



# Detention and Alternatives to detention in international protection and return procedures

## Common Template for EMN Study 2020

Fina Version, 4 January 2020

### 1 BACKGROUND AND RATIONALE FOR THE STUDY

In the context of migration, detention is a *non-punitive administrative measure applied by the state to restrict the movement through the confinement of an individual for another immigration procedure to be implemented*.<sup>1</sup> 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.<sup>2</sup>

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*.<sup>3</sup> These measures, having an impact on the person's rights,<sup>4</sup> are subject to human rights standards and have to be imposed, on a case-by-case basis, by taking into consideration individual factors. Examples of such alternative measures include the obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.<sup>5</sup> Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly

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<sup>1</sup> EMN Glossary

<sup>2</sup> 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.

<sup>3</sup> EMN Glossary

<sup>4</sup> 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).

<sup>5</sup> Article 8(4) of the Reception conditions directive (recast)

aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> In this sense, the administrative detention of individuals can take place only in those cases where there are no alternatives.

Despite the legal obligation to consider the use of alternatives to detention, in practice, the widespread use of alternatives is hampered by the scarce availability of tools and for alternatives to detention that could achieve the same goal of detention especially in the context of return procedures – notably to ensure compliance with the migration procedures and prevent absconding. Alternatives to detention are considered to bring **effective advantages compared to detention**, specifically considering their reduced costs as compared to detention, the reduced interference with fundamental rights, and the fact that they can significantly relieve the pressure on national detention systems. Nevertheless, among Member States alternatives to detention remain often unused, and the findings of different actors in the field - the Council of Europe,<sup>9</sup> the UN<sup>10</sup> and the EU<sup>11</sup> – 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 addition, there are several alternative measures, and some information is available on which measures work

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

<sup>7</sup> 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.

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

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

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

## 2 STUDY AIMS AND OBJECTIVES

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

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

- Provide a comparative overview of the scale of detention and available alternatives to detention in each Member State in the context of international protection and return procedures and challenges Member States face to implement the alternatives to detention in practice;
- Give a comparative overview of the process and criteria used by national authorities to assess whether placing a third-country national in detention or instead applying an alternative to detention, in the context of international protection and return procedures;
- Assess the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures. This impact is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.<sup>12</sup>

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?*

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<sup>12</sup> 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.

## Detention and alternatives to detention in international protection and return procedures

- 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)<sup>13</sup> requires Member States to consider alternatives to detention before subjecting asylum seekers to detention. Recital 15 provides that "applicants [for international protection] may be detained only under very **clearly defined exceptional circumstances** laid down in the Directive and subject to the principles of **necessity** and **proportionality** concerning both to the manner and the purpose of such detention". Under this Directive, Member States may detain an applicant only if other less coercive alternative measures cannot be effectively applied based on a case-by-case evaluation.<sup>14</sup>

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;

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<sup>13</sup> 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

<sup>14</sup> Article 8(2) of the Reception conditions directive (recast)

## Detention and alternatives to detention in international protection and return procedures

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,<sup>15</sup> 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),<sup>16</sup> "when there is a significant risk of absconding, Member States may detain the person concerned to secure transfer procedures following this Regulation, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively."

### Detention and alternatives to detention in the context of return proceedings

The Return Directive<sup>17</sup> allows Member States to detain a migrant only to **prepare his/her return** and/or carry out the **removal process** if the application of less coercive measures is not sufficient. Article 15(4) specifies that detention is only justified as long as there is a **reasonable prospect for removal**. Furthermore, according to Article 15(5), each Member State shall set a limited period of detention, which may not exceed **six months**. Article 15(6) also allows Member States to **extend detention** for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third country.

Recital 16 of the Return Directive states that: "detention for the purpose of removal should be limited and subject to the principle of proportionality concerning the means used and objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient".<sup>18</sup>

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.

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<sup>15</sup> 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

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

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

### Obligation to consider alternatives to detention

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

### Risk of absconding

Case C-528/15 *Al Chodor* relates to the interpretation of Article 28 of the Dublin III Regulation on the conditions of the detention of asylum seekers pending a transfer to another Member State. The Court affirmed that, some of the provisions of this Regulation necessitate the adoption of measures by national authorities for their implementation. In that sense, Article 2(n) of the Dublin III Regulation requires the criteria to establish a 'risk of absconding' to be 'defined by law'. The CJEU concluded that Article 2(n) and Article 28(2) of the Dublin III Regulation must be interpreted as requiring Member States to establish, in a binding provision of general application, **objective criteria** underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond. In the absence of that, Article 28(2) is inapplicable, and detention on this ground is unlawful. The Court also noted that the meaning of Article 6 of the Charter of Fundamental Rights should be defined in light of the established case-law of the ECtHR, which requires any measure on deprivation of liberty to be accessible, precise and foreseeable.

## 5 RELEVANT SOURCES AND LITERATURE

### EMN Studies and Ad-hoc Queries

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

## Detention and alternatives to detention in international protection and return procedures

- Council of Europe, Twenty Guidelines on Forced Return, 2005
- Council of Europe, "Legal and practical aspects of effective alternatives to detention in the context of migration", 2017
- Council of Europe, "Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results", 2019
- Council of Europe, European Commission and the European Migration Network, conclusion from the Conference "Effective Alternatives to the Detention of Migrants", April 2019
- European Asylum Support Office (EASO), Detention of applicants for international protection in the context of the Common European Asylum System, 2019
- European Commission, Return Handbook, C(2017) 6505, 2017
- European Law Institute, Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards, 2017.
- European Union Agency for Fundamental Rights, Detention of third-country nationals in return procedures, 2013
- European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, 2015
- Odysseus Academic Network, Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, 2015.
- UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, 2011.
- UNHCR, Option Paper no 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015.
- UNHCR, Compilation of International Human Rights Law and Standards on Immigration Detention, 2018
- UNHCR, Beyond Detention - A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2019

## 6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v6.0<sup>19</sup> 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

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<sup>19</sup> 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](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf)

## Detention and alternatives to detention in international protection and return procedures

Directive), detention is defined as confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty.

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

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

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

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

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

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

**'Detention'** is defined as a non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented (Source: EMN Glossary 3.0).<sup>20</sup>

**'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

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<sup>20</sup> 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.

## Detention and alternatives to detention in international protection and return procedures

readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

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

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

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

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

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

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

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

## 7 ADVISORY GROUP

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

## Detention and alternatives to detention in international protection and return procedures

- FR NCP( Anne-Cécile Jarasse, and Christelle Caporali-Petit)
- EE NCP
- LU NCP (Adolfo Sommaribas)
- LT NCP
- LV NCP
- PL NCP (Joanna Sosnowska)
- SE NCP – AG lead (Marie Bengtsson)
- SI NCP (Luka Žigante)
- Odysseus network expert (Lilian Tsourdi, Philippe DE BRUYCKER)
- IC/ EMN Service Provider (Sara Bagnato, Roberta Vasile, Martina Griffo)

### 8 TIMETABLE

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

Date	Action
<b>Study specifications</b>	
27 February	First AG meeting
20 April	Circulation of the <b>first draft</b> to the AG
w/c 5 October	Circulation of the <b>second draft</b> to the AG (one-week deadline for review)
12 October 2020	Second AG meeting
w/c 22 October	Circulation of the <b>third draft</b> to NCPs (two weeks deadline for review)
w/c 4 January 2021	Launch of the study
<b>Synthesis report</b>	
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

**Detention and alternatives to detention in international protection and return procedures**

Date	Action
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.

