Chief of Police (as in the other cases of detention provided for by paragraphs 2 and 3) shall adopt a formal detention order, and shall ask for its validation to the **judges of the specialised sections of the competent Court**, who shall go to the hotspot or CPR to perform the validation hearing.

As a consequence of the reference made by Art. 3 bis, Legislative Decree 142/15 to Art. 14 of Legislative Decree 286/98, the Chief of Police may ask the Court to validate the detention at the CPR, when it is necessary, among other cases, "to carry out additional verifications regarding his/her identity or nationality" (Art. 14, par. 1, Legislative Decree 286/98). The validation entails the stay in the CPR for a further period of 30 days. It goes without saying that, since it is a matter of limitation of personal freedom, the Public Administration is required to specify which additional verifications will be carried out for identification purposes, in order to justify the permanence of detention. In case such investigations present "serious difficulties" (Art. 14, par. 5, Legislative Decree 286/98), the Court, at the request of the Chief of Police, may extend the deadline by a further 30 days. After this term, the Chief of Police may ask the Court for one or more extensions if "concrete elements have emerged which make identification likely, or if it is necessary in order to organise repatriation operations" (Art. 14, par. 5, Legislative Decree 286/98).

The second and subsequent extensions of detention are therefore subject to the emergence of "concrete elements" that make likely the identification of the applicant, and not mere declarations of will. In the absence of such conditions, the detention shall be terminated.

However, a further hypothesis that may apply is the persistence of the detention following the filing of a judicial appeal against the rejection of the application for international protection by the Territorial Commission for the Recognition of International Protection. Since the maximum term for accelerated procedures for the recognition of international protection applicable to the detained applicant is 6 months (art. 28-bis, par. 3, Legislative Decree No. 25/08, subject to adequate justification), the decision of the Territorial Commission could be notified to the foreigner during the pendency of his/her detention. In this case, following the submission of a judicial appeal, whose term of appeal is reduced to 15 days and does not determine the automatic suspension of the effectiveness of the contested measure, the applicant remains in the CPR until the decision of the Court on the application for suspension of the executive effectiveness of the contested measure (Art. 6, par. 7, Legislative Decree 142/15).

Return procedures

The alternative measures to detention are adopted by means of a motivated measure, which takes effect from the notification to the person concerned, bearing the notice that the same person has the right to submit personally or through a lawyer briefs or deductions to the validation judge. The measure is communicated within 48 hours of notification to the Justice of the Peace with territorial jurisdiction. The judge, if the conditions are met, orders the validation by decree within the following 48 hours. The measures, at the request of the interested party, after hearing the Chief of Police, can be modified or revoked by the Justice of the Peace.

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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: No such support is foreseen

Return procedures: No such support is foreseen

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 (Absolute figures)	No data available	No data available

Detention and alternatives to detention in international protection and return procedures

Alternatives to detention 1 Granting a deadline for voluntary departure	No data available	No data available
Alternatives to detention 2 Mandatory residence/ area for the applicant for international protection	No data available	No data available
Alternatives to detention 3 Provisional permit	No data available	No data 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.)?

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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)		
	a) Average length of time in determining the status of an applicant for international protection	b) Share of decisions which were appealed and of these, the share which overturned the initial decision
Detention (Absolute figures)	2017	2017
	2018	2018
	2019	2019
Alternatives to detention 1 Surrender of the passport	2017	2017
	2018	2018
	2019	2019

Detention and alternatives to detention in international protection and return procedures

Alternatives to detention 3 (NAME)		
Alternatives to detention 4 (NAME)		

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.)?

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)

	# of irregular migrants in return procedures (including pre-removal)	# who absconded before removal is implemented
Detention (Absolute figures)	2017	2017
	2018	2018
	2019	2019
Alternatives to detention 1 Granting a deadline for voluntary departure	2017	2017
	2018	2018
	2019	2019
Alternatives to detention 2 Provisional permits	2017	2017
	2018	2018
	2019	2019
Alternatives to detention 4 (NAME)		

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.)?

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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 (Absolute figures)	2017	2017	2017	2017
	2018	2018	2018	2018
	2019	2019	2019	2019
Alternatives to detention 1 Granting a deadline for voluntary departure 1. surrender of a valid passport or other equivalent document to the police headquarters, to be returned at the time of departure; 2. mandatory residence at a previously identified place where he/she can be easily traced; 3. obligation to report to a law enforcement office at specified days and times.	2017	2017	2017	2017
	2018	2018	2018	2018
	2019	2019	2019	2019

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Alternatives to detention 2 Provisional permits	2017	2017	2017	2017
	2018	2018	2018	2018
	2019	2019	2019	2019
Alternatives to detention 4 (NAME)				

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.)?

