



THE USE OF DETENTION AND
ALTERNATIVES TO DETENTION
IN THE CONTEXT OF
IMMIGRATION POLICIES

2014



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

Common Template of EMN Focussed Study 2014

Final Version: 24th February 2014

Subject: Common Template for the EMN Focussed Study 2014 on "*The use of detention and alternatives to detention in the context of immigration policies.*"

Action: EMN NCPs are invited to submit their completed Common Templates by 2nd May 2014. If needed, further clarifications can be provided by directly contacting the EMN Service Provider (ICF GHK-COWI) at emn@ghkint.com

1 STUDY AIMS AND RATIONALE

The aim of this focussed study is to identify similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of Member States' immigration policies. In particular, the study examines whether and the extent to which the use of different 'degrees' of coercive measures that restrict a person's freedom, adapted to the needs of individual cases, contribute to the effectiveness of return policies (in case the person is subject to a return decision) and international protection procedures (in case the person is ultimately allowed to stay in the Member State).

Immigration detention is a non-punitive administrative measure applied by the state to restrict the movement through confinement of an individual in order for another procedure to be implemented.¹ The EU asylum and migration *acquis* provides that detention is justified in a number of situations, such as preventing unauthorised entry into the territory of a Member State, preventing absconding in return procedures and in conjunction with applications for international protection.

In all cases, EU legislation provides for and encourages the use of alternatives to detention, entailing that detention should be used as a 'last resort'. Alternatives to detention are non-custodial measures that allow individuals to enjoy different degrees of freedom of movement, while agreeing to comply with specified conditions in order to resolve their migration status and/or while awaiting removal from the territory. The alternatives can include regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes, residence requirements, etc.

¹ See EMN Glossary V.02

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In practice, the procedures concerning detention and alternatives to detention vary greatly among (Member) States. While existing information suggests that many (Member) States do not make the best use of alternatives, little is known about the extent to which such alternatives are used and the extent to which detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures. By analysing Member State policy, legislation and practices in relation to the use of detention and alternatives to detention, the study will help to identify and compare best practices and possibly contribute to the further development of common standards.

More specifically the study aims to:

- Provide information on the scale of detention and alternatives to detention in each Member State by collecting statistics available on the number of third-country nationals (by category) that are subject to these measures;
- Identify the categories of third-country nationals (e.g. applicants for international protection, rejected international protection applicants, rejected family reunification applicants, persons that have been issued a return decision, other persons found to be illegally present on the territory of (Member) States) that can be subject to detention and/or **provided** an alternative to detention;
- Compare and contrast the grounds for placing third-country nationals in detention and / or **providing** alternatives to detention outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions in individual cases;
- Identify and describe the different types of detention facilities and alternatives to detention available and used in (Member) States;
- Collect any evidence of the way detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures, and identify examples of good practice in this regard.

2 SCOPE OF THE STUDY

The study will therefore provide a mapping of categories of third-country nationals who can be detained and/or **provided** alternatives to detention in (Member) States. This includes, *inter alia*, international protection applicants, including those in Dublin procedures and accelerated procedures. Other categories of third-country nationals included in the scope of the study are persons who have been issued a return decision, rejected applicants for international protection, rejected family reunification applicants and persons found to be illegally present on the territory of the (Member) States. The study gives special attention to the possibility of detaining and/or **providing** alternatives to detention to vulnerable persons such as minors, family units with children, pregnant women or persons with special needs. The study focuses on detention for immigration purposes only and does not include in its scope detention of third-country nationals who have committed a criminal offence.

The study compares and contrasts the grounds for placing third-country nationals in detention and/or **providing** them alternatives to detention as outlined in national legal or policy frameworks. However, the study also has an important practical dimension and seeks to understand the extent to which detention and alternatives to detention are used in practice; the assessment procedures that (Member) States use in order to decide on the placement of third-country nationals in detention, and/or **providing** an alternative to detention; and the impact which detention and alternatives to detention have on the effectiveness of return policies and international protection procedures, with specific attention given to the identification of best practices.

In order to compare the effectiveness of detention and alternatives to detention in the context of (Member) States' return policies and international protection procedures, it is important to provide a clear picture of the types of detention facilities that exist in each (Member) State, as well as the types of alternatives that exist. The study therefore provides a comparative overview of the material detention conditions of third-country nationals that are placed in detention, including visitation rights and the number of detainees placed in one room. However, the

study stops short of comparing the 'quality' of detention centres in terms of broader human rights considerations in the different (Member) States as this aspect has been the subject of recent studies.²

3 EU LEGAL AND POLICY CONTEXT

EU provisions concerning detention stipulate a number of grounds when third country nationals in different migration situations can be detained, as reviewed below. They also identify a variety of procedural guarantees which must be observed by Member States³ when implementing detention. However, Member States have discretion to decide how to transpose the EU provisions and there are no common guidelines on the operationalization of alternatives to detention. The design, selection, codification and implementation of alternatives to detention are left to EU Member States.

★ Detention of applicants for international protection

According to Article 18 of the Asylum Procedures Directive (2005/85/EC), it is not acceptable to detain a person solely for the reason that s/he has lodged an asylum application. The EU legal framework has recently been strengthened and consolidated in view of ensuring better and more harmonised protection of fundamental rights with the adoption of the recast of the Reception Conditions Directive (Directive 2013/33/EU). To ensure the non-arbitrariness of detention and the respect of fundamental rights of applicants for international protection, the Directive introduced an exhaustive list of detention grounds (Article 8). A number of 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).⁴

★ Detention in order to prevent unauthorised entry into the territory of the Member State

The Schengen Borders Code (Regulation 562/2006) requires that third-country nationals who do not fulfil the entry conditions are refused entry into the EU. Article 13(4) stipulates that border guards should prevent irregular entry on the territory of the Member States. To that effect, national provisions in some Member States allow for the short-term detention at the border-crossing point, such as in a transit area of an airport. In addition, the recast of the Reception Conditions Directive (2013/33/EU) provides that an applicant for international protection can be detained upon entry in the territory of the Member State in order to determine the applicant's identity.

★ Detention of irregular migrants involved in return proceedings

The Return Directive provides common standards for EU Member States to follow in return and removal procedures. According to Article 15 (1) of the Return Directive, detention is permitted in particular in two cases – i.e. when there is a risk of absconding or **the third-country national concerned avoids or hampers the preparation of return or removal process**. According to the Directive (Recital 16, Article 15(1)), "detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient". Article 15(6) 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 State (the latter is a ground that is not related to the behaviour of the person concerned, as opposed to the others).

★ Detention of applicants for international protection subject to Dublin procedures

² European Parliament Committee on Civil Liberties (December 2007), "The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states", Available at: http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf
 Jesuit Refugee Service-Europe (2010), "Becoming vulnerable in detention", Available at: http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf

³ Ireland and the United Kingdom do not participate in some of the Directives outlined in this section

⁴ Member States are required to transpose the Directive by 20 July 2015

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Article 28 of new Dublin Regulation No 604/2013, applicable from 1st January 2014, regulates detention for the purpose of transfer. According to the Regulation (Article 28), “when there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.” A single ground for detention, “significant risk of absconding” and a strict time limit for detention are introduced.

★ **Detention of vulnerable persons, minors and persons with specific needs**

Under EU law, Article 11 of the Recast of the Reception Conditions Directive provides for the detention of vulnerable persons and persons with special needs. Specific provisions regulate the detention of unaccompanied minors, families, female applicants. Article 17 of the Return Directive provides for the detention of minors and families stipulating that detention of these categories should be a measure of last resort. Detention of (potential) victims of trafficking in human beings is also outlined in Article 11 of Trafficking Directive (2011/36/ EU).

4 PRIMARY QUESTIONS TO BE ADDRESSED

The Study will focus on the following questions:

- ★ What is the EU legal framework in the domain of immigration detention and how does it relate to the broader international provisions on immigration detention?
- ★ Which categories of third-country nationals can be detained in (Member) States?
- ★ What are the grounds for detention for each category of third-country national and is there an exhaustive list of grounds in national legal frameworks?
- ★ What types of detention facilities exist in (Member) States and what are the conditions of detention in these detention facilities?
- ★ Which alternatives to detention are available in (Member) States?
- ★ What is the practical organisation of alternatives to detention?
- ★ What is the assessment procedure to determine whether a person should be placed in detention or **provided** an alternative?
- ★ To what extent do detention and alternatives to detention contribute to the effectiveness of (Member) State return policies and international protection procedures?
- ★ How effectively do Member States ensure fundamental rights are respected during periods of detention or where alternatives are applied?

5 RELEVANT SOURCES AND LITERATURE

EMN Ad-Hoc Queries

Twelve EMN Ad-Hoc Queries on detention have been launched in the period 2010-2013. In the context of return, two Ad-Hoc Queries were concerned with access of non-governmental organisations and other bodies to detention facilities pursuant to Article 16 of the Return Directive.⁵ Further aspects covered in EMN Ad-Hoc Queries in the context of return include: national systems for legal assistance for migrants in detention pending return⁶; access to cell phones in detention pending deportation⁷; responsibility of education institutions for covering the costs of administrative expulsion and/or detention⁸ and organisation of detention facilities⁹. In the context of asylum

⁵ No. 483 Ad-Hoc Query on Access of access of non-governmental organisations and other bodies to detention centres, Launched by FR EMN NCP on 11th June 2013 and No. 472 Ad-Hoc Query on Article 16(4) of the Return Directive (2008/115/EC) on the possibility of competent national, international and non-governmental organizations and bodies to visit detention facilities, Requested by LV EMN NCP on 13 May 2013

⁶ No. 462 Ad-Hoc Query on Provision of legal assistance in detention centres, Requested by FR EMN NCP on 1st March 2013

⁷ No.382 Ad-Hoc Query on access to cell phones in detention pending deportation, Requested by AT EMN NCP on 21st February 2012

⁸ No.447 Ad-Hoc Query on responsibility of education institutions for covering the costs of administrative expulsion and/or detention, Requested by CZ EMN NCP on 5th December 2012

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proceedings, three Ad-Hoc Queries have been launched.¹⁰ A further three Ad-Hoc Queries focused on vulnerable groups and minors.¹¹ The Ad-Hoc Queries are presented in this section as an overview of relevant sources. However, the study does not aim at covering or updating these ad-hoc queries.