## Common Template of EMN Study 2020

### National Contribution from Poland

*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:

Protective measures applied in the area of migration in Poland are complementary. Alternatives for detention are of a priority nature within the framework of both asylum and return procedures. This means that the Border Guard should examine at the very outset whether the application of an alternative to detention is possible, and only when the imposition of any such alternative is not possible with regard to the particular foreigner, the authority in question may lodge an application with a court for placing a foreigner in a guarded facility. At this stage the court may still refuse the application of a detention measure and may deliver an order for the application of alternatives to detention. Only where the application of detention is indeed justified, the court will deliver the appropriate order.

It must be noted at this point that at all times of the application of detention, the Border Guard to which a particular guarded detention facility is subordinated may, at its own initiative, deliver an order for the release of a foreigner from the guarded facility and immediately relapse him/her if it, for example, deems that the conditions for detaining the foreigner have ceased to exist, health grounds have appeared or other grounds precluding further detention, or there are no reasonable chances that a return decision will be enforced.

It is also worth mentioning that the Border Guard makes all efforts aimed at assuring that the conditions within guarded facilities meet the highest standards, including psychological and therapeutic care.

### Section 1: National policy and legal framework: development since 2015<sup>21</sup>

*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*

<sup>21</sup> 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->

## Detention and alternatives to detention in international protection and return procedures

*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.

Under presently existing laws, the rules of placing foreigners in a guarded facility or detention for foreigners, are as follows:

A foreigner, with regard to whom return proceedings are pending, may be detained and placed in a guarded facility for foreigners or detention for foreigners pursuant to the provisions of the Act on Foreigners of 12 December 2013, where one of the following conditions is present:

- there is significant likelihood that a return decision will be delivered with regard to the foreigner without setting out a deadline for voluntary return on grounds of security and public order or such a decision hyas already been delivered,

- it is necessary to secure the transfer of the foreigner to a third country pursuant to a readmission agreement, and immediate transfer to the country in question is not possible,

- the application of alternatives to detention is not possible or the foreigner has not complied with such measures, and one of the following conditions exists:

- It is most likely that a retrn decision will be delivered without setting out the deadline for voluntary return or such a decision has already been delivered, and a risk of absconding exists,

- the foreigner has failed to leave the territory of the Republic of Poland within the deadline set out in the return decision, and its immediateenforcement is not possible,

- It is necessary to secure transfer procedures in accordance with Article 28 of Regulation 604/2013, when there is a significant risk of absconding, and immediate transfer to another Member State is not possible,

- It is necessary to secure the transfer of the foreigner to another Member State, and immediate transfer to the country in question is not possible

A foreigner may be placed in a detention facility for foreigners where there exists a risk that the foreigner will not comply with the rules of stay at the guarded facility.

The maximum period of a stay of a foreigner applicant at a guarded facility or detention facility for foreigners is 6 months, with the option of extension up to a maximum period of 18 months.

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A foreigner shall not be placed in a guarded facility or detention facility for foreigners where 1) this may present a hazard to the life or health of the foreigner 2) the mental or physical condition of the foreigner may justify the assumption that the foreigner was subjected to violence.

A foreigner who lodges an application for international protection may be detained and placed in a guarded facility for foreigners or detention facility for foreigners pursuant to the provisions of the Law of 13 June 2003 on international protection for foreigners only:

- for the purpose of establishing Or verifying their identity,
- for the purpose of collecting information on which their application for international protection is based, and obtaining thereof would not be possible – where there is significant risk of absconding,
- for the purpose of delivering or enforcement of a return decision, where there is justified suspicion that the application was lodged only for the purpose of delaying extradition or detaining and/or preventing of the enforcement of a return decision,
- where grounds of state defence or security, or of protection of security and the public order require so,
- for the purpose of transfer to another Member State pursuant to Regulation 604/2013, when there is a significant risk of absconding, and immediate transfer to another Member State is not possible.

The maximum period of a stay of a foreigner applicant at a guarded facility or detention facility for foreigners is 6 months.

An applicant shall not be placed in a guarded facility or detention facility for foreigners where 1) this may present a hazard to the life or health of the foreigner 2) the mental or physical condition of the foreigner may justify the assumption that the foreigner was subjected to violence 3) he/she is a an unaccompanied minor.

An application for the placement of a foreigner In a guarded facility or detention facility for foreigners shall be lodged by the Border Guard with the competent district court. The court shall deliver an order in this regard.

During the years 2015-2020, the most important modifications of regulations in this regard were as follows:

- introduction of a new condition for the placement In a guarded facility into the contents of the Act on Foreigners (necessity of securing the transfer of a foreigner in accordance with Article 28 of Regulation 604/2013) – by the amending act of 10 September 2015;
- introduction of the priority of alternatives to detention (as a rule, alternatives to detention are to be applied, and where this is not possible – the possibility of applying for a detention measure – by the amending act of 24 November 2017;
- modification of the Act on Foreigners in the following manner: the maximum period of stay at the guarded facility has been modified from 12 to 6 months, with the possibility of having it extended up to 18 months, where 1) the foreigner who was issued a return decision is not cooperating with the

## Detention and alternatives to detention in international protection and return procedures

Border Guard as regards the enforcement of the decision In question or 2) enforcement of the return decision is temporarily prevented due to delays In obtaining the necessary documents for this purpose from third countries - by the amending act of 24 November 2017;

Q3. 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)

- alternatives to detention have been introduced into the Polish legal order as of 1 May 2014 (1 obligation of reporting within defined intervals to the designated authority , 2 duty of residing at the designated place, 3 surrender of the passport for safe-keeping 4 payment of bail) – by the Act on Foreigners of 12 December 2013;

- introduction of of the priority of alternatives to detention (as a rule, alternatives to detention are to be applied, and where this is not possible – the possibility of applying for a detention measure – by the amending act of 24 November 2017.

**Example of good practice:**

**developing a process of safe release from detention to ATD pilot with the Polish Border Guard:**

Stowarzyszenie Interwencji Prawnej (SIP - The Association for Legal Intervention is a civil society organisation), the Polish alternatives to detention pilot implementor, and the Border Guard jointly developed a process that enables migrants' release from detention directly to the ATD pilot. The final text of their Memorandum of Understanding was agreed in February 2020.

This agreement formalises a cooperation mechanism between the Border Guard and the Polish ATD pilot, an example of collaboration between the authorities and a civil society organisation that results in release from detention or abstaining from detention.

According to the agreement, the Border Guard at the detention centre notifies SIP when they are considering the possibility of releasing a migrant from detention because of their vulnerability and when they believe the individual will benefit from case management in a community setting. The same mechanism applies when the Border Guard arrests an individual staying in Poland illegally and decides between his/her detention or applying alternatives to detention.

SIP then out screening and assessment of the individual. If they meet the ATD pilot criteria and agree to be released onto the pilot, SIP inform the Border Guard. The Border Guard then notify the headquarters of the Border Guard of the final release arrangement. The Border Guard require SIP to notify them if the individuals abscond.

From August 2020 to March 2021, twelve persons were provided an institutional assistance, eight of them absconded (in 2020 - 6 persons, in 2021 – 2 persons), two of them realized the return decision in 2020 and two of them are currently still receiving the legal and psychological support from the pilot.

Q4. 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.

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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?
<b>International Protection</b>	<b>Applicants for international protection in ordinary procedures</b>	yes	<p>Art. 88a (1) of the Act on granting protection to foreigners within the territory of the Republic of Poland:</p> <p>When alternatives to detention cannot be applied, detention is applied if:</p> <ul style="list-style-type: none"> <li>- it is necessary to confirm the identity,</li> <li>- it is necessary to gather information needed for the application, and there is high risk of absconding,</li> <li>- it is necessary to issue and execute the return decision if the application for asylum seems to “the last minute” application,</li> <li>- it is necessary due to security reasons,</li> <li>- it is necessary according to Art. 28 of the regulation 604/2013 and there is high risk of absconding.</li> </ul>	<ul style="list-style-type: none"> <li>- obligation of reporting within defined intervals to the designated authority</li> <li>- payment of bail</li> <li>- residence at a designated place</li> </ul>	<p>The Border Guard decides whether to apply an alternative to detention or whether to lodge an application with the court for detention.</p> <p>The court may deliver a detention decision or a decision for applying an alternative measure.</p>
	<b>Applicants for international protection in</b>	n/a	n/a	n/a	n/a

## Detention and alternatives to detention in international protection and return procedures

	<i>border procedures</i>				
<i>Return procedures</i>	<b><i>Irregular migrants detected in the territory</i></b>	yes	<p>Article 398a of the Act on foreigners (points 1, 3 or 4)</p> <ul style="list-style-type: none"> <li>- it is probable that due to security reasons a return decision without the period for voluntary return will be issued,</li> <li>- it is necessary to secure the transfer of the third country national to a third country on the basis of a readmission agreement,</li> <li>- alternatives to detention cannot be applied or the third country national did not obey the alternatives, and there are reasons listed in Art. 398.1 (1. it is probable that due to a high risk of absconding a return decision without the period for voluntary return will be issued, 2. due to a high risk of absconding a return decision without the period for voluntary return is issued and it is necessary to secure its execution, 3. the third country national has not left the territory of Poland as obliged in the return decision, 4. it is necessary according to Art. 28 of the regulation 604/2013 and there is high risk of absconding, 5. it is necessary to secure the transfer of the third country national to another Member State on the basis of a readmission agreement.)</li> </ul>	<ul style="list-style-type: none"> <li>- obligation of reporting within defined intervals to the designated authority</li> <li>- surrender of travel document for safe-keeping</li> <li>- payment of bail</li> <li>- residence at a designated place</li> </ul>	<p>The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention.</p> <p>The court may deliver a detention decision or a decision for applying an alternative measure.</p>

## Detention and alternatives to detention in international protection and return procedures

<b>Persons who have been issued a return decision</b>	yes	<p>Article 398a of the Act on foreigners (points 2 or 4)</p> <ul style="list-style-type: none"> <li>- due to security reasons a return decision without the period for voluntary return is issued and it is necessary to secure its execution,</li> </ul> <p>alternatives to detention cannot be applied or the third country national did not obey the alternatives, and there are reasons listed in Art. 398.1 (1. it is probable that due to a high risk of absconding a return decision without the period for voluntary return will be issued, 2. due to a high risk of absconding a return decision without the period for voluntary return is issued and it is necessary to secure its execution, 3. the third country national has not left the territory of Poland as obliged in the return decision, 4. it is necessary according to Art. 28 of the regulation 604/2013 and there is high risk of absconding, 5. it is necessary to secure the transfer of the third country national to another Member State on the basis of a readmission agreement.)</p>	<ul style="list-style-type: none"> <li>- requirement of reporting within defined intervals to the designated authority</li> <li>- surrender of travel document for safe-keeping</li> <li>- payment of bail</li> <li>- residence a designated place</li> </ul>	<p>The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention.</p> <p>The court may deliver a detention decision or a decision for applying an alternative measure.</p>
<b>Irregular migrants detected at the border</b>	yes	<p>Article 398a of the Act on foreigners (points 1, 3 or 4) – as above</p>	<ul style="list-style-type: none"> <li>- obligation of reporting within defined intervals to the designated authority</li> <li>- surrender of travel document for safe-keeping</li> <li>- payment of bail</li> <li>- residence at designated venue</li> </ul>	<p>The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention.</p> <p>The court may deliver a detention decision or a decision for applying an alternative measure.</p>

## Detention and alternatives to detention in international protection and return procedures

Q5. 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?

	<b>International protection procedures</b> <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>	<b>Return procedures</b> <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>
<b>Unaccompanied Minors</b>	They may not be detained.	The court, guided by the interests of the unaccompanied minor, shall In, particular, take into account: 1) the degree of physical and mental development of the minor foreigner, 2) .personality features of the minor foreigner, 3) circumstances of the arrest of the minor foreigner 4) personal circumstances which support the placement of the minor foreigner in a guarded facility. An unaccompanied minor over 15 may be placed in a guarded facility.  Alternate measures are not applied with regard to unaccompanied minors, as they have no legal capacity.
<b>Disabled people</b>	They may not be detained.	They may be detained, unless this may cause a hazard to their life or health.  Alternatives as in table 1.
<b>Elderly people</b>	They may be detained, unless this may cause a hazard to their life or health.  Alternatives as in table 1.	They may be detained, unless this may cause a hazard to their life or health.  Alternatives as in table 1.
<b>Families with children and single parents with minor</b>	They may be detained, unless this may cause a hazard to their life or health.  Alternatives as in table 1.	They may be detained, unless this may cause a hazard to their life or health.  The court In reviewing the application for placement of the foreigner along with a minor under his/her care In a guarded facility, shall also be guided by the interests of the minor In question.  Alternatives as in table 1.
<b>Persons with serious illnesses and persons with mental disorders</b>	They may be detained, unless this may cause a hazard to their life or health, or their mental or physical may justify the assumption that the foreigner was subjected to violence.  Alternatives as in table 1.	They may be detained, unless this may cause a hazard to their life or health, or their mental or physical may justify the assumption that the foreigner was subjected to violence.  Alternatives as in table 1.

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<b>victims of human trafficking</b>	Victims of human trafficking are not expressly listed as a category excluded from the possibility of detention; it is subject to assessment whether detention may cause a hazard to the person's in question life or health, or his/her mental or physical condition may justify the assumption that he/she was subjected to violence.  . Alternatives as in table 1.	Victims of human trafficking are not expressly listed as a category excluded from the possibility of detention; it is subject to assessment whether detention may cause a hazard to the person's in question life or health, or his/her mental or physical condition may justify the assumption that he/she was subjected to violence.  . Alternatives as in table 1.
<b>Pregnant women</b>	Pregnant women are not expressly listed as a category excluded from the possibility of detention; it is subject to assessment whether detention may cause a hazard to her life or health, or her mental or physical condition may justify the assumption that she was subjected to violence.  Alternatives as in table 1.	Pregnant women are not expressly listed as a category excluded from the possibility of detention; it is subject to assessment whether detention may cause a hazard to her life or health, or her mental or physical condition may justify the assumption that she was subjected to violence.  . Alternatives as in table 1.
<b>Other vulnerable persons</b>	Other categories are not expressly listed however every foreigner is subject to assessment whether detention may cause a hazard to the person's in question life or health, or his/her mental or physical condition may justify the assumption that he/she was subjected to violence.  Alternatives as in table 1.	Other categories are not expressly listed however every foreigner is subject to assessment whether detention may cause a hazard to the person's in question life or health, or his/her mental or physical condition may justify the assumption that he/she was subjected to violence.  Alternatives as in table 1.

## 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.*

Q6. Please indicate whether any **alternatives to detention for third-country nationals are available in your (Member) State** and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

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

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)  <i>Please provide information on how often and to which authority persons subject to this measure should report</i>	Yes.  To the Border Guard.  This authority rules as to the frequency in its decision.
A2	Obligation to surrender a passport, travel document or identity document	Yes (In the return procedure, as the refugee procedure this concerns all applicants and does not constitute an alternative).
A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	This is not treated as an alternative. Every applicant has such an obligation
A4	Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.	Yes. House arrest is not covered by administrative procedures.
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>	Yes. The amount is set by the authority issuing the order.  The amount of surety is no less than the double minimum wage

## Detention and alternatives to detention in international protection and return procedures

		provided under regulations governing minimum wages
A6	Electronic monitoring (e.g. tagging)	No
A7	<i>Release to a guardian/guarantor Please provide information on who could be appointed as a guarantor/guardian (e.g. family member, NGO or community group)</i>	No
A8	Release to care worker or under a care plan	No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	No
A10		
	Other alternative measure available in your (Member) State. Please specify.	None

Q6.1 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>In the case of the refugee procedure, the most used alternative is the requirement of residing at a designated place, as this place is a rule the reception facility, from which feedback is received as soon as the foreigner voluntarily leaves the facility.</p> <p>In the case of a return procedure, the most used alternative is the obligation to report to the Border Guard unit indicated in the decision.</p>
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Q6.2 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) Obligation to report to the competent authorities	
<i>In what it consists, and maximum duration</i>	It consists of indicating in the decision of the competent Border Guard unit and days on which the foreigner is to report. There is no maximum duration.
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Article. 88 (1) (1) of the Act on granting international protection to foreigners within the territory of the Republic of Poland. Article 398 (2) (1) of the Act on foreigners
<i>Is it used in practice? Please provide any available data for the period 2016-2020</i>	This is one of the most widely used alternatives

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	<p>2016 – alternative used 1126 times</p> <p>2017 – 2094 times</p> <p>2018 – 1327 times</p> <p>2019 – 1609 times</p> <p>2020 – 505 times</p>
<i>National authorities responsible to administer the alternative</i>	The Border Guard decides whether to apply an alternative to detention or whether to lodge an application with the court for detention. The court may deliver a detention decision or a decision for applying an alternative measure.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	The Border Guard and district courts
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Obligation of accepting and making note that the foreigner reported with the Border Guard
<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>	Non-compliance with the alternative provides grounds to lodge an application with the court for detention. However, the court may deliver a detention decision or a decision for applying an alternative measure once again (Article 398a (4) (b) of the Act on foreigners or Article 88 (4) the Act on granting international protection to foreigners within the territory of the Republic of Poland.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Failure on part of the foreigner to report on the designated day to the particular Border Guard unit entails that this authority makes note of this fact in its in-house IT register, verified during the arrest and checking the ID of persons
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	As above
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	<p>No evaluation was conducted to assess the effectiveness of any separate specific alternative.</p> <p>The general effectiveness of alternatives has been analysed; In later years a distinction was introduced on grounds of the category of persons to whom they were applied.</p> <p>In 2016 out of 1261 foreigners (under both procedures), 540 have complied with alternatives, and 721 have not.</p>

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	<p>In 2017 out of 1190 foreigners (under both procedures), 714 have complied with alternatives, and 476 have not.</p> <p>Since 2018, a distinction has been added, dividing foreigners under the refugee procedure and return procedure.</p> <p>In 2018 out of 399 foreigners subjected to the refugee procedure, 96 have complied with the alternative, and 303 have not (75%).</p> <p>In 2018 out of 332 foreigners subjected to the return procedure, 183 have complied with the alternative, and 169 have not (45%)</p> <p>In 2019 out of 590 foreigners subjected to the refugee procedure, 171 have complied with the alternative, and 419 have not (71%).</p> <p>In 2019 out of 235 foreigners subjected to the return procedure, 118 have complied with the alternative, and 117 have not (50%)</p> <p>In 2020 out of 182 foreigners subjected to the refugee procedure, 33 have complied with the alternative, and 149 have not (82%).</p> <p>In 2020 out of 142 foreigners subjected to the return procedure, 58 have complied with the alternative, and 84 have not (59%)</p> <p>These data indicate that one may count on a low effectiveness of these alternatives In the case of persons subjected to the refugee procedure (18-29%), for the majority of which Poland is still a transit state, and they are not interested in waiting for the completion of the procedure.</p>
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<b>Name of alternatives (as reported in table 2 above)</b> Obligation to surrender a passport, travel document or identity document	
<i>In what it consists, and maximum duration</i>	It consists of an indication of the competent Border Guard unit with which the passport is deposited. There is no maximum duration
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Article 398 (2) (3) of the Act on foreigners
<i>Is it used in practice? Please provide any available data for the period 2016-2020</i>	<p>This is a relatively infrequently used alternative (it only concerns people subject to the return procedure and on those who hold a travel document)</p> <p>2016 – alternative used 47 times</p> <p>2017 – 49 times</p>

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	2018 – 29 times 2019 – 34 times 2020 – 39 times
<i>National authorities responsible to administer the alternative</i>	The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention. The court may deliver a detention decision or a decision for applying an alternative measure.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	The Border Guard and district courts
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Obligation of collecting the travel document and its safe keeping for the duration of the use of the alternative
<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>	Non-compliance with the alternative provides grounds to lodge an application with the court for detention. However, the court may deliver a detention decision or a decision for applying an alternative measure once again (Article 398a (4) (b) of the Act on foreigners).
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Monitoring is not necessary.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	Monitoring is not necessary.
<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>	DESCRIPTION AS IN TABLE 1 ABOVE

<b>Name of alternatives (as reported in table 2 above)_</b> Requirement to reside at a designated place	
<i>In what it consists, and maximum duration</i>	It consists of indicating the place where the foreigner is to reside There is no maximum duration
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Article. 88 (1) (3) of the Act on granting international protection to foreigners within the territory of the Republic of Poland.

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	Article 398 (2) (4) of the Act on foreigners
<i>Is it used in practice? Please provide any available data for the period 2016-2020</i>	This is one of the most frequently used alternatives 2016 – alternative used 1141 times 2017 – 1818 times 2018 – 1058 times 2019 – 1527 times 2020 – 479 times
<i>National authorities responsible to administer the alternative</i>	The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention. The court may deliver a detention decision or a decision for applying an alternative measure.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	The Border Guard and district courts
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Obligation of monitoring the fact of residence of the foreigner at the designated place
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically lead to detention, or is this determined on a case-by-case basis?)</i>	Non-compliance with the alternative provides grounds to lodge an application with the court for detention. However, the court may deliver a detention decision or a decision for applying an alternative measure once again (Article 398a (4) (b) of the Act on foreigners or Article 88 (4) the Act on granting international protection to foreigners within the territory of the Republic of Poland.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	Leaving the particular place of residence by the foreigner without permission entails that the Border Guard makes note of this fact in its in-house IT register, verified during the arrest and checking the ID of persons
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	As above
<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>	DESCRIPTION AS IN TABLE 1 ABOVE

<b>Name of alternatives (as reported in table 2 above) Release on bail</b>
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## Detention and alternatives to detention in international protection and return procedures

<i>In what it consists, and maximum duration</i>	It consists of indicating the sum and authority to which payment is to be effected. There is no maximum duration
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	Article. 88 (1) (2) of the Act on granting international protection to foreigners within the territory of the Republic of Poland.  Article 398 (2) (2) of the Act on foreigners
<i>Is it used in practice? Please provide any available data for the period 2016-2020</i>	This is a sporadically used alternative 2016 – alternative used 3 times 2017 – 4 times 2018 – 1 (once) 2019 – 3 times 2020 – 1 (once)
<i>National authorities responsible to administer the alternative</i>	The Border Guard decides whether to apply an alternative for detention or whether to lodge an application with the court for detention. The court may deliver a detention decision or a decision for applying an alternative measure.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	The Border Guard and district courts
<i>Obligations attached to the granting of the alternative (if relevant)</i>	Obligation of accepting bail
<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>	Non-compliance with the alternative provides grounds to lodge an application with the court for detention. However, the court may deliver a detention decision or a decision for applying an alternative measure once again (Article 398a (4) (b) of the Act on foreigners or Article 88 (4) the Act on granting international protection to foreigners within the territory of the Republic of Poland.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	In the event the foreigner leaves without permission and fails to appear at the demand of the authority, the forfeit of the bail in favour of the State Treasury may be ruled.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	As above
<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</i>	DESCRIPTION AS IN TABLE 1 ABOVE

## Detention and alternatives to detention in international protection and return procedures

"effectiveness" was defined/which aspects were assessed	
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Q7. 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 (Obligation to report to the competent authorities)	Alternative 2 (Obligation to surrender a passport, travel document or identity document)	Alternative 3 (Requirement to reside at a designated place)	Alternative 4 (Release on bail)
<b>Availability of facilities related to accommodation (i.e. beds)</b>			This alternative only concerns persons within the framework of the refugee procedure, as it is based on places at reception facilities/open facilities	
<b>Availability of staffing and supervision</b>	Alternative does not require the involvement of additional staff or funds	Alternative does not require the involvement of additional staff or funds	As above	Alternative requires the preparation of appropriate financial documentation
<b>Administrative costs</b>	Marginal costs	Marginal costs	Expenses do not increase as this measure is only applied to persons directed to reception facilities	Marginal costs
<b>Mechanisms to control movements of the person</b>	The foreigner may move within the whole country, however failure to report on the particular date at the designated seat of the authority shall entail the entry of information into the in-house register that the alternative is not to be applied	The foreigner may move within the whole country, however leaving without permission shall entail the entry of information into the in-house register that the alternative is not to be applied	The foreigner should reside at the reception facility/open facility, and leaving without permission for a period in excess of 7 days shall entail the entry of information into the in-house register that the alternative is not to be applied	The foreigner may move within the whole country, however leaving the country shall entail the forfeit of the bail in favour of the State Treasury and an entry of information into the in-house register that the alternative is not to be applied

## Detention and alternatives to detention in international protection and return procedures

<b>Legislative obstacles</b>				
<b>Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)</b>	Limited funds are an obstacle, although the closest authority is always indicated	A lack of the travel document is an obstacle	This alternative only concerns persons within the framework of the refugee procedure, as in practice it is based on reception facilities	A lack of funds will be an obstacle
<b>Other challenges</b>				

Q8. 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:

<b>Advantage</b>	<b>Alternative 1 (Obligation to report to the competent authorities)</b>	<b>Alternative 2 (Obligation to surrender a passport, travel document or identity document)</b>	<b>Alternative 3 (Requirement to reside at a designated place)</b>	<b>Alternative 4 (Release on bail)</b>
<b>Availability of facilities related to accommodation (i.e. beds)</b>			In the instance of only reception facilities/open facilities are employed	
<b>Availability of staffing and supervision</b>	Alternative does not require the involvement of additional staff or funds	Alternative does not require the involvement of additional staff or funds		
<b>Administrative costs</b>	Marginal costs	Marginal costs	Does not require additional expenses, as this measure is only applied to persons directed to reception facilities	
<b>Mechanisms to control movements of the person</b>	The Border Guard unit to which the foreigner was to report makes note of non-compliance		The staff of the open facility makes note of non-compliance	
<b>Legislative obstacles</b>				

## Detention and alternatives to detention in international protection and return procedures

Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)				
Other advantages				

## 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.*

Q9. 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

At the outset the Border Guard considers alternatives to detention. If it deems that alternatives cannot be applied, it lodges an application with the court for placing the foreigner in a guarded facility. Despite such an application, the court always has the option whether to apply an alternative measure or to place the foreigner in detention.

It is not the grounds of detention which are rejected in favour of alternatives – rather, the application of alternatives is considered at the outset. Article 88a of the Act on granting protection to foreigners within the territory of the Republic of Poland provides that where the application of alternatives is not possible, the applicant shall be placed in a guarded facility or in a detention facility for foreigners.

## Detention and alternatives to detention in international protection and return procedures

The procedure is the same for everyone in this regard.

Return procedure

At the outset the Border Guard considers alternatives to detention. If it deems that alternatives cannot be applied, it lodges an application with the court for placing the foreigner in a guarded facility. Despite such an application, the court always has the option whether to apply an alternative measure or to place the foreigner in detention.

It is not the grounds of detention which are rejected in favour of alternatives – rather, the application of alternatives is considered at the outset. Article 398 (1) of the Act on foreigners that alternative measures may be applied to a foreigner other than having him/her placed in a guarded facility or detention facility for foreigners where: 1) it is likely that due to a high risk of absconding a return decision without the period for voluntary return will be issued, 2) Such a decision has been issued and it is necessary to secure its enforcement, 3) the foreigner has not left the territory of Poland within the deadline provided in the return decision, 4) it is necessary to secure the transfer of the foreigner under Article 28 of the Dublin III Regulation, 5) it is necessary to secure the transfer of the foreigner to another Member State on the basis of an international agreement on the transfer and admission of persons.

The procedure is the same for everyone in this regard.

Q11. Is the possibility to provide alternatives to detention systematically considered in your (Member) State when assessing whether to place a person in detention? Please respond separately for international protection and return procedures.

International protection procedure

**Yes**

Detailed information: As indicated above, national regulations first refer to alternatives, and only where they cannot be applied, they refer to the detention option.

Return procedures:

**Yes**

Detailed information: As indicated above, national regulations first refer to alternatives, and only where they cannot be applied, they refer to the detention option.

Q12. When there are grounds for authorising detention, which **considerations or criteria** are used to decide whether to place the third-country national concerned in detention or instead provide an alternative?

Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	Yes	Yes

## Detention and alternatives to detention in international protection and return procedures

Criteria	International protection procedures	Return procedures
	The possibility of using alternative measures is assessed individually.	The possibility of using alternative measures is assessed individually.
<b>Cost-effectiveness</b>	<b>No</b>	<b>No</b>
<b>Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)</b>	<b>No</b>	<b>No</b>
<b>Level of the risk of absconding</b>	<b>No</b> The risk of absconding is the basis for the use of alternatives to detention. It does not determine the application of detention.	<b>No</b> The risk of absconding can only affect the grounds of the detention. In the further decision (whether detention or alternatives) it does not matter.
<b>Vulnerability</b>	<b>Yes</b> Some categories of people are excluded from detention (unaccompanied minors, disabled, people due to their health or psychophysical condition presumed to be a victim of torture)	<b>Yes</b> Certain categories of people are excluded from detention (people due to their health or psychophysical condition presumed to be a victim of torture)
<b>Less-invasive legal measures impacting on human rights</b>	<b>No</b>	<b>No</b>
<b>Other</b>	<b>No</b>	<b>No</b>

- Q.12.1. If **vulnerability** is one of the criteria used to assess whether placing the person under an alternative instead of detention, please **describe how the vulnerability assessment is made** (e.g., the responsible authority and the procedures followed). Please respond separately for international protection and return procedures.

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

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

## Detention and alternatives to detention in international protection and return procedures

### International protection procedures

The assessment of the special treatment requirement is conducted on a case by case basis. The Border Guard applies the so-called “Rules of procedure concerning foreigners requiring special treatment”, which are helpful in identifying people with special needs among detained foreigners. These are especially applied under conditions of detention. They indicate with regard to whom and at which stage it becomes necessary to apply the relevant procedures (psychological assistance, psychiatric and therapeutic consultations). This algorithm has also introduced the function of a return guardian and social guardian, entrusted with the task of advising the foreigner as to the stage of his/her procedure, as well as monitoring of his/her conduct. The “Rules” are also accompanied by observation sheets, in which the detention facility staff may enter its comments and observations concerning a particular foreigner on an ongoing basis.

### Return procedures

As above.

The assessment of the special treatment requirement is conducted on a case by case basis. The Border Guard applies the so-called “Rules of procedure concerning foreigners requiring special treatment”, which are helpful in identifying people with special needs among detained foreigners. These are especially applied under conditions of detention. They indicate with regard to whom and at which stage it becomes necessary to apply the relevant procedures (psychological assistance, psychiatric and therapeutic consultations). This algorithm has also introduced the function of a return guardian and social guardian, entrusted with the task of advising the foreigner as to the stage of his/her procedure, as well as monitoring of his/her conduct. The “Rules” are also accompanied by observation sheets, in which the detention facility staff may enter its comments and observations concerning a particular foreigner on an ongoing basis.

Q14. 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:

A foreigner may appeal against the decision of the district court on placement in a detention center to the regional court.

### Return procedures:

A foreigner may appeal against the decision of the district court on placement in a detention center to the regional court.

Q15. 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?

## Detention and alternatives to detention in international protection and return procedures

International protection procedures:

Under the Code of Criminal Procedure, a foreigner has the right to an attorney selected by him/her or of an attorney appointed ex officio.

Return procedures:

Under the Code of Criminal Procedure, a foreigner has the right to an attorney selected by him/her or of an attorney appointed ex officio.

## 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 (Q16, Q17) and for return (Q18, Q19) procedures. If this is not possible, please clarify and respond to Q16 and Q17 covering both procedures.**

Q16. Please provide **statistics** available in your country for the latest available year on the **number of asylum seekers** that were placed in detention and in alternatives to detention during the international protection procedures **who absconded**.

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

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

	# People in international protection procedures (including Dublin)	# of applicants who absconded
<b>Detention (Absolute figures)</b>		
<b>Alternatives to detention 1 (NAME)</b>		

## Detention and alternatives to detention in international protection and return procedures

Alternatives to detention 2 (NAME)		
Alternatives to detention 3 (NAME)		
Alternatives to detention 4 (NAME)		

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

The following number of people have been placed in guarded facilities (refugee procedure and return procedure):

- in 2020 - 837 people, of which 69 within the framework of the refugee procedure, 711 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 57 people,
- in 2019 - 1033 people, of which 182 within the framework of the refugee procedure, 826 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 25 people,
- in 2018 - 1152 people, of which 207 within the framework of the refugee procedure, 878 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 67 people,
- in 2017 - 1289 people, of which 429 within the framework of the refugee procedure, 808 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 52 people.

As a total, alternatives have been applied (refugee procedure and return procedure):

- in 2020 r. – with regard to 522 people,
- in 2019 r. – with regard to 1655 people,
- in 2018 r. – with regard to 1336 people,
- in 2017 r. – with regard to 2141 people.

In the context of international protection, we are in possession of data on alternatives and compliance therewith by adult applicants (that is, excluding children accompanied by them):

- in 2020, alternatives have been applied with regard to 182 adult applicants, of which 33 applicants have complied with the alternatives and 149 have not,
- in 2019 alternatives have been applied with regard to 590 adult applicants, of which 171 applicants have complied with the alternatives and 419 have not,
- in 2018 alternatives have been applied with regard to 399 adult applicants, of which 96 applicants have complied with the alternatives and 303 have not,

## Detention and alternatives to detention in international protection and return procedures

- in 2017 – no data available with such a breakdown.

Q17. Please provide any statistics available in your country on **the average length of time needed to determine the status of applicants for international protection** who are held in detention or are in an alternative to detention. Please also indicate the share of decisions which were appealed and the share of those which overturned the initial decision. Those MS who do not place asylum applicants in detention, shall indicate this at the beginning of the question and skip to the next question.

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

Average length of time needed to determine the status of applicants for international protection who were detained or in alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)		
	Average length of time in determining the status of an applicant for international protection	Share of decisions which were appealed and of these, the share which overturned the initial decision
Detention (Absolute figures)		
Alternatives to detention 1 (NAME)		
Alternatives to detention 2 (NAME)		
Alternatives to detention 3 (NAME)		
Alternatives to detention 4 (NAME)		

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

Urząd do Spraw Cudzoziemców (UdSC) (Office for Foreigners), responsible for such data, is not in possession of detailed statistics for the years 2017-2019. However, it must be stressed at the outset that in accordance with the Rules of procedure in matters lodged with the Department of Refugee Procedures [DPU] of the Office for Foreigners, which are a managerial control feature at the Department, matters in which a guarded facility or detention for foreigners are applied are reviewed on a priority basis (§ 9 (14) (s)), and administrative decisions are delivered in these matters no later than within 17 days before the expiry of the detention period or two days following the date of the order for extending stay at the Guarded Facility for Foreigners (§ 10 (4)). Accordingly, in all cases in which detention is applied, ongoing supervision is exercised by section heads with a view of the proper application of the Rules of procedure in matters lodged with the DPU UdSC. Data concerning the dates of termination of detention are registered in the Monitoring IT system, which entails that the staff is alerted as to the impending end of detention, which prevents the extension of foreigners' detention. It must be stressed that all acts in such matters are taken without undue delay on a priority basis. Following the initiative of the Head of the Office for Foreigners, it has become possible to interview applicants with the assistance of teleconferences in all guarded facilities for foreigners, which significantly cuts down the duration of such proceedings. Furthermore, studies ordered from the Country of Origin Information Section of the Department of Refugee Proceedings prepared for the purposes of foreigners placed in detention are designated by case workers as urgent, which have the effect that they are performed without delay. A practice has also been accepted that where there is a greater influx of cases in which detention is applied to foreigners, staff from sections with a smaller

## Detention and alternatives to detention in international protection and return procedures

workload assures support. Furthermore, in order to assure that foreigners have all procedural safeguards available to them, the Head of the Office for Foreigners requests the Border Guard to provide results of identification of detained foreigners with a view of ascertaining eligibility as a vulnerable group member. In the event of qualification as vulnerable or of suspicion that a particular person had been subjected to violence, an interview scheduled for the first time is conducted with the participation of a psychologist employed at the guarded facility for foreigners, which allows the proceedings to be more expeditious, and also allows the foreigner to obtain genuine support from the psychologist, who is known to the foreigner in question and who has to-date applied therapy. On the other hand, in a situation where during the course of a status interview, information is obtained which may indicate or indirectly indicate that the foreigner had been subjected to violence, the Head of the Office for Foreigners advises the relevant Border Guard unit on an ongoing basis. Moreover, the priority treatment of the cases of detained foreigners is supported by the average time of review by the Head of the Office for Foreigners, which can be shorter even by as much as 50%, and according to data established in July 2020, lasts app. 3 – 4 months. It must however be noted that the length of proceedings may differ on a case by case basis, for example, by reason of extended time of service of correspondence in the instance where an attorney has been appointed. We do not have data concerning the duration of appeals proceedings before the Refugee Board in cases where detention or alternatives have been applied. We also do not keep statistics of instances in which detention or alternatives have been applied as regards the percentage of decisions subjected to appeal and the percentage of decisions which have annulled the original decision.

Q18. 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)		
Alternatives to detention 1 (NAME)		
Alternatives to detention 2 (NAME)		
Alternatives to detention 3 (NAME)		
Alternatives to detention 4 (NAME)		

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

## Detention and alternatives to detention in international protection and return procedures

The following number of people have been placed in guarded facilities (refugee procedure and return procedure):

- in 2020 - 837 people, of which 69 within the framework of the refugee procedure, 711 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 57 people,
- in 2019 - 1033 people, of which 182 within the framework of the refugee procedure, 826 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 25 people,
- in 2018 - 1152 people, of which 207 within the framework of the refugee procedure, 878 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 67 people,
- in 2017 - 1289 people, of which 429 within the framework of the refugee procedure, 808 within the framework of the return procedure, and no data is available within the system as to the procedure concerning 52 people.

As a total, alternatives have been applied (refugee procedure and return procedure):

- in 2020 r. – with regard to 522 people,
- in 2019 r. – with regard to 1655 people,
- in 2018 r. – with regard to 1336 people,
- in 2017 r. – with regard to 2141 people.

In the context of the return procedure, we are in possession of data on alternatives and compliance therewith by adult applicants (that is, excluding children accompanied by them):

- in 2020, alternatives have been applied with regard to 142 adult foreigners within the framework of the return procedure, of which 58 foreigners have complied with the alternatives and 84 have not,
- in 2019 alternatives have been applied with regard to 235 adult foreigners within the framework of the return procedure, of which 118 foreigners have complied with the alternatives and 117 have not,
- in 2018 alternatives have been applied with regard to 332 adult foreigners within the framework of the return procedure, of which 183 foreigners have complied with the alternatives and 149 have not,
- in 2017 – *no data available with such a breakdown.*

Q19. 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	Number of voluntary returns (persons who opted to return voluntarily) (absolute figures)	Number of effective forced departures (absolute figures)
Detention (Absolute figures)				
Alternatives to detention 1 (NAME)				
Alternatives to detention 2 (NAME)				
Alternatives to detention 3 (NAME)				
Alternatives to detention 4 (NAME)				

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

a) 2017

- foreigners covered by compulsory decisions: 1375, including those who have complied with such a decision: 813
- foreigners covered by voluntary decisions: 23 568, including those who have complied with such a decision: 21 247

b) 2018

- foreigners covered by compulsory decisions: 1355, including those who have complied with such a decision: 935
- foreigners covered by voluntary decisions: 28 168, including those who have complied with such a decision: 24 619

c) 2019

- foreigners covered by compulsory decisions: 1022, including those who have complied with such a decision: 808
- foreigners covered by voluntary decisions: 28 388, including those who have complied with such a decision: 25 226

## Detention and alternatives to detention in international protection and return procedures

c) 2020

- foreigners covered by compulsory decisions: 1022, including those who have complied with such a decision: 900
- foreigners covered by voluntary decisions: 9950, including those who have complied with such a decision: 7543

Q20. Have any **evaluations or studies on the rate of absconding and degree of cooperation** of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details and if possible, distinguish between the international protection and return procedures.

International protection procedures

**Yes**

Key findings :

Annual analyses indicate that foreigners subjected to the refugee procedure fail to comply with alternatives to a significantly greater degree than foreigners subjected to the return procedure. In 2020, out of 182 foreigners (adults) barely 33 have complied with the imposed alternative. The most frequently applied alternatives are: the requirement to reside at a designated place and requirement to report to the designated authority at designated intervals. Instances of compliance are quite rare.

Return procedures

**Yes**

Key findings:

Annual analyses indicate that foreigners subjected to the return procedure comply with alternatives to a significantly greater degree than foreigners subjected to the refugee procedure. In 2020, out of 142 foreigners (adults) 58 have complied with the imposed alternative. The most frequently applied alternatives are: requirement to report to the designated authority at designated intervals and the requirement to reside at a designated place. Instances of bail are quite rare. Instances of compliance with the surrender of a travel document concerned, for apparent reasons, only people who indeed had such documents

Q21. 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

## Detention and alternatives to detention in international protection and return procedures

<p><u>International protection</u></p> <p>Detention:</p> <p>Alternative 1:</p> <p>Alternative 2:</p> <p>Alternative 3:</p> <p>...</p> <p><u>Return procedures</u></p> <p>Detention:</p> <p>Alternative 1:</p> <p>Alternative 2:</p> <p>Alternative 3:</p> <p>No detailed analyses in the context of the nationality as regards compliance with alternatives</p>
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## Upholding fundamental rights

Q22. What **human rights safeguards** are available in detention and in alternatives to detention?