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

Yes/**No**

Key findings

Reference

Return procedures

Yes/**No**

Key findings

Reference

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:

Alternative 1:

Alternative 2:

Alternative 3:

Detention and alternatives to detention in international protection and return procedures

...

Return procedures

Detention:

Alternative 1:

Alternative 2:

Alternative 3:

.....

Upholding fundamental rights

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

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
<p>Is the access to legal assistance guaranteed? If yes, how? Please specify.</p>	<p>Third-country nationals detained in Repatriation Centres (CPR) are granted by the Article 13 of the Constitution in terms of notification timing and validation of detention by the judicial authority, as well as legal assistance.</p> <p>In addition, pursuant to Article 2 of the current Single Regulation of CIEs (now CPRs), adopted by Ministerial Decree of 20 October 2014, when detained persons enter the CPR, they are informed by the staff of the managing body in charge of reception and assisted by the linguistic-cultural mediator about their rights and duties, the modalities of detention, and the rules of coexistence within the structure. To this end, the managing body provides, by posting and handing to the foreigner:</p>		

Detention and alternatives to detention in international protection and return procedures

	<ul style="list-style-type: none"> - the Charter of Rights and Duties; - the list of lawyers providing free legal aid, within the Bar Association (Ordine degli avvocati), at the request of the Prefecture; - to those applying for international protection, the information booklet provided for by art. 10 of Legislative Decree No. 25 of January 28, 2008; - other information material that may be provided by the Prefecture. <p>For the purpose of the interview with the lawyer, the security staff takes care of verifying whether the foreigner has given the appropriate mandate. During confidential interviews, the supervision is carried out without limiting the privacy right and in order to guarantee the safety of visitors and foreigners themselves.</p>		
<p>Is the right to be heard guaranteed during detention/alternatives detention?</p> <p>If yes, how? Please specify.</p>	<p>Inside the Repatriation Centres (CPRs), the detained persons have a series of guarantees and they can exercise a number of rights and faculties also provided by the aforementioned Single Regulation of CIEs. They also benefit from the supervisory activities of the persons authorized to enter the centers according to article 67 of the Penitentiary</p>	<p>Details:</p>	

Detention and alternatives to detention in international protection and return procedures

	<p>Law (Law No. 354 of 26 July 1975).</p> <p>In addition, Decree-Law No. 130 of October 21, 2020, (converted into Law No. 173 of December 18, 2020), introduced the possibility for persons detained in the CPRs to submit petitions or complaints in oral or written form, including in sealed envelopes, to the National Ombudsman, the regional or local Ombudsmans of the rights of persons deprived of personal liberty who, having ascertained the merits of the complaint, make specific recommendations to the Administration.</p> <p>Finally, the International Organization for Migration (IOM), carried out (2014-2019) regular visits inside the CPRs, holding interviews with foreigners, and reporting to the Prefectures any criticalities detected. IOM acted within the project "ADITUS", financed with AMIF resources.</p>		
<p>Is the right to health (e.g. access to facilities, monitoring of a person's health and well-being) guaranteed? If yes, how? Please specify.</p>	<p>The right to health as well as the monitoring of detained persons' health conditions are always guaranteed within the Repatriation Centre (CPR).</p> <p>In particular, according to article 3 of the current Single Regulation of CIEs, the foreigner enters the Centre after a medical examination carried out by the Local Health Authority (Azienda Sanitaria Locale, ASL) or hospital doctors. Once they</p>	<p>Even though irregular foreigners are not enrolled in the National Health System, they are eligible for "urgent or, in any case, essential outpatient and hospital care, even if continuous for illness and injury".</p> <p>Concerning the meaning of "urgent care", the Circular n.5/2000 of the Ministry of Health clarifies that it has to be understood as care that cannot be postponed</p>	

Detention and alternatives to detention in international protection and return procedures

	<p>have ascertained the absence of evident pathologies inhibiting the entrance and the permanence of the foreigner in the structure (e.g., infectious or contagious diseases dangerous for the community, psychiatric conditions, acute or chronic degenerative pathologies that cannot receive adequate treatment in restricted communities) the detained can be admitted to the CPR.</p> <p>After the entrance and during the permanence in the Centre, foreigners are subjected to medical screenings by the doctor in charge of the health facility present in the Centre. The screening is foreseen in order to monitor the overall assessment of their health status, to verify the necessity to arrange specialist visits or diagnostic and/or therapeutic treatments at the competent public health facilities, also on the basis of the health form drawn up by the doctors of the facility in case they come from penal institutions. In case of elements that may lead to incompatibility with life in a restricted community that did not emerge during the certification of suitability, and pending a new assessment by the ASL or the hospital, the foreigner is housed in an observation room, in order to safeguard the health of the individual and the community.</p>	<p>without endangering the life of the person. “Essential care” means diagnostic and therapeutic healthcare services related to pathologies which are not fatal in the short term but which, over time, could cause damage to life. Lastly, “continuous care” aims at assuring the diagnosis to the patient, as well as the therapeutic and rehabilitative cycle necessary for a possible recovery. Within the sphere of urgent or essential care, the Law includes certain types of care and certain categories of individuals to whom must be guaranteed special protection.</p> <p>Among these, the protection of pregnancy and maternity is certainly important. In fact, during pregnancy and for the first 6 months after childbirth, the irregular non-EU woman has the right to a residence permit that allows temporary registration with the SSN. Access to free or reduced-cost health care by the pregnant irregular non-EU woman and/or by the non-EU man without a residence permit, takes place with a prior signing of a declaration of indigence, valid for six months. This declaration exempts him/her only from the portion of the service that, for the Italian citizen, would be charged to the SSN. The registration to the health services is carried out through the assignment of a regional code with the</p>	
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Detention and alternatives to detention in international protection and return procedures

	<p>The right to health is also guaranteed to detained applicants. Indeed, pursuant to article 7, paragraph 5, of Legislative Decree 142/2015, applicants whose health conditions or vulnerability are incompatible with detention cannot be detained. It also includes that within the scope of the social-health services guaranteed in the centers, it is ensured the periodic verification of vulnerabilities that require special assistance measures.</p>	<p>initials STP (Straniero Temporaneamente Presente, i.e. “Temporarily Present Foreigner”). This code is valid for 6 months and it is renewable. It is also inserted both on the request, on regional prescription, of examinations, specialistic visits and prescribable medicines, and for reporting of provided services by accredited structures of the SSN to be reimbursed. In order to obtain the STP code, which is completely anonymous, the foreigner must provide the personal details, with date and place of birth, without showing any identity document. This legislative choice places the human being, as such, at the center of health protection. From this point of view, it is also justified the access to health facilities by a non-EU citizen without a residence permit without leading to any kind of report to the public security authorities. The exception is when a report is required on equal terms with the Italian citizen. All the services of international prophylaxis are guaranteed to the foreigner in a condition of irregularity as well as for vaccinations for collective prevention campaigns and the prophylaxis, diagnosis and treatment of infectious diseases.</p>	
<p>Please add any additional safeguards</p>	<p>The new specifications approved by the Decree of the Minister of the Interior</p>		

Detention and alternatives to detention in international protection and return procedures

	<p>of January 29, 2021, has made changes aimed at meeting and reconciling the needs for control, assistance and full respect for the dignity and rights of the detainees within Repatriation Centres (CPRs). To this end, the number of daily and night workers has been increased and the weekly number of hours of medical assistance has been increased too. Adequate hygienic, sanitary and housing standards are ensured in the CPRs, in order to provide the detainee with the necessary information on his/her status, assistance and full respect for his/her dignity. In any case, freedom of correspondence, also by telephone, with the outside world is ensured.</p>		
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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)?

<p>Yes/No</p> <p>Key findings</p> <p>Reference</p>
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Q21. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**²² 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.

<p><u>Non sono disponibili statistiche ufficiali in tal senso.</u></p>

²² Please consider appeals to a judge but also to a specific administrative commission or ombudsman

Detention and alternatives to detention in international protection and return procedures

On October 30, 2018, an interesting ruling was published by the First Civil Section of the Court of Cassation, No. 27692/18, which addresses some issues related to a possible misuse of the institution of administrative detention.

The Court of Cassation recalls that "any restriction of personal freedom must be based on the specific legal requirements that justify it, as established in Article 13 of the Constitution. A measure limiting personal freedom cannot be validated in court outside of the legal paradigm of the specific requirements that justify its adoption, as a function of an immanent need for prevention and security (...) the abstract compatibility of the latter measures with the administrative expulsion does not eliminate the need that is fully respected, both in terms of the competent judicial authority, both in terms of procedural guarantees, and in particular in terms of compliance with the specific requirements provided by law, the principle of legality that justifies its legitimate imposition".

Return procedures

On this point, can be mentioned Amnesty International's research, which offers a critical picture one year after the official launch of the hotspot approach in Italy. While the number of arrivals in Italy remained stable, the imposition of the hotspot approach has led to a dramatic increase in the number of people seeking asylum in Italy. This contributed to increase the pressure on the authorities' ability to adequately assist new arrivals. Hotspots were designed to provide a place where irregularly arrived refugees and migrants could be quickly identified, primarily through mandatory fingerprinting (screened for protection needs) and then selected for consideration about asylum claims or return to the countries of origin. One of the key objective was the decrease in irregular movements of refugees and migrants to other EU member states. This goal could be achieved through fingerprinting, in order to ensure the possibility of their return, according to the Dublin Regulation, to Italy or other countries of first entry. However, in order to reduce the burden on these states, an emergency relocation system was adopted in September 2015 providing for the progressive relocation of approximately 160 thousand asylum seekers (of which 40 thousand from Italy) to other EU countries to examine their asylum claims. The Italian government began implementing the hotspot approach in the same month, with the transformation of the existing first reception center in Lampedusa into a hotspot and the deployment of officials from several EU agencies.

<https://www.amnesty.org/download/Documents/EUR3050042016ITALIAN.PDF>

On this topic, see also the collection of Recommendations made by the National Ombudsman of Persons Deprived of their Liberty with reference to the years 2016-2018:

<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/ef9c34b393cd0cb6960fd724d590f062.pdf>

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.

Yes/No

Key findings

Reference

Detention and alternatives to detention in international protection and return procedures

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

Yes/No
Key findings
Reference

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.)

Within the national territory, the alternative measures to detention in Repatriation Centres (CPRs) are applied whenever the necessary conditions for their application are satisfied. The conditions to be satisfied for a third-country national are: the possession of an identification document; the presence of a domicile; the absence of expulsion measure; the absence of false personal details; not being a socially dangerous subject. A challenge to implement the use of alternative measures could be to ensure a rapid execution of the repatriation, trying to obtain quickly the document valid for expatriation and organizing the departure of the foreigner with the first flight to his country. The prospect of imminent repatriation may result in the foreigner's willingness to show the police any document in order to identify him/her, thus avoiding detention in a CPR, which would limit his/her personal liberty. Despite ensuring lower costs in the context of return enforcement and greater protection of fundamental rights, the use of alternative measures to detention in the CPR is still applied unevenly across the country. Although the enforcement of return through detention involves higher costs at the administrative level, it is still considered the most effective way to prevent the risk of absconding and to give a greater guarantee for the execution of return. Concerning empirical evidence in Italy, the costs and effectiveness of the use of alternative measures rather than detention is not particularly reflected in studies or official statistical sources.

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	5,242	2,984	4,087	4,092			https://www.globaldetentionproject.org/countries/europe/italy#statistics-data
Number of applicants for international protection in ordinary procedures in detention (including Dublin)					at the end of 2019 CPRs: 5941 Hotspots:78		https://asylumineurope.org/wp-content/uploads/2020/05/report-download_aida_it_2019update.pdf
Number of persons detained to prevent illegal entry at borders							Not a ground for detention https://asylumineurope.org/wp-content/uploads/2020/05/report-download_aida_it_2019update.pdf pag 124

Detention and Alternatives to Detention

Number of person detained during return procedures (including pre-removal)							This is a ground for detention https://asylumineurope.org/wp-content/uploads/2020/05/report-download_aida_it_2019update.pdf pag 124-125
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.)							Are unaccompanied asylum-seeking children detained in practice? Rarely Are asylum seeking children in families detained in practice: rarely https://asylumineurope.org/wp-content/uploads/2020/05/report-download_aida_it_2019update.pdf pag 127 Following the 2017 reform, the law also prohibits the detention of vulnerable persons p. 127
Vulnerable persons specified – minors				2,700 children were placed in hotspots in 2018, including 2,002 unaccompanied and 698 accompanied children			
Vulnerable persons specified – unaccompanied minors				2,002 unaccompanied minors			

Detention and Alternatives to Detention

Number of other third-country nationals placed in immigration detention							
<i>Statistics on number of third-country nationals provided alternatives to detention</i>							
Total number of third-country nationals in alternatives to detention							Are alternatives to detention used in practice? No p.126 https://asylumineurope.org/wp-content/uploads/2020/05/report-download_aida_it_2019update.pdf pag 127
Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)							
Number of persons given alternatives to detention to prevent illegal entry at borders							
Number of person in alternatives to detention during return							

Detention and Alternatives to Detention

procedures (including pre-removal)							
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.)							
Vulnerable persons specified – minors							
Vulnerable persons specified – unaccompanied minors							

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	25.2 days				The average duration of detention in CPR in 2019 is not available https://asylumineurope.org/wp-content/uploads/2020/05/report-		https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-Immigration-Detention-Report-201 The duration of pre-removal detention has been extended from 90 to 180 days. The Chief of Police may prolong the detention of an applicant for international protection for

Detention and Alternatives to Detention

					download_aida_it_2019update.pdf pag 127		periods that do not exceed 60 days. The maximum length of detention in Italy has changed several times in recent years.
Average length of time in detention of applicants for international protection in ordinary procedures				During 2018 and before the reform, the Association for Legal Studies on Immigration (Associazione per gli Studi Giuridici sull'Immigrazione, ASGI) was able to observe that de facto detention in hotspots took place mainly in the first days after arrival and lasted until the identification procedures were concluded.			
Average length of time in detention of persons detained to prevent illegal entry							
Average length of time in detention of persons during return procedures							
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	25 day UASC						