Studies and reports

A number of European and national level studies have addressed various aspects of detention and alternatives to detention. The comparative study "**Detention of third-country nationals in return procedures**" carried out by the Fundamental Rights Agency in 2010 provided a EU-wide comparative overview on detention and procedural safeguards provided in detention in the context of return procedures.¹² A number of studies focused on the EU and international legislative frameworks in the field of detention.¹³ A study undertaken by the European Parliament on the jurisprudence of European Court of Justice and the European Court of Human Rights also includes information on detention and the right to liberty.¹⁴ A further set of studies were concerned with the conditions and rights in detention centres. They have shown that detention can adversely affect the health and well-being of persons placed in detention.¹⁵

Several national level studies have shed light on the use of alternatives to detention at national level. The study "**From Deprivation to Liberty: Alternatives to Detention in Belgium, Germany and the United Kingdom**" prepared by the Jesuit Refugee Service Europe, based on data gathered from interviews of third-country nationals, concluded that alternatives to detention pose few restrictions to physical movement, and allow migrants to live in the community and access local services. A number of factors that contribute to the well-functioning of alternatives to detention include *inter alia* the provision of holistic support, dignified living conditions and regular, up-to-date information on the immigration status of the person. The study "**Steps to Freedom. Monitoring detention and promoting alternatives to detention of asylum seekers in the Czech Republic, Estonia, Latvia, Lithuania, and Slovakia**" was completed under the project "Steps to Freedom" and aimed at assessing whether national legislation and practices fully comply with the European Union (EU) *acquis* and international standards. The study also looks at the implementation of alternatives to detention and puts forward policy recommendations with regard to further strengthening the measures that are currently being developed.¹⁶

A study conducted by Matrix – "**An economic analysis of alternatives to long-term detention**" commissioned by the UK Border Agency in 2012 showed that the scope of risk assessment could be extended in order to identify those individuals who cannot be deported within a reasonable and lawful period of detention, and who will,

⁹ No. 319 Ad-Hoc Query on facilities for detention of a third-country national who is the subject of return procedures and asylum seekers, Requested by EE EMN NCP on 4 May 2011

¹⁰ No. 457 Ad-Hoc Query on detention of asylum seekers, Requested by HU EMN NCP on 30 January 2013; No. 417 Ad-Hoc Query on Asylum Proceedings and Detention, Requested by HU EMN NCP on 31st July 2012 and No 52 Detention of Asylum Applicants requested by NL EMN NCP on 15th May 2008

¹¹ No. 355 Ad-Hoc Query on the age limit for capacity to perform legal acts for the purpose of administrative expulsion and detention, Requested by CZ EMN NCP on 29th November 2011, No. 332 Ad-Hoc Query on detention of families with minors, Requested by PL EMN NCP on 28th June 2011 and No 55 Possible detention of minors who are refused access at the border requested by BE EMN NCP on 4th June 2008

¹² European Union Agency for Fundamental Rights (2013), Detention of third-country nationals in return procedures, Available at: <http://fra.europa.eu/en/node/1220>

¹³ European Union Agency for Fundamental Rights (2013), Handbook on European law relating to asylum, borders and immigration, Chapter 6: Detention and Restrictions of Freedom of Movement, Available at: <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration>

British Institute of International and Comparative Law (2013), "Immigration Detention and the Rule of Law: Safeguarding Principles", Available at: http://www.biicl.org/files/6559_immigration_detention_and_the_rol_-_web_version.pdf

¹⁴ European Parliament, "Impact of the jurisprudence of the CEJ et de la CEDH en matière d'asile et d'immigration", Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462438/IPOL-LIBE_ET\(2012\)462438_FR.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462438/IPOL-LIBE_ET(2012)462438_FR.pdf)

¹⁵ European Parliament Committee on Civil Liberties (December 2007), "The conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states", Available at: http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf

Jesuit Refugee Service-Europe (2010), "Becoming vulnerable in detention", Available at: http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf

¹⁶ "Steps to Freedom. Monitoring detention and promoting alternatives to detention in Latvia, Lithuania, Estonia, Slovakia and the Czech Republic", Available at: <http://goo.gl/G3IESC>

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therefore, eventually be released back into the community. Early identification and timely release of these individuals would save the cost of their protracted detention. The analysis estimated that an improved risk assessment could result in cost savings of £377.4 million over a 5-year time period.¹⁷ **A study undertaken by the Swedish Red Cross** identified that there is an under-use of alternatives to detention in Sweden due to a lack of a comprehensive assessment of the “risk of absconding”.¹⁸ A forthcoming study by the Odysseus network **“Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning”** will aim to address the knowledge and implementation gap concerning alternatives to detention for asylum seekers in the EU in conjunction with the transposition of the recast Reception Conditions Directive.¹⁹

6 AVAILABLE STATISTICS

EU level

There are no periodic data collection instruments on detention and alternatives to detention at EU or international level. Eurostat does not collect statistics on third-country nationals in detention or **provided** alternatives to detention. EASO will start collecting statistics on applicants for international protection in detention in April 2014. The EMN Service Provider will liaise with EASO to explore possibilities of including the statistics in the Synthesis Report.

Several studies have collected primary data based on interviews carried out with third-country nationals in immigration detention.²⁰

National level

At national level, statistics on detention are likely to be available from immigration authorities and other competent authorities responsible for the assessment and decision on detention.

Statistics on alternatives to detention are likely to be available from national authorities responsible for the deciding on the **provision** of alternatives to detention or authorities responsible for administering these measures: such as the police, immigration authority, local authority, NGOs or private contractors within community supervision arrangements)

The EMN Statistics Working Group is kindly invited to comment on the inclusion of statistics in the Common Specifications and to trial the collection of statistics in their (Member) State.

7 DEFINITIONS

‘Accelerated international protection procedure’ refer to a significantly faster examination procedure of an application for international protection than an ordinary examination of an international protection procedure (Source: based on Recast of Asylum Procedures Directive 2013/32/EU, Preamble (20))

‘Alternatives to detention’ refer to non-custodial measures that allow individuals to reside in the community subject to a number of conditions or restrictions on their freedom of movement. The alternatives can include regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes. **As some alternatives to detention also involve various restrictions on movement on liberty, they must also be subject to human rights standards** (adapted based on UNHCR 2012 Revised Guidelines

¹⁷ Matrix (2012), “An economic analysis of alternatives to long-term detention”

¹⁸ Forced Migration Review (issue 44, September 2013), “Detention, alternatives to detention and deportation”, Available at: <http://www.fmreview.org/detention>

¹⁹ <http://www.ulb.ac.be/assoc/odysseus/MADEREALuk.html>

²⁰ Jesuit Refugee Service-Europe (2010), “Becoming vulnerable in detention”, Available at: http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf; Jesuit Refugee Service-Europe (2011), *From Deprivation to Liberty, Alternatives to detention in Belgium, Germany and the United Kingdom*,

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on Detention). Reception facilities can be considered an alternative to detention only in cases where the individual concerned has to report regularly to the competent authorities, or if there are residency requirements.

'Detention' is defined as "restriction on freedom of movement through confinement that is ordered by an administrative or judicial authority(ies) in order that another procedure may be implemented." (Source: EMN Glossary 2.0).

'Detention facility' is defined as a "specialised facility used for the detention of a third-country national in accordance with national law. In context of the EU's Return Directive (2008/115/EC), a facility to keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: (a) there is a risk of absconding; or (b) the third-country national concerned avoids or hampers the preparation of return or the removal process." (Adapted from EMN Glossary 2.0)

'Dublin procedure' is defined as "the process of determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national under Council Regulation (EC) No 343/2003". (Source: Article 4(1) of the Regulation)

'Dublin transfer' is defined as (i) The transfer of responsibility for the examination of an asylum application from one Member State to another Member State; and (ii) the transfer of an applicant to the Member State responsible for examining the application following a Dublin procedure (Source: Part (i) is taken from the EMN Glossary 2.0 and part (ii) is derived from Article 19(1) of Council Regulation 343/2003).