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
<p><b>Is access to legal aid ensured? If so, how? Please specify.</b></p>	<p>Detailed information:</p> <p>A foreigner subjected to the refugee procedure and return procedure is entitled to legal aid. In practice, it is provided by NGOs. Additionally, the Head of the Office for Foreigners provides legal aid within the framework of the refugee procedure</p>	<p>Detailed information:</p> <p>A foreigner subjected to the refugee procedure and return procedure is entitled to legal aid. In practice, it is provided by NGOs. Additionally, the Head of the Office for Foreigners provides legal aid within the framework of the refugee procedure</p>	
<p><b>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</b></p>	<p>Detailed information:</p> <p>A foreigner has the right to be heard by the court</p>	<p>Detailed information:</p> <p>A foreigner has the right to actively participate in the administrative proceedings within the framework of which alternatives are imposed</p>	

## Detention and alternatives to detention in international protection and return procedures

<p><b>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</b></p>	<p>Detailed information: During the stay at the guarded facility, full healthcare is assured, including medical specialists. Additionally, the well-being of the foreigner is constantly monitored during his/her stay by so-called return guardians and social guardians</p>	<p>Detailed information: A foreigner with regard to whom alternatives have been applied has access to basic healthcare.</p>	
<p><b>Please add any additional safeguard</b></p>			

Q23. 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><b>No</b></p> <p>Key findings</p> <p>Reference</p>
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Q24. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**<sup>22</sup> and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention (please quote the relevant case law/decision). Please provide the statistics for 2019 or the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your country.

<p>It must be noted that there have been two complaints in 2019 classified as regarding violations of human rights, lodged by detained foreigners) subjected to the return procedure) (both have been deemed by the commandant of the particular Border Guard unit as unfounded).</p>
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#### Improving the cost-effectiveness of migration management.

Q25. 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.

<sup>22</sup> 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

<p><b>No</b></p> <p>Key findings</p> <p>Reference</p>
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Q26. **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

<p><b>No</b></p> <p>Key findings</p> <p>Reference</p>
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## 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.)

Poland devotes special attention to the application of alternatives to detention, taking into account their priority over detention under national law. The Act on Foreigners, as well as the Act on granting international protection to foreigners within the territory of the Republic of Poland at the very outset imposes the obligation of assessing the option of applying alternatives to detention, and only where no such possibility exists, the application of detention is admissible.

Furthermore, Border Guard units are authorized to apply alternatives in an independent manner without court participation. Only where a detention measure is considered, an application is lodged with the court, and the court may still apply an alternative in lieu of detention.

Following an analysis of statistics, it must be pointed out that in 2020, **alternatives to detention** have, as a total, been applied with regard to foreigners **522** (of which 324 with regard to adults – the remaining persons were minors accompanied by their legal guardians), which constitutes a decrease by 68.4% against 2019, in which alternatives to detention were applied with regard to **1 655** foreigners.

**Detention and alternatives to detention in international protection and return procedures**

During the period under scrutiny, out of a Total number of **324 adult foreigners** (born before 2003), with regard to whom Border Guard units delivered orders on the application of alternatives to detention, **91 foreigners actually complied with** the prescribed measures, which barely constitutes **28.1%** of all foreigners of this category. (2019 - 35%).

The percentage of persons that fail to comply with orders on the application of alternatives, delivered pursuant to the provisions of the Act on granting international protection to foreigners within the territory of the Republic of Poland - 149 people, was greater by 81.9% than those delivered under the Act on Foreigners, where 84 people have not complied, which constitutes 59.1% of alternatives.



## 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.

	2014	2015	2016	2017	2018	2019	Source / further information
<i>Statistics on number of third-country nationals in detention per category</i>							
Total number of third-country nationals in detention	3 254 UOC- 2913 Ochrona –341	6 249 Uoc-5824 Ochrona- 425	7 344 UoC-6409 Ochrona- 935	10 950	10 725	11 380	No. of all detained persons with a break down between the Act on Foreigners (UoC) and Act on granting international protection to foreigners within the territory of the Republic of Poland (Ochrona)  2014-2016 –the data is from the Border Guard in-house database , the so-called „Mapa Cudzoziemców (“Map of Foreigners”)  2017-2019 from the Border Guard In-house database (System Wspomagania Kierowania – Management Support System) .No breakdown

## Detention and Alternatives to Detention

							on the relevant Acts as previously.
Number of applicants for international protection in ordinary procedures in detention (including Dublin)	B/D	B/D	B/D	30	455	377	DATA IN THE O D 2017 SSYSTEM
Number of persons detained to prevent illegal entry at borders	27 687	53 144	118 202	42 881	57 038	67 980	All entry refusals – data from the Border Guard in-house database
	3 514	6 167	7 637	7 479	7 670	7 148	Disclosed and prevented entries (crossing of the internal boundary) In breach of regulations
Number of person detained during return procedures (including pre-removal)	907	577	472	607	575	608	Foreigners escorted to the frontier of the Republic of Poland directly from the guarded facility for foreigners (SOC) for the purpose of implementing decisions imposing an obligation
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.)	B/D	B/D	B/D	B/D	B/D	B/D	
Vulnerable persons specified - minors	329	128	292	281	210	108	The reports do not contain the special treatment category

## Detention and Alternatives to Detention

							Minor foreigners under the care of SOC have been included
Vulnerable persons specified – unaccompanied minors	19	31	24	17	19	24	Minor foreigners not under the care of SOC
Number of other third-country nationals placed in immigration detention	B/D	B/D	B/D	B/D	B/D	B/D	
<b>Statistics on number of third-country nationals provided alternatives to detention</b>							
Total number of third-country nationals in alternatives to detention	492	1 026	2 317	2 141	1 336	1 655	
Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)	364	768	1 261	1 411	399	590	
Number of persons given alternatives to detention to prevent illegal entry at borders	B/D	B/D	B/D	B/D	B/D	B/D	
Number of person in alternatives to detention during return procedures (including pre-removal)	B/D	B/D	B/D	B/D	B/D	B/D	
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.)	-	51 – persons covered by hospital treatment during their stay at SODC	4-addicted persons; 62– persons covered by hospital treatment during their stay at SOC  1 person diagnosed with	5- addicted persons; 86 – persons covered by hospital treatment during their stay at SOC  2 persons diagnosed	1- addicted person; 66 – persons covered by hospital treatment during their stay at SOC  3 persons diagnosed with	5- addicted persons; 47 – persons covered by hospital treatment during their stay at SOC;  1 person diagnosed with	No. of persons classified as vulnerable

## Detention and Alternatives to Detention

			mental disorders	with mental disorders	mental disorders	mental disorders	
Vulnerable persons specified - minors	B/D	B/D	B/D	951	605	830	Data available since 2017
Vulnerable persons specified – unaccompanied minors	B/D	B/D	B/D	B/D	B/D	B/D	

**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	2014	2015	2016	2017	2018	2019	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	66	74	70	75	92	91	in 2020: 87
Average length of time in detention of applicants for international protection in ordinary procedures	n/a						
Average length of time in detention of persons detained to prevent illegal entry	n/a						
Average length of time in detention of persons during return procedures	n/a						
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	61	82	55	84	99	88	in 2020: 70

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