



Detention and Alternatives to detention in international protection and return procedures

Common Template for EMN Study 2020

Final 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

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).

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obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.⁵ Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.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

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

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

2 STUDY AIMS AND OBJECTIVES

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

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

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

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.

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uphold fundamental rights; iii) improve the cost-effectiveness of migration management.¹²

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**

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 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

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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 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."

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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

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

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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limited period of detention, which may not exceed **six months**. Article 15(6) also allows Member States to **extend detention** for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third country.

Recital 16 of the Return Directive states that: "detention for the purpose of removal should be limited and subject to the principle of proportionality concerning the means used and objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient".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 obligation to stay at a specific place. However, these measures cannot be considered alternatives to detention as there is no ground for detention within the context of voluntary return.

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

Obligation to consider alternatives to detention

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

Risk of absconding

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

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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case-law of the ECtHR, which requires any measure on deprivation of liberty to be accessible, precise and foreseeable.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and Ad-hoc Queries

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

Other relevant sources

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

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- UNHCR, Option Paper no 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015.
- UNHCR, Compilation of International Human Rights Law and Standards on Immigration Detention, 2018
- UNHCR, Beyond Detention - A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2019

6 DEFINITIONS

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

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

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'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).

'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

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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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 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 Griffio)

8 TIMETABLE

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

Detention and alternatives to detention in international protection and return procedures

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)
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 Slovenia

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:

The study focuses on two types of detention that may be imposed on third-country nationals for a longer duration of time. Firstly, detention of applicants for international protection (maximum duration of four months), and secondly, detention of aliens that have been issued a return decision (maximum duration of six months, exceptionally extended to 12 months). The parts of the study that describe existing system of detention in “return decision” do not refer to shorter detention of aliens that are to be returned without a return decision (maximum duration of 48 hours). This shorter detention is briefly described under Section 1, Q3.

Currently, two alternatives to detention are being implemented in the system of immigration detention in the Republic of Slovenia and presented in the study – “restriction of movement to the area of the Asylum Centre” in international protection procedures and “residence outside the Centre for Foreigners” in return procedures.

Important findings of the study are summarized in Section 4 (Conclusions).

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 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.

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

International Protection Procedures**Legal changes**

On 24 April 2016 a new International Protection Act²² entered into force. Article 84 regulates the “restriction of movement” of an applicant for international protection.

In accordance with paragraph one of Article 84 the competent authority may require an applicant for international protection to **stay in the area of the Asylum Home** if the objectives under the provisions of this paragraph cannot be attained through the implementation of this Act, for the following reasons:

- to verify or establish his or her identity or citizenship if there is obvious doubt about this,
- to establish certain facts on which the application for international protection is based that could not be acquired without the imposed measure, and there is a danger that the applicant will abscond,
- when the applicant's movement is restricted due to the readmission procedure in accordance with the Act governing the entry into, departure from and residence of foreigners in the Republic of Slovenia in order to carry out the readmission or removal procedure and there are well-founded reasons to believe that the applicant has filed his or her application only to stay or impede removal, including the fact that he or she has already had an opportunity to apply for international protection,
- when a threat to the security of the country or the constitutional order of the Republic of Slovenia will thereby be prevented, or when this is necessary in order to protect people and property or other comparable reasons related to public order. A threat to the security of the country or the constitutional order of the Republic of Slovenia is a threat to the internal or external security of the country, including a threat to the functioning of institutions and basic public services and the survival of the population, a risk of serious disturbances in international relations or peaceful coexistence among nations, and a threat to the defence interests of the country. Other comparable reasons related to public order are understood as reasons that indicate a realistic, current and sufficiently serious threat to the basic interests of the country,
- in accordance with Article 28 of Regulation 604/2013/EU.

Paragraph two of the Article 84 stipulates that if, in an individual case, the competent authority establishes that it is not possible to effectively implement the measure referred to in the first paragraph, or if an applicant arbitrarily leaves the area where he or she has been required to stay, the applicant shall be imposed the measure of having his or her **movement restricted to the Centre for Foreigners** if he or she is not a minor or an unaccompanied minor.

The measure referred to in paragraphs one and two of Article 84 shall be imposed on the applicant orally. The applicant shall immediately receive a record of the imposed measure stating the reasons for the measure. The record shall be read to the applicant in a language he or she understands. A written copy of the decision shall be issued by the competent authority no later than 48 hours after the decision was delivered orally and must be served on the applicant within three working days.

The measures referred to in paragraphs one and two of Article 84 may continue until the grounds for such cease, but no longer than three months, except in the cases referred to in indent five of paragraph one of this Article. If, after this period, the reasons for the

²² Official Gazette of the Republic of Slovenia, No. [16/17](#) – official consolidated version.

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restriction of movement still exist, the measure may be extended for another month based on a decision. The measures referred to in paragraphs one or two of this Article shall terminate ex officio if the underlying grounds cease to exist. The president of the Administrative Court may decide that the implementation of the measure referred to in paragraph one or two of this Article be supervised, and may appoint a judge or judges of the Administrative Court to carry out such review within the time limits and at locations determined by the president thereof or regarding certain applicants, and to report thereon. If as part of the review a judge of the Administrative Court establishes that the reasons for the restriction of the movement of a certain applicant no longer exist, he or she shall order the measure to be eliminated.

An action may be brought by an applicant against the order imposing the measures from this Article before the Administrative Court. The court shall decide on the case within three working days after a preliminary oral hearing.

If the measure of the restriction of movement to the Centre for Foreigners has been imposed on a **vulnerable person with special needs**, the competent authority shall as a priority ensure that his or her health, including mental health, is protected and shall ensure regular monitoring and adequate assistance, while taking into account the specific situation of that person. Applicants that are **unaccompanied minors** may not be detained in the Centre for Foreigners. Only an alternative measure – restriction of movement to the area of the Asylum Centre may be imposed on them.

Policy changes

The Supreme Court of the Republic of Slovenia ruled in March 2019 ([judgment X Ips 1/2019 from 13 March 2019](#)) that there is no clear legal basis in the International Protection Act for the detention of an applicant for international protection in accordance with Article 84, Paragraph 1, Indent 5 (Article 28 of the Dublin Regulation (EU) 604/2013). Objective criteria which define the existence of a risk of absconding, must be laid down in a clear and general binding provision which shall be unambiguously implemented and the use of which should be predictable in order to avoid the risk of arbitrary decision making from the executive branch. The Supreme Court ruled that point 31 of Article 2, which defines “risk of absconding” is not sufficient, as it does not explain which circumstances or objective criteria should be given that it could reasonably be concluded that the person is about to escape. The Supreme Court also ruled that the standard under Regulation (EU) No 604/2013 for which the risk of absconding has to be ‘significant’ needs to be separated from the standard in return procedures, where the existence of risk of absconding is already sufficient. After this judgment Ministry of the Interior stopped applying Article 84, Paragraph 5, Indent 5 of the International Protection Act.

Return Procedure

Legal changes

No legal changes were adopted from 2015 until December 2020.

Policy changes

No policy changes were adopted from 2015 until December 2020.

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)

International Protection Procedures

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Legal changes

International Protection Act (ZMZ-1) adopted in 2016 maintains the same alternative to detention as previous International Protection Act (ZMZ). In accordance with Article 84, Paragraph 1, all applicants for international protection may be provided the alternative to detention “restriction of movement to the area of the Asylum Centre”.

Policy changes

No policy changes.

Return Procedures**Legal changes**

No legal changes were adopted from 2015 until December 2020.

Policy changes

No policy changes were adopted from 2015 until December 2020.

Q3. Please complete the table below with regard to the **categories of third-country nationals that can be detained** in your (Member) State. You can refer to the same information reported in the 2014 EMN study on Detention and Alternatives. Please highlight any changes since then.

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

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

	Categories of third-country nationals	Can third-country nationals under this category be detained? Yes/No	If yes, what is the legal basis for detention? <i>List the ground for detention</i>	Which alternatives to detention are available for this category? <i>List in bullet point the alternatives to detention available for each category. Further details on each measure will be collected in section 2.</i>	What are the (judicial and non-judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?
<i>International Protection</i>	Applicants for international protection in ordinary procedures	Yes	The grounds are set out exhaustively in the International Protection Act ²³ (same for all applicants for international protection): - to verify or establish his or her identity or citizenship if there is obvious doubt about this,	In accordance with Article 84, Paragraph 1 of the International Protection Act all applicants for international protection may be provided the alternative to detention (“restriction of movement to the	Judicial authorities are only involved in assessing detention if a person files a legal remedy (administrative dispute) against detention.

²³ Official Gazette of the Republic of Slovenia, No. 22/16 and subsequent amendments; Article 84, Paragraph 1

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			<ul style="list-style-type: none"> - to establish certain facts on which the application for international protection is based that could not be acquired without the imposed measure, and there is a danger that the applicant will abscond, - when the applicant's movement is restricted due to the readmission procedure in accordance with the Act governing the entry into, departure from and residence of foreigners in the Republic of Slovenia in order to carry out the readmission or removal procedure and there are well-founded reasons to believe that the applicant has filed his or her application only to stay or impede removal, including the fact that he or she has already had an opportunity to apply for international protection, - when a threat to the security of the country or the constitutional order of the Republic of Slovenia will thereby be prevented, or when this is necessary in order to protect people and property or other comparable reasons related to public order. A threat to the security of the country or the constitutional order of the Republic of Slovenia is a threat to the internal or external security of the country, including a threat to the functioning of institutions and basic public services and the 	area of the Asylum Centre”).	
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Detention and alternatives to detention in international protection and return procedures

			<p>survival of the population, a risk of serious disturbances in international relations or peaceful coexistence among nations, and a threat to the defence interests of the country. Other comparable reasons related to public order are understood as reasons that indicate a realistic, current and sufficiently serious threat to the basic interests of the country,</p> <p>- in accordance with Article 28 of Regulation 604/2013/EU.</p>		
	Applicants for international protection in border procedures	No	/	/	/
Return procedures	Irregular migrants detected in the territory	Yes	<p>The grounds are set out exhaustively in the State Border Control Act²⁴:</p> <ol style="list-style-type: none"> 1. the person intends to or <u>has already crossed the border</u> and suspicion exists that he/she has done so illegally and detention is necessary for determining all relevant circumstances of crossing the border; 2. the person has been refused entry into Slovenia for not meeting the entry conditions and he/she cannot be immediately referred back due to valid reasons. <p>This type of detention is imposed to determine the circumstances of</p>	None	Judicial authorities are involved in assessing detention if a person files a legal remedy (administrative dispute) against detention.

²⁴ Official Gazette of the Republic of Slovenia No. 35/2010 and subsequent amendments; Article 32, Paragraph 1.

Detention and alternatives to detention in international protection and return procedures

		<p>entry into Slovenia. If it is determined that the person is to be returned informally (without a return decision), detention on the above grounds is transformed into detention under the Police Tasks and Powers Act²⁵ on the grounds that “the person has to be transferred to foreign security authorities”²⁶. Detention on both grounds may not cumulatively exceed 48 hours. In case the person is to be returned without a return decision but this cannot be carried out in 48 hours, he/she is taken to the Centre for Foreigners and is issued a detention decision under Foreigners Act.</p>		
Persons who have been issued a return decision	Yes	<p>The grounds are set out exhaustively in the Foreigners Act²⁷ (same for all foreigners in return procedures). A foreigner may be detained in the Centre for Foreigners in case of:</p> <ol style="list-style-type: none"> 1. risk of absconding if removal cannot be carried out immediately; 2. failure to depart from the country by the ordered deadline if removal cannot be carried out immediately. <p>Note: The assessment for placing a third-country national in detention is</p>	<p>The police may, ex officio or at the request of a foreigner, replace the measure of mandatory accommodation in the Centre for Foreigners with less stringent measures if such measures also ensure the removal of the foreigner from the country. The police may issue a decision allowing a foreigner to stay outside the Centre for Foreigners, and may also determine the place of his or her accommodation. In this case the police</p>	<p>Judicial authorities are involved in assessing detention if a person files a legal remedy (administrative dispute) against detention. Furthermore, the Article 79.a of the Foreigners Act regulates an obligatory ex officio judicial review of detention longer than three months. If the Administrative Court determines that reasons for detention no longer exist, it orders the Centre for Foreigners to immediately release</p>

²⁵ Official Gazette of the Republic of Slovenia No. 15/2013 and subsequent amendments.

²⁶ Police Tasks and Powers Act, Article 64, Paragraph 1.

²⁷ Official Gazette of the Republic of Slovenia No. 50/2011 and subsequent amendments, Article 76, Paragraph 1.

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		carried out in conjunction with the assessment for issuing a return decision. If a person is issued a return decision without a deadline for voluntary departure and he/she cannot be returned immediately, he/she is placed in detention on the above grounds (unless there are obstacles preventing return that may lead to a "tolerated stay" status).	may restrict the movement of a foreigner to his or her place of accommodation, and impose on him or her the obligation to report regularly to the nearest police station. ²⁸	the person. In case of detention shorter than three months the ex officio review is carried out by the Ministry of the Interior.
<i>Irregular migrants detected at the border</i>	Yes	<p>The grounds are set out exhaustively in the State Border Control Act²⁹:</p> <ol style="list-style-type: none"> 1. the <u>person intends to or has already crossed the border</u> and suspicion exists that he/she has done so illegally and detention is necessary for determining all relevant circumstances of crossing the border; 2. the person has been refused entry into Slovenia for not meeting the entry conditions and he/she cannot be immediately referred back due to valid reasons. <p>This type of detention is imposed to determine the circumstances of entry into Slovenia. If it is determined that the person is to be returned informally (without a return</p>	None	Judicial authorities are involved in assessing detention if a person files a legal remedy (administrative dispute) against detention.

²⁸ Foreigners Act, Official Gazette of the Republic of Slovenia No. 50/2011 and subsequent amendments, Article 81.

²⁹ Official Gazette of the Republic of Slovenia No. 35/2010 and subsequent amendments; Article 32, Paragraph 1.

Detention and alternatives to detention in international protection and return procedures

			<p>decision), detention on the above grounds is transformed into detention under the Police Tasks and Powers Act³⁰ on the grounds that “the person has to be transferred to foreign security authorities”³¹. Detention on both grounds may not cumulatively exceed 48 hours. In case the person is to be returned without a return decision but this cannot be carried out in 48 hours, he/she is taken to the Centre for Foreigners and is issued a detention decision under Foreigners Act.</p>		
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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

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

	International protection procedures	Return procedures
	<i>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</i>	<i>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</i>
Unaccompanied Minors	<p>No</p> <p>Asylum applicants that are unaccompanied minors shall not be detained in the Centre for Foreigners. Only an alternative measure – restriction of movement to the area of the Asylum Centre - may be imposed on them.</p>	<p>Yes</p> <p>In cases of the removal of a foreign minor who is not accompanied by his or her parents or other statutory representative and is illegally staying in the Republic of Slovenia, the police shall immediately inform a social work centre, which must immediately assign a special case guardian to the foreign minor. The police shall issue the unaccompanied foreign minor a return decision after his or her special case guardian, having</p>

³⁰ Official Gazette of the Republic of Slovenia No. 15/2013 and subsequent amendments.

³¹ Police Tasks and Powers Act, Article 64, Paragraph 1.

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		<p>carefully considered all of the circumstances, establishes that this is in the best interests of the foreign minor.³²</p> <p>A foreign minor and a family with a foreign minor shall be accommodated, in agreement with the special case guardian, in adequate accommodation facilities for minors, where he or she will be guaranteed the rights referred to in the preceding paragraph. If this is not possible, an unaccompanied foreign minor and a family with a foreign minor shall be accommodated in the Centre.³³ Restriction of movement shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy.³⁴</p>
Disabled people	<p>Yes</p> <p>If the measure of the restriction of movement to the Centre for Foreigners has been imposed on a vulnerable person with special needs, the competent authority shall as a priority ensure that his or her health, including mental health, is protected and shall ensure regular monitoring and adequate assistance, while taking into account the specific situation of that person.³⁵</p> <p>All applicants for international protection may be provided the alternative to detention ("restriction of movement to the area of the Asylum Centre").³⁶</p>	<p>Yes</p> <p>Restriction of movement shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy.³⁷</p> <p>In agreement with a social protection institution, a foreigner who cannot be accommodated in the Centre for Foreigners due to special reasons or needs may be accommodated in a social protection institution or provided with other appropriate institutional care at the expense of the Centre.³⁸</p>
Elderly people	Ibidem	Ibidem
Families with children and single parents with minor	Ibidem	Ibidem
Persons with serious illnesses and persons with mental disorders	Ibidem	Ibidem

³² Foreigners Act, Article 82, Paragraph 1.

³³ Foreigners Act, Article 82, Paragraph 3.

³⁴ Foreigners Act, Article 76, Paragraph 3.

³⁵ International Protection Act, Article 84, Paragraph 8.

³⁶ International Protection Act, Article 84, Paragraph 1.

³⁷ Foreigners Act, Article 76, Paragraph 3.

³⁸ Foreigners Act, Article 76, Paragraph 5.

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victims of human trafficking	Ibidem	<p>No</p> <p>The police shall allow a victim of trafficking in human beings who is staying illegally in the Republic of Slovenia, ex officio or upon the victim's request, to stay for a period of 90 days in order to decide whether or not to cooperate as a witness in criminal proceedings concerning trafficking in human beings.³⁹</p>
Pregnant women	Ibidem	<p>Yes</p> <p>Restriction of movement shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy.⁴⁰</p> <p>In agreement with a social protection institution, a foreigner who cannot be accommodated in the Centre for Foreigners due to special reasons or needs may be accommodated in a social protection institution or provided with other appropriate institutional care at the expense of the Centre.⁴¹</p>
Other vulnerable persons	Ibidem	Ibidem

³⁹ Foreigners Act, Article 50, Paragraph 1.

⁴⁰ Foreigners Act, Article 76, Paragraph 3.

⁴¹ Foreigners Act, Article 76, Paragraph 5.

Detention and alternatives to detention in international protection and return procedures

Section 2: Availability and practical organisation of alternatives to detention

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

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

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

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

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals) <i>Please provide information on how often and to which authority persons subject to this measure should report</i>	Reporting obligation is not a separate alternative to detention but may be imposed on a person in return procedure that is granted "residence outside the Centre" (see below). The police may restrict the movement of a foreigner to his or her place of accommodation, and impose on him or her the obligation to report regularly (it can be on weekly or monthly interval) to the nearest police station. ⁴²
A2	Obligation to surrender a passport, travel document or identity document	No

⁴² Foreigners Act, Article 81, Paragraph 2 and 3.

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A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	No
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.	Residence requirement is not a separate alternative to detention but may be imposed on a person in return procedure that is granted “residence outside the Centre” Foreigners Act does not provide for house arrest.
A5	Release on bail (with or without sureties) <i>Please provide information on how the amount is determined; whether this can be paid by a third person/entity r (e.g. family member, NGO or community group); and at what point the money is returned</i>	No
A6	Electronic monitoring (e.g. tagging)	No
A7	<i>Release to a guardian/guarantor</i> <i>Please provide information on who could be appointed as a guarantor/guardian (e.g. family member, NGO or community group)</i>	No
A8	Release to care worker or under a care plan	No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	No
A10		
	Other alternative measure available in your (Member) State. Please specify.	International Protection Procedures: Restriction of movement to the area of the Asylum Centre⁴³ The person may live in the Asylum Centre

⁴³ International Protection Act, Article 84, Paragraph 1.

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		<p>under the same arrangements as other asylum applicants and may move freely within the compounds of the Asylum Centre including the inside yard, however he/she is not permitted to leave the Asylum Centre. As opposed to the Centre for Foreigners the Asylum Centre is not a Police institution and is not guarded; security is provided by a security company, whose powers are limited.</p> <p>Return Procedures:</p> <p>Residence outside the Centre for Foreigners⁴⁴</p> <p>The person may live outside the Centre for Foreigners pending the return procedure. In addition, the Police can order the person to reside at a particular location. In such case the Police may also restrict movement of the person to that particular location and impose an obligation to report regularly to the nearest Police Station.</p>
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⁴⁴ Foreigners Act, Article 81

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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

<p><u>International Protection Procedures</u></p> <p>In the course of individual assessment the authorities are systematically considering between detention, the only alternative to detention (“restriction of movement to the area of the Asylum Centre”) and no measure (accommodation of a person in Asylum Centre without restriction of movement).</p> <p><u>Return Procedures</u></p> <p>The Centre for Foreigners always issues a detention decision first and only later carries out the assessment whether detention is to be replaced with the “residence outside the Centre”. The combination of residence in certain place with regular reporting to the competent police station is most often used. The measure may be imposed for the duration of the detention at the Centre for Foreigners and for as long as the reasons for the detention last.</p>
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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

Name of alternatives (as reported in table 2 above) A10 - International Protection Procedures - Restriction of movement to the area of the Asylum Centre	
<i>In what it consists, and maximum duration</i>	<p>The person may live in the Asylum Centre under the same arrangements as other asylum applicants and may move freely within the compounds of the Asylum Centre including the inside yard, however he/she is not permitted to leave the Asylum Centre. As opposed to the Centre for Foreigners the Asylum Centre is not a Police institution and is not guarded; security is provided by a security company, whose powers are limited.</p> <p>The measure may last until the grounds for it cease, but no longer than three months, except in the cases referred to in indent five (in accordance with Article 28 of Regulation 604/2013/EU) of paragraph one of the Article. 84 of the International Protection Act. If, after this period, the reasons for the restriction of movement still exist, the measure may be extended for another month based on a decision. The measures shall terminate ex officio if the underlying grounds cease to exist.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	International Protection Act, Official Gazette of the Republic of Slovenia, No. 22/16 and subsequent amendments; Article 84

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<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Restriction of movement to the area of Asylum Centre was imposed to two applicants for international protection in 2015, 2016 and 2017, to none in 2018 and 2019 and to one in 2021.
<i>National authorities responsible to administer the alternative</i>	The “restriction of movement to the area of the Asylum Centre” is imposed by the asylum authority – International Protection Procedures Division of the Ministry of the Interior. This is normally done in a single assessment procedure, in which it is determined whether a person is to be placed under detention, the alternative to detention or accommodated in the Asylum Centre without any restriction of movement. The measure is administered by the International Protection Procedures Division of the Ministry of the Interior.
<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>	/
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	If an applicant arbitrarily leaves the area where he or she has been required to stay, the applicant may be imposed the measure of having his or her movement restricted to the Centre for Foreigners if he or she is not a minor or an unaccompanied minor.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Ibidem
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The president of the Administrative Court may decide that the implementation of the measure be supervised, and may appoint a judge or judges of the Administrative Court to carry out such review within the time limits and at locations determined by the president thereof or regarding certain applicants, and to report thereon. If as part of the review a judge of the Administrative Court establishes that the reasons for the restriction of the movement of a

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	certain applicant no longer exist, he or she shall order the measure to be eliminated.
<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.

Name of alternatives (as reported in table 2 above) A10 - Return Procedures - Residence outside the Centre for Foreigners	
<i>In what it consists, and maximum duration</i>	<p>The police may issue a decision allowing a foreigner to stay outside the Centre, and may also determine the place of his or her accommodation. In this event, the police may restrict the movement of a foreigner to his or her place of accommodation, and impose on him or her the obligation to report regularly to the nearest police station.</p> <p>Alternative to detention "residence outside the Centre for Foreigners" can last as long as detention at the Centre for Foreigners, which may only last for the period necessary to remove the foreigner from the country, but for not more than six months + a possibility of extension for a further six months (a total of 12 months).</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Foreigners Act, Official Gazette of the Republic of Slovenia No. 50/2011 and subsequent amendments, Article 76 and 81.
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	<p>Yes</p> <p>(2015) 4</p> <p>(2016) 300</p> <p>(2017) 6</p> <p>(2018) 2</p> <p>(2019) 4</p> <p>(2020) 5</p>

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<i>National authorities responsible to administer the alternative</i>	The "residence outside the Centre" is granted by the Centre for Foreigners (Police) ex officio or upon a request of the detainee. It is also administered by the Centre.
<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>	Regular reporting to the nearest police station within certain time frames, which is determined individually on a case-by-case basis (usually weekly, 10-days or monthly).
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	If a person does not follow the conditions of the "residence outside the Centre", the measure may be revoked and the person detained in the Centre for Foreigners. Determined on a case by case basis
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The locally competent police station can supervise.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	/
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No

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

Challenge	Alternative 1	Alternative 2
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	International Protection Procedures – “Restriction of movement to the area of the Asylum Centre”	Return Procedures – “Residence outside the Centre for Foreigners”
Availability of facilities related to accommodation (i.e. beds)	The capacity of the Asylum Centre is 203 persons.	The foreigner finds his own place of residence, sometimes in cooperation with NGO-s.
Availability of staffing and supervision	Employees are present every day of the week, and the security service is provided 24 hours a day.	The person reports himself to the competent police station.
Administrative costs	The costs are no higher than for other accommodated applicants for international protection. The cost of day care for an individual applicant for international protection in 2020 was 14,21 EUR.	None
Mechanisms to control movements of the person	The person may live in the Asylum Centre under the same arrangements as other applicants for international protection and may move freely within the compounds of the Asylum Centre including the inside yard, however he/she is not permitted to leave the Asylum Centre. As opposed to the Centre for Foreigners the Asylum Centre is not a Police institution and is not guarded; security is provided by a security company, whose powers are limited. Therefore the alternative to detention is not successful in preventing absconding.	None other than police control, if necessary.
Legislative obstacles	/	/
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable	/	The measure can only be implemented if the person can access (and bear the costs of) private accommodation.

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address or community support)		
Other challenges	/	Foreigners are exploiting this alternative to continue their journey to other, targeted, EU Member States. Therefore, application of this alternative is chosen mostly for those involved in identification and repatriation procedures when the risk of absconding is very low.

Q7. Please identify any **practical advantage associated with the implementation of each alternative** to detention available in your (Member) State in comparison with detention, based on existing studies or evaluations or information received from competent authorities specifically in relation to (add more column as needed). Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q7.

Advantage	Alternative 1(Name) International Protection Procedures: Restriction of movement to the area of the Asylum Centre	Alternative 2(Name) Return Procedures: Residence outside the Centre for Foreigners
Availability of facilities related to accommodation (i.e. beds)	The capacity of the Asylum Centre is 203 persons.	Foreigners take care of the accommodation themselves.
Availability of staffing and supervision	Employees are present every day of the week, and the security service is provided 24 hours a day.	The person reports himself to the competent police station.
Administrative costs	The costs are no higher than for other accommodated	None

Detention and alternatives to detention in international protection and return procedures

	<p>applicants for international protection. The cost of day care for an individual applicant for international protection in 2020 was 14,21 EUR.</p>	
<p>Mechanisms to control movements of the person</p>	<p>The person may live in the Asylum Centre under the same arrangements as other applicants for international protection, they can move freely within the compounds of the Asylum Centre including the inside yard, however he/she is not permitted to leave the Asylum Centre. As opposed to the Centre for Foreigners the Asylum Centre is not a Police institution and is not guarded; security is provided by a security company, whose powers are limited. Therefore the alternative to detention is not successful</p>	<p>Police control, if necessary. The person reports himself to the competent police station.</p>

Detention and alternatives to detention in international protection and return procedures

	in preventing absconding.	
Legislative obstacles	/	/
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	/	For the most part, they are without means of subsistence and without an address where they could reside. For this reason, they are encouraged to find a guarantor or a person who provides basic care.
Other advantages	"Restriction of movement to the area of the Asylum Centre" can be issued to person in procedure based solely on individual assessment of the case.	"Residence outside the Centre" in return procedures can be issued to person in procedure based solely on individual assessment of the case.

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.

Detention and alternatives to detention in international protection and return procedures

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

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

International protection procedure

Individual assessment is carried out in all cases. The procedure does not vary depending on the categories of third country nationals or their country of origin. The authorities decide whether to impose detention upon carrying out the application for international protection (first interview), checking EURODAC and evaluating other evidence that may be relevant to the case. The assessment between detention "Restriction of movement to the Centre for Foreigners" or alternative to detention "Restriction of movement to the area of the Asylum Centre" is made at the same time as when the grounds for detention are considered. The providing of the alternative to detention is not conditioned on completing a certain period of time in detention. Risk of absconding and vulnerability are the main considerations made in deciding whether an alternative to detention will be provided. The individual assessment is conducted and the alternative to detention decided on by the officials from the International Protection Procedures Division of the Ministry of the Interior.

Return procedure

Individual assessment is carried out in all cases by the Police Station or Police Directorate where a third-country national is in procedure due to illegal entry/illegal residence. If the Police Station or Police Directorate determines upon evaluating all the evidence and circumstances that a person needs to be detained in the Centre for Foreigners, he/she is transported there by the Police. Centre for Foreigners then issues a detention decision. The Centre for Foreigners always issues a detention decision first and only later carries out the assessment whether detention is to be replaced with the "residence outside the Centre". The providing of the alternative to detention is not conditioned on completing a certain period of time in detention. Risk of absconding, vulnerability and availability (whether the person has the means for and access to suitable accommodation) are the main considerations made in deciding whether an alternative to detention will be provided. It is essential in the decision whether there is a risk of absconding, whether the foreigner has identification documents, or participates in the return process to the country of origin. The fact is that Slovenia, for the current structure of illegally staying third-country nationals, does not represent a destination country, but is considered a transit country on the way to other EU Member States. Therefore, they exploit the possibility of an alternative to detention to continue their journey to neighboring countries. Only when the foreigner proves by his actions his participation in the identification process (cooperation with the representations of his countries for the issuance of documents) and actively participates in the return procedures, this indicates the existence of conditions for the imposition of an alternative to detention.

Other (if indicated on Table I)

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Detention and alternatives to detention in international protection and return procedures

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.

<p><u>International protection procedures:</u></p> <p>Yes/No</p> <p>Details: In the course of individual assessment the authorities are considering between detention, alternative to detention (“restriction of movement to the area of the Asylum Centre”) and no measure (accommodation of a person in Asylum Centre without restriction of movement).</p> <p><u>Return procedures:</u></p> <p>Yes/No</p> <p>Details: The Centre for Foreigners always issues a detention decision first and only later may, ex officio or at the request of a foreigner, carry out the assessment whether detention is to be replaced with the “residence outside the Centre”.</p>
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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	<i>Yes, if there are to many accommodated asylum applicants in Asylum Centre we do not use this alternative.</i>	<i>Yes, however The Centre for Foreigners always issues a detention decision first and only later may, ex officio or at the request of a foreigner, carry out the assessment whether detention is to be replaced with the “residence outside the Centre”.</i>
Cost-effectiveness	<i>Costs of alternative to detention and detention are more or less the same, since applicants are accommodated in the same facility (Asylum Centre) and have more or less the same scope of cost-sensitive rights inside the this facility. The resources put into the alternative scheme are low; only regular administrative costs and</i>	<i>Residence outside the Centre in particular is less expensive than detention of a person in return procedure, however this measure also requires that the person provides for him/herself and cannot be used if the person does not have sufficient resources or a sponsor or when there is a</i>

Detention and alternatives to detention in international protection and return procedures

	<i>cost of translating a decision apply, other costs are the same as for those in the Asylum Centre without any restriction.</i>	<i>risk of absconding or when he/she does not participate in the return process to the country of origin.</i>
Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)	<i>No, we do not differentiate on Country of origin.</i>	No
Level of the risk of absconding	<i>If there is no risk of absconding we usually not use detention.</i>	<p>Yes</p> <p><i>Circumstances indicating that a foreigner poses a risk of absconding shall in particular be⁴⁵:</i></p> <ul style="list-style-type: none"> - <i>if the foreigner has previously stayed illegally in the Republic of Slovenia,</i> - <i>if the foreigner has entered the country despite an entry ban imposed on him or her,</i> - <i>if the foreigner has been convicted by a final judgment for a criminal offence,</i> - <i>if the foreigner holds another person's, counterfeit or forged travel or other documents,</i> - <i>if the foreigner has provided false information or has not cooperated in the procedure,</i> - <i>If the foreigner's actions indicate that he or she will not leave the Republic of Slovenia by the set deadline for voluntary return.</i> <p><i>Less serious circumstances indicating that a foreigner poses a risk of absconding shall in particular be⁴⁶:</i></p>

⁴⁵ Article 68, Paragraph 1 of the Foreigners Act.

⁴⁶ Article 68, Paragraph 2 of the Foreigners Act.

Detention and alternatives to detention in international protection and return procedures

		<ul style="list-style-type: none"> - if the foreigner has entered the Republic of Slovenia illegally, - if the foreigner has exceeded the period of legal residence in the country by less than 30 days, - if there is no possibility for the foreigner to reside in the Republic of Slovenia, - other less serious circumstances identified on a case-by-case basis.
Vulnerability	<i>Vulnerable groups are usually not detained if it would be necessary we would use alternative option.</i>	<i>Yes, detention in the Centre for Foreigners shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy. The minister responsible for the interior shall determine the procedure for the accommodation of foreigners in the Centre.</i>
Less-invasive legal measures impacting on human rights	<i>Yes, In the course of individual assessment the authorities are considering between detention, alternative to detention (“restriction of movement to the area of the Asylum Centre”) and no measure (accommodation of a person in Asylum Centre without restriction of movement).</i>	<i>The Centre for Foreigners always issues a detention decision first and only later ex officio or at the request of a foreigner, carries out the assessment whether detention is to be replaced with the “residence outside the Centre”.</i>
Other	/	/

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)

Detention and alternatives to detention in international protection and return procedures

- 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

International protection procedures

Assessment of vulnerability is a part of the overall assessment and is not formally prescribed by law. The International Protection Act contains general provisions on treatment of vulnerable persons⁴⁷ but they do not refer to criteria for placing persons in detention specifically. Vulnerability assessments are conducted on a case-by-case basis.

The International Protection Procedures Division of the Migration Directorate of the Ministry of the Interior is the responsible authority for individual assessment procedures and deciding on the placement of third-country nationals in detention.

Return procedures

Assessment of vulnerability is a part of the overall assessment and is not formally prescribed by law. Police Stations and Police Directorates where a third-country national is in procedure due to illegal entry/illegal residence carry out an individual assessment on whether he/she is to be issued a return decision without a deadline for voluntary departure in accordance with and within grounds set by the Foreigners Act. If such a decision is issued and a person cannot be returned immediately he/she is taken to the Centre for Foreigners, where the Centre issues a detention decision. The Centre for Foreigners is a public body within the organizational structure of the Police.

The procedure is different in case of unaccompanied minors due to obligatory participation of legal guardians. The Police Stations or Police Directorates do not issue a return decision but take an unaccompanied minor to the Centre for Foreigners where he/she is issued a detention decision. The minor is then issued a return decision by the Centre only if this is determined to be in his/her best interest by an appointed guardian (this normally takes a few days, up to a week).

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:

An applicant has the right to bring an action against the order imposing detention “restriction of movement to the area of the Asylum Centre” with the Administrative Court within three days of service. The court shall decide on the case within three working days after a preliminary oral hearing. An applicant has the right to bring an action against the order to extend the detention for

⁴⁷ International Protection Act, Article 12.

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another month with the Administrative Court within three days of service. The court shall decide on the case within three working days.⁴⁸ The president of the Administrative Court may decide that the implementation of the measure be supervised, and may appoint a judge or judges of the Administrative Court to carry out such review within the time limits and at locations determined by the president thereof or regarding certain applicants, and to report thereon. If as part of the review a judge of the Administrative Court establishes that the reasons for the restriction of the movement of a certain applicant no longer exist, he or she shall order the measure to be eliminated.⁴⁹

Return procedures:

A foreigner shall have the right to bring an action with the Administrative Court against a decision on “accommodation in the Centre for Foreigners or outside the Centre for Foreigners” within three days of the service of the decision. An action shall not stay the execution of the decision. The Administrative Court must decide on the action within six days.⁵⁰

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:

Every person subject to the procedures referred to in the International Protection Act shall be guaranteed access to the organisations providing legal advice.⁵¹ Refugee counsellors provide support and legal assistance in the procedures under the International Protection Act before the Administrative and the Supreme Court of the Republic of Slovenia.⁵² Vulnerable persons with special needs shall be afforded special care and treatment in the procedures under the International Protection Act.⁵³ If the measure of the restriction of movement to the Centre for Foreigners has been imposed on a vulnerable person with special needs, the competent authority shall as a priority ensure that his or her health, including mental health, is protected and shall ensure regular monitoring and adequate assistance, while taking into account the specific situation of that person.⁵⁴

Return procedures:

During the ordered detention in the Centre for Foreigners, the person has the possibility of basic medical, psychological and social care. The staff of the Centre also includes 4 medical technicians and 5 social workers, medical support is also provided by 3 contract general practitioners, and psychological support is provided by 1 psychiatrist with whom a contract has been concluded.

⁴⁸ International Protection Act, Article 84, Paragraphs 6 and 7.

⁴⁹ International Protection Act, Article 84, Paragraph 5.

⁵⁰ Foreigners Act, Article 78, Paragraphs 1, 2 and 3.

⁵¹ International Protection Act, Article 4.

⁵² International Protection Act, Article 9, Paragraph 1.

⁵³ International Protection Act, Article 12.

⁵⁴ International Protection Act, article 84, Paragraph 8.

Detention and alternatives to detention in international protection and return procedures

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.		
2017	# People in international protection procedures (including Dublin)	# of applicants who absconded
Detention (Absolute figures)	48	N/A
Alternatives to detention 1 (NAME) "Restriction of movement to the area of the Asylum Centre"	2	N/A

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.

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2018	# People in international protection procedures (including Dublin)	# of applicants who absconded
Detention (Absolute figures)	123	N/A
Alternatives to detention 1 (NAME) "Restriction of movement to the area of the Asylum Centre"	0	N/A

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.		
2019	# People in international protection procedures (including Dublin)	# of applicants who absconded
Detention (Absolute figures)	22	N/A
Alternatives to detention 1 (NAME) "Restriction of movement to the area of the Asylum Centre"	0	N/A

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.)?

We do not have data that would connect absconded applicant with restriction of movement. Our observation is that the most of the applicants to whom the restriction of movement to Asylum Centre has been imposed, absconded during the period of the measure. Most of them abscond after their detention decision becomes final.

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)		
2017, 2018, 2019	Average length of time in determining the status of an applicant for international protection	Share of decisions which were appealed and of these, the share which overturned the initial decision

Detention and alternatives to detention in international protection and return procedures

Detention (Absolute figures)	N/A	N/A
Alternatives to detention 1 (NAME) "Restriction of movement to the area of the Asylum Centre"	N/A	N/A

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.)?

Cases of detained applicants are prioritised.

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 236	2017 4
	2018 1177	2018 25
	2019 1400	2019 10
Alternatives to detention 1 (NAME) "residence outside the Centre for Foreigners"	2017 5	2017 4
	2018 2	2018 1
	2019 3	2019 3

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)

Detention and alternatives to detention in international protection and return procedures

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 (in days)	Number of voluntary returns (persons who opted to return voluntarily) (absolute figures)	Number of effective forced departures (absolute figures)
Detention (Absolute figures)		2017: 39,2 2018: 32,9 2019: 20	2017: 7 2018: 4 2019: 2	2017: 8 2018: 5 2019: 13
Alternatives to detention 1 (NAME) "residence outside the Centre for Foreigners"		2017: one person 66 days 2018: one person 590 days 2019: no cases	No cases	2017: 0 2018: 1 2019: 0

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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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.

<p><u>International protection procedures</u></p> <p>Yes/No</p> <p>Key findings</p> <p>Reference</p> <p><u>Return procedures</u></p> <p>Yes/No</p> <p>Key findings /</p> <p>Reference /</p>

Detention and alternatives to detention in international protection and return procedures

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:

Empirical studies in terms of the effect of alternatives to detention on international protection procedures have not been done.

Alternative 1:

Ministry of the Interior experience is that alternative to detention has negative impact particularly on Dublin transfers, because most of the applicants abscond.

Alternative 2:

Alternative 3:

...

Return procedures

Detention:

Empirical studies in terms of the effect of detention on returns have not been done.

Alternative 1:

Empirical studies in terms of the effect of alternatives to detention on returns have not been done.

Alternative 2:

Alternative 3:

.....

Upholding fundamental rights

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

International Protection Procedures

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention

Detention and alternatives to detention in international protection and return procedures

<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Yes</p> <p>Details:</p> <p>Under the Article 4 of the International Protection Act every person subject to the procedures referred to in this Act shall be guaranteed <i>inter alia</i> access to the High Commissioner and organisations providing legal advice.</p> <p>Under the Article 9 of the International Protection Act refugee counsellors shall provide support and legal assistance in the procedures under this Act before the Administrative Court of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia.</p>	<p>Ibidem</p>	
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Detention and alternatives to detention in international protection and return procedures

<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</p>	<p>Yes</p> <p>Details:</p> <p>In all proceedings under International Protection Act, the applicant is given the opportunity to make statements.</p> <p>The measure of detention or alternative to detention is imposed on the applicant orally. The applicant shall immediately receive a record of the imposed measure stating the reasons for the measure. The record shall be read to the applicant in a language he or she understands. A written copy of the decision shall be issued by the competent authority no later than 48 hours after the decision was delivered orally and must be served on the applicant within three working days.</p>	<p>Ibidem</p>	

Detention and alternatives to detention in international protection and return procedures

<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Yes</p> <p>Details:</p> <p>Under the Article 78 of International Protection Act applicants shall enjoy inter alia emergency medical treatment which under the Article 86 of the International Protection Act shall include the right to:</p> <ol style="list-style-type: none"> 1. emergency medical care and emergency transport upon a physician's decision and the right to emergency dental care; 2. emergency treatment upon a decision of the attending physician, which encompasses: <ul style="list-style-type: none"> - the preservation of essential functions, stopping serious haemorrhaging and preventing blood loss; - the prevention of a sudden deterioration of his or her health condition which could cause permanent damage to individual organs or bodily functions; - treatment for shock; - health-care services addressing chronic illnesses and conditions which, if not received, could directly and in a relatively short period of time lead to disability, permanent damage to health, or death; 	<p>Ibidem</p>	
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Detention and alternatives to detention in international protection and return procedures

	<ul style="list-style-type: none"> - treatment for hyperthermia and the prevention of the spread of an infection that might lead to sepsis; - treatment or prevention of poisoning; - treatment of bone fractures or sprains and other injuries requiring immediate intervention by a physician; - medication from the positive and intermediate lists in accordance with the list of mutually interchangeable medication prescribed for the treatment of indicated illnesses and conditions; <p>3. health care for women: contraception, abortions, and health care during pregnancy and while giving birth.</p> <p>Vulnerable persons with special needs, and in exceptional cases other applicants, shall also be entitled to additional health-care services, including psychotherapy, which are approved and determined by the commission.</p> <p>Applicants who are minors and unaccompanied minors shall be entitled to health care equivalent to that enjoyed by children under mandatory</p>		
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Detention and alternatives to detention in international protection and return procedures

	<p>health insurance as family members. School children aged 18 years or older shall be entitled to health care to the same degree until they leave school, but not after they reach the age of 26.</p>		
<p>Please add any additional safeguard</p>	<p>Under the Article 3 of the International Protection Act where minors are involved, the principle of the child's best interests shall be observed.</p> <p>Under the Article 4 of the International Protection Act every person subject to the procedures referred to in this Act shall be guaranteed the following:</p> <ul style="list-style-type: none"> - information, - interpreting and translation services, - access to the High Commissioner and organisations providing legal advice, - a written decision on the procedure, including a translation of the essential parts into a language that the person understands. <p>Under the Article 12 of the International Protection Act vulnerable persons with special needs shall be afforded special care and treatment in the procedures under this Act.</p>		

Detention and alternatives to detention in international protection and return procedures

Return Procedures

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>The foreigner is not automatically (ex lege) granted legal aid, however the foreigner can find himself a legal representative who has the possibility of unhindered access to his/her client in the Centre for Foreigners, where detention is carried out.</p>	<p>Ibidem</p>	
<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</p>	<p>Yes Different procedures in terms of identity and repatriation are taking place with the foreigner during detention. In all these proceedings, the foreigner shall be given the opportunity to make statements.</p>	<p>Ibidem</p>	
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Yes In addition to emergency medical care, the person is provided with a basic treatment in terms of health protection.</p>	<p>Yes A person who has been granted alternative to detention "residence outside the Centre for Foreigners" is provided with urgent medical care. Other medical care is provided through the infirmary of the Centre for Foreigners.</p>	

Detention and alternatives to detention in international protection and return procedures

<p>Please add any additional safeguard</p>	<p>Under Article 76 of the Foreigners Act the restriction of movement shall be provided separately for women, families, children, unaccompanied minors, the elderly, the seriously ill and other vulnerable persons with a view to ensuring adequate privacy. The minister responsible for the interior shall determine the procedure for the accommodation of foreigners in the Centre.</p> <p>In agreement with a social protection institution, a foreigner who cannot be accommodated in the Centre due to special reasons or needs may be accommodated in a social protection institution or provided with other appropriate institutional care at the expense of the Centre.</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>

Detention and alternatives to detention in international protection and return procedures

Q21. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**⁵⁵ 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.

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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:

The main difficulties/obstacles in the implementation of the alternative is noncompliance. Most applicants flee; control over them at the Asylum Home is insufficient. Costs of alternative to detention and detention are more or less the same, since applicants are accommodated in the same facility in Ljubljana or in the Police institution in Postojna and have more or less the same scope of cost-sensitive rights inside the these facilities. The resources put into the alternative scheme are low; only regular administrative costs and cost of translating a decision apply, other costs are the same as for those in the Asylum Home without any restriction. These schemes are not evaluated on the basis of cost effectiveness systematically or regularly and no other alternatives have even been tested for applicants.

Reference:

<https://odysseus-network.eu/wp-content/uploads/2015/03/SloveniaPractices.pdf>

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:

According to the Police, main difficulties/obstacles observed in the implementation of these alternatives are costs. Alternatives cost practically nothing since only returnees with permission to

⁵⁵ 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

stay are granted social help, other returnees are without any financial support from state. warns in its report that this may result in illegal work. There are also some practical difficulties with assuring basic medical assistance since it is provided in the Aliens Centre in Postojna. If a returnee is accommodated elsewhere, he or she must come to the Centre which may lead to transportation and costs for travel difficulties which are all covered by the alien himself or his sponsor. No subsidiary system of basic medical assistance in nearby towns to the place of accommodation of a returnee is envisaged. According to the Aliens Centre, they can arrange a doctor visit for returnees from Ljubljana since the doctor, under contract with the Aliens Centre has also a dispensary in Ljubljana. In case of a sponsor, he or she is responsible to cover all costs incurred in connection with the stay and accommodation (including health cost) of an alien in the Republic of Slovenia and also for the return/deportation to their home country. The resources put into each of schemes are low; it takes appx. 5 minutes for all activities concerning regular reporting to the Police authorities and monthly supervision at an address. The supervision if a returnee still lives on the address is usually done simultaneously with other Police work in the area. It basically does not take any extra time or cost. These schemes are not evaluated regularly, more lenient measures were adopted in Slovenian legislation in 1999 and the only change in content since then was that since 2011 no administrative appeal is permitted against a decision by which a returnee's request for a more lenient measure was refused.

Reference:

<https://odysseus-network.eu/wp-content/uploads/2015/03/SloveniaPractices.pdf>

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.)

International Protection Procedures

The assessment between detention “Restriction of movement to the Centre for Foreigners” or alternative to detention “Restriction of movement to the area of the Asylum Centre” is made at the same time as when the grounds for detention are considered. Individual assessment is carried out in all cases. The procedure does not vary depending on the categories of third country nationals or their country of origin. The providing of the alternative to detention is not conditioned on completing a certain period of time in detention. Risk of absconding and vulnerability are the main considerations made in deciding whether an alternative to detention will be provided. The main difficulties/obstacles in the implementation of the alternative is noncompliance, since most applicants abscond. Alternative to detention “Restriction of movement to the area of the Asylum Centre” is not successful in preventing absconding, because Asylum Centre is not a Police institution and is not guarded (security is provided by a security company, whose powers are limited).

Return procedures

An essential element in imposing an alternative to detention in return proceedings is risk of absconding. We have previously pointed out the specifics of Slovenia in the sense that most illegally staying foreigners consider it a transit country on their way to their final destination (other EU member states). Therefore, alternative to detention represents high risk in terms of its abuse to continue the journey to one of the neighboring countries. For this reason, Slovenia is selective in approving alternative to detention to foreigners who do not have identification documents, do not participate in identification procedures and return home, as they pose a high risk of leaving (absconding) the country and thus continuing illegal border crossings.

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
Statistics on number of third-country nationals in detention per category							
Total number of third-country nationals in detention	2338	1482	284	1303	1423	2266	MOI statistics
Number of applicants for international protection in ordinary procedures in detention (including Dublin)	16	76	48	126	23	216	MOI statistics
Number of persons detained to prevent illegal entry at borders	N/A	N/A	N/A	N/A	N/A	N/A	
Number of person detained during return procedures (including pre-removal)	2322	1406	236	1177	1400	205	MOI statistics
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	33	154	17	63	31	82	MOI statistics
Vulnerable persons specified – unaccompanied minors	66	135	46	245	287	304	MOI statistics
Number of other third-country nationals placed in immigration detention	N/A	N/A	N/A	N/A	N/A	N/A	All categories of third-country nationals in detention are included above.
Statistics on number of third-country nationals provided alternatives to detention							
Total number of third-country nationals in alternatives to detention	3	202	5	2	3	4	MOI statistics

Detention and Alternatives to Detention

Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)	2	2	2	0	0	0	MOI statistics
Number of persons given alternatives to detention to prevent illegal entry at borders	N/A	N/A	N/A	N/A	N/A	N/A	
Number of person in alternatives to detention during return procedures (including pre-removal)	4	300	6	2	4	5	MOI statistics
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)	N/A	N/A	N/A	N/A	N/A	N/A	
Vulnerable persons specified - minors	N/A	N/A	N/A	N/A	N/A	N/A	
Vulnerable persons specified – unaccompanied minors	N/A	N/A	N/A	N/A	N/A	N/A	

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 (in days)	2015	2016	2017	2018	2019	2020	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	10,4	14,8	13,5	6,8	4,3	7,6	MOI statistics
Average length of time in detention of applicants for international protection in ordinary procedures	14,3	31,1	29,2	24,3	19,3	36,8	MOI statistics
Average length of time in detention of persons detained to prevent illegal entry	N/A	N/A	N/A	N/A	N/A	N/A	The data is not available however this type of detention cannot exceed 48 hours.
Average length of time in detention of persons during return procedures	10,3	13,5	13,6	4,5	4,1	4,7	MOI statistics

Detention and Alternatives to Detention

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	7,3	7,3	5,5	2,9	3,6	3,7	MOI statistics, they include only unaccompanied minors
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