'Forced return' is defined as "the compulsory return of an individual to the country of origin, transit or third country [i.e. country of return], on the basis of an administrative or judicial act". Synonym: Removal (UK) (Source: EMN Glossary 2.0)

'International protection' is defined, "in the EU context, as encompassing the refugee and subsidiary protection status as defined in Article 2 (d) and (f) of Council Directive 2004/83/EC: Article 2d) "refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee; and Article 2f) "subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection". (Source: EMN Glossary 2.0)

'Reception centre' refers to an open centre with facilities for receiving, processing and attending to the immediate needs of refugees or applicants for international protection as they arrive in the Member State where they have received / are applying for protection. (Source: adapted from the definition of 'reception centre' in EMN Glossary 2.0)

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

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

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

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

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

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

'Release on bail/bond' Release from detention is granted if the individual can pay a specified bail sum. A guarantor/surety may also need to be provided. (UNHCR 2012 Revised Guidelines on Detention)

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

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

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

8 ADVISORY GROUP

For the purpose of providing support to EMN NCPs while undertaking this focussed study and for developing the Synthesis Report, an "Advisory Group" has been established. The members of the advisory group for this study, in addition to COM and EMN Service Provider (ICF GHK), are the BE, HU, IE, LV, LU, NL, SE, UK and NO EMN NCPs. EMN NCPs are thus invited to send any requests for clarification or further information on the study to the following "Advisory Group" members:

- ★ BE EMN NCP: ina.vandenberghe@ibz.fgov.be, peter.vancostenoble@ibz.fgov.be and GVerbauwhede@ibz.fgov.be
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★ EMN Service Provider (ICF-GHK): emn@ghkint.com

9 TIMETABLE

| Date | Action |
|--|---|
| 13 th December 2013 | <u>Workshop</u> to discuss Concept Paper and agree next steps for Common Template (on occasion of 63 rd EMN NCP meeting) |
| December/January | Begin work on the Concept Paper |
| 15 th January 2014 | Advisory Group Meeting to discuss Concept Paper |
| 15 th - 28 th January 2014 | Begin work on the Common Template |
| 29 th January – 6 th February 2014 | Circulation of <u>Version 1</u> of the Common Template to EMN NCPs to provide comments |
| Week commencing 17 th February 2014 | <u>Finalisation</u> of the Common Template and official <u>launch</u> of the study |
| 2 nd May 2014 | <u>Completion</u> of the National Reports by EMN NCPs. |
| 16 th May 2014 | <u>First draft of the Synthesis Report</u> ²¹ |
| Week commencing 9 th June 2014 | <u>Finalisation</u> of the Synthesis Report and of National Contributions for publication. |

10 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template outlines the information that should be included in the National Contributions to this focussed study. The indicative number of pages to be covered by each section is provided in the guidance note. For national contributions, the total number of pages should **not exceed 32 pages**, including the questions and excluding the statistical annex. A limit of 35 pages will apply to the Synthesis Report, in order to ensure that it remains concise and accessible.

²¹ Provided that a sufficient number of EMN NCPs submit their National Contribution in time for the Synthesis stage.

EMN FOCUSSED STUDY 2014

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Top-line "Factsheet" (National Contribution)

National contribution (one page only)

Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.

The purpose of this study is identifying the legal framework and national practices in matters of detention and alternatives to detention, with a view to ascertain similarities, differences and good practices between all European Union Member States. Accordingly, the development of integrated migration policies may continue, providing an appropriate answer to the current social, economic and political challenges, and supporting the integration and/or voluntary return of third country nationals, thus providing a contribution to the decrease of irregular migration.

In the Portuguese case, the coercive measures that shall be applied to third-country nationals residing irregularly in national territory are enshrined in the Immigration Act and in the Code of Criminal Procedure.

Third-country nationals who enter or stay irregularly in national territory and are waiting for the implementation of the removal decision, or fails to abide by such decision, may be detained. Third-country nationals who are applicants for international protection cannot be detained or subject to alternative coercive measures, exception made when their application is refused or is given a negative response (section 2).

The measure to be applied (detention or others) is decided on the basis of procedures of individual assessment and on a broad set of criteria, which takes into consideration the vulnerability of those persons and any evidence or a risk of the person absconding, if the citizens avoids or hampers the preparation of the removal process, or if he/she presents any threat to the security or public order.

The main authorities with responsibilities on conducting these procedures and enforcement of coercive measures are the Portuguese Immigration and Borders Service [SEF - *Serviço de Estrangeiros e Fronteiras*] (responsible for notification of voluntary departure) and the judges (responsible for the detention, prohibition against leaving the house and electronic surveillance, bail, regular reporting obligations, statement of identity and residence, among others). These entities handle the removal decision of third-country nationals; however the implementation of the decision is exclusively conducted by SEF (sections 3 and 6).

Portugal has specific spaces for detaining foreign citizens who are on an irregular situation, more specifically a detention facility [*Centro de Instalação Temporária*] and five similar spaces in airports. These spaces are regulated and properly equipped, ensuring the respect for both individual and family fundamental rights. SEF manages these facilities with the collaboration of others entities, such as the International Organization for Migrations (IOM), the Jesuit Refugee Service (JRS), Doctors of the World (DOTW), ANA Portugal Airports and ANAM Madeira Airport (section 4).

As regards alternative measures in Portugal, one should mention: Notification of Voluntary Departure [*Notificação para abandono voluntário*], Statement of Identity and Residence [*Termo de Identidade e Residência*], regular reporting obligations, prohibition against leaving the house [*obrigação de permanência na habitação*] and electronic surveillance (section 5).

Finally, it should be noted the existence of some national and international studies that identify the national good practices, such as: adopting the principle of proportionality and preference for implementing alternatives to detention; establishing a detention period shorter than the that established in the Directive on Return (60 days); legal unfeasibility to detain minors; and legal impossibility to detain in prison establishments foreign citizens solely on grounds of entering or staying illegally in the country.

Executive Summary (Synthesis Report)

Synthesis Report (up to three pages)

Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.

This study - "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies: the Portuguese Case" - emerges within the context of the European Migration Network. It was prepared by the National Contact Point, more specifically by the Portuguese Immigration and Borders Service, through its Planning and Training Department [*Gabinete de Estudos, Planeamento e Formação*]. The research and wording were under the responsibility of Elisa Alves, the document was proofread by Pedro Dias and the translation was performed by Rita Pinto Ferreira.

The main goal of this study is to understand the national reality as regards those matters. On the other hand, it aims to provide the European Union with a wider understanding in order to, together with the other Member-States, make it possible to identify i) the similarities, differences and good practices, ii) the implementation of coercive measures limiting individual freedom, iii) the contribution of these measures to the effectiveness of return policies and iv) the opportunities to future developments on immigration policies. It should be noted that the study also enables the (re)verification of the transposition and compliance with the Return Directive²².

Hence, responding to the specifications, and presenting the national reality, it becomes possible to ascertain that:

- Detention and alternatives to detention are legally supported by the Immigration Act²³ and the Code of Criminal Procedure;
- In the current context, the detention of illegally staying third-country nationals is an administrative measure which, commonly, consists on placing the citizens in detention facilities [*CIT – Centros de Instalação Temporária*], or similar spaces, in order to organize their removal from national territory. These spaces are different from prison facilities, where these citizens cannot be detained;
- In Portugal, priority is given to the implementation of alternatives to detention, which constitutes a good practice (FRA, 2011; and JRS, 2010), as for example the Notification of Voluntary Departure, the Statement of Identity and Residence, and regular reporting obligations to SEF in person. There is also the possibility of prohibition against leaving the house, complemented by electronic monitoring, which

²² 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.

²³ Act n° 23/2007 of July 4th, as amended by Act 29/2012 of July 9th

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is not a frequently used alternative;

- Third-country nationals who are applicants to any international protection status cannot be detained, nor subject to alternative coercive measures while waiting for the answer to their application. On the course of that period they remain free and, if needed, may be supported by specific Reception Centres [*Centros de Acolhimento*];
- Illegally staying, or entering the country, third-country nationals who are waiting for their removal, or who have failed to abide by their removal decision, may be detained; applicants for international protection, after having their application refused, or who are given a negative response, cannot be detained or subject to alternative coercive measures;
- The detention may last to up 60 days, which is a third of the maximum period established in the Directive on Return. On the end of that period, and even if the citizen is still on an irregular situation, he is released and remains in freedom;
- The country has a Detention Facility - *Unidade Habitacional de Santo António - UHSA*, in Porto - and five similar spaces located in Faro, Lisbon, Porto, Funchal and Pontal Delgada airports. These facilities have female and male wards, serve several meals throughout the day, offer common leisure areas, individual rooms for varied consultations or visits, among other aspects that contribute and ensure the respect for fundamental rights.
- National legislation focuses especially on vulnerable and detained persons, thus creating conditions suitable to their needs. As for example, one should mention the respect for the right to family privacy and the existence of special spaces for them, the possibility of providing education for children, and access to medical treatments, etc.;
- Minors cannot be detained (in Detention Facilities or similar spaces), exception made when they are accompanying their family that is subject to that measure;
- The coercive measure, detention or alternative to detention, to be applied to the irregularly staying foreign citizen, depends on the individual assessment procedures, which take into consideration the citizen's eventual vulnerability and other social and professional aspects;
- Detention is used – in detriment of alternatives to detention – when there is evidence of: absconding or risk of absconding; the citizen hampers the organization of the removal process; threat to the protection of national security and public order;
- The main authorities responsible for conducting the procedures for individual assessments and implementation of coercive measures are the Immigration and Borders Service (Notification of voluntary departure) and the judges (detention, prohibition against leaving the house and electronic

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monitoring, bail, regular reporting obligations, statement of identity and residence, among others);

- SEF is the sole authority responsible for delivering - and implementing - the removal decision.

Finally, it should be highlighted the national study on temporary housing of foreign citizens refused to enter Portugal, or who are under a removal process (Ombudsman, 2011), as well as two international studies: one on the detention in return procedures (FRA, 2011) and other on the vulnerability of asylum applicants and detained illegally-staying immigrants. Both studies contribute to the understanding of the national actuality, and also enable a comparison with other countries' reality. They identify some good practices in Portugal, such as the adoption of the principle of proportionality and the preference for the implementation of alternative measures to detention, the establishing of a reduced maximum period of detention (60 days) and lower than that enshrined in the Directive on Return (6 months), and also admit the unlawfulness of placing illegally-staying foreign citizens in prisons.

Section 1: Overview of EU acquis (Maximum 2 pages)

This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation in relation to detention and alternatives to detention. It will provide a mapping of the substantive and procedural provisions in the EU acquis that regulate immigration detention and apply to different migration situations. The section will also highlight how the EU acquis relates to the broader international legal framework on immigration detention.

This section will be developed by the EMN Service Provider and no input from the EMN NCPs is required.

Section 2: Categories of third-country nationals that can be detained, national provisions and grounds for detention (Maximum 3 pages)

This section aims at providing an overview of the categories of third-country nationals that can be placed in detention in (Member) States according to national law and practice. The section also examines whether the possibility to detain each category of third-country national is enshrined in national legislation, the grounds for detention that apply and whether national legal frameworks include an exhaustive list of grounds. EMN NCPs are asked to provide their answers to these questions in the table provided overleaf. The section considers whether special provisions regarding detention are in place for persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs. Finally, the section examines national provisions on (release) of detention of persons who cannot be returned and/or are granted tolerated stay.

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Q1. Please complete the table below with regard to the categories of third-country nationals that can be detained in your Member State. 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 (Q2) after the table.

| Categories of third-country nationals | Can third-country nationals under this category be detained²⁴? (Yes/No) | If yes, is the possibility to detain laid down in legislation? (Yes/No) | If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines | Please list the <u>grounds</u> for detention for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework? |
|--|---|--|---|---|
| <i>Applicants for international protection in ordinary procedures</i> | No. | n.a. | n.a. | n.a. |
| <i>Applicants for international protection in fast-track (accelerated) procedures</i> | No. | n.a. | n.a. | n.a. |
| <i>Applicants for international protection subject to Dublin procedures</i> | No. | n.a. | n.a. | n.a. |
| <i>Rejected applicants for international protection</i> | Yes. | Yes. | n.a. | Irregular entry and/or stay in the country ²⁵ ; Compliance with the removal decision ²⁶ ; and Failure to abide by the removal decision ²⁷ . |

²⁴ Public Prosecution Office defines *Detention* as follows: "It is the deprivation of liberty of a person for a maximum period of forty-eight hours, with the following purposes: the detainee shall have a trial or be brought before a judge with competences for judicial questioning or implementation of a constraint measure; or ensuring the immediate presence of the detainee before the judge on a procedural act." <https://www.pgdporto.pt/proc-web/faq.jsf?ctxId=85&subCtxId=94&faqId=455&show=&offset=>

²⁵ Paragraph 1a) of Article 134 and Paragraph 1 of Article 146 of the Immigration Act.

²⁶ Paragraph 2 of Article 160, of the Immigration Act.

²⁷ Paragraph 1 of Article 161, of the Immigration Act.

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| | | | | |
|--|------|------|------|--|
| Rejected family reunification applicants | Yes. | Yes. | n.a. | Irregular entry and/or stay in the country; Compliance with the removal decision; and Failure to abide by the removal decision. |
| Other rejected applicants for residence permits on basis other than family reunification (Please provide details) | Yes. | Yes. | n.a. | Irregular entry and/or stay in the country; Compliance with the removal decision; and Failure to abide by the removal decision. |
| Persons detained at the border to prevent illegal entry (e.g. airport transit zone) | Yes. | Yes. | n.a. | Non-compliance with the legal requirements for entering the country (travel documents and documents that may replace them, entry visa, evidence that he/she holds sufficient resources, proof of sponsorship, purpose and conditions of stay); and The person is subject of an alert in Schengen Information System or in SEF's Integrated Information System (forced return decisions, judicial expulsion, refusal of entry, etc.) ²⁸ |
| Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision | Yes. | Yes. | n.a. | Irregular entry and/or stay in the country; Compliance with the removal decision; and Failure to abide by the removal decision. |
| Persons who have been issued a return decision | Yes. | Yes. | n.a. | Compliance with the removal decision; and Failure to abide by the removal decision. |
| Other categories of third-country nationals (Please specify the categories in your answer) | n.a. | n.a. | n.a. | n.a. |

²⁸ Articles. 32 and 33, of the Immigration Act.

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Q2. *Is it possible, within the national legal framework of your (Member) State, to detain 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. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.*

Portuguese legislation enables third-country nationals considered vulnerable – such as families with children, pregnant women and persons with special needs – to be accommodated in Detention Facilities or similar spaces. In accordance with the Immigration Act (Act 23/2007, of July 4th, as amended by Act 29/2012, of August 9th), special attention shall be paid to these groups, apart from emergency health care and essential treatment of illness²⁹.

In cases where minors are accommodated in Detention Facilities, together with their families, there is a specific space for them, separated from the other detainees, that is properly equipped, thus ensuring the families' privacy and the minors' needs. According to the legislation, accompanied minors detained in these centers shall be able to participate in activities appropriate to their age and shall have, depending on the length of their stay, access to education³⁰.

Q3. *Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.*³¹

If a foreign citizen exceeds the maximum length of stay in a Detention Facility or similar space, and if it is not possible to implement the removal decision, the citizen shall be released – compliance with Directive on Return³².

²⁹ Paragraph 3 of Article 146-A, and paragraph 4 of Article 160, of the Immigration Act.

³⁰ Paragraphs 6 and 7 of Article 146-A, of the Immigration Act.

³¹ According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

³² Paragraph 4 of Article 15 of Directive 2008/115/EC, of December 16.

Section 3: Assessment procedures and criteria for the placement of third-country nationals in detention (Maximum 5 pages)

This section examines the assessment procedures and criteria/benchmarks that are used by (Member) States in order to decide whether detention is justified in individual cases. It begins with a series of questions which explore the extent to which individual assessment procedures (e.g. interviews) are used in all cases before placing third-country nationals in detention, or whether individual assessment procedures are only used in the case of certain categories of third-country national. Where individual assessments are used, EMN NCPs are asked to describe the procedures involved and whether they include an assessment of the vulnerability of the individual in question. Finally, EMN NCPs are asked to provide information on the challenges associated with the assessment procedures in their Member States and to identify any elements of good practice.

Q1. Please indicate whether an **individual assessment** procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No.

If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.

If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?

In Portugal there are individual assessment procedures to determine the appropriateness of detention and implementation of appropriate coercive measures. These procedures are applied to all categories of third-country nationals that may be detained (cf. categories pointed out in the table of Section 2).

Q2. Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the **legal basis** on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines).

Individual assessment procedures that determine the detention legitimacy are carried out by Judges of the Lower Criminal Court [*Juízo de Pequena Instância Criminal*] or by Judges of the District Court³³, taking into consideration the provisions of the Immigration Act and Code of Criminal Procedure.

According to the Code of Criminal Procedure, the following principles must be considered: principle of legality, according to which freedom can only be limited – total or partially – on the basis of preventive procedural requirements³⁴; and the principles of necessity, adequacy and proportionality which establish that coercive measures must be those needed and appropriate to the procedural requirements, as well as proportional to the crime seriousness³⁵.

³³ Article 146 (1) of the Immigration Act.

³⁴ Article 191 of the Code of Criminal Procedure.

³⁵ Article 193 of the Code of Criminal Procedure.

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Q3. *Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?*

Individual assessment procedures, i.e., the first judicial interrogations³⁶, begin with a set of personal questions, such as parentage, place and date of birth, marital status, occupation, residence, place of work and, if necessary, the citizen shall provide identification documents. At this point, the judge shall inform the third-country national that if he/she do not provide an answer to those questions, or provide false information, he/she may be subject to criminal liability.

After this procedure, the judge informs the third-country national on his/her procedural rights and duties. These include the duty of answering the truth, without prejudice of the citizen's right to silence (possibility of non-response, avowing that silence will not place him/her at disadvantage). Next, the citizen is informed on the consequences of his/her declarations: they can be used in the procedure and may be subject to free assessment of evidence.

In the beginning of the judicial interrogation, before the citizen's statement, he/she is also enlightened on the arrestment reasons (within the meaning of Article 254 of the Code of Criminal Procedure so as to ensure the citizen's presence before the judge for arrestment purposes, or implementation or enforcement of the coercive measure and substantiating evidence).

Q4. *Where individual assessments are used, please indicate whether the procedure includes an assessment of the **vulnerability** of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used.*

Individual assessment procedures take into consideration several facts and conditions relating to the entry and stay in the country of a third-country national, such as the purpose of his/her entry and stay, his/her professional situation, whether he/she has a support social network (family members, friends, children, etc.), among other information.

On the course of the citizen's first judicial interrogation, the detainee may reveal circumstances that may be significant to determine the coercive measure³⁷.

Having regard to these two points, one considers that there is an assessment to the third country nationals vulnerabilities.

³⁶ Article 141, of the Code of Criminal Procedure.

³⁷ Article 141 (5) of the Code of Criminal Procedure.

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Q5. Please provide more detailed information on **the criteria /indicators** used to decide whether particular grounds for detention apply in individual cases. EMN NCPs are asked to answer this question by listing the criteria / indicators that are used to determine the circumstances in which the following grounds for detention, permitted in EU law, apply. However, if the grounds for detention are not applicable in your (Member) State, EMN NCPs may identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply.

- a) **Ground 1: If there is a risk of absconding**
- b) **Ground 2: If the third-country national avoids or hampers the preparation of a return or removal process**
- c) **Ground 3: If required in order to protect national security or public order**
- d) **Ground 4: Please indicate any other ground(s) and the respective criteria/indicators considered in the assessment**

a), b), c) e d)

Detention is a coercive measure that takes into account: a) absconding or risk of absconding, b) if the citizen avoids or hampers the preparation of a removal process and c) threats to the protection of national security and public order. The measures are imposed by a judge, following the first judicial interrogation³⁸.

To ascertain the existence of any of the above-mentioned risks, and also to decide on the most appropriate coercive measure, the Judge conducts a wide set of questions and observations.

The questions asked - as well as the entire assessment on the afore-mentioned risks - do not follow a set of criteria/indicators thoroughly listed to each risk. Criteria are used globally in the first judicial interrogation. That is to say that this interrogation enables to assess the three risks at the same time, taking into consideration the detainee's answers to questions such as:

- ✓ Relevant dates (entry in the country, alteration of residence, etc.);
- ✓ Purposes of the visit and circulation;
- ✓ Existence, authenticity and validity of an identification document;
- ✓ Professional situation;
- ✓ Existence of any family members in the country, or other support networks;
- ✓ Accuracy of the statements provided; and
- ✓ Police information, among others.

According to Ferreira Dias (n.d.), the risk of absconding or absconding shall not be presumed for purposes of implementation of a coercive measure, instead one should consider concrete and real situations. Hence, and according to national case-law³⁹:

Essentially, situations of citizens with foreign nationality, without ties with national territory; defendants that do not hold identification documents, without a defined occupancy and often using motor vehicles of

³⁸ Article 204 of the Code of Criminal Procedure.

³⁹ According to Ana Gil: "There is not much case-law of the Portuguese higher courts on the detention of immigrants." (Gil, 2011: 138)

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unknown origin; citizens that have already resided abroad or who have family - or other - ties in foreign countries; or who belong to ethnic minorities that, due to tradition and culture, have, usually, a nomadic way of life.

That is to say: lack of ties with our country, ties with foreign countries, lack of a stable occupancy, being able to easily move from country to country; and also the existence of funds to pay for the necessary expenses in more or less distant places. (Ferreira Dias, n.d.: 3)

Lastly, it should also be mentioned that Portuguese legislation establishes the principle of free assessment of evidence, i.e., evidence is assessed in accordance with the experience rules and the judge's free conviction, which may play a part in determining the coercive measure.

Q6. Is the **possibility to provide alternatives to detention** systematically considered when assessing whether to place a person in detention in your (Member) State?

Detention is the coercive measure implemented in cases where there is a risk of absconding, or when the citizen avoids or hampers the preparation of a removal process, or in cases of threats to the protection of national security and public order.

Considering the constitutionally granted right to freedom⁴⁰, and given that detention is a measure quite restrictive of personal freedom, it is a last resort.

Hence, whenever deemed possible, the implementation of alternative coercive measures⁴¹ is taken into consideration.

Q7. Please indicate which **national authorities** are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on the placement of a third-country national in detention.

The first individual assessment procedures (corresponding to the first judicial interrogation) are a judicial responsibility, more specifically a duty of the lower criminal courts or district courts.

These judges are responsible for the first individual assessment procedures (i), from which the legal conditions of the detention are corroborated, and the coercive measures to be implemented are appraised – detention or alternatives to detention – (ii)⁴².

Q8. Please indicate whether **judicial authorities** are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)

Please see previous answer.

⁴⁰ Article 27 (1) of the Constitution of the Portuguese Republic.

⁴¹ However, cf. Article 194 (2) and (3) of the Code of Criminal Procedure.

⁴² Article 146 (1) of the Immigration Act.

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Q9. Please identify any **challenges** associated with the implementation of existing assessment procedures in your (Member) State.

Assessment procedures that enable a decision - whether regarding detention or alternative measures to detention - imply two important issues:

- The possibility for the foreign citizen to appeal such decision and, therefore, request a new review by a higher body; and
- The judges' decision is subject to the principle of 'free assessment of evidence'.

In view of this combination, there are some limitations as to a possible assessment of the efficiency and proportionality of the decisions and implemented measures.

Moreover, the last Ombudsman annual reports (2009-2012) - public body dedicated to the protection and promotion of citizens' fundamental rights - show no cases of complaints regarding detention.

Q10. Please identify any **good practices** in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

As regards the Portuguese case and national good practices concerning detention, one should mention the references provided in two international reports, more particularly the *Becoming Vulnerable in Detention* report, prepared by the Jesuit Refugee Service (JRS), and the *Detention of Third-Country Nationals in Return Procedures* report, outlined by the European Union's Fundamental Rights Agency (FRA).

JRS report (2010) refers that in Portugal minors cannot be detained. It highlights the fact that, on a detention situation, properly regulated medical and social services are provided to the citizen. This document also mentions the use of alternative measures such as the obligation of regular reporting, the prohibition against leaving the house until the removal takes place, the use of electronic monitoring means and payment of bails. On the other hand, the detention period seems to range from 31 to 60 days (less than the maximum period approved by Directive 2008/115/EC), and each detainee is entitled to an individual area where he/she can be alone, and is free to move within the Detention Facility (exception made to the area reserved to the employees). This report states that, in some cases, the Detention Facility has also contributed to improve the detainees' health and physical condition.

FRA report (2011) highlights the fact that in Portugal re-detention is not allowed, i.e., it is illegal to maintain in a detention facility an illegally-staying foreign citizen that has already been detained for the maximum period permitted by law. This study also exposes the fact that it is assumed that children shall stay with their families, rather than separated from their family members, as long as they can be accommodated in facilities that respect their needs - which are, in fact, ensured by the detention facilities, or similar spaces. The document indicates an average detention period of 35 days.

Finally, one should mention a national assessment carried out to the Detention Facility *Unidade Habitacional de Santo António* and to the other similar centres. The assessment report states that there is a set of good practices as regards human rights and accommodation conditions (Ombudsman, 2011). In accordance with this document, the length of stay in the Detention Centre ranged between 2 to 58 days, with an average length of stay of 7 days.

Section 4: Types of detention facilities and conditions of detention (Maximum 5 pages)

This section of the Synthesis Report will provide a factual, comparative overview of the types of immigration detention facilities that exist in the EU and the conditions of detention associated with these. It examines whether there are specialised immigration detention facilities and explores whether different types of detention facilities are available for different categories of third-country national. The section also reviews the conditions of third country nationals in these detention facilities, including average surface per person, existence of separate facilities for families, visitation rights, access to medical care and legal assistance.

Q1. *Are there specialised immigration detention facilities in your (Member) State, which are not prisons? (Yes/No) If yes, please indicate how many exist and how they are distributed across the territory of your (Member) State.*

Yes, third-country nationals are detained in Detention Facilities, or similar spaces, and not in prisons.

Currently Portugal has a Detention Facility (*Unidade Habitacional de Santo António – UHSA*) in Porto, and five similar spaces: Lisbon, Faro, Porto, Funchal and Ponta Delgada airports.

Q2. *Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)? (Yes/No). If yes, please provide a brief overview of the different types of immigration detention facilities.*

Generally, there are two types of specialised detention facilities for third-country nationals:

- Detention Facilities, or similar spaces, intended to those waiting for a decision and/or implementation of a removal decision. In all these facilities, individual freedom is limited, detainees are not allowed to enter and leave according to their will; and
- Reception Centres for asylum applicants, when entering, or after entering, national territory⁴³. These centres include the Reception Centre of Bobadela (CAR - *Centro de Acolhimento da Bobadela*), in Loures, intended for adults and families; the Reception Centre for Refugee Children (CACR - *Centro de Acolhimento de Crianças Refugiadas*), in Lisbon, intended for unaccompanied minors. CAR does not impose limits to individual freedom.

Q3. *Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in your (Member) State?*

⁴³ According to an Ombudsman report, asylum applicants accommodated on a reception centre "(...) are authorized to stay in national territory, for purposes of asylum granting procedures, up to the delivery of the decision on acceptability of the application; however this right to stay does not grant them a residence permit." (Ombudsman, 2011:73)

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With regard to the two types of facilities above-mentioned, the following authorities are responsible for their daily management in the following areas:

- Detention facilities and similar spaces – border control, maintenance and management of the facilities under the responsibility of SEF, ANA – Portugal Airports, ANAM – Madeira Airports and air operators (Ombudsman, 2011).
- UHSA is managed by SEF, with the collaboration of other bodies: International Organization for Migration (IOM), Jesuit Refugee Service (JRS) and Doctors of the World (health care).
- Reception Centres for asylum applicants (CAR and CACR) are under the responsibility of the Portuguese Refugee Council (CRP - *Conselho Português para os Refugiados*)⁴⁴.

Q4. Please describe any measures taken by your (Member) State to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.

When the number of detained third-country nationals exceeds the capacity of the detention facility or similar space, they are transferred to other(s) similar(s) space(s). For example, a foreign citizen detained in the Algarve may be transferred to Lisbon due to overfilling in the similar space of Faro's airport, combined with the existence of enough room to accommodate him/her at Lisbon airport's similar space. Nevertheless, it should be noted that such situations are less frequent.

Q5. Are third-country nationals detained in prisons in your (Member) State? (Yes/No) If yes, under which circumstances?

Third-country nationals can only be detained in prisons if they are subject to criminal proceedings resulting from ordinary offences of which they are accused and found guilty.

Q6. If third-country nationals are detained in prisons in your (Member) State, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?

When a third-country national is detained in prison, he/she is not separated from the other detained on grounds of to his/her nationality. In criminal proceedings the defendants' nationality does not bestow the right to a different type of treatment, hence there is no need to separate them when they are detained and placed in cells.

Q7. Please provide the following information about the conditions of third-nationals who have been placed in an immigration detention facility in your (Member) State: (Please indicate if the facilities in question are prisons or specialised immigration detention facilities).

Note: Answers provided in the table below relate to detention facilities or similar spaces.

⁴⁴ Cf. <http://www.cpr.pt/> (in Portuguese)

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| Conditions of detention | Statistics and/or comments |
|--|---|
| Please provide any statistics on the average available surface area per detainee (in square meters) | <p>UHSA and the five similar spaces located at the airports have outside and inside areas, with several rooms, that fulfil different purposes:</p> <ul style="list-style-type: none"> • UHSA has a wide unbuilt area, that is partially cemented for sports purposes; • The similar area at Lisbon airport has an interior courtyard with c. 70m²; • Faro's airport similar space has a nursery with c. 16m² (Ombudsman, 2011) |
| Please provide any statistics on the average number of detainees placed in one room per detention facility | <p>UHSA and the similar space at Lisbon's airport have, each, capacity for housing 30 persons.</p> <p>The other similar spaces – at Faro, Porto, Funchal and Ponta Delgada airports – have capacity to accommodate 7, 9, 2 and 3 persons, respectively.</p> |
| Are families accommodated in separate facilities? | <p>UHSA and similar spaces at Lisbon, Porto and Faro airports have nurseries/areas to accommodate families (bunk beds and private bathrooms), in accordance with national legislation and safeguarding the right to privacy.</p> |
| Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen? | <p>No, children can only be placed in detention facilities when their families are detained there.</p> |
| Are single women separated from single men? | <p>Detention facilities and similar spaces at airports have male and female wards.</p> |
| Are unaccompanied minors separated from adults? | <p>In Portugal there is no evidence of the existence of unaccompanied minors outside the international protection scope.</p> |
| Do detainees have access to outdoor space? If yes, how often? | <p>Detainees have access to outdoors space.</p> <p>As regards UHSA, detainees have access to a wide area for sports purposes, as well as to a partially covered courtyard.</p> <p>The similar spaces at Lisbon, Faro and Porto airports also have courtyards.</p> |
| Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often? | <p>Detainees in detention facilities or similar spaces are authorized, upon request, to contact their legal representatives, family members and competent consular authorities. Furthermore, detainees may receive their visit as well as the visit of elements of human rights organizations/associations. The visits take place in specific times and rooms (in accordance with internal regulations), and visitors</p> |

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| | must be properly identified. |
| Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way? | <p>UHSA and similar spaces at the airports have a public telephone, from which detainees may establish communications as they wish against payment (coins, cards or out collect calls).</p> <p>A UHSA e os espaços equiparados dos aeroportos dispõem de um telefone público, a partir do qual os detidos podem estabelecer comunicações de forma livre, mediante o pagamento com moedas ou cartões, ou a cobrar no destinatário.</p> |
| Are education programmes provided (e.g. school courses for minors and language classes for adults)? | Unaccompanied minors have access to age-appropriate activities and - according to the length of their stay - to education. |
| Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often? | <p>UHSA has a living room equipped with televisions, DVD's and books, and also some written press.</p> <p>Similar spaces at the airports are equipped with televisions and written press.</p> |
| Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility? | Persons in detention are not allowed to leave the facility. Inside that facility they can move freely in specific areas. |
| Are detainees entitled to legal advice / assistance? If yes, is it free of charge? | Detainees are entitled to communicate with their legal advisor. Legal assistance can be provided with the State's support or on the detainee's own expenses. |
| Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge? | <p>UHSA and similar spaces located at airports internal regulations are translated into some languages, such as English and French.</p> <p>When necessary, translation or interpretation services may be provided.</p> |
| Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included? | <p>Foreign citizens detained have the right to emergency care and essential treatment of illnesses.</p> <p>Special attention is paid to persons in vulnerable situations, such as minors (accompanied by their family members), disabled people, elderly people, pregnant women, people who have been subject to torture acts, rape or other forms of psychological, physical or sexual violence.</p> <p>At UHSA medical care includes medical appointments (routine and emergency) and health care, even on a psycho-affective level.</p> |
| Are there special arrangements for persons belonging to | Although there are not special arrangements for |

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| vulnerable groups? Please describe | vulnerable groups, some conditions are ensured to enable a more appropriate treatment to those persons. That is the case of rooms that are exclusively for families, with nurseries; as well as individual rooms in cases of need of continuous medical care. |
| Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe | Shall there be any security risk, preventive measures in the light of the case are assessed and implemented. |

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies***Section 5: Availability and practical organisation of alternatives to detention (*Maximum 6 pages*)**

This section explores the availability of different types of alternatives to detention for different categories of third-country national. It further explores the practical organisation of the alternatives to detention, including information on the authorities/organisations responsible for administering the alternatives; the conditions that must be met by the third-country national who has been provided 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.

Q1. 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.

| Alternatives to detention | Yes/ No (If yes, please provide a short description) |
|--|--|
| Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals) | Yes ⁴⁵ , citizens must regularly report to SEF once the dates and times are stipulated. For this purposes, one takes into consideration the detainee's professional demands and his/her place of residence. This measure can be combined with the others, exception made to the prohibition against leaving the house. |
| Obligation to surrender a passport or a travel document | No, passport or other valid travel document is only retained (kept in SEF's custody, together with the file) when there is detention and until the conclusion of the removal procedure. |
| Residence requirements (e.g. residing at a particular address) | Yes ⁴⁶ , prohibition against leaving the house is combined with the use of electronic monitoring, for purposes of ensuring compliance with the measure. |
| Release on bail (with or without sureties) | Yes, although bail payment is not an often used measure. |
| Electronic monitoring (e.g. tagging) | Yes ⁴⁷ , electronic monitoring is used in addition to the prohibition against leaving the house. |
| Guarantor requirements | No. |
| Release to care worker or under a care plan | No. |
| Community management programme | No. |
| Other alternative measure available in your | Notification of Voluntary Departure from national territory: If it |

⁴⁵ Article 198 of the Code of Criminal Procedure.

⁴⁶ Article 201 of the Code of Criminal Procedure.

⁴⁷ Article 201 (3) of the Code of Criminal Procedure.

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| (Member) State. Please specify. | <p>is detected that a third-country national is illegally staying in national territory, he/she is notified by SEF to voluntarily leave national territory within 10 to 20 days. After this period, if the citizen has not left the country, he/she may be brought before a judge for purposes of implementation of a coercive measure and induction of a forced return procedure. In view of this, the notification of voluntary departure is an alternative measure to detention.</p> <p>Statement of Identity and Residence [<i>Termo de Identidade e Residência</i>]: is an alternative to detention when the judge so decides, and can be combined with the other measures⁴⁸. The foreign citizen is informed on: obligation to report or be available to a certain authority; prohibition of changing residence (or leaving the residence for more than five days without communicating the move or absence); the fact that future notifications may be sent by post to the address that he/she provided; that he/she may be represented by a legal representative in case of no compliance with these requirements.</p> |
|---------------------------------|---|

⁴⁸ Article 196 of the Code of Criminal Procedure.

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Q2. For each of the alternatives to detention that are available in your (Member) State, please indicate the categories of third country nationals that may be provided an alternative to detention, making use of the list provided below and adding any additional categories as applicable. If there are variations in the practical organisation of any of the alternatives to detention provided to different categories of third country national, please indicate this is the case and briefly illustrate the variations.

- Applicants for international protection in ordinary procedures;
- Applicants for international protection in fast-track (accelerated) procedures;
- Applicants for international protection subject to Dublin procedures;
- Rejected applicants for international protection;
- Rejected family reunification applicants;
- Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision)
- Persons who have been issued a return decision;
- Other categories of third-country nationals;
- Vulnerable persons (such as minors, families with very young children, pregnant women and persons with special needs).

Third-country nationals subject to detention may be provided alternative measures to detention, as mentioned in the table in Section 2.

Q3. For each of the alternatives to detention that are available in your (Member) State, please indicate the legal basis on which they may be granted to particular categories of third country nationals (for example legislation, soft law/guidelines, other).

The legal premises for implementation of alternative measures to detention are enshrined in the Code of Criminal Procedure and in the Immigration Act. They are summarized in the answers provided in Q1 of this section and mentioned in the respective footnotes.

On the other hand, one may add the case-law of national courts, as soft law.

Q4. For each of the alternatives to detention that are available in your (Member) State, please indicate the authorities/organisations responsible for (a) deciding and (b) administering the alternative. Please indicate in particular whether the responsible organisation is a non-governmental organisation.

(a) SEF (notification of voluntary departure) and courts (others) decide on the implementation of alternative measures to detention.

(b) The following are responsible for the implementation:

- SEF, by means of citizen's regular reporting (although it can be made in another criminal police body or judiciary entity) and by retaining the citizen's passport or travel document; and
- Directorate-General for Social Reintegration and Prison Services [*Direção-Geral de Reinserção e Serviços Prisionais*] of the Ministry of Justice, for ensuring that the citizen remains in the residence and controlling electronic monitoring.

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Q5. For each of the alternatives to detention that are available in your (Member) State, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention.

According to national legislation, on breach of any of the imposed measures regarding detention, the judge may inflict other(s) coercive measure(s)⁴⁹. In view of that, ultimately, the judge may decide on placing the foreign citizen in a detention center or similar space.

Q6. Please indicate any challenges associated with the implementation of the alternatives to detention in your (Member) State. (based on existing studies/evaluations or information received from competent authorities)

In the Portuguese case there is not a regulatory definition of the risk of absconding.

On the other hand, the implementation of alternative measures to detention decided judicially may bestow some discretion, considering the principle of 'free assessment of evidence' and the judge's conviction. This aspect makes it impossible to assume a harmonized model for determining the detention of alternative measures to it.

It is, however, likewise necessary to safeguard knowledge and awareness of the involved actors in the return procedure on the main trends as regards policies and practices in matters of migration, particularly in the field of detention and alternatives to detention of illegally staying third-country nationals.

It may be relevant to understand social impacts, allocated resources and the effectiveness of the implemented measures, such as prohibition against leaving the house and electronic monitoring, by taking into consideration, as an example, the risk of absconding, and making a comparison of detention costs.

Another aspect that may be a challenge is the assessment/monitoring of the return policy, given the reduced expression of studies regarding this phenomenon, more specifically as regards detention and alternatives to detention.

Q7. Please provide any examples of good practices regarding the implementation of the alternatives to detention in your (Member) State. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

In the Portuguese case it is important to understand that detention is a measure applied in situations where it is not possible – or where all endeavours for implementation of alternative measures have already failed. Detention is regarded as a last resort; the afore-mentioned alternatives to detention shall always take precedence.

Furthermore, asylum applicants cannot be detained: they await the answer to the application in total freedom or in a specialised reception centre.

Accordingly, one should outline JRS's study (2010) which ascertains these national practices and considers them as good practices:

Non-custodial alternatives to detention for asylum seekers that respect their human dignity and fundamental rights should always take precedence before detention. Asylum seekers, due to the legal complexity of their situation and the asylum procedure, require a level of care and support that cannot be provided in a detention centre. (...) non-custodial alternatives to detention should always take precedence. (JRS, 2010:14)

Finally, FRA's study also refers as positive the fact that Portugal establishes several alternatives to detention, which is something that some European countries still fail to do.

⁴⁹ Article 203 (1) of the Code of Criminal Procedure.

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*Section 6: Assessment procedures and criteria used for the placement of third-country nationals in alternative to detention (Maximum 5 pages)

This section explores the type of assessments made by the competent authorities when considering whether to place a third-country national in an alternative to detention. It includes a number of questions which explore the timing of this assessment – in particular whether the assessment is conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have completed a period in detention. It also includes questions about the practical implementation of the assessment procedure, in particular whether an individual assessment is conducted, what this involves and which organisations are involved in the assessment procedure.

Q1. *In Section 2, Q1, you have identified the grounds on which detention can be authorised for particular categories of third-country national. In what circumstances can those grounds be displaced in favour of an alternative to detention in your (Member) State? Please provide answers in relation to each of the relevant categories of third-country national. If there is a separate set of grounds for providing third-country nationals an alternative to detention in your (Member) State, please indicate this is the case.*

Alternative measures can be applied to all categories of third-country nationals subject to detention, as long as:

- a) the citizen is not likely to abscond;
- b) the citizen hampers the removal procedure; nor
- c) represents a threat to the protection of national security and public order.

Q2. *Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?*

The consideration regarding the implementation of alternative measures to detention results from the individual assessment procedures described in Section 3, especially in the answer to Q5.

Q3. *Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention. Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.*

Individual assessment procedures used to determine detention are also used to determine the implementation of alternative measures (cf. Section 3).

All categories of third-country nationals are subject to these procedures (cf. Categories referred in the table of section 2).

Q4. *Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used.*

Assessment on the potential vulnerability of the detainee is described in the answer to section 3's Q4.

Q5. *Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?*

Individual assessment with the purpose of determining an alternative to detention is applied to all third-country nationals found staying illegally in national territory.

Q6. *Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on alternatives to detention*

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The authorities responsible for individual assessment procedures and for the decision on alternatives to detention are those mentioned in the answer provided in section 3's Q7.

Q7. *Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)*

Cf. previous answer.

Section 7: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures (Maximum 5 pages)

This section aims at exploring the impact of detention and alternatives to detention on the effectiveness of (Member) State return and international protection procedures. The questions are formulated as a comparison between the impact of detention and alternatives to detention; they do not attempt to compare the impact of detention (or alternatives to detention) on the effectiveness of return and international protection procedures in the case of third country nationals whose freedom of movement is not restricted at all.

Four specific aspects of effectiveness are considered: (i) effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions; (ii) cost-effectiveness; (iii) respect for fundamental rights; and (iv) effectiveness in reducing the risk of absconding.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these dimensions 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.

7.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions

7.1.1. Effectiveness in reaching decisions on applications for international protection

Q1. *Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status). Yes/No. If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.*

In Portugal, applicants for international protection are not detained; exception made after decision on the non-admission and/or refusal of the application is rendered. The existing studies have not addressed the effectiveness of the measures taken in relation to asylum applications, in particular as regards the impact of detention or alternatives to detention.

Q2. *Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).*

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

The Use of Detention and Alternatives to Detention in the Context of Immigration Policies

| Applicable year | Detention | Alternatives to detention | | | |
|---|---|---------------------------|------|------|------|
| | | A1 | A2 | A3 | A4 |
| Average length of time in determining the status of an applicant for international protection | n.a. | n.a. | n.a. | n.a. | n.a. |
| | Applicants for international protection are not detained. They wait in freedom for the decision regarding their application ⁵⁰ . | | | | |

Q3. Please provide any other evidence that may be available in your (Member State) on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Studies to date have not addressed these matters.

7.1.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

Q4. Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:

- The length of time from apprehending an irregular migrant to issuing a return decision? Yes/No
- The length of time that transpires from issuing a return decision to the execution of the return? Yes/No
- The share of voluntary returns out of the total number of returns? Yes/No
- The total number of removals completed? Yes/No

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

There are no assessments or studies that show the impact of detention and alternatives to it.

⁵⁰ For further information on asylum applicants and other international protection statuses, please consult SEF's (2009) *Protection Statuses Complementing EU Legislation Regarding Immigration and Asylum in Portugal*, at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/21a_portugal_national_report_non-eu_harmonised_forms_of_protection_final_version_3nov09_en.pdf

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Q5. Please provide any statistics that might be available in your (Member) State on

- (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure;
- (ii) the proportion of voluntary returns and
- (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) Stat. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

Statistics on the success rate in the number of departures should be provided as the number of persons who were issued a return decision and who have returned to their country of origin, and the number of persons who were issued a return decision and who have not returned to their country of origin. Please provide both the numbers and the share they represent out of the total number of persons issued a return decision.

| Applicable year | Detention | Alternatives to detention | | | |
|--|-----------|---------------------------|------|------|------|
| | | A1 | A2 | A3 | A4 |
| Average length of time from apprehending an irregular migrant to issuing a return decision | N.I. | N.I. | N.I. | N.I. | N.I. |
| Average length of time from issuing a return decision to the execution of the return | N.I. | N.I. | N.I. | N.I. | N.I. |
| Number of voluntary returns (persons who opted to return voluntarily) | N.I. | N.I. | N.I. | N.I. | N.I. |
| Success rate in number of departures | N.I. | N.I. | N.I. | N.I. | N.I. |
| With the aim of enabling the answer, the information is not systematized. | | | | | |

Q6. Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Studies to date have not addressed these matters.

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies***7.2. Costs**

Q7. Have any evaluations or studies on the costs of detention and alternatives to detention been undertaken in your (Member) State?

Studies to date have not addressed these matters.

Q8. Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where costs can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection to measure the costs.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "not applicable" and briefly state why

| Applicable year | Detention | Alternatives to detention | | | |
|--|-----------|---------------------------|------|------|------|
| | | A1 | A2 | A3 | A4 |
| Total costs | n.i. | n.i. | n.i. | n.i. | n.i. |
| Staffing costs | n.i. | n.i. | n.i. | n.i. | n.i. |
| Medical costs | n.i. | n.i. | n.i. | n.i. | n.i. |
| Food and accommodation costs | n.i. | n.i. | n.i. | n.i. | n.i. |
| Legal assistance | n.i. | n.i. | n.i. | n.i. | n.i. |
| Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify | n.i. | n.i. | n.i. | n.i. | n.i. |
| There is no information available due to specifications of the accounting system used by SEF, and allocation of costs of other stakeholders. | | | | | |

Q9. Please provide any other evidence that may be available in your (Member) State on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Studies to date have not addressed these matters.

7.3. Respect for fundamental rights

Q10. *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)?*

On a national level one must highlight the Ombudsman assessment on temporary detention facilities, more particularly to UHSA and the five similar spaces at the Faro, Lisbon, Porto, Funchal and Ponta Delgada airports (Ombudsman, 2011).

This assessment report showed that Portuguese authorities have a strong concern with ensuring fundamental rights. According to the report, several positive situations were observed, such as: existence of specific rooms for families, thus ensuring their privacy; individual rooms and some designed to provide health assistance; separate female and male wards with exclusive sanitary facilities sufficiently equipped; provision of basic health care and assistance during sickness; registration and delivery of prescribed medication; psychosocial support; food diet adapted to children, sick persons or religious matters; special care to pregnant women or other people with vulnerabilities; good hygiene conditions; measures of security or protection to life and facilities; and access to information, translation and interpretation services, as well as legal support. Children or school age minors are ensured access to activities adequate to their age and to education.

The report points out some aspects that should be improved, such as access conditions to the facilities to persons with reduced mobility (to UHSA and the majority of the similar spaces) and access to more meals (afternoon snacks and supper). Similar spaces at the Funchal and Ponta Delgada airport have fewer conditions, mostly due to the near absence of detentions. However, it is considered that they respect most fundamental rights of those that may be detained there.

On a European Union level, it is important to mention the study of the Fundamental Rights Agency on Detention of third-country nationals in return procedures (FRA, 2011). The document points out important matters as regards Portugal. On the one hand, the respect for non-detention of unaccompanied children for removal purposes, except when it is the detention of the family accompanying them. This exception is well regarded given that it is considered that the best option is not to separate the children from their families, provided all the necessary conditions are granted (as mentioned above). And on the other hand, the impossibility of detaining someone who has already served the maximum period of detention (60 days).

Finally, on an international level, one should consider the contributions of the Jesuit Refugee Service study (JRS, 2010). Once again, it is highlighted that in Portugal minors cannot be detained, and also that all detainees benefit from social support and health care. In line with the Ombudsman assessment, JRS also states that each detainee has its own space, which confers, therefore, respect for each person's individuality. The detainee is also free to move within the facilities and in the other areas reserved to the users. Moreover, the report evidences the existence of diverse security and control measures with the purpose of protecting the life and wellbeing of those in the UHSA and similar spaces at the airports.

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Q11. Please provide any statistics that might be available in your (Member) State on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Please do the same with any statistics that may be available in your (Member) State on the number of voluntary returns.

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

| Applicable year | Detention | Alternatives to detention | | | |
|--|-----------|---------------------------|------|------|------|
| | | A1 | A2 | A3 | A4 |
| Number of complaints of violations of fundamental rights lodged with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals). | n.i. | n.i. | n.i. | n.i. | n.i. |
| Number of complaints of violations of fundamental rights upheld by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals). | n.i. | n.i. | n.i. | n.i. | n.i. |
| Number of court cases in which there have been challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of violation and by categories of third-country national) | n.i. | n.i. | n.i. | n.i. | n.i. |
| Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been upheld (where possible, please disaggregate by types of violation and by categories of third-country national) | n.i. | n.i. | n.i. | n.i. | n.i. |
| There is no record of complaints regarding matter of violations of human rights ⁵¹ . | | | | | |

Q12. Please indicate if studies exist in your (Member) States which show negative effects of the alternatives to detention in practice. (For example, ankle bracelets can be socially stigmatising and cause physical and emotional distress.)

⁵¹ For more information on complaints in matters related with foreigners legislation, please consult the Annual Reports on the Ombudsman activity, at <http://www.provedor-jus.pt/?idc=16>

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Studies to date have not addressed these matters.

Q13. Please provide any other evidence that may be available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Cf. Answer to Q10 of this section.

7.4. Rate of absconding and compliance rate

Rate of absconding is the share of persons who have absconded from all third-country nationals placed in detention or provided an alternative to detention.

Compliance rate is the share of persons who have complied with the alternative to detention.

Q14. Have evaluations or studies on the compliance rate and rate of absconding of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details.

Studies to date have not addressed these matters.

Q15. Please provide any statistics that might be available in your (Member) State on the rate of absconding and the compliance rate of third-country nationals in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

| Applicable year | Detention | Alternatives to detention | | | |
|--------------------|-----------|---------------------------|------|------|------|
| | | A1 | A2 | A3 | A4 |
| Rate of absconding | n.i. | n.i. | n.i. | n.i. | n.i. |
| Compliance rate | n.i. | n.i. | n.i. | n.i. | n.i. |

There is no systematization of meta-information, collection, processing and analysis of data.

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Q16. Please provide any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention.

Studies to date have not addressed these matters.

Section 8: Conclusions (Maximum 2 pages)

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

The social, economic and political context of EU and a number of European and African neighbour States, among others, has been leading into serious reflection, discussion and operationalization of immigration and asylum policies within the Union and in each one of the Member-States.

With a view to meet the needs, vulnerabilities and fundamental rights of immigrants and, on the other hand, to cope with challenges related with the country's stability, UE has been developing legislation and appropriate mechanisms such as the Asylum Procedures Directive⁵², the Schengen Borders Code⁵³, Return Directive⁵⁴, among others. This legal framework enables establishing common rules on the entry, stay, departure and removal of foreign citizens. Regarding detention, EU establishes certain reasons that lead to detention and some procedures. Member-States transpose these provisions as they will, and also define and implement alternative measures to detention.

In Portugal the transposition of EU regulations relating to detention and alternatives to detention are complemented with the Code of Criminal Procedure. Hence, national legislation and practices comply with the common legal framework; in fact, in some cases they are somehow improved, as for example the fact that the maximum 60-day period for detention is lower than the one set out in the Return Directive.

Illegally staying third-country nationals who are waiting for the implementation of a removal decision, or who have not complied with it, can be detained. Applicants for international protection cannot be detained or subject to alternative coercive measures, exception made after their application is refused or not accepted.

Illegally staying or unaccompanied minors cannot be detained (placed in detention facilities or similar spaces). In Portugal there are no records of unaccompanied minors outside the context of international protection (they are only placed in an adequate space for this purpose with conditioned freedom of movement so as to safeguard the minors' integrity).

In compliance with the principle of proportionality, the implementation of alternative measures to detention is privileged, such as the Notification of Voluntary Departure, the statement of identity and residence, regular

⁵² Council Directive 2005/85/EC, of December 1 2005, on minimum standards on procedures in Member-States for granting and withdrawing refugee status.

⁵³ Regulation (EC) No 562/2006 of the European Parliament and of the Council, of 15 March 2006, establishing a Community Code on the rules governing the movement of persons across borders.

⁵⁴ Directive 2008/115/EE of the European Parliament and of the Council, of 16 December 2008, on common standards and procedures in Member-States for returning illegally staying third-country nationals.

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reporting to SEF and prohibition against leaving the house combined with electronic monitoring. Most of these alternatives demonstrate a set of good practices. However, a recent report of the European Network for Fundamental Rights states that the use of electronic monitoring should be reduced, given that it is a quite intrusive measure, compromising individual freedom:

Electronic monitoring is probably the most intrusive among the various forms of alternatives to detention, as it substantially interferes with a person's right to privacy, restricts freedom of movement and can deprive people of dignity. It can also lead to discrimination, as persons wearing an electronic device can be associated with criminals. (FRA, 2011:51)

In Portugal, the experience regarding the implementation of electronic monitoring measures is very scarce, hence there is a lack of evidence regarding the impacts on a social and discriminatory point of view. On the other hand, there is no evidence of social and individual impacts on the implementation of other alternative measures to detention.

An assessment of the Ombudsman (2011) to the Detention Facilities, or similar spaces, for illegally-staying citizens revealed several practices as good and appropriate. The existence of separate female and male wards, provision of health care, legal support, possibility of receiving visitors, respect for the families and children, among other aspects that contribute to detentions with dignity shall be highlighted. Additionally, the report also suggest some alterations, such as the distribution of intermediate meals, the access to a greater number subject-diversity of books, printed press and other forms of leisure, among others.

In recent years the number of third-country citizens found to be illegally staying in Portugal, as well as the number of notifications of Voluntary Departure and the number of forced removal proceedings has decreased. On the other hand, the number of foreigners benefiting from the program supporting voluntary return (SEF, 2013; SEF, 2012) has increased. It should also be mentioned that Portugal is currently witnessing a slowdown in immigration, combined with the acquisition of Portuguese nationality and citizens returning to their country of origin.

Lack of knowledge on the impacts of detention and alternatives to detention in the return policy is a limitation that is important to overpass. The Return Directive sheds some guidelines already transposed into some ongoing national projects.

Considering the objectives of this Study, it becomes possible to conclude that - as regards the Portuguese case - the legal bases and practices in matters of detention and alternatives to detention provide a positive characterization of the Country. It is now important to develop new ways to assess policies, systematize the collection of quantitative data and, as deemed possible, disaggregated, thus creating opportunities for the development of effective policies on immigration and asylum aiming at promoting human dignity.

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*Annex 1

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).

| | 2009 | 2010 | 2011 | 2012 | 2013 |
|--|------|------|------|------|------|
| Statistics on number of third-country nationals in detention per category | | | | | |
| Total number of third-country nationals in detention | n.a. | 248 | 235 | 196 | n.a. |
| Number of third-country national applicants for international protection in ordinary procedures in detention | n.i | n.i | n.i | n.i | n.i |
| Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention | n.i | n.i | n.i | n.i | n.i |
| Number of applicants for international protection subject to Dublin procedures in detention | n.i | n.i | n.i | n.i | n.i |
| Number of rejected applicants for international protection in detention | n.i | n.i | n.i | n.i | n.i |
| Number of rejected family reunification applicants in detention | n.i | n.i | n.i | n.i | n.i |
| Number of other rejected applicants for residence permits on basis other than family reunification (Please specify) | n.i | n.i | n.i | n.i | n.i |
| Number of persons detained to prevent illegal entry at borders in detention | n.i | n.i | n.i | n.i | n.i |
| Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a return decision in detention | n.i | n.i | n.i | n.i | n.i |
| Number of persons who have been issued a return decision in detention | n.i | n.i | n.i | n.i | n.i |
| 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.) and by category | n.i | n.i | n.i | n.i | n.i |
| Number of other third-country nationals placed in immigration detention | n.i | n.i | n.i | n.i | n.i |

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| Statistics on number of third-country nationals provided alternatives to detention | | | | | |
|---|-----|-----|-----|-----|-----|
| Total number of third-country nationals provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of international protection applicants subject to Dublin procedures provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of rejected applicants for international protection provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of rejected applicants for family reunification provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of other rejected applicants for residence permits on basis other than family reunification (Please specify) | n.i | n.i | n.i | n.i | n.i |
| Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of persons issued a return decision provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| 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.) and by category provided alternatives to detention | n.i | n.i | n.i | n.i | n.i |
| Number of other third-country nationals provided alternatives to detention (Please specify the category(ies)) | n.i | n.i | n.i | n.i | n.i |

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 | 2009 | 2010 | 2011 | 2012 | 2013 | Source / further information |
|---|-------------|-------------|-------------|-------------|-------------|-------------------------------------|
| Average length of time in detention of all categories of third-country nationals in detention | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of applicants for international protection in ordinary procedures | n.i | n.i | n.i | n.i | n.i | |

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| | | | | | | |
|---|-----|-----|-----|-----|-----|--|
| Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures) | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of applicants for international protection subject to Dublin procedures | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of rejected applicants for international protection | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of rejected family reunification applicants | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of other rejected applicants for residence permits on basis other than family reunification (Please specify) | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of persons detained to prevent illegal entry | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of persons who have been issued a return decision | n.i | n.i | n.i | n.i | n.i | |
| 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 | n.i | n.i | n.i | n.i | n.i | |
| Average length of time in detention of other third-country nationals placed in immigration detention | n.i | n.i | n.i | n.i | n.i | |

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