



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

Common Template of EMN Focussed Study 2014

Final Version: 21st February 2014

1 STUDY AIMS AND RATIONALE

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

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

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

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

¹ See EMN Glossary V.02

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More specifically the study aims to:

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

2 SCOPE OF THE STUDY

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

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

In order to compare the effectiveness of detention and alternatives to detention in the context of (Member) States' return policies and international protection procedures, it is important to provide a clear picture of the types of detention facilities that exist in each (Member) State, as well as the types of alternatives that exist. The study therefore provides a comparative overview of the material detention conditions of third-country nationals that are placed in detention, including visitation rights and the number of detainees placed in one room. However, the study stops short of comparing the 'quality' of detention centres in terms of broader human rights considerations in the different (Member) States as this aspect has been the subject of recent studies.²

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

3 EU LEGAL AND POLICY CONTEXT

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

★ Detention of applicants for international protection

According to Article 18 of the Asylum Procedures Directive (2005/85/EC), it is not acceptable to detain a person solely for the reason that s/he has lodged an asylum application. The EU legal framework has recently been strengthened and consolidated in view of ensuring better and more harmonised protection of fundamental rights with the adoption of the recast of the Reception Conditions Directive (Directive 2013/33/EU). To ensure the non-arbitrariness of detention and the respect of fundamental rights of applicants for international protection, the Directive introduced an exhaustive list of detention grounds (Article 8). A number of procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further, the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10).⁴

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

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

★ Detention of irregular migrants involved in return proceedings

The Return Directive provides common standards for EU Member States to follow in return and removal procedures. According to Article 15 (1) of the Return Directive, detention is permitted in particular in two cases – i.e. when there is a risk of absconding or **the third-country national concerned avoids or hampers the preparation of return or removal process**. According to the Directive (Recital 16, Article 15(1)), "detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient". Article 15(6) allows Member States to extend detention for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third State (the latter is a ground that is not related to the behaviour of the person concerned, as opposed to the others).

★ Detention of applicants for international protection subject to Dublin procedures

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

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

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

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

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

4 PRIMARY QUESTIONS TO BE ADDRESSED

The Study will focus on the following questions:

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

5 RELEVANT SOURCES AND LITERATURE

EMN Ad-Hoc Queries

Twelve EMN Ad-Hoc Queries on detention have been launched in the period 2010-2013. In the context of return, two Ad-Hoc Queries were concerned with access of non-governmental organisations and other bodies to detention facilities pursuant to Article 16 of the Return Directive.⁵ Further aspects covered in EMN Ad-Hoc Queries in the context of return include: national systems for legal assistance for migrants in detention pending return⁶; access to cell phones in detention pending deportation⁷; responsibility of education institutions for covering the costs of administrative expulsion and/or detention⁸ and organisation of detention facilities⁹. In the context of asylum proceedings, three Ad-Hoc Queries have been launched.¹⁰ A further three Ad-Hoc Queries focused on vulnerable

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

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

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

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

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

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

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groups and minors.¹¹ The Ad-Hoc Queries are presented in this section as an overview of relevant sources. However, the study does not aim at covering or updating these ad-hoc queries.

Studies and reports

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

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

A study conducted by Matrix – **"An economic analysis of alternatives to long-term detention"** commissioned by the UK Border Agency in 2012 showed that the scope of risk assessment could be extended in order to identify those individuals who cannot be deported within a reasonable and lawful period of detention, and who will, therefore, eventually be released back into the community. Early identification and timely release of these individuals would save the cost of their protracted detention. The analysis estimated that an improved risk assessment could result in cost savings of £377.4 million over a 5-year time period.¹⁷ **A study undertaken by the Swedish Red Cross** identified that there is an under-use of alternatives to detention in Sweden due to a lack

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

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

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

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

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

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

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

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

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

of a comprehensive assessment of the “risk of absconding”.¹⁸ A forthcoming study by the Odysseus network **“Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning”** will aim to address the knowledge and implementation gap concerning alternatives to detention for asylum seekers in the EU in conjunction with the transposition of the recast Reception Conditions Directive.¹⁹

6 AVAILABLE STATISTICS

EU level

There are no periodic data collection instruments on detention and alternatives to detention at EU or international level. Eurostat does not collect statistics on third-country nationals in detention or **provided** alternatives to detention. EASO will start collecting statistics on applicants for international protection in detention in April 2014. The EMN Service Provider will liaise with EASO to explore possibilities of including the statistics in the Synthesis Report. Several studies have collected primary data based on interviews carried out with third-country nationals in immigration detention.²⁰

National level

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

7 DEFINITIONS

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

‘Alternatives to detention’ refer to non-custodial measures that allow individuals to reside in the community subject to a number of conditions or restrictions on their freedom of movement. The alternatives can include regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes. **As some alternatives to detention also involve various restrictions on movement on liberty, they must also be subject to human rights standards** (adapted based on UNHCR 2012 Revised Guidelines on Detention). Reception facilities can be considered an alternative to detention only in cases where the individual concerned has to report regularly to the competent authorities, or if there are residency requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ADVISORY GROUP

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

- ★ BE EMN NCP: ina.vandenbergh@ibz.fgov.be, peter.vancostenoble@ibz.fgov.be and GVerbauwhede@ibz.fgov.be
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- ★ SE EMN NCP: emn@migrationsverket.se
- ★ UK EMN NCP: Bwalya.Kankulu@homeoffice.gsi.gov.uk and Carolyne.Tah@homeoffice.gsi.gov.uk
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9 TIMETABLE

Date	Action
13 th December 2013	<u>Workshop</u> to discuss Concept Paper and agree next steps for Common

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

10 TEMPLATE FOR NATIONAL CONTRIBUTIONS

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

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

EMN FOCUSED STUDY 2014

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Top-line "Factsheet" (National Contribution)

National contribution (one page only)

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

The study aims to map the issues of detention of foreign nationals for the purpose of departure, including alternatives to detention.

The study specifically examines the following areas: a) the categories of third country nationals who can be detained; the national measures in this area and reasons for detention; b) the process of evaluating the adequacy of detention of a specific individual and the criteria for placing a foreign national in detention; c) the types of facilities for detaining foreign nationals and the conditions in these facilities; d) alternatives to detention; e) evaluation of the appropriateness of alternatives to detention for a specific foreign national; f) the impact of detention and its alternatives on the effectiveness of the return policy and on the proceedings for granting international protection and g) the available statistics at the national level.

The decision-making process on **detention** of the category of third country nationals (hereinafter also referred to as TCN) in the Czech Republic always includes evaluation of the vulnerability of these persons. Applicants for international protection (hereinafter also referred to as the IP) who are vulnerable persons are exempted from detention pursuant to the Asylum Act (hereinafter also referred to as the AA); foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals (hereinafter also referred to as the ARFN) are not exempted; nevertheless, the law provides for different treatment for some of these persons.

As concerns the appropriateness of detention of a specific individual and the criteria for placing a foreign national in detention, the Police of the Czech Republic (partly in cooperation with the Ministry of the Interior) is always responsible for carrying out individual assessment and making decisions on detention of those foreign nationals who are subject to treatment under the ARFN and the Ministry of the Interior (hereinafter also referred to as the MoI) is responsible for this in relation to applicants for international protection.

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In the Czech Republic, there is a single Facility for Detention of Foreign Nationals, which is in Bělá pod Bezdězem and the Administration of Refugee Facilities of the MoI is responsible for operation of this facility.

In the Czech Republic, there are **alternatives to detention** of third country nationals, which are defined in Act No. 326/1999 Coll. on the Residence of Foreign Nationals. Pursuant to Section 123 (Special Measures for the Purpose of a Foreign National's Departure from the Territory), there are two alternatives to detention of a foreign national in the Czech Republic: the obligation of a foreign national to report the address of their place of residence to the Police, to reside at that address, to report any change of the address to the Police on the following working day and to report in person at a police station at a time limit stipulated by the Police on a regular basis; or to deposit a financial security.

Assessment of the possibility of taking alternative measures to detention is a part of the decision-making process on detention in the case of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals.²² The provision of Section 124(1) explicitly states that a foreign national can only be detained for the purpose of administrative expulsion if imposition of a Special Measure for the Purpose of Departure is not sufficient.²³ The Police of the Czech Republic decides on the type and method of execution of the Special measure for the Purpose of Departure. For applicants for international protection, the Asylum Act does not currently provide for imposition of alternative measures to their detention.

The statistics requested in the Study are not monitored at national level. However, the Study provides data concerning the average period of detention in the Facility for Detention of Foreign Nationals and the number of third country nationals placed in this facility (see ANNEX 1).

²² Section 123b of the Act on the Residence of Foreign Nationals, Section 123c of the Act on the Residence of Foreign Nationals

²³ I.e. the imposition of an alternative measure to detention

Executive Summary (Synthesis Report)

Synthesis Report (up to three pages)

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

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

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

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

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

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

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Q1. Please complete the table below with regard to the categories of third-country nationals that can be detained in your Member State. Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q2) after the table.

Categories of third-country nationals	Can third-country nationals under this category be detained? (Yes/No)	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the <u>grounds</u> for detention for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework?
Applicants for international protection in ordinary procedures	Yes	Yes	-	<p>The grounds for detention of applicants for international protection (or the obligation of applicants for international protection to remain in the reception centre or in a facility for detention of foreign nationals) are defined in Section 46a of Act No. 325/1999 Coll., on Asylum, as amended, (hereinafter also referred to as the "AA") according to which a decision on detention can be issued:</p> <ul style="list-style-type: none"> a) if the applicant's identity has not been established in a reliable manner, b) if the applicant has produced forged or altered identity documents, or c) in the event of a well-founded assumption that the applicant could threaten state security or public order, <p>unless this contradicts the international obligations of the Czech Republic.</p> <p>Additional grounds for detention for this category of persons are defined in Section 124a of Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic and on Amendments to Some Acts, as amended (hereinafter also referred to as the "ARFN").</p> <p>According to this provision, for the purposes of administrative expulsion, it is possible to detain a foreign national who has made a declaration on international protection or submitted an application for international protection:</p> <ul style="list-style-type: none"> - if the final and conclusive decision on his/her administrative expulsion has been made, or - if the proceedings on administrative expulsion have been

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				<p>commenced on the following grounds²⁴:</p> <ul style="list-style-type: none"> - if there is a substantiated risk that the foreign national might threaten state security during his/her residence in the Territory by using violence in asserting political aims or by performing an activity endangering the foundations of a democratic state or aimed at disrupting the integrity of the Territory, and/or in any other similar manner; or - if there is a substantiated risk that the foreign national might seriously violate public order during his/her residence in the Territory; - if the foreign national crosses the national border in concealment or attempts to do so; - if the foreign national crosses the national border otherwise than via a border crossing point. <p>In the cases mentioned above, this is an exhaustive list of the grounds for detention.</p> <p>In the case of a foreign national who made a declaration on international protection in the transit area of an international airport, the grounds for his/her detention are defined in Section 73(4) of the Asylum Act (detention in a reception centre in the transit area of an international airport). In this case, entry into the territory will be denied to a foreign national,</p> <ul style="list-style-type: none"> a) whose identity has not been established in a reliable manner; b) who has presented forged or altered identity documents; or c) who can be reasonably suspected to represent a threat to the security of the state, public health or public order. <p>This is an exhaustive list of the grounds for detention.</p>
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²⁴ Pursuant to Section 119(1)(a) of the Act on the Residence of Foreign Nationals or Section 119(1)(b)(6) or (7) of the Act on the Residence of Foreign Nationals.

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Applicants for international protection in fast-track (accelerated) procedures	Yes	Yes	-	The Czech legal system does not differentiate between this category of applicants for international protection and the previous category. Thus, the grounds for detention of an applicant for international protection in regular proceedings defined in Section 46a of the Asylum Act and in Section 124a of the Act on the Residence of Foreign Nationals will apply (see above).
Applicants for international protection subject to Dublin procedures	Yes	Yes	-	<p>Such persons are detained pursuant to Section 129 of the Act on the Residence of Foreign Nationals (Detention of a Foreign National for the Purpose of His/Her Readmission or Escort through a Foreign Country) where the condition for their detention is:</p> <ul style="list-style-type: none"> - the fact that the foreign national illegally entered or stayed in the territory of the Czech Republic; and - the existence of a directly applicable legal regulation of the European Communities (Regulation No 343/2003 EC according to which the foreign national can be readmitted); and - compliance with the conditions for readmission of a foreign national contained in the EC regulations. <p>This is an exhaustive list of the grounds for detention.</p> <p>After approval of an amendment to the Asylum Act, which is currently in preparation (in connection with transposition of the revised Directive No 2013/33/EU of the European Parliament and Council), applicants for international protection will be detained for the purpose of their readmission under the Dublin Procedure pursuant to Section 46a of the Asylum Act.</p>
Rejected applicants for international protection	Yes	Yes	-	<p>The special grounds for detention for this category of persons are defined in Section 124b(1)(b) of the Act on the Residence of Foreign Nationals (Detention of a Foreign National for the Purpose of Departure) and the general grounds for detention of foreign nationals contained in Section 124 of the ARFN and Section 129 of the ARFN, see below, also apply to these persons.</p> <p>Pursuant to Section 124b(1)(b) of the ARFN, a reason for detaining a foreign national over the age of 15 who has not used the option of voluntary repatriation under the Asylum Act for the purpose of his/her departure from the territory is the fact that</p>

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				<p>- the foreign national failed to leave the Territory within the time limit specified in an exit order or within the period of 30 days if an exit order was not issued to him/her after the proceedings for granting international protection had been finally and conclusively closed.</p> <p>In the cases mentioned above, this is an exhaustive list of the grounds for detention.</p>
Rejected family reunification applicants	Yes	Yes	-	The Czech legal system does not contain a special regulation on detention of these persons. Therefore, the general grounds for detention of foreign nationals contained in Sections 124 and 129 of the ARFN or possibly in Section 124b of the ARFN, see below, will be applied. In all these cases, it is an exhaustive list of the grounds for detention.
Other rejected applicants for residence permits on basis other than family reunification (Please provide details)	Yes	Yes	-	The Czech legal system does not contain a special regulation on detention of these persons. Therefore, the general grounds for detention of foreign nationals contained in Sections 124 and 129 of the ARFN or possibly in Section 124b of the ARFN, see below, will be applied. In all these cases, it is an exhaustive list of the grounds for detention.
Persons detained at the border to prevent illegal entry (e.g. airport transit zone) who have not applied for international protection	No	-	-	-
Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision	Yes	Yes	-	<p>Detention of the category of persons for whom a decision on administrative expulsion has not yet been issued is possible according to the Czech legal system, if at least a notice of commencement of the proceedings on expulsion has been delivered to the foreign national.</p> <p>The grounds for detention of this category of persons are defined in Sections 124 and 129 of the ARFN.</p> <p>Pursuant to Section 124 of the ARFN (Detention for the Purpose of Administrative Expulsion), the Police is entitled to detain a foreign national over 15 years of age to whom a notice on commencement of administrative expulsion proceedings has been duly delivered or in relation to whom a</p>

Comment [MV1]: When considering this question, we were not certain whether these are supposed to be persons for whom a decision on administrative expulsion has not yet been issued but the proceedings for administrative expulsion have already been commenced, or whether these are supposed to be persons for whom the proceedings for administrative expulsion have not yet been commenced.

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				<p>final and conclusive decision on administrative expulsion has been made or a ban on entry has been imposed on him/her by some other Member State of the European Union, which applies to the territories of the Member States of the European Union, and imposition of a Special Measure for the Purpose of Departure is not sufficient, if:</p> <ul style="list-style-type: none"> a) there is a risk that the foreign national might threaten state security or might seriously disrupt public order; b) there is a risk that the foreign national could fail to comply with or hinder the execution of a decision on administrative expulsion; c) the foreign national did not leave the Territory within the time limit specified in a decision on administrative expulsion; d) the foreign national seriously breached an obligation imposed on him/her by a decision on imposition of a Special Measure for the Purpose of Departure; or e) the foreign national is recorded in the Information System of the Signatory States. <p>Pursuant to Section 129 of the ARFN (Detention of a Foreign National for the Purpose of His/Her Readmission or Escort through a Foreign Country), the grounds for detention of a foreign national are as follows:</p> <ul style="list-style-type: none"> - the fact that the foreign national illegally entered or stayed in the territory of the Czech Republic; and - the existence of an international agreement entered into with some other member State of the European Union before 13 January 2009 (readmission agreement) or the existence of a directly applicable legal regulation of the European Communities (Regulation No 343/2003 EC), under which the foreign national can be readmitted; and - fulfilment of the conditions for readmission of a foreign national contained in the applicable international (readmission agreement) or the EC regulation (for example, a decision on expulsion). <p>Detention under Section 129 of the ARFN is also possible in the case of a foreign national who is being escorted through the Territory, if such transit cannot be carried out without necessary break for objective reasons.</p> <p>In all the cases mentioned above, it is an exhaustive list of the</p>
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				grounds for detention.
Persons who have been issued a return decision	Yes	Yes	-	The grounds for detention of this category of persons are defined in an exhaustive manner in Sections 124 and 129 of the ARFN, see above.
Other categories of third-country nationals (Please specify the categories in your answer)	Yes	Yes	-	The provision of Section 124b of the ARFN defines an exhaustive list of the grounds for detention of a foreign national for the purpose of his/her departure from the Territory if this concerns a foreign national over the age of 15 who has not used the option of voluntary repatriation under the Asylum Act and at the same time a) the foreign national has failed to submit an application for international protection , even though he/she had been invited to do so; or b) the foreign national has failed to leave the Territory within the time limit specified in an exit order or within the period of 30 days if an exit order was not issued to him/her after the proceedings for granting international protection had been finally and conclusively closed (see above "rejected applicants for international protection"); or c) the residence permit awarded to a person under subsidiary protection has expired.

Q2. Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.

The category of applicants for international protection belonging to vulnerable groups is completely exempted from detention pursuant to the Asylum Act. Pursuant to the Asylum Act, the following vulnerable persons cannot be detained: unaccompanied minors, parents or family with handicapped minors or persons of full age, seriously handicapped persons, pregnant women or victims of torture, rape or subjection to any other forms of serious mental, physical or sexual violence (Section 46a(1) of the Asylum Act; Section 73(7) of the Asylum Act).

The category of foreign nationals who are subject to treatment under the Act on the Residence of Foreign nationals and who are vulnerable persons is not exempted from detention. Nevertheless, the law defines a different treatment for some of these persons. Unaccompanied minor foreign nationals younger than 15 years are not subject to detention and are placed in a special facility for foreign children. Unaccompanied minor foreign nationals (from 15 to 18 years of age) can only be detained on special grounds (if there is a reasonable risk that they might threaten state

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security or might seriously disrupt public order – Section 124(5) and Section 129(4) of the ARFN) and only for a reduced period (Section 125(1) of the ARFN, i.e. 90 days). Accompanied minor foreign nationals are accommodated together with their parents in facilities for detention of foreign nationals, if the care for them cannot be arranged for in any other manner (Section 140(1) of the ARFN). Families with minor children are subject to a reduced period of detention (Section 125(1) of the ARFN, i.e. 90 days).

Q3. Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.²⁵

The obstacles preventing expulsion are examined already during the proceedings for administrative expulsion (which usually precedes the proceedings for detention) and the Police deciding on expulsion is required to request a binding opinion from the Ministry of the Interior on whether departure of the foreign national is possible (that is, whether there are any reasons preventing departure of the foreign national due to compliance with the non-refoulement principle, see Sections 120a and 179 of the ARFN). If departure of the foreign national is not possible, a visa will be issued to the foreign national for the purpose of leave to remain in the Territory. In that case, grounds for detention of the foreign national would no longer exist and detention would have to be terminated without unreasonable delay (Section 127(1)(a) of the ARFN) and the Police is obliged to examine whether grounds for detention still exist for the duration of detention of a foreign national (Section 126(a) of the ARFN).

²⁵According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*Section 3: Assessment procedures and criteria for the placement of third-country nationals in detention (Maximum 5 pages)

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

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

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

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

Yes, in the case of all the categories of foreign nationals mentioned above, **the appropriateness of detention is assessed individually**. The decisions on detention of foreign nationals pursuant to the ARFN, the decisions on the obligation of applicants for international protection to remain in a reception centre²⁶ as well as the decisions to deny them entry into the Territory²⁷ are **individual decisions containing the particulars required by Act No. 500/2004 Coll., the Administrative Procedure Code, as amended**.

In the case of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals, in the course of decision-making on detention, the question of whether imposition of measures alternative to detention might not be sufficient, whether the conditions and grounds for detention defined by the law have been fulfilled, and whether the person concerned is not a vulnerable person the detention of whom is governed by a different legal regulation is always given consideration.

In the case of applicants for international protection who are subject to treatment under the Asylum Act, in the course of decision-making on detention, the question of whether the conditions and grounds for detention defined by the law have been fulfilled, and whether the person concerned is not a vulnerable person the detention of whom is governed by a different legal regulation is given consideration.

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

The legal basis is legislation – the Code of Administrative Procedure, the Act on the Residence of Foreign Nationals, and the Asylum Act.

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

The proceedings for detaining foreign nationals/applicants for international protection are governed by the **Administrative Procedure Code**, which determines guarantees due process. Within the proceedings for expulsion and the related proceedings for detention, the foreign national/applicant for international protection is

²⁶ Section 46a of the Asylum Act

²⁷ Section 73 of the Asylum Act

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interrogated in the presence of an interpreter, and the foreign national/applicant for international protection is acquainted with the interrogation report and is informed of his/her rights and obligations arising from his/her position in the proceedings for expulsion/detention. Before a decision on the matter is issued, the foreign national/applicant for international protection is given an opportunity to comment on the materials on which the decision is based.²⁸

Individual assessment of a case by an administrative authority and the authority's individual decision-making are fundamentally laid down in the procedural rules of administrative proceedings defined in the Administrative Procedure Code, in the Asylum Act as well as the Act on the Residence of Foreign Nationals. Neither the Administrative Procedure Code, Section 2(4) (which defines that the solution adopted by the administrative authority must be in accordance with public interest and must correspond to the circumstances of the given case) in conjunction with Section 3 (which imposes an obligation on the administrative authority to establish the merit of the case beyond doubt), nor the Act on the Residence of Foreign Nationals, Sections 124, 124b and 129 nor the Asylum Act, Section 46a (where both Acts define the grounds for detention of a foreign national in such way that they do not permit any other approach to their examination than an individual one) permit any other examination and decision-making than individual examination of the case and individual decision-making on detention.

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

Yes, assessment of the vulnerability of the persons is always a part of the decision-making process on detention.

In the case of foreign nationals subject to **treatment under the Act on the Residence of Foreign Nationals**, it is assessed whether or not they are vulnerable persons, the detention of whom is governed by a different legal regulation in that case.

In the case of **applicants for international protection** who are subject to treatment under the Asylum Act, it is assessed whether or not they are vulnerable persons who are completely exempted from detention pursuant to the Asylum Act (i.e. it is not possible to make a decision on their obligation to remain in the reception centre and it is not possible to deny them the entry into the Territory).

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

~~a) Ground 1: If there is a risk of absconding~~

~~Example: The risk of absconding may be measured in your (Member) State on the basis of a previous escape or attempt to escape from detention, a statement about the person's reluctance to return to their home country, a previous breach of temporary release or non-compliance with an alternative to detention, lack of a valid passport, lack of address or residence, previous declaration of false identify, previous violation of voluntary departure or entry ban, etc.~~

~~b) Ground 2: If the third country national avoids or hampers the preparation of a return or removal process~~

²⁸ Section 36(3) of the Code of Administrative Procedure

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~~e) Ground 3: If required in order to protect national security or public order~~

~~d) Ground 4: Please indicate any other ground(s) and the respective criteria/indicators considered in the assessment~~

In the Czech legal system, the grounds for detention (see above Section 2 - Table Q1) are defined partly differently from the grounds defined in the template.

The grounds for detention defined in Section 124 of the ARFN (detention for the purpose of administrative expulsion) and the criteria for applicability of such grounds:

a) Ground 1: If there is a substantiated risk that the foreign national might threaten state security or seriously violate public order

The existence of a ground for suspicion of the risk of threat to the security of the state or disruption of public order is assessed with regard to the interpretation of the concