

## EMN Study 2020

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



Estonian national report

April 2021

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on Detention and Alternatives to detention in international protection and return procedures. The contributing EMN NCP have provided information that is, to the best of their knowledge, up to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.

This document was produced by Eike Luik the expert of EMN EE NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.

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

### Common Template for EMN Study 2020

#### 1 BACKGROUND AND RATIONALE FOR THE STUDY

In the context of migration, detention is a *non-punitive administrative measure applied by the state to restrict the movement through the confinement of an individual for another immigration procedure to be implemented*.<sup>1</sup> EU legislation regulates in detail the detention of migrants within the context of international protection and return procedures, setting the grounds on which an individual can be deprived of liberty and the relevant principles governing the matter. At both European and International levels, legal sources agree on the fact that detention should be used as a "last resort" and encourages the use of alternatives to detention, as an application of the principles of necessity and proportionality in order to avoid arbitrary deprivation of liberty.<sup>2</sup>

Although there is no common legal definition of alternatives to detention, they can be defined as *non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory*.<sup>3</sup> These measures, having an impact on the person's rights,<sup>4</sup> are subject to human rights standards and have to be imposed, on a case-by-case basis, by taking into consideration individual factors. Examples of such alternative measures include the obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.<sup>5</sup> Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.<sup>6</sup> As a general principle, it is essential to clarify that the consideration of alternatives is only relevant and legal when there are legitimate grounds to detain.

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<sup>1</sup> EMN Glossary

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

<sup>3</sup> EMN Glossary

<sup>4</sup> These rights include: the right to family life (Article 2 ECHR; Article 9 CFREU; Article 12(2) 1951 Refugee Convention), the right to privacy (Article 8 ECHR), prohibition of torture (Article 3 ECHR) the prohibition on inhuman or degrading treatment (Article 3 ECHR).

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

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

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

The principles of **necessity** and **proportionality** should be observed as a core part of the decision to detain a third-country national under EU law. Nevertheless, it should be noted that the principle of necessity, while applying in EU law in relation to the grounds for detention that must be justified, is not taken into consideration by the ECHR. Also, the principles of **non-arbitrariness** and legality provide that detention should be based on grounds for detention established by law.<sup>7</sup> Moreover, as the European Court of Human Rights has underscored in several judgments (see section 5 below), in practice, domestic authorities shall **effectively verify** and provide with **evidence** whether an alternative measure less coercive than detention is possible.<sup>8</sup> In this sense, the administrative detention of individuals can take place only in those cases where there are no alternatives.

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

The lack of **empirical research** on the practical applicability of alternative measures and which takes into account all related costs, has been identified as one of the main challenges for their implementation. In fact, there are several alternative measures, and some information is available

<sup>7</sup> The use of detention and alternatives to detention in the context of immigration policies, EMN 2014.

The principles of non-arbitrariness and legality are laid down in the following international law instruments: Art. 9 Universal Declaration of Human Rights (1948), Art. 9 (1) International Covenant on Civil and Political Rights (1966), Art 16(4) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990), Council of Europe (PACE), Resolution 1707(2010), 10 Guiding Principles on detention of asylum seekers and irregular migrants, §9.1.5.

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

<sup>9</sup> Legal and practical aspects of effective alternatives to detention in the context of migration, *Analysis of the Steering Committee for Human Rights (CDDH)*, 7 December 2017; Commissioner for Human Rights, Human Rights Comment, High time for states to invest in alternatives to migrant detention, 31/01/2017; Parliamentary Assembly, Resolution 2020 (2014), § 8.

<sup>10</sup> Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, § 48.

<sup>11</sup> European Commission, Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, Brussels, 28.3.2014, p. 15.

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

## 2 STUDY AIMS AND OBJECTIVES

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

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

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

Categories of third-country nationals considered in the study will include international protection applicants and individuals who have been issued a return decision. The study will focus on detention for asylum/return purposes only and will not include in its scope detention of third-country nationals who have committed a criminal offence. The study will give special attention to the possibility of detaining and/or providing alternatives to detention to vulnerable persons such as minors, families with children, pregnant women and persons with special needs.

The study will consider legal and practical approaches related to provision of detention and alternatives **available during the reporting period January 2015- December 2020**.

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<sup>12</sup> Effective Alternatives to the Detention of Migrants, International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 2019. Cost-effectiveness is intended as the financial costs of alternatives to detention as compared with the costs of detention, taking into consideration their outcomes (effects). For instance, reducing the length of time a migrant is detained is a factor that might reduce the costs associated with detention.

## MAIN RESEARCH QUESTIONS

The study seeks to address two primary questions:

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

## 3 OVERVIEW OF THE EU ACQUIS

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

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

The Reception Conditions Directive foresees a list of six grounds that may **justify the detention** of asylum seekers:

1. To determine the identity or nationality of the person;
2. To determine the elements of the asylum application that could not be obtained in the absence of detention (in particular, if there is a risk of absconding);

<sup>13</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

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

3. To decide, in the context of a procedure, on the asylum seeker's right to enter the territory;
4. In the framework of a return procedure when the Member State concerned can substantiate on the basis of objective criteria that there are reasonable grounds to believe that the person tries to delay or frustrate it by introducing an asylum application;
5. For the protection of national security or public order;
6. In the framework of a procedure for the determination of the Member State responsible for the asylum application.

Moreover, according to Article 18 of the Asylum Procedures Directive,<sup>15</sup> it is not lawful to detain a person solely for the reason that s/he has lodged an asylum application.

To guarantee the **non-arbitrariness** of detention and the respect of fundamental rights of applicants for international protection, the list above is exhaustive. (Article 8). Several procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further, the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10). Furthermore, according to the Dublin Regulation (Article 28),<sup>16</sup> "when there is a significant risk of absconding, Member States may detain the person concerned to secure transfer procedures following this Regulation, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively."

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

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

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

<sup>15</sup> COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and its recast Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

<sup>16</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

<sup>17</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>18</sup> C-61/11 relates to the interpretation of Articles 15 and 16 of Directive 2008/115. The court specifically concluded that such Articles must be interpreted as precluding a Member State's legislation which



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

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

##### Obligation to consider alternatives to detention

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

##### Risk of absconding

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

#### 5 RELEVANT SOURCES AND LITERATURE

##### EMN Studies and Ad-hoc Queries

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

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provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.



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

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

## Other relevant sources

- British Institute of International and Comparative Law, "Immigration Detention and the Rule of Law: Safeguarding Principles", 2013
- Council of Europe, Twenty Guidelines on Forced Return, 2005
- Council of Europe, "Legal and practical aspects of effective alternatives to detention in the context of migration", 2017
- Council of Europe, "Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results", 2019
- Council of Europe, European Commission and the European Migration Network, conclusion from the Conference "Effective Alternatives to the Detention of Migrants", April 2019
- European Asylum Support Office (EASO), Detention of applicants for international protection in the context of the Common European Asylum System, 2019
- European Commission, Return Handbook, C(2017) 6505, 2017
- European Law Institute, Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards, 2017.
- European Union Agency for Fundamental Rights, Detention of third-country nationals in return procedures, 2013
- European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, 2015
- Odysseus Academic Network, Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, 2015.
- UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, 2011.

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

## 6 DEFINITIONS

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

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

**'Alternatives to detention'** refers to non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of forced return or deciding on the individual's right to remain in the Member State, such as regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring. In the EU context, pursuant Art. 2(h) of Directive 2013/33/EU (Recast Reception Conditions Directive) and Art. 26 of Directive 2013/32/EU (Recast Asylum Procedures Directive), detention is defined as confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty.

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

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

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

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

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

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

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<sup>19</sup> Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/docs/interactive\\_glossary\\_6.0\\_final\\_version.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf)

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

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

**'Dublin procedure'** is defined as the process for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. (Source: Article 1 of the Regulation 604/2013).

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

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

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

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

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

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

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<sup>20</sup> For the purpose of this study, the criminal detention, which is the deprivation of liberty which applies to a citizen or non-citizen due to criminal charges or convictions, is excluded. The administrative detention which is here considered is an administrative or civil decision taken by (usually) immigration authorities that operates separately to the powers given to the police and criminal courts.

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

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

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

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

## **Common Template of EMN Study 2020**

### **National Contribution from Estonia**

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

Top-line factsheet [max. 2 pages]

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

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

The EMN study “Detention and Alternatives to detention in international protection and return procedures” aims to identify practical challenges and best practices concerning the use of detention and alternatives to detention in the framework of international protection and return procedures.

In the first section of the study an overview of legislative framework on detention and alternatives to detention in international protection and returns procedures is given, although priority is given to legislative changes, which took place after the 2015 (as the study is considered as an update study on the same topic prepared by the EMN in 2014). Since last report several amendments have been made to national legislation. Main legal changes in the field of international protection have been the need to assess the vulnerability of a person and the obligation to take it into account in international protection proceedings; linking the risk of absconding with the grounds for detention; and specifying the rules on accommodation and detention in case of an emergency situation and also co-operation with the European Asylum Support Office.

Main legislative amendments in return context have been the specification of the situations where person’s risk of absconding occurs (including the person obligation to co-operate in return procedures); regulation of an accommodation and detention of an irregular migrants in case of an emergency and mass immigration (primarily that the Police and Border Guard Board (hereinafter the PBGB) or the Estonian Internal Security Service will apply to an administrative court for permission to detain a person for up to seven days, to perform the necessary procedural acts and international cooperation of the European Border and Coast Guard Agency).

A new surveillance measure, appearing for counselling, was introduced in the AGIPA<sup>21</sup> and OLPEA<sup>22</sup> recently.

As regards the categories of persons who can be detained in Estonia, national legislation provides a legal basis to detention of all categories who fall under a scope of this study (applicants for international protection in ordinary procedures, irregular migrants detected in the territory, persons who have been issued a return decision and irregular migrants detected at the border), except the applicants for international protection in border procedures, as Estonia does not have border procedure. Separately the detention of

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<sup>21</sup> the Act on Granting International Protection to Aliens

<sup>22</sup> the Obligation to Leave and Prohibition on Entry Act

vulnerable persons is observed - although that vulnerabilities are taken into account, all vulnerable groups, including minors, families with children, pregnant women or persons with special needs, may be detained according to national legislation. Exceptions are unaccompanied minors, whose detention is allowed by national legislation, but not used in practice and victims of human trafficking, whose detention is prohibited. However, as a general rule the detention of vulnerable persons is avoided and alternative measures are provided instead.

In the second section of the study the availability and practical organisation of alternatives to detention are examined. In Estonian legislation the surveillance measures are considered as the alternatives to detention and although that the alternatives to detention and basis for detention in the international protection and return proceedings overlap at a large extent, in practice they are applied differently.

Alternatives to detention are playing different role in international protection procedures, than in return procedures. National legislation stipulates that obligation to deposit a document when requested by PBGB and to reside at designated place are procedural obligations of an applicant for international protection (from the start of the proceedings until the termination of proceedings), but at the same time these are also stipulated as surveillance measures. Thus, in practice they are always used, but rarely formalized as a surveillance measures. In case depositing documents or residing in designated place is formalized as a surveillance measure the purpose of it must be justified by the PGBG. If there is a need for additional surveillance measure (alternative to detention) provided in legislation, an administrative act will be issued to a person, justifying and determining the alternative measure. But, as national legislation foresees them as surveillance measures, they are examined in this study as such. In return procedures the applicable surveillance measure will be assigned to a person already while issuing a return decision (the decision on whether to apply the surveillance measure or not will be taken by the official of the PGBG) and if there is a need for additional surveillance measure, a separate administrative act (decision on the surveillance measure) will be issued to a person.

Most commonly used alternatives in international protection and return procedures are appearing for registration at the PBGB at prescribed intervals and appearing at the PBGB to clarify circumstances ensuring compliance with a return decision (in return context). Person, who is subject to surveillance measure, has to meet the PBGB official approx. once in a month.

In third section of the study an overview of when and how the decision about placing a person in detention instead of alternative to detention is made and which are the grounds for authorising detention, meaning which are the criteria used to decide whether to place the third-country national in detention. When deciding whether to place a person in detention or apply the surveillance measure, in both of the procedures an individual assessment is made by the PBGB taking into account all the relevant circumstances and assessing first whether the surveillance measures can be applied efficiently. In international protection procedures the most essential is to assess whether the efficient application of the surveillance measures is impossible to use. In return procedures if the surveillance measures cannot be applied efficiently. Thus, priority must be given to alternative to detention. In cases where detention is unavoidable, the principle of proportionality and the relevant circumstances of a person must be taken into account in each individual case. A person can be detained for up to 48 hours without the permission of an administrative court in accordance with national legislation. In case it is necessary to detain the person for longer than 48 hours, a permission has to be obtained from the administrative court.

In Estonia the alternatives to detention are primarily used in return procedures, as persons are cooperative with authorities and the risk for absconding from the procedures is less likely

to happen. In Estonia the percentage of voluntary departure from the total number of returns, is about 90%. However, alternatives to detention are not effective if the person poses risk of absconding. In international protection procedures the person's risk of absconding is higher, as Estonia is not considered as a destination country for the applicants. Thus, placing the person in detention center is very much related to the assessment on how high is the risk of absconding.

In forth section impact of detention and alternatives to detention on the effectiveness of return and international protection procedures will be assessed. No evaluations or studies on effectiveness of procedures have been conducted in Estonia as there is a relatively small number of applicants of international protection and significantly high return rate in return procedures.

Statistical data on use of alternatives to detention in international protection and return procedures is not available due to very complex system of provision of alternatives to detention. Statistical information on the use of detention is provided in the Annex of this study.

#### Section 1: National policy and legal framework: development since 2015<sup>23</sup>

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

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

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

##### General background on detention, both in international protection and return procedures

National legislation stipulates the grounds in which persons may be detained within the international protection and return procedures and describes the possibilities for alternatives to detention (surveillance measures).

Grounds for detention of an applicant for international protection in a detention center are regulated in the Act on Granting International Protection to Aliens (hereinafter AGIPA) closely linked to the European Union law, in particular [Directive 2013/33 / EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection](#). Grounds for detention of a person who is in a country without a legal basis to stay, are enacted in the Obligation to Leave and Prohibition on Entry Act (hereinafter OLPEA), which is in accordance with the [Directive 2008/115/EC of the](#)

<sup>23</sup> The latest EMN study on detention and alternatives to detention was published in 2014, therefore the study will cover the period between 2015–2020. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_study\\_detention\\_alternatives\\_to\\_detention\\_synthesis\\_report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf)



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.

An applicant for international protection as well as individuals who have been issued a return decision may be detained if the efficient application of the surveillance measures provided in legislation is impossible. The detention has to be in accordance with the principle of proportionality and upon detention all essential circumstances related to the person shall be taken into account. An applicant for international protection may be detained if it is unavoidable necessary and if the ground of detention stipulated in AGIPA exists. A person in return procedure may be detained if a ground for detention stipulated in OLPEA exists.

Pursuant to the AGIPA § 36<sup>1</sup> p 1 and the OLPEA § 15 p 1, an applicant for international protection and a person in return procedures may be detained on the basis provided accordingly in the AGIPA § 36<sup>1</sup> p 2 and the OLPEA § 15 p 2. In international protection procedures taken into account the essential circumstances related to the applicant in every single case and if the efficient application of the surveillance measures is impossible. And in return procedures taken account of in each case and if the surveillance measures cannot be applied efficiently. In doing so, detention must comply with the principle of proportionality and the relevant circumstances of a person must be taken into account in each individual case.

A person can be detained for up to 48 hours without the permission of an administrative court in accordance with both the AGIPA and OLPEA<sup>24</sup>. In case it is necessary to detain the person for longer than 48 hours, a permission has to be obtained from the administrative court to detain the person and place him or her into detention centre for up to two months. The administrative court may, pursuant to the Code of Administrative Court Procedure, extend the term for detention by up to four months at a time. A person may be detained if the efficient application of the surveillance measures provided in legislation is impossible. The detention has to be in accordance with the principle of proportionality and upon detention all essential circumstances related to the person shall be taken into account.

If a person has previously been detained as an applicant for international protection on the basis of the AGIPA, but his/her application was rejected and preparation for his/her deportation is started, then PBGB may detain the person on the grounds of OLPEA. In cases, if a person is first detained under the OLPEA but later applies for international protection therefore acquiring a right to stay as an applicant, the basis for detention will also be changed to AGIPA and procedures under the OLPEA will be suspended pending a final decision.

Main legislative changes since 2015

The AGIPA was amended in 2016, when Estonia transposed the so called second generation EU asylum-related acquis<sup>25</sup>. Throughout the AGIPA, the term of asylum seeker was replaced with the term an applicant for international protection.

Since 2015 several changes have entered into force, concerning the detention of applicants for international protection:

<sup>24</sup> OLPEA § 15 (3) and AGIPA § 15 (6)

<sup>25</sup> <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5dd26d064>

➤ Need to assess the vulnerability of a person and take it into account in proceedings is specified, entered into force on 1<sup>st</sup> May 2016 –

- The specific situation of a vulnerable person and the special needs arising thereof have to be taken into account in the international protection proceedings. An applicant with special needs is, in particular, a vulnerable person, such as a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with minor children, a victim of trafficking, a person with serious illness, a person with mental health problems and a victim of torture or rape or a person who has been subjected to other serious forms of psychological, physical or sexual violence.
- The PBGB or other administrative body has to establish special need of a person and enable the support corresponding to his/her or her special need.
- Where necessary, other administrative authority or expert will be involved in the identification of a special need. The special need shall be identified as soon as possible after the submission of the application of international protection.
- The PBGB has to fix the special need of an applicant in writing.
- All the administrative authorities and persons who are in contact with an applicant have to observe the special need of the applicant and consider it systematically and individually during the whole international protection proceedings, taking also account of the special need which has become evident in a later stage of the international protection proceedings. /.../
- All the officials and employees who are in contact with the applicants for international protection shall comply with such competency requirements which enable them to observe a special need and take it into account.<sup>26</sup>

➤ Additionally, with the same amendments the principle of the “ensuring family unity” was added to AGIPA:

- Family members shall be accommodated together.
- A minor child of an applicant or an applicant who is a minor shall be accommodated together with his or her parent, his or her single minor sister or brother or guardian on condition that it is in the interests of the minor.
- A dependent adult applicant with a special need will be accommodated, where possible, together with his or her guardian, who is already staying in Estonia.<sup>27</sup>

➤ With the same amendment, the extension of the term for detention, was prolonged to four months at a time (previously the term was two months). The term for detention may be extended only by the administrative court.

➤ According to amendment, entered into force also on 1<sup>st</sup> May 2016, the risk of absconding (on a basis of AGIPA) was linked with the grounds for detention (on a basis of OLPEA § 6<sup>8</sup>), or if a person has left another Member State of the European Union without a permission.

➤ With the amendment that came into force on 7th May 2020 a new provision was enacted regarding the revision of application for detention accordingly:

- The detention of an applicant for international protection shall be decided by an administrative court pursuant to the provisions for the granting of permission for an administrative measure of the Code of Administrative Court Procedure.

<sup>26</sup> AGIPA § 15<sup>1</sup>. Assessment of special need of applicant and taking account of

<sup>27</sup> AGIPA § 31<sup>3</sup> p 1-3

- If an exceptionally large number of applications for detention of an applicant for international protection have been submitted to a court and the court is unable, due to an objective obstacle, to review the application for detention, or the review is significantly complicated, the court may make the ruling on the detention of the applicant for international protection without the descriptive and reasoning part.
- If an applicant for international protection wishes to contest the detention which the court formalized by a ruling without a descriptive and reasoning part, the court shall submit the descriptive and reasoning part to the applicant for international protection at the first opportunity.

➤ On 27th June 2020 an amendment regarding the exceptional procedures in event of an emergency situation as the mass immigration influx of third country nationals entered into force. In order to be able to accommodate and detain applicants for international protection in emergency situations changes were made to AGIPA<sup>28</sup> accordingly:

- In order to verify the legal bases for the arrival and stay of an applicant for international protection in Estonia, the PBGB or the Estonian Internal Security Service may detain an applicant for international protection for up to 48 hours without the permission of an administrative court.
- The PBGB or the Estonian Internal Security Service shall apply to an administrative court for permission to detain an applicant for international protection for up to seven days if in an emergency caused by mass immigration it is not possible, due to an objective obstacle, to perform the necessary procedural acts with regard to the applicant for international protection so that the court could assess the justification for detaining the applicant for international protection.
- The PBGB or the Estonian Internal Security Service shall submit an application for detention of an applicant for international protection to an administrative court no later than within 24 hours as of the detention of the applicant for international protection. The application shall at least describe the essential circumstances of the mass immigration, list the applicants for international protection and the related procedural acts which have been prevented, and indicate the time needed to carry out the procedural acts.
- Upon detention of an applicant for international protection, the provisions state supervision measures described in the Obligation to Leave and Prohibition on Entry Act, may be applied to the applicant.
- In an emergency, an applicant for international protection may be detained outside a detention centre. A third country national shall be placed outside a detention centre on the basis of a decision of an administrative court or a detention report.
- An applicant for international protection shall not be placed in a prison.
- Family members detained in an emergency shall be placed together at the earliest opportunity, unless the separate detention of a family member is necessary for the protection of other persons, public health, public order or national security. Family privacy shall be guaranteed as much as possible.
- With the amendments to the Act on Granting International Protection to Aliens and the Obligation to Leave and Prohibition on Entry Act, Article 18 of the EU Return Directive 2008/115/EC was transposed into national legislation, which allows member states to change the requirements for detention of a third country national in a situation where an exceptionally large amount of irregular immigrants arrive.

<sup>28</sup> Act on Granting International Protection to Aliens § 36<sup>6</sup> p 1-12

- With the same amendments to the AGIPA, international cooperation with the European Asylum Support Office (EASO) was regulated, that in order to perform the tasks provided in the AGIPA, the PBGB may request assistance from the European Asylum Support Office.

In 2019, a new detention center, was opened near Tallinn in Rae Parish with the capacity to accommodate up to 123 persons.

#### Legal basis for detention in return procedures –

Detention of a person who is staying in Estonia without a legal basis to stay, is regulated in the OLPEA § 15 p 1 and 2. This also includes a person whose application for international protection has been rejected and who have no legal basis to stay in Estonia. Such provision is based on Article 15 (1) of Directive 2008/115 / EC of the European Parliament and of the Council.

The detention of a person has to be in accordance with the principle of proportionality and upon detention relevant circumstances related to the person have to be taken account of in each case and if the surveillance measures provided in OLPEA does not ensure the efficiency of the compliance with the obligation to leave and, primarily, in the case:

- 1) there is a risk of abscond of the person;
- 2) the person does not comply with the obligation to co-operate or
- 3) the person does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.<sup>29</sup>

Upon the issue of a return decision or detention of a person, risk of abscond will be assessed.

OLPEA provides the list of objective criteria for risk of abscond:

- 1) a person has not left Estonia or a member state of the Schengen Convention after the term has expired for voluntary compliance with the obligation to leave imposed by the return decision;
- 2) a person has submitted false information or falsified documents upon application for the legal basis for the stay in Estonia or the extension thereof, for the Estonian citizenship, international protection or identity document;
- 3) there is a reasoned doubt regarding the identity or citizenship of a person;
- 4) a person has repeatedly committed intentional criminal offences or has committed a criminal offence for which he or she has been sentenced to imprisonment;
- 5) a person has not complied with the surveillance measures applied with regard to him or her to ensure compliance with the return decision;
- 6) a person has notified the PBGB or the Estonian Internal Security Service or the administrative authority concludes from his or her attitudes or conduct that he or she does not wish to comply with the obligation to leave;
- 7) a person has entered into Estonia during the period of validity of the prohibition on entry applied with regard to him or her;
- 8) a person has been detained due to illegally crossing the external border of Estonia and he or she has not been issued the permit or right to stay in Estonia;
- 9) a person has left without permission the residence, assigned to him or her, or another member state of the Schengen Convention.

<sup>29</sup> OLPEA § 15 p 1, 2

10) the obligation to leave of a person has been enforced by a court judgment.<sup>30</sup>

Person will be released immediately from detention if the basis for detention has ceased to exist or the expulsion is pointless.

#### Main legal changes since 2015

Since 2015 several changes have entered into force, concerning the detention of a person in return proceedings. The main changes are as follows:

- Upon a detention of a person there is an obligation to assess whether there is a risk of absconding. According to the amendment made on 1<sup>st</sup> May 2016 a risk of absconding exists if person has left without permission the residence assigned to him or her or another member state of the Schengen Convention.
- According to amendment that entered into force on 1<sup>st</sup> July 2019, a new ground for risk of absconding was added to OLPEA, according to which risk of abscond occurs also when the obligation to leave to a third country national has been enforced by a court judgment.<sup>31</sup>
- According to amendment that entered into force on 27th June 2020, the list of risks of absconding was supplemented. The new provision foresees that if a person has notified the PBGB or the Estonian Internal Security Service or the administrative authority concludes from his or her attitudes or conduct that he or she does not wish to comply with the obligation to leave.  
The Aliens Act stipulates that the TCN and other person concerned is obliged to cooperate in every way in the clarification of the facts relevant to the proceedings in the organization of the entry into Estonia, the temporary stay, residence and employment in Estonia and the departure from Estonia of an alien. In order not to be a purely declaratory obligation, the obligation to assist will be linked to the risk of absconding. If a person obstructs the obligation to leave (for example, does not take part in proceedings, refuses to give fingerprints, etc.), it might be a ground not to issue a deadline for voluntary departure and to detain a person.
- As of 27th June 2020, significant detention related changes were made to the AGIPA and the OLPEA concerning the accommodation and detention of applicants for international protection in case of an emergency and mass immigration, changes are described previously under the same question, Q1. Main amendments were that the PBGB should apply from an administrative court for permission to detain an applicant for international protection for up to seven days, to perform the necessary procedural proceedings with regard to the applicant for international protection. The authority coordinating the resolution of an emergency shall designate the start and end dates of the application of emergency measures and shall immediately inform the European Commission thereof. With the same amendments to OLPEA, international cooperation with the European Border and Coast Guard Agency (Frontex) was regulated, that in order to perform the tasks provided for in the OLPEA, the PBGB may request assistance from the European Border and Coast Guard Agency.

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

<sup>30</sup> OLPEA § 6<sup>8</sup> p 1-10

<sup>31</sup> OLPEA § 6<sup>8</sup> p 1-10

There have been only few legal changes concerning the use of alternatives to detention since 2015.

For the purposeful and efficient, simple and expedient conduct of proceedings for international protection surveillance measures may be applied. A new surveillance measure, appearing for counselling, was introduced in the AGIPA and OLPEA on 27th June 2020. Main purpose of this amendment was to provide to a person staying without a legal basis and who is not placed in a detention center or who is released from detention center, social or psychological counselling during the stay in Estonia, if it is necessary to fulfil the return decision, or to ensure the security of society. The counselling service will be organized and provided by the PBGB. If a person does not participate in the counselling without a good reason, the PBGB may consider this as a violation of surveillance measures.<sup>32</sup>

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

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

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

	Categories of third-country nationals	Can third-country nationals under this category be detained?  Yes/No	If yes, what is the legal basis for detention?  <i>List the ground for detention</i>	Which alternatives to detention are available for this category?  <i>List in bullet point the alternatives to detention available for each category. Further details on each measure will be collected in section 2.</i>	What are the (judicial and non-judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?
<b>International Protection</b>	<b><i>Applicants for international protection in ordinary procedures</i></b>	Yes	An applicant for international protection may be detained if it is unavoidably necessary on the following bases: 1) identification of the person or verification of the identity; 2) verification or identification of the citizenship of the person; 3) verification of the legal bases of the entry into	For the purposeful and efficient, simple and expedient conduct of proceedings for international protection, the Police and Border Guard Board may apply the following surveillance measures with respect to applicants:	A decision to detain a person in Estonia for longer than 48 hours can only be made by the administrative court. Surveillance measures are applied by the PBGB.

<sup>32</sup> AGIPA § 29 p 1 (5) and OLPEA § 10 p 2 (3<sup>1</sup>)

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			<p>and the stay in the state of a person;</p> <p>4) identification of the circumstances relevant to the proceedings of the application for international protection, primarily in the case when there is a risk of abscond;</p> <p>5) there is a reason to believe that the person has submitted an application for international protection to postpone the obligation to leave or prevent expulsion;</p> <p>6) protection of the security of state or public order;</p> <p>7) transfer of a person in the procedure provided for in Regulation (EU) No 604/2013 of the European Parliament and of the Council, if there is a risk of abscond of a person.<sup>33</sup></p>	<p>1) residing in a determined place of residence;</p> <p>2) appearing for registration at the Police and Border Guard Board at prescribed intervals;</p> <p>3) notifying the Police and Border Guard Board of the absence from the place of residence for a period longer than three days;</p> <p>4) depositing the travel document issued by a foreign state at the Police and Border Guard Board;</p> <p>5) appearing for counselling.<sup>34</sup></p>	
	<b>Applicants for international protection in border procedures</b>	N/A. Estonia has no border procedures in place.	N/A. Estonia has no border procedures in place.	N/A. Estonia has no border procedure.	N/A
<b>Return procedures</b>	<b>Irregular migrants detected in the territory</b>	Yes	<p>A person may be detained if the application of surveillance measures provided does not ensure the efficiency of the compliance with the obligation to leave and, primarily, in the case:</p> <p>1) there is a risk of abscond of a person;</p>	<p>In order to prevent the risk of abscond the PBGB may, by a return decision, require a person to comply with surveillance measures. Surveillance measures are:</p> <p>1) residing in a determined place of residence;</p>	<p>A decision to detain a person in Estonia for longer than 48 hours can only be made with the permission of an administrative court.</p> <p>Surveillance measures are applied by the PBGB.</p>

<sup>33</sup> AGIPA § 36<sup>1</sup> p 2 (1-7)<sup>34</sup> OLPEA § 29 p 1 (1-5)



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		<p>2) a person does not comply with the obligation to co-operate or</p> <p>3) a person does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.<sup>35</sup></p>	<p>2) appearing for registration at the PBGB at prescribed intervals;</p> <p>3) appearing at the PBGB to clarify circumstances ensuring compliance with a precept;</p> <p>3<sup>1</sup>) appearing for counselling;</p> <p>4) notifying the PBGB of the changes of residence of a person and of his or her prolonged absence from the place of residence;</p> <p>5) notifying the PBGB of the changes of a person's marital status.</p> <p>6) depositing of a travel document of a foreign country or an identity document of a person at the PBGB or the Estonian Internal Security Service.<sup>36</sup></p>	
<b><i>Persons who have been issued a return decision</i></b>	Yes	<p>Detention is possible if person has not complied with the surveillance measures applied to him or her to ensure compliance with the return decision.<sup>37</sup></p> <p>But also, if the person hasn't left the country within the term for voluntary departure or the return decision is subject to enforcement.</p>	<p>In order to ensure compliance with the obligation to leave, surveillance measures may be applied in return decision. If there are need for additional surveillance measures, a separate administrative act will be issued.<sup>38</sup></p>	<p>A decision to detain a person in Estonia for longer than 48 hours can only be made with the permission of an administrative court.</p>
<b><i>Irregular migrants</i></b>	Yes	<p>If an irregular migrant is detained at the border, a decision on prohibition an</p>	<p>In this case, the national legislation does not provide possibility for</p>	<p>A decision to detain a person in Estonia for longer than 48 hours can</p>

<sup>35</sup> OLPEA § 15 p 2 (1-3)

<sup>36</sup> OLPEA § 10 p 1,2 (1-6)

<sup>37</sup> OLPEA § 6<sup>a</sup> p 5

<sup>38</sup> OLPEA § 7 p 3

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<b>detected at the border</b>		entry shall be made, according to OLPEA § 28 <sup>2</sup> .  If enforcement of a decision on prohibition on entry is not possible within 48 hours, the PBGB will apply to the administrative court for permission to place a person to a detention centre and detain him or her for up to two months. The administrative court may, at the request of the PBGB, extend the term of detention.	alternatives to detention, the return decision will be enforced through detention.	only be made with the permission of an administrative court.
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Q4. Is it possible, within the national legal framework of your (Member) State, to detain (or to impose an alternative to detention to) persons belonging to **vulnerable groups**, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Yes/ No

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

	<b>International protection procedures</b>	<b>Return procedures</b>
	<i>Please indicate if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided</i>	<i>Please indicate here if the persons belonging to these vulnerable groups can be detained and under which circumstances. Please also indicate whether alternatives to detention are provided</i>
<b>Unaccompanied Minors</b>	<p>Yes. Although national legislation provides a possibility to accommodate an unaccompanied minor to the accommodation center or detention center<sup>39</sup>, it has not been used in practice for years.</p> <p>The Tallinn Circuit Court has specified, that detention of a minor is justified only in the extreme circumstances, as something truly extraordinary, such as a serious threat to public order (suspicion of terrorism,</p>	<p>Yes. Although national legislation provides a possibility to detain an unaccompanied minor, in practise an unaccompanied minor shall be provided substitute care service (incl. accommodation) by the Social Insurance Board during his or her stay in Estonia. Thus, alternatives to detention are provided.<sup>42</sup></p>

<sup>39</sup> AGIPA § 17 p 8

<sup>42</sup> OLPEA § 10 p 2

	<p>impossibility to be separated from a person whose detention in a detention center is absolutely unavoidable, etc.)<sup>40</sup>.</p> <p>Alternatives to detention are provided. An unaccompanied minor shall be provided substitute care service (incl. accommodation) by the Social Insurance Board during his or her stay in Estonia.</p> <p>There are no specific alternatives to the administrative detention for UAMs, but there are general alternatives brought out in OLPEA.<sup>41</sup></p>	
<b>Disabled people</b>	<p>Yes. The specific situation of a vulnerable person, as a disabled person, and the special needs arising therefrom are taken into account in the international protection proceedings.<sup>43</sup></p> <p>If the detention of an applicant for international protection at the detention centre is impossible for the security or health protection purposes or for other reasons or is materially complicated an applicant for international protection may be accommodated at the police detention house or under surveillance outside the detention centre on the decision of the head of the detention centre, thus alternatives to detention are provided, if needed.</p> <p>Upon detention of the minors, disabled persons, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence their special needs have to be taken into account and the PBGB will ensure regular monitoring of the detention thereof.<sup>44</sup></p>	<p>Yes, but the PBGB has to take into account the special needs of a vulnerable person and may suspend the execution of the decision on refusal of entry if the TCN is unable to leave Estonia immediately due to his or her physical or mental health condition or other good reason.<sup>45</sup></p> <p>Alternatives to detention can be applied, if needed.</p>

<sup>40</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020, case nr 3-15-2383 on 23.12.2015

<sup>41</sup> OLPEA § 10 p 2

<sup>43</sup> AGIPA § 15<sup>1</sup> p 1 an applicant with special needs is, in particular, a vulnerable person, such as a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with minor children, a victim of trafficking, a person with serious illness, a person with mental health problems and a victim of torture or rape or a person who has been subjected to other serious forms of psychological, physical or sexual violence.

<sup>44</sup> AGIPA § 36<sup>3</sup> p 3, 4

<sup>45</sup> OLPEA § 28<sup>2</sup> p 8

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	Alternatives to detention can be applied, if needed.	
<b>Elderly people</b>	<p>Yes, upon detention of the vulnerable persons, as elderly people, their special needs have to be taken into account and the PBGB will ensure regular monitoring of the detention thereof.<sup>46</sup></p> <p>Alternatives to detention are provided, if needed.</p>	<p>Yes, but the PBGB has to take into account the special needs of a vulnerable person and may suspend the execution of the decision on refusal of entry if the TCN is unable to leave Estonia immediately due to his or her physical or mental health condition or other good reason.<sup>47</sup></p> <p>Alternatives to detention can be applied if needed.</p>
<b>Families with children and single parents with minor</b>	<p>Yes, upon detention of the minors, pregnant women, single parents with minor children, their special needs have to take into account and the PBGB will ensure regular monitoring of the detention thereof.<sup>48</sup></p> <p>Alternatives to detention can be applied, if needed.</p>	<p>Yes, but the PBGB has to take into account the special needs of a vulnerable person and may suspend the execution of the decision on refusal of entry if the alien is unable to leave Estonia immediately due to his or her physical or mental health condition or other good reason.<sup>49</sup></p> <p>In 2019, the Tallinn Circuit Court decided to place an accompanied child in a detention center. The court decision was considered from the mother of the child, with whom the child arrived in Estonia and on whose further activities the child's well-being depended. Taking into account all the circumstances, the court considered the placement in the detention center to be proportionate, as also the child protection specialist found that the child's well-being in the detention center was better than in custody (the mother had no job, social guarantees or social network).<sup>50</sup></p> <p>Alternatives to detention can be applied, if needed.</p>
<b>Persons with serious illnesses and persons with mental disorders</b>	<p>Yes, upon detention of the disabled persons, elderly people, pregnant women, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence their special needs have to take into account and the PBGB will ensure</p>	<p>Yes, but the PBGB has to take into account the special needs of a vulnerable person and may suspend the execution of the decision on refusal of entry if the alien is unable to leave Estonia immediately due to his or her physical</p>

<sup>46</sup> AGIPA § 36<sup>3</sup> p 3, 4

<sup>47</sup> OLPEA § 28<sup>2</sup> p 8

<sup>48</sup> AGIPA § 36<sup>3</sup> p 3, 4

<sup>49</sup> OLPEA § 28<sup>2</sup> p 8

<sup>50</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020, case nr 3-19-1665 on 09.10.2019

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

	<p>regular monitoring of the detention thereof.<sup>51</sup></p> <p>Alternatives to detention are provided, if needed.</p>	<p>or mental health condition or other good reason.<sup>52</sup></p> <p>The Tartu Circuit Court has found that even in a situation where a person may need special care due to his or her state of health, the provision of necessary health care services to a person both in a detention center and, if necessary, in a medical institution is guaranteed by legislation and detention could be justified.<sup>53</sup></p> <p>Alternatives to detention can be applied, if needed.</p>
<b>Victims of human trafficking</b>	No, a person will be placed with his or her consent, a place designated by the Social Insurance Board. The Social Insurance Board will refer person to services specified in the Victim Support Act § 3 and 3 <sup>1</sup> . <sup>54, 55</sup>	No, a person will be placed with his or her consent, a place designated by the Social Insurance Board. The Social Insurance Board will refer person to services specified in the Victim Support Act § 3 and 3 <sup>1</sup> . <sup>56</sup>
<b>Pregnant women</b>	<p>Yes, upon detention of the pregnant women, their special needs have to be taken into account and the PBGB will ensure regular monitoring of the detention thereof.<sup>57</sup></p> <p>Alternatives to detention can be applied, if needed.</p>	<p>Yes, but the PBGB has to take into account the special needs of a vulnerable person and may suspend the execution of the decision on refusal of entry if the alien is unable to leave Estonia immediately due to his or her physical or mental health condition or other good reason.<sup>58</sup></p> <p>Alternatives to detention can be applied, if needed.</p>

<sup>51</sup> AGIPA § 36<sup>3</sup> p 3, 4

<sup>52</sup> OLPEA § 28<sup>2</sup> p 8

<sup>53</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020 case nr 3-19-376, on 26.03.2019

<sup>54</sup> According to Victim Support Act provision of victim support services includes:

- 1) counselling of victims;
- 2) assisting victims in communicating with state and local government authorities and legal persons.
- 3) ensuring safe accommodation;
- 4) ensuring catering;
- 5) ensuring access to necessary health services;
- 6) providing necessary material assistance;
- 7) providing necessary psychological assistance;
- 8) enabling necessary translation and interpretation services for receiving the services provided within the framework of victim support services;
- 9) providing other services necessary for physical and psycho-social rehabilitation of victims.

<sup>55</sup> Aliens Act § 226 p 1,2

<sup>56</sup> Aliens Act § 226 p 1,2

<sup>57</sup> AGIPA § 36<sup>3</sup> p 3, 4

<sup>58</sup> OLPEA § 28<sup>2</sup> p 8

## Section 2: Availability and practical organisation of alternatives to detention

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

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

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

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

	<b>Alternatives to detention</b>	<b>Yes/No</b>
A1	<p><b>Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)</b></p> <p>The alternative is used in international protection and in return procedures.</p> <p>Person following this surveillance measure, is obliged to report to the PBGB regularly, the interval is not determined in legislation.</p>	Yes
A2	<p><b>Obligation to surrender a passport, travel document or identity document</b></p> <p>The alternative is used in international protection and in return procedures.</p> <p>In international protection procedures, at the request of the PBGB an applicant is required to deposit his or her identity document until the termination of proceedings for international protection.<sup>59</sup></p> <p>Inversely to international protection proceedings, where presented alternative is almost always used, in return context it is not so</p>	Yes

<sup>59</sup> Note: national legislation stipulates, that obligation to deposit a document is already procedural obligation of an applicant for international protection (from the start of the proceedings until the termination of proceedings) and usually there is no need to specify this additionally as a surveillance measure. Thus, this surveillance measure is always used, but rarely formalized as a surveillance measure. If it formalized as a surveillance measure the purpose of it must be justified.

	commonly used, as it might complicate person's arrangement of their return (for example obtaining the tickets). <sup>60</sup>	
A3	<p><b>Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)</b></p> <p>The alternative is used both in international protection and in return procedures.</p> <p>TCN is obliged to co-operate with the proceeding and expelling authority, including the notification of the PBGB of the changes of his or her residence and of his or her prolonged absence from the place of residence. But also notifying the PBGB of the changes in the person's marital status.</p> <p>In international protection procedures the TCN has to notify the PBGB of the absence from the place of residence for a period longer than three days.</p>	Yes
A4	<p><b>Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.</b></p> <p>The alternative is used both in international protection<sup>61</sup> and in return procedures.</p> <p>Residing in a designated place of residence is commonly used alternative, as it simplifies the communication with the PBGB (the person is in contact with a specific official who is usually familiar with his case).</p> <p>The PBGB and the Estonian Internal Security Service have the right to check whether a person is residing in the determined place of residence.<sup>62</sup></p> <p>In Estonia house arrest is not applied.</p>	Yes
A5	<p>Release on bail (with or without sureties)</p> <p><i>Please provide information on how the amount is determined; whether this can be paid by a third person/entity r (e.g. family member, NGO or community group); and at what point the money is returned</i></p>	No

<sup>60</sup> Interview with the PBGB official on 23th March 2021

<sup>61</sup> Note: national legislation stipulates, that residing at a designated place is already procedural obligation of an applicant for international protection (from the start of the proceedings until the termination of proceedings) and usually there is no need to specify this additionally as a surveillance measure. Thus, this surveillance measure is always used, but rarely formalized as a surveillance measure. If it formalized as a surveillance measure the purpose of it must be justified.

<sup>62</sup> OLPEA § 10 p 3



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A6	Electronic monitoring (e.g. tagging)	No
A7	<i>Release to a guardian/guarantor Please provide information on who could be appointed as a guarantor/guardian (e.g. family member, NGO or community group)</i>  Usually no, only in case of accompanied or unaccompanied minor.	No
A8	Release to care worker or under a care plan	No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	No
A10		
A11	Other alternative measure available in your (Member) State. Please specify - <b>appearance for counselling</b> .  As a new surveillance measure – appearing to counselling, entered into force on 27.06.2020. <sup>63</sup> The alternative can be used both in international protection and in return procedures.  The purpose of this measure is to provide to a person social or psychological counselling (as applicable) during the stay in Estonia, if it is necessary to fulfil the obligation to leave, or to ensure the security of society. The counselling service is organized by the PBGB and co-funded by the AMIF. <sup>64</sup>	Yes

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

Most commonly used alternatives in international protection and return procedures are appearing for registration at the PBGB at prescribed intervals and appearing at the PBGB to clarify circumstances ensuring compliance with a return decision (in return context). For PBGB applying of a surveillance measure is rather an option than an obligation. If there is a need to apply a surveillance measure, it must be justified and issued to a person in written form by an administrative decision. Person, who is subject to surveillance measure as appearing for registration at the PBGB at prescribed intervals, has to meet the PBGB official approx. once in a month. Persons who are not placed into accommodation center can be invited to appear for registration to PBGB about once in a week or twice in a month. If needed the decision to extend or change the existing surveillance measure to more effective or reasonable one, will be decided by the PGBG.<sup>65</sup>

<sup>63</sup> OLPEA § 10 p 2 (3<sup>1</sup>)

<sup>64</sup> Explanatory letter on planned amendments to the OLPEA and AGIPA

<sup>65</sup> Interview with the PBGB official on 23th March and on a 7th April 2021

National legislation stipulates that obligation to deposit a document when requested by PBGB and to reside at designated place are procedural obligations of an applicant for international protection (from the start of the proceedings until the termination of proceedings), but at the same time these are also stipulated as surveillance measures. Thus, in practice they are always used, but rarely formalized as a surveillance measures. In case depositing documents or residing in designated place is formalized as a surveillance measure the purpose of it must be justified by the PGBG. If there is a need for additional surveillance measure (alternative to detention) provided in legislation, an administrative act will be issued to a person, justifying and determining the alternative measure.

In return procedures the applicable surveillance measure will be assigned to a person already while issuing a return decision (the decision on whether to apply the surveillance measure or not will be taken by the official of the PGBG) and if there is a need for additional surveillance measure, a separate administrative act (decision on the surveillance measure) will be issued to a person.

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

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

Name of alternatives (as reported in table 2 above) Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	
<i>In what it consists, and maximum duration</i>	<p>There is no fixed duration period of using this alternative. Alternative may be used repeatedly.</p> <p>In context of international protection procedures until the termination of proceedings for international protection.</p> <p>In context of return procedures, the term for voluntary compliance with the obligation to leave stipulated in the return decision may be extended by up to 30 days at a time. It is not specified how many times the deadline can be extended.</p> <p>Person subject to surveillance measure has to meet the PBGB official approx. once in a month. Persons who are not placed into accommodation center of applicants for international protection are invited to appear for registration to PBGB about once in a week or twice in a month.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>In international protection procedures AGIPA § 29 p 1 (1).</p> <p>In return procedures OLPEA § 10 p 2 (1).</p>
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Yes, although there is no available statistics.

<i>National authorities responsible to administer the alternative</i>	The PBGB.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	<p>Person is obliged to comply the surveillance measures applied to him.</p> <p>The PBGB may presume that the application for international protection has been withdrawn or waived by the applicant, if applicant has not appeared at the PBGB for performance of a procedural act within one month without good reason.<sup>66</sup></p> <p>If person does not comply with the surveillance measures applied, there might be risk of abscond and person may be detained.</p>
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The PBGB is obliged to monitor and assess whether the third-country national is able to follow the surveillance measures assigned to him or her.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The compliance with the surveillance measure is registered in written form and documented.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.

<sup>66</sup> AGIPA § 23 p 2 (3)

Name of alternatives (as reported in table 2 above) Obligation to deposit a passport, travel document or identity document	
<i>In what it consists, and maximum duration</i>	<p>There is no fixed duration period of using this alternative. Alternative may be used repeatedly.</p> <p>In context of international protection procedures obligation to deposit a document is already procedural obligation of an applicant for international protection (from the start of the proceedings until the termination of proceedings)<sup>67</sup> and usually there is no need to specify this additionally as a surveillance measure. Thus, this surveillance measure is always used, but rarely formalized as a surveillance measure. If it formalized as a surveillance measure the purpose of it must be justified.</p> <p>In context of return procedures, the term for voluntary compliance with the obligation to leave stipulated in the return decision may be extended by up to 30 days at a time. It is not specified how many times the deadline can be extended.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>AGIPA § 29 p 1 (4) and § 11 p 9, 10<sup>68</sup> at the request of the PBGB an applicant is required to deposit his or her identity document until the termination of proceedings for international protection.</p> <p>OLPEA § 10 p 2 (6) and 14<sup>1</sup> p 1 the travel document and identity document of a person who is staying in Estonia without a basis for stay may be deposited by the PBGB or the Estonian Internal Security Service in order to ensure the performance of the obligation to leave.</p>
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	<p>Yes, in context of international protection, the applicant is obliged to deposit the identity documents at the request of the PBGB. This surveillance measure is always used, but rarely formalized as a surveillance measure as this is an obligation of applicant for international protection.<sup>69</sup></p> <p>There is no statistics available.</p>

<sup>67</sup> AGIPA § 11 p 2

<sup>68</sup> AGIPA § 11 p 10 upon the admission for deposit of the identity document of an applicant for international protection the provisions of the OLPEA regarding the depositing of the travel document issued by a foreign state and identity document shall be applied.

<sup>69</sup> AGIPA § 11 p 2

<i>National authorities responsible to administer the alternative</i>	The PBGB.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	<p>Person is obliged to comply with the surveillance measures applied to him or her, also the duty to co-operate lies on him.</p> <p>If person does not comply with the surveillance measures applied with regard to him or her, there might be risk of abscond and person may be detained.</p>
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	The PBGB is obliged to monitor and assess whether the third country national is able to follow the surveillance measures applied to him or her.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	<p>In case of the deposit of the travel document of a foreign country and an identity document of a person the will issue a certificate about receipt of documents for deposit to a person.<sup>70</sup></p> <p>An applicant will be informed in writing of the application of surveillance measures.<sup>71</sup></p> <p>All administrative acts and administrative proceedings are appealable.</p>
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.
<b>Name of alternatives (as reported in table 2 above) Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)</b>	

<sup>70</sup> OLPEA § 10 p 3<sup>1</sup>

<sup>71</sup> AGIPA § 29 p 3

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<i>In what it consists, and maximum duration</i>	There is no fixed duration period to use this alternative. Alternative may be used repeatedly.
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	In international protection procedures AGIPA § 29 p 1 (3) which stipulated that the applicant must notify the PBGB of the absence from the place of residence for a period longer than three days.  In return procedures OLPEA § 10 p 2 (4).
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	Used frequently in international protection procedures, but rarely as a surveillance measure, as this is an obligation of applicant for international protection. <sup>72</sup>  There is no statistics available.
<i>National authorities responsible to administer the alternative</i>	The PBGB.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No.
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	Person is obliged to comply with the surveillance measures applied to him or her. If the person does not comply with the applied surveillance measures, there might be risk of absconding and the person may be detained.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	In international protection procedures the PBGB and the Estonian Internal Security Service have the right to verify the compliance with the surveillance measures at any time.

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<sup>72</sup>AGIPA § 11 p 2

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<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	<p>The PBGB is obliged to monitor and assess whether the third country national is able to perform the surveillance measures applied to him or her.</p> <p>Compliance with the surveillance measure is registered and documented in written form.</p>
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.
<b>Name of alternatives (as reported in table 2 above) Requirement to reside at a designated place (e.g. a facility or specific region).</b>	
<i>In what it consists, and maximum duration</i>	<p>There is no fixed duration period. Alternative may be used repeatedly.</p> <p>In context of international protection procedures until the termination of proceedings for international protection.</p> <p>In context of return procedures, the term for voluntary compliance with the obligation to leave stipulated in the return decision may be extended by up to 30 days at a time. It is not specified how many times the deadline can be extended.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>In international protection procedures, according to AGIPA § 29 p 1 (1), it is specified that an applicant is required to reside at the accommodation centre for applicants for international protection.</p> <p>With the written permission of the PBGB, an applicant may reside outside the accommodation centre for applicants for international protection if:</p> <ol style="list-style-type: none"> <li>1) the accommodation and support of the applicant is ensured by a person legally residing in Estonia;</li> <li>2) the applicant has sufficient financial resources to ensure his or her accommodation and support;</li> <li>3) it is necessary for the applicant to reside outside the accommodation centre for applicants for international protection in order to ensure his or her safety. In this case the permission will be granted by the</li> </ol>



	<p>accommodation centre, coordinating such decision with the PBGB.<sup>73</sup></p> <p>An applicant who is residing outside the accommodation centre for applicants for international protection during proceedings for international protection is required to inform the PBGB of the address of his or her residence and any changes thereof.</p> <p>In return procedures OLPEA § 10 p 2 (1).</p>
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	<p>Yes, in international protection procedures, person is obliged to reside in designated place (in accommodation center or in some cases outside the accommodation centre). Thus, it is always used, but rarely as a surveillance measure, as this is an obligation of applicant for international protection.<sup>74</sup></p> <p>In return context it is used, but the relevant data is not available.</p>
<i>National authorities responsible to administer the alternative</i>	The PBGB.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	<p>In some cases, also the accommodation centre for the applicants of international protection may be involved. The performance of the functions of the accommodation centre for applicants for international protection are ensured by the Estonian National Social Insurance Board, who has transferred its functions to contactor AS Hoolekandeteenus. Applicant has to ask from the accommodation center a written permission to reside outside the accommodation center. Center will coordinate such decision with the PBGB.<sup>75</sup></p>
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD</i>	The PBGB may presume that the application has been withdrawn or waived by the applicant of international protection, if applicant is hiding or has left his or her

<sup>73</sup> AGIPA § 34

<sup>74</sup> AGIPA § 11 p 2

<sup>75</sup> AGIPA § 34 p 2<sup>1</sup>

<i>automatically leads to detention, or is this determined on a case-by-case basis?)</i>	<p>residence, the accommodation centre for applicants for international protection without permission, without having informed the PBGB within a reasonable period of time.<sup>76</sup></p> <p>If person does not comply with the surveillance measures applied to him or her, there might be risk of abscond and person may be detained.</p>
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	In international protection procedures and return procedures the PBGB and the Estonian Internal Security Service have the right to verify the compliance with the surveillance measures at any time.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	<p>The PBGB is obliged to monitor and assess whether the third country national is able to perform the surveillance measures applied to him or her.</p> <p>Person's compliance with the surveillance measure is documented in written form.</p>
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.
<b>Name of alternatives (as reported in table 2 above) Appearance for counselling</b>	
<i>In what it consists, and maximum duration</i>	<p>There is no fixed duration period. Alternative may be used repeatedly.</p> <p>The PBGB may refer a person to counselling repeatedly during the procedures.</p>
<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	<p>In international protection procedures AGIPA § 29 p 1 (1).</p> <p>In return procedures OLPEA § 10 p 2 (1).</p>
<i>Is it used in practice? Please provide any available data for the period 2015-2020</i>	So far, the alternative is not very largely used in international protection procedure, due to very limited number of applicants for international protection. Counselling as a surveillance measure,

<sup>76</sup> AGIPA § 23 p 2 (2)

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	has been available since summer 2020, although that counselling has been provided even earlier.
<i>National authorities responsible to administer the alternative</i>	The PBGB.  Counselling service is funded by AMIF. Counselling project started in 2020 and its financing is approved until the end of 2022.
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No.
<i>Obligations attached to the granting of the alternative (if relevant)</i>	No.
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	Person is obliged to comply with the surveillance measures applied to him or her.  If the person does not comply with the surveillance measures applied to him or her, there might be risk of abscond and person may be detained.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	In international protection procedures the PBGB and the Estonian Internal Security Service have the right to verify the compliance of applicants with the surveillance measures at any time.
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	The PBGB is obliged to monitor and assess whether the third country national is able to perform the surveillance measures applied to him or her.  compliance with the surveillance measure is registered and documented in written form.
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	No.

Q6. Please identify any **practical challenges associated with the implementation of each alternative to detention** available in your (Member) State, based on existing studies or evaluations or information received from competent authorities, specifically in relation to (add more column as needed). Please

elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q8.

Challenge	Alternative 1(Reporting obligations)	Alternative 2(Obligation to deposit a document)	Alternative 3(Requirement to communicate the address to authorities)	Alternative 4(Requirement to reside at a designated place)	Alternative 5(Appearance for counselling)
<b>Availability of facilities related to accommodation (i.e. beds)</b>	N/A	N/A	No challenges (hereinafter in this table No challenges identified)	There are two accommodation centres for applicants for internal protection. To date there has been sufficient places to accommodate applicants.	No challenges identified
<b>Availability of staffing and supervision</b>	No challenges identified	No challenges identified	No challenges identified	No challenges identified	As the councilors are officials of the PBGB, persons/applicants may not trust them as they might not be impartial. <sup>77</sup>
<b>Administrative costs</b>	No challenges identified	No challenges identified	No challenges identified	No challenges identified	Counselling is co-funded by AMIF. Counselling project started since 2020 and its finance is approved until end of 2022.
<b>Mechanisms to control movements of the person</b>	No challenges identified	No challenges identified	No challenges identified	No challenges identified	N/A

<sup>77</sup> According to information provided by the Estonian Human Rights Centre on 16<sup>th</sup> April 2021

<b>Legislative obstacles</b>	No challenges identified	No challenges identified	No challenges identified	No challenges identified	No challenges identified
<b>Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)</b>	No challenges identified	No challenges identified	No challenges identified	No challenges identified	No challenges identified
<b>Other challenges – risk of abscond</b>	Measure is not sufficiently effective, to avoid an abscond of a person.	There have been cases, where person abscond from Estonia without documents (as documents were deposited by the PBGB), person has been detected via EURODAC in another MS, and was sent back to continue procedures. Thus, depositing the documents is not always the effective measure. <sup>78</sup>	Measure is not sufficiently effective, to avoid abscond of a person.	Measure is not sufficiently effective, to avoid abscond of a person.	Measure is not sufficiently effective, to avoid abscond of a person.

Q7. Please identify any **practical advantage associated with the implementation of each alternative** to detention available State in comparison with detention, based on existing studies or evaluations or information received from competent authorities specifically in relation to (add more in your (Member)

<sup>78</sup> Interview with the PBGB official on a 7th April 2021

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

column as needed). Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q7:

Advantage	Alternative 1(Reporting obligations)	Alternative 2(Obligation to deposit a document)	Alternative 3(Requirement to communicate the address to authorities)	Alternative 4(Requirement to reside at a designated place)	Alternative 5(Appearance for counselling)
Availability of facilities related to accommodation (i.e. beds)	N/A	N/A	N/A	Detention does not depend on the number of places in the detention center or the conditions offered therein. This alternative can be applied if the person has a place of residence.	N/A
Availability of staffing and supervision	<p>The PBGB is using the alternative for detention for the purposeful, efficient, simple and expedient conduct of proceedings for international protection.</p> <p>Using alternative detention in return procedures, is much more cost-efficient. Persons may continue their normal activities and prepare for voluntary departure. In Estonia the percentage of voluntary departure from the total number of returns, is about 90 %. However, alternatives to detention are not effective if the person poses risk of absconding.</p>				
Administrative costs	Using alternative measures is more cost-efficient as the administrative costs are very limited.				
Mechanisms to control movements of the person	Persons are informed about the consequences in case they don't follow the surveillance measures and are mostly willing to follow the measures.				
Legislative obstacles	No				
Aspects related to the situation of third-country nationals (e.g.	No.				

limited financial resources, no stable address or community support)					
<b>Other advantages integration</b>	-	In international protection context, surveillance measures allow persons to better adaptation into life in Estonia (in accommodation center persons are allowed to go shopping/prepare food by themselves; get some work experiences; live a normal family lives). <sup>79</sup>			

### Section 3: Assessment procedures and criteria used for the placement of third-country nationals in detention or alternatives to detention

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

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

*The section begins with an overview of the steps taken to decide to use an alternative instead of placing the individual in detention. Questions then explore the timing of this assessment, whether an individual assessment is conducted, which authorities are involved in the assessment procedure and which criteria are used to determine whether to use detention or an alternative.*

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

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

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

<sup>79</sup> Interview with the PBGB official on a 7th April 2021



Which authorities are involved in the procedure, please specify the respective role (i.e. consultative, decision maker)?

#### International protection procedure

i. At the same time. National legislation stipulates that first option should be alternatives to detention (applying surveillance measures), and only if efficient use of these measures is impossible, an applicant for international protection may be detained. The detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the person will be taken account. The detention of the applicant for international protection and the extension of the term thereof will be decided only by the administrative court pursuant to the provisions of the Code of Administrative Court Procedure on deciding the grant of permission for administrative act. The PBGB has to provide to the court sufficiently argued explanation, why there is a need to detain a person and why the surveillance measures are not sufficient. The court has to assess whether the arguments provided by the PBGB are sufficiently substantiated taken into account the real need to detain a person, principle of proportionality and circumstances related to each individual case. This “doublecheck” should guarantee that decision to detain a person is justified.

A regulation of the Government of Estonia “The Procedure of Documentation of Detention of a person” stipulates the requirements for documenting a detention of a person. The PBGB or the Estonian Internal Security Service must issue to a person an administrative decision – detention protocol.

ii. Detention is avoided in case of families with children and other vulnerable persons.

iii. Only the country of origin can't be a ground to detain a person, all the circumstances will be taken into account. If there is a risk that person may be a risk to public order or national security, then the Estonian Internal Security Service will be involved and they will apply from the administrative court permission to detain a person<sup>80</sup>.

#### Return procedure

i. At the same time. A return decision will be issued to a person who is staying in Estonia without a basis for stay. Upon the issue of a return decision all the relevant circumstances are taken into account of in every single case and the reasoned interests of the person are considered. Within the return decision the term for voluntary departure will be determined. The PBGB may in order to ensure compliance with the obligation to leave apply the surveillance measures. Assessment whether to use alternative to detention or detention, will be made taking into account all the relevant circumstances.

Upon expiry of the term for obligation to leave the obligation to leave may be enforced with regard to a person at any time.

If there are some aspects (there is a risk of abscond of a person; person has been refused the issue of a residence permit or granting international protection because the application is found unfounded; a person has submitted false information or falsified documents about the circumstances relevant in the proceedings concerning the issue of a residence permit or international protection; a person poses a danger for public order or national security) then the term for voluntary leave may be shortened and

<sup>80</sup> Interview with the PBGB official on a 7th April 2021

the obligation to leave enforced before the expiry of the term for voluntary leave. The obligation to leave regarding a person who is subject to enforcement by means of the detention and expulsion of him or her from Estonia.<sup>81</sup>

A regulation of the Government of Estonia [“The Procedure of Documentation of Detention of a person”](#) stipulates the requirements for documenting a detention of a person. The PBGB or the Estonian Internal Security Service must issue to a person an administrative decision – a detention [protocol](#).

In conclusion, the decision either to use alternative to detention or detention might change over the time, taking into account all the relevant circumstances, but as the first measure alternatives to detention are used and only if surveillance measures cannot be applied efficiently, the possibility of detention will be assessed.

ii. If a person complies the surveillance measures which ensures the completion of the return proceedings, the preference to use alternative detention should be given. This is also supported by national practice, the percentage of voluntary departure from the total number of returns, is about 90 %.

In Estonia, an administrative court will decide on the detention or extension of the term of detention of a person pursuant to the provisions for the issue of a permit for an administrative act of the Code of Administrative Court Procedure.<sup>82</sup> Only after the administrative court has authorised the detention of a person, the PBGB or the Estonian Internal Security Service may continue the detention of a person for the purpose of expulsion until the end of the term for detention assigned in the authorisation.<sup>83</sup>

iii. The PBGB will take in return decision under consideration all the relevant circumstances, including returnee’s situation in the home-country.

Although that there is no specified list of circumstances which must be taken into account, while assessing the possibility to use an alternative detention (national legislation specifies only a list of cases, when the detention is justified), but in complex the PBGB will take into account whether the person is willing to co-operate with authorities; whether the person has a valid documents to travel; risk of abscond will be assessed; whether there is a possibility, that person is not removable (incl. principle of non-refoulment) or return is without perspective (pointless).

iv. The PBGB has a central role in assessment of whether to use alternative to detention or detention, monitoring the effectiveness of complying with the measures. The Estonian Internal Security Service has the same competences as the PBGB, but not in decision making procedures.

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

<sup>81</sup> OLPEA § 7<sup>3</sup> p 2

<sup>82</sup> OLPEA § 15<sup>3</sup> p 1

<sup>83</sup> OLPEA § 22 p 2

International protection procedures:

**Yes/No**

Details:

If it is necessary to detain an applicant for international protection, taking into account of the principles<sup>84</sup>, for longer than 48 hours, the PBGB or the Estonian Internal Security Service have to acquire the permission from the administrative court to detain the applicant for international protection and place him or her into the detention centre for up to two months.

If a person lodges an application for international protection during the detention in the detention centre or in the course of expulsion, the PBGB has to acquire for the permission from the administrative court to detain the applicant for international protection for up to two months within 48 hours as of the lodging of the application. In this case the detention of a person with the purpose of expulsion will be suspended until the decision with regard to the application for international protection has been taken.

The administrative court will extend, if necessary, the term of detention up to four months at a time.<sup>85</sup>

Thus, the administrative court will assess systematically, on a case by case basis, whether the detention of the person is the most effective and proportionate measure taking into account all the relevant aspects.

There have not been any cases where a person fulfils the surveillance measures, but the PBGB has applied for a permission to detain a person from the administrative court.; most likely the court would not allow to detain such a person (except in cases where person unexpectedly poses a threat to national security).

Return procedures:

**Yes/No**

Details:

If it is necessary to detain a person for longer than 48 hours taking into account the principles<sup>86</sup>, the PBGB or the Estonian Internal Security Service will apply for authorisation from the administrative court for detention of the person to be expelled and placement in the detention centre for up to two months. If necessary, the administrative court will authorise the detention of a person and placement in the detention centre for up to two months if the ground for detention exists<sup>87</sup>.

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<sup>84</sup> AGIPA § 36<sup>1</sup> p 1 the detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the applicant for international protection shall be taken account of in every single case and if the efficient application of the surveillance measures is impossible.

<sup>85</sup> AGIPA § 36<sup>2</sup> p 1,2,3,4,5

<sup>86</sup> OLPEA § 15 p 1 The detention shall be in accordance with the principle of proportionality and upon detention relevant circumstances related to the alien shall be taken account of in each case and if the surveillance measures cannot be applied efficiently.

<sup>87</sup> OLPEA § 23 p 1, 1<sup>1</sup>

Thus, the administrative court will assess systematically, on a case by case basis, whether the detention of the person is the most effective and proportionate measure taking into account all the relevant aspects.

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

Criteria	International protection procedures	Return procedures
<b>Suitability of the alternative to the needs of the individual case</b>	<p>Yes, whether to detain a person or reject to detain a person and apply an alternative to detention will be assessed by the court on individual basis. In practice, most often courts have had to assess whether there is a risk of absconding of an applicant of international protection or a person who has no legal basis to reside in Estonia.<sup>88</sup></p> <p>Always the vulnerability of a person will be taken into account. There are not uncommon, that the vulnerability of a person turns out during the proceeding (not at the beginning of the proceedings), and all these relevant aspects should be taken into account.</p>	
<b>Cost-effectiveness</b>	<p>No, cost-effectiveness is not among the criteria used to decide whether to impose a detention.</p>	
<b>Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)</b>	<p>No, but these criteria might be taken into account.</p> <p>The Supreme Court has substantiated, that the need to detain the person <u>to perform procedural acts (including for the identification and documentation of a person and country of his/her origin)</u>, must be proven in detail and how it relates to the international protection procedure. The request to detain a person must indicate a specific and</p>	<p>No, but these criteria might be taken into account.</p> <p>The court will assess regularly the proportionality of the detention.</p>

<sup>88</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020

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

Criteria	International protection procedures	Return procedures
	urgent need which justifies deprivation of liberty. <sup>89</sup>	
<b>Level of the risk of absconding</b>	<p>Yes.</p> <p>The risk of absconding plays a major role in assessing the proportionality of detention, the manner and thoroughness of its identification in procedures is crucial. The Supreme Court has specified that only the circumstances specified in OLPEA § 6<sup>8</sup> (which determine the risk of absconding) is not a sufficient basis to detain a person, all the other circumstances characterizing a person and the case should be taken into consideration. In international protection procedures the detention has to be in accordance with the principle of proportionality and upon detention the essential circumstances related to the applicant for international protection shall be taken account of in every single case.</p> <p>One of the most important circumstances, which according to the courts indicates the risk of a person absconding and the need to detain him or her, is when the person confirms that Estonia is not the destination country person actually wants to reach.<sup>90</sup></p> <p>The district court has specified that using the alternatives to detention expect confidence that the person follows the surveillance measures set by the PBGB, but the circumstances as a whole may show that if the person is released from the detention center, the person would not comply with the PBGB's supervision measures and absconds from the procedures. Lack of confidence, is often referred by courts to the Supreme Court case, according to which the PBGB and courts may not waive the assessment of a person's past conduct when making a prognosis decision.<sup>91</sup></p>	
<b>Vulnerability</b>	<p>Yes.</p> <p>The specific situation of a vulnerable person and the special needs arising therefrom are taken account of in the international protection proceedings.</p>	

<sup>89</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020

<sup>90</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020

<sup>91</sup> The Supreme Court order in case [3-3-1-24-17](#)

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

Criteria	International protection procedures	Return procedures
	If a person who is staying in Estonia without a basis for the stay has no sufficient finances, the PBGB or the Estonian Internal Security Service may organise accommodation elsewhere than in detention center, if this is necessary for humanitarian considerations or for the protection of a vulnerable person.	
Less-invasive legal measures impacting on human rights	<p>Yes</p> <p>Detention of an applicant for international protection or a person within return procedures must be justified and proportionate, which in practice relies mostly on whether a person poses a risk of absconding, which, in the view of the courts, generally precludes the use of more lenient surveillance measures (alternatives to detention). However, court found, that given the seriousness of the violation of fundamental rights by depriving a person of his/<u>her</u> liberty, there must be a specified and clear need for that.<sup>92</sup></p>	
Other (the TCN does not comply with the obligation to co-operate)	<p>Yes</p> <p>An applicant for international protection is required to co-operate in every way in the clarification of the circumstances of the application for international protection. If applicant does not co-operate, the PBGB presumes that the application has been withdrawn or waived, unless person proves within a reasonable period of time that he was unable to fulfil the specified obligations with good reason.<sup>93</sup> If the application is withdrawn, then person has no legal basis to stay in Estonia.</p>	<p>Yes</p> <p>According to OLPEA<sup>94</sup>, if a person does not comply with the obligation to co-operate, then detention of a person is justified.</p> <p>The courts have considered the obligation to co-operate also the person obligation to provide oral and written information and explanations to the relevant authorities to assist in obtaining the necessary documents for expulsion what he could do to speed up person identification and obtaining documents, but nevertheless person didn't</p>

<sup>92</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020

<sup>93</sup> AGIPA § 23 p 2

<sup>94</sup> OLPEA § 15 p 2 (2)

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

Criteria	International protection procedures	Return procedures
		show any desire to co-operate. <sup>95</sup>
Other (the TCN does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed)	<p>N/A in international protection procedures.</p> <p>An applicant for international protection is required to co-operate in every way in the clarification of the circumstances of the application for international protection.</p>	<p>Yes.</p> <p>According to OLPEA<sup>96</sup> § 15 p 2 (3), person can be detained if he or she does not have the documents necessary for return or acquisition of documents from the host or transit country is delayed. The lack of necessary documents for return can therefore only be based if the person does not co-operate in obtaining the documents. In the opinion of the Supreme Court, the court and the PBGB must clarify what a person should do in order to obtain travel documents and whether person is able to do so. Whether a person intends to resist the obligation to co-operate in obtaining documents is seen as a prognosis.<sup>97</sup></p>

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

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

<sup>95</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020

<sup>96</sup> OLPEA § 15 p 2 (3)

<sup>97</sup> [Detention of an applicant for international protection and a person in return, justification in case law](#), Supreme Court, Tartu 2020 3-3-1-24-17 on 16.06.2017

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

#### In international protection procedures

Yes. National legislation obliges the authorities take into account and assess person's vulnerability. The specific situation of a vulnerable person and the special needs arising therefrom are taken account in the international protection proceedings. An applicant with special needs is, in particular, a vulnerable person, such as a minor, an unaccompanied minor, a disabled person, an elderly person, a pregnant woman, a single parent with minor children, a victim of trafficking, a person with serious illness, a person with mental health problems and a victim of torture or rape or a person who has been subjected to other serious forms of psychological, physical or sexual violence.

A person is deemed to be an applicant with special needs when the PBGB has established his or her special need and the person is enabled to receive the support corresponding to his or her special need.

Where necessary, other administrative authority or expert shall be involved in the identification of a special need. The special need shall be identified as soon as possible after the submission of the application. The PBGB will fix the special need of an applicant in writing.

All the administrative authorities and persons who are in contact with an applicant shall observe the special need of the applicant and consider it systematically and individually during the whole international protection proceedings, taking also account of the special need which has become evident in a later stage of the international protection proceedings.

The PBGB will communicate the information on a special need of an applicant to other administrative authorities and persons who are in contact with the applicant to the extent which is necessary for taking into account a special need of an applicant. If another administrative authority identifies a special need of an applicant or notices a circumstance indicating a special need, it shall immediately notify the PBGB thereof.

All the officials and employees who are in contact with the applicants for international protection shall comply with such competency requirements which enable them to observe a special need and take it into account.<sup>98</sup>

In the proceedings for international protection of a minor or an unaccompanied minor, including upon provision of services, the rights and interests of a minor shall be taken account of in particular. An applicant for or beneficiary of international protection who is an unaccompanied minor shall be placed in the accommodation centre, referred to substitute home service or to an adult relative. The Estonian National Social Insurance Board shall ensure the provision of services.<sup>99</sup> Applies also in return procedures.

#### In return procedures

<sup>98</sup> AGIPA § 15<sup>1</sup>

<sup>99</sup> AGIPA § 17 p 12



Yes. The administrative authority that is conducting the procedural acts in the return (incl detention and alternatives to detention) proceedings, is required to take into account the specific needs of minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.<sup>100</sup> In the case of detention of a vulnerable person, the PBGB take into account the special needs of such person and may suspend the execution of the decision on refusal of entry if the person is unable to leave Estonia immediately due to his or her physical or mental health condition or other good reason.<sup>101</sup>

Additionally, if a person who is staying in Estonia without a basis for the stay in Estonia has no sufficient finances, the PBGB may organise accommodation of a person if this is necessary for humanitarian considerations or for the protection of a vulnerable person and if the foreigner cannot use accommodation elsewhere. So, if possible, the alternative accommodation to detention center will be used.

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

International protection procedures:

An applicant for international protection is entitled to get legal assistance in the administrative court proceedings for contestation of the made decision.<sup>102</sup> UNHCR in co-operation with the [Estonian Human Rights Centre](#) (EHRC) provides to applicants of international protection comprehensive legal assistance throughout the procedure. The EHRC offers free legal aid in order to ensure the effective access to the Estonian asylum procedure and the respect of rights of persons who are in need of international protection.<sup>103</sup> The EHRC has pointed out recently raised problem related to COVID-19, when a person is placed at the detention center, where firstly the self-isolation is applicable to him, the access to legal aid provided by the adviser/counselor might be limited therefore.<sup>104</sup>

Additionally, the PBGB has a counselling service to provide reliable legal information to applicants of international protection.

Also, the Chancellor of Justice has an obligation to perform visits to accommodation center, detention facilities of the PBGB incl. detention center and report about violations and also to give some recommendations how to improve the situation.

Return procedures:

<sup>100</sup> OLPEA § 6<sup>7</sup>

<sup>101</sup> OLPEA § 28 p 8

<sup>102</sup> AGIPA § 10 p 2

<sup>103</sup> EHCR provides following services: legal counselling and provision of legal information about Estonian asylum procedures and rights of those who seek asylum; if necessary, also representation in the Police and Border Guard Board or courts; assistance in applying for free state legal aid if needed.

<sup>104</sup> According to information provided by the Estonian Human Rights Centre on 16<sup>th</sup> April 2021

An appeal against issue of a return decision and about compliance with a return decision may be filed by a person to an administrative court pursuant to the procedure provided for in the Code of Administrative Court Procedure within ten days as of the date of notification of the return decision.<sup>105</sup>

A person has the right to receive legal aid from the state for contestation of the return decision, the decision on the expulsion or prohibition on entry, in the case person has no sufficient funds to cover legal expenses.<sup>106</sup>

Within a return counselling, provided by the PBGB, a legal assistance will be given to returnees.

The Chancellor of Justice has an obligation to perform visits to the PBGB detention facilities incl. detention center and report about violations and also to give some recommendations on how to improve the situation.

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

International protection procedures:

An applicant for international protection is entitled to get legal assistance in the administrative court proceedings for contestation of the made decision.<sup>107</sup>

Additionally, to the EHCR legal counselling, the PBGB has a counselling service to provide reliable legal information to applicants of international protection. Within a service also a psychological assistance will be provided by the medical co-operator.

Return procedures:

A person has the right to receive legal aid from the state for contestation of the return decision, the decision on the expulsion or prohibition on entry, in the case person has no sufficient funds to cover legal expenses.<sup>108</sup>

An appeal against issue of a return decision and a decision about a compliance with a return decision may be filed by a person to an administrative court pursuant to the procedure provided for in the Code of Administrative Court Procedure within ten days as of the date of notification of the return decision.<sup>109</sup>

Additionally, the PBGB has a counselling service to provide reliable legal information to returnees in return procedures. Within a service also a psychological assistance will be provided by the medical co-operator.

<sup>105</sup> OLPEA § 13 p 3

<sup>106</sup> OLPEA § 6<sup>6</sup> p 1

<sup>107</sup> AGIPA § 10 p 2

<sup>108</sup> OLPEA § 6<sup>6</sup> p 1

<sup>109</sup> OLPEA § 13 p 3

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

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

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

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

#### Ensuring compliance with migration procedures

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

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

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

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

	# People in international protection procedures (including Dublin)	# of applicants who absconded
<b>Detention (Absolute figures)</b>	2017 - 28 2018 - 53 2019 - 19 2020 - 17	0
<b>Alternatives to detention 1 (NAME)</b>	data is not available	data is not available

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<b>Alternatives to detention 2 (NAME)</b>	data is not available	data is not available
<b>Alternatives to detention 3 (NAME)</b>	data is not available	data is not available
<b>Alternatives to detention 4 (NAME)</b>	data is not available	data is not available

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

No, there is no additional information.

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

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

<b>Average length of time needed to determine the status of applicants for international protection who were detained or in alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)</b>		
	Average length of time in determining the status of an applicant for international protection	Share of decisions which were appealed and of these, the share which overturned the initial decision
<b>Detention (Absolute figures)</b>	In general, it is about 3-4 months.	No data available.
<b>Alternatives to detention 1 (NAME)</b>	No data available.	No data available.
<b>Alternatives to detention 2 (NAME)</b>	No data available.	No data available.
<b>Alternatives to detention 3 (NAME)</b>	No data available.	No data available.
<b>Alternatives to detention 4 (NAME)</b>	No data available.	No data available.

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

No, there is no additional information.

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

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

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

	# of irregular migrants in return procedures (including pre-removal)	# who absconded before removal is implemented
<b>Detention (Absolute figures)</b>	0 (2017-2020)	0 (2017-2020)
<b>Alternatives to detention 1 (NAME)</b>	No data available.	No data available.
<b>Alternatives to detention 2 (NAME)</b>		
<b>Alternatives to detention 3 (NAME)</b>		
<b>Alternatives to detention 4 (NAME)</b>		

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

Surveillance measures are applied to a person by an administrative act which can be appealed by a person. According to information provided by official<sup>110</sup>, persons haven't appealed the alternatives to detention.

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

- (i) the proportion of voluntary returns and

<sup>110</sup> Written feedback by the Ministry of the Interior on 14<sup>th</sup> April 2021

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

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

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

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

	Average length of time from apprehending an irregular migrant to issuing a return decision	Average length of time from issuing a return decision to the execution of the return	Number of voluntary returns (persons who opted to return voluntarily) (absolute figures)	Number of effective forced departures (absolute figures)
<b>Detention (Absolute figures)</b>	2017 – 1 day (decision was made in the same day);  2018 - 1 day (decision was made in the same day);  2019 - 1 day (decision was made in the same day).	2017 - 27 days; 2018 – 21 days; 2019 – 14 days.	2017 – 515; 2018 – 686; 2019 – 949.	2017 – 150; 2018 – 152; 2019 – 237.
<b>Alternatives to detention 1 (NAME)</b>	Information is not available	Information is not available	Information is not available	Information is not available
<b>Alternatives to detention 2 (NAME)</b>				
<b>Alternatives to detention 3 (NAME)</b>				
<b>Alternatives to detention 4 (NAME)</b>				

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

Statistics available only on average length of procedures in detention.

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

International protection procedures

Yes/**No**

Key findings

Reference

Return procedures

Yes/**No**

Key findings

Reference

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

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

Please discuss separately for international protection and return procedures

International protection

There are no evaluations or empirical observations of using detention or alternative to detention in international protection procedures, but according to of the PBGB official assessment, majority of applicants are firstly placed in detention center, as there is a significantly high risk, that persons will abscond from procedures. One aspect of it is that Estonia is not destination country, were they are planning to reach. Thus, placing the person in detention center is very much related to assessment, how high is a risk of abscond.<sup>111</sup> But as circumstances during the international protection procedures may change, the person may be released from detention center and instead an alternative detention measures will be used.

<sup>111</sup> Interview with the PBGB official on 7th April 2021

Return procedures

There are no evaluations on using detention or alternative to detention in return procedures, but according to statistics, oppositely to international protection, majority of persons are not placed in detention center but rather surveillance measures are applied to them. Thus, persons are co-operative to perform surveillance measures applicable to them.

Upholding fundamental rights

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

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



<p><b>Is access to legal aid ensured? If so, how? Please specify.</b></p>	<p>Detained applicants are counselled and assisted in applying for state legal aid. Additionally, detained international protection applicants are provided with information on how to contact the UNHCR or NGOs, including the Human Rights Centre.<sup>112</sup> Legal experts of Human Rights Centre carry out twice-yearly monitoring visits to accommodation centers and to the detention center. The purpose of monitoring visits is to collect and assess information concerning, whether the applicants of international protection has the access of to various rights and services, including free state legal aid, during their stay in Estonia.</p> <p>Provision of state legal aid is regulated and provided to applicants under the State-funded Legal Aid Act. The AGIPA stipulates that applicants have the right to free legal aid when contesting a decision on international</p>	<p>Surveillance measures are part of a return decision and can be contested; a person has the right to apply for state legal aid for this.</p> <p>Also, according to Administrative Procedure Act § 36 the PBGB has an obligation to explain to a person the content of the administrative act and if needed returnee may turn to a return councilor<sup>113</sup>. The counselling service is organized and provided by the PBGB.</p>	<p>The same.</p>
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<sup>112</sup> Access to legal aid for asylum seekers in Estonia

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

	<p>protection in an administrative court.</p> <p><a href="#">Application form</a> for state legal aid could be found on the Ministry of Justice homepage.</p> <p>The PBGB has employed legal councillors who also provide information, where and how to apply for legal aid both in international protection and in return procedures.</p> <p>Person in return procedures has right to receive legal aid from the state for contestation of the precept to leave, the decision on the expulsion or prohibition on entry applied in the precept to leave in the case the alien has no sufficient funds to cover legal expenses.</p>		
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<p><b>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</b></p>	<p>The Administrative Procedure Act § 40 p 1 specifies that an administrative authority must, before issuing an administrative act, enable a participant in the proceeding to submit his or her opinions and objections. In the case of a burdensome administrative act, a hearing is mandatory.</p> <p><sup>114</sup></p>	<p>Applicable also to persons who are under alternative detention.</p>	<p>The same.</p>
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<sup>114</sup> AGIPA § p 1 (3)

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

<p><b>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</b></p>	<p>Yes, the PBGB has a cooperation agreement with the healthcare provider.</p> <p>Persons to whom return decision is issued, are entitled to consult a doctor or nurse, the psychologist and psychiatrist and receive support for purchasing medicines.<sup>115</sup></p> <p>Additionally, according to Health Services Organisation Act, every person in the territory of Estonia has the right to receive emergency care.<sup>116</sup> Under emergency care it is meant health services which are provided by health care professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care.<sup>117</sup></p>	<p>Yes, the PBGB has a cooperation agreement with the healthcare provider.</p> <p>Persons to whom return decision is issued, are entitled to consult a doctor or nurse, the psychologist and psychiatrist and receive support for purchasing medicines.<sup>118</sup></p> <p>Additionally, according to Health Services Organisation Act, every person in the territory of Estonia has the right to receive emergency care.<sup>119</sup> Under emergency care it is meant health services which are provided by health care professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care.<sup>120</sup></p>	<p>The same.</p>
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<sup>115</sup> Service is provided with support of the AMIF project (AMIF2018-9 „Support services for applicants for international protection and returnees“)

<sup>116</sup> Health Services Organisation Act § 6 p 1 and § 6 p 4 Emergency care provided to a person not covered by health insurance shall be paid for from the budget of the Estonian Health Insurance Fund on the bases, conditions and pursuant to the procedure provided for in the list of health services of the Estonian Health Insurance Fund.

<sup>118</sup> Service is provided with support of the AMIF project (AMIF2018-9 „Support services for applicants for international protection and returnees“)

<sup>119</sup> Health Services Organisation Act § 6 p 1 and § 6 p 4 Emergency care provided to a person not covered by health insurance shall be paid for from the budget of the Estonian Health Insurance Fund on the bases, conditions and pursuant to the procedure provided for in the list of health services of the Estonian Health Insurance Fund.

<sup>120</sup> Health Services Organisation Act § 5

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

<b>Please add any additional safeguard</b>	In return context - when returnee who is placed to detention center, accommodation and catering is provided by the state, then person who is under alternative detention has to organize his self-maintenance by himself. The state provides only emergency social assistance. However, person may be detained if the surveillance measures provided cannot be applied efficiently.	In return context - detention is more safeguarded.
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Q20. Have **evaluations or studies** been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention, of mental and physical health)?

Yes, the Supreme Court has conducted in 2020 a court analysis on [Detention of an applicant for international protection and a person in return, justification in case law](#). The purpose of the analysis is to provide an overview of how the grounds of detention of persons is justified in the rulings of the Supreme Court and Circuit Courts. Analysis is in Estonian.

Reference [Detention of an applicant for international protection and a person in return, justification in case law](#), Tartu, 2020

Q21. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**<sup>121</sup> and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention (please quote the relevant case law/decision). Please provide the statistics for 2019 or the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your country.

#### International protection procedures

There are only available statistics providing the number of all appeals related to international protection procedures.

Year	All appeals related to international protection procedures
2014	1
2015	2
2016	2

<sup>120</sup> Health Services Organisation Act § 5

<sup>121</sup> Please consider appeals to a judge but also to a specific administrative commission or ombudsman

2017	4
2018	16
2019	20
2020	3
<b>Total</b>	<b>48</b>

Source: The Ministry of the Interior

Main reason for appeal in international protection procedures is related to negative decision (dismissal of an application of an international protection), which means that persons are appealing the PBGB assessment, on person's need for international protection.

According to information provided by the Estonian Human Rights Center, persons who are in international protection proceedings, appeal frequently about their placement to a detention center.

#### Return procedures

There are only available statistical information providing the number of all appeals related to detention center.

As detention is an interference of person's right to liberty, there have been a few cases where a court has found detention of a person to be disproportionate (in return context).

<b>Year</b>	<b>All appeals related to detention center</b>
2014	3
2015	92
2016	52
2017	28
2018	1
2019	10
2020	7
<b>Total</b>	<b>193</b>

Source: The Ministry of the Interior

Main reason to appeal in detention center is to appeal the expulsion of a person. According to information, provided by the official<sup>122</sup>, there haven't been cases where person has contested the surveillance measures applicable to him/her.

<sup>122</sup> Written feedback by the Ministry of the Interior on 14<sup>th</sup> April 2021

Improving the cost-effectiveness of migration management.

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

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

<p>Yes/No</p> <p>Statistical information on length of time to determine an international protection status and executing decisions is provided in Annex.</p> <p><b>But, no such evaluations or studies have been conducted.</b></p> <p>Key findings</p> <p>Reference</p>
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Q23. **Have any evaluations or studies** in your (Member) State considered **cost-effectiveness of using detention and alternatives to detention as part of the return procedures**. (e.g., the length of time that transpires from issuing a return decision to the execution of the removal, the share of voluntary returns out of the total number of returns, the total number of removals completed, costs of procedures,)?

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

<p>Yes/No</p> <p>There are no available evaluations on cost-effectiveness of using detention or alternative to detention in return procedures. According to statistics, majority of persons who are in return procedure are not placed in detention center but rather surveillance measures are applied to them. Thus, the detention is not related/depending to cost-effectiveness, persons are co-operative to follow surveillance measures applicable to them.</p> <p>Key findings</p> <p>Reference</p>
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## Conclusions

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

- i. To what extent are alternatives to detention applied in practice in your country?
- ii. What are the challenges in the implementation and use of alternatives to detention?

- iii. What are the concerns regarding the use of alternatives (if any) compared to detention in international protection and return procedures? In answering this question, please consider each aspect of effectiveness: 1) compliance with migration procedures including reduce the risk of absconding; 2) maximising cost-effectiveness; 3) ensuring respect for fundamental rights;
- iv. What does evidence suggest about main factors identified which contributed to greater or reduced cost-effectiveness (e.g. personal characteristics of the third-country nationals affected, type of alternative provided, etc.)
- i. In Estonia alternatives to detention must be prioritized to instead of detention. Upon making a decision whether to place a person in detention or apply an alternative measure in international protection procedures, detention is applied, if usage of less restrictive measures is impossible (there is a high risk of absconding) and a ground for detention exists. In return procedures detention is an option, if the surveillance measures cannot be applied efficiently (if person is not cooperating with authorities and there is high risk of absconding).  
There are no evaluations or empirical observations of using detention or alternative to detention in international protection procedures, but according to assessment of the PBGB, official majority of applicants are firstly placed in detention center, as there is a significantly high risk of absconding. One aspect of it is that Estonia is not considered a destination country for the applicants. Thus, placing the person in detention center is dependent on the assessment of how high is a risk of abscond. However, as circumstances during the international protection procedures may change, the applicant may be released from detention center and instead an alternative detention measures will be used. In return procedures, oppositely to international protection, majority of persons are not placed to detention center but rather surveillance measures are applied to them. Thus, persons are co-operative to follow the surveillance measures applicable to them.  
There is no available statistics on exact numbers of using the alternatives to detention.
- ii. No evaluations or studies on effectiveness of procedures have been conducted as the number of applicants for international protection is relatively small and return rate in return procedures is significantly high.
- iii. The risk of absconding plays a major role in assessing the proportionality of detention, the manner and thoroughness of its identification in international protection and return procedures is crucial. As detention is always an interference of person's right to liberty, the protection of human rights is safeguarded with provision of access to legal aid, right to be heard, right to healthcare and accommodation. Cost-effectiveness is not an issue while assessing the use of alternatives to detention or placing a person to detention.
- iv. No information available.



## Statistical annex

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

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

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

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

	2015	2016	2017	2018	2019	2020	Source / further information
<b>Statistics on number of third-country nationals in detention per category</b>							
Total number of third-country nationals in detention	126	109	72	81	55	52	The PBGB / applicants for international protection + persons in return process.
Number of applicants for international protection in ordinary procedures in detention (including Dublin)	62	37	22	47	18	9	The PBGB / applicants for international protection placed in detention center during the year.
Number of persons detained to prevent illegal entry at borders	86	60	35	45	27	5	The PBGB/ Number of persons tackled at the illegal border crossing based on prohibition on entry.

Number of person detained during return procedures (including pre-removal)	64	72	50	34	37	43	
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							
Vulnerable persons specified - minors	4 10 (Under OLPEA)	4	0 10 (Under OLPEA)	0	1	0	The PBGB
Vulnerable persons specified – unaccompanied minors	0	0	0	0	0	0	The PBGB
Number of other third-country nationals placed in immigration detention							
<b>Statistics on number of third-country nationals provided alternatives to detention</b>							
Total number of third-country nationals in alternatives to detention							
Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)							
Number of persons given alternatives to detention to prevent illegal entry at borders							
Number of person in alternatives to detention during return procedures (including pre-removal)							
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible,							

disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							
Vulnerable persons specified - minors							
Vulnerable persons specified – unaccompanied minors							

**Table 2: Average length of time in detention**

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

Average length of time in detention	2015	2016	2017	2018	2019	2020	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	54 days	80 days	65 days	96 days	95 days	76 days	The PBGB
Average length of time in detention of applicants for international protection in ordinary procedures	99 days	177 days	65 days	80 days	128 days	100 days	The PBGB
Average length of time in detention of persons detained to prevent illegal entry							
Average length of time in detention of persons during return procedures							
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category							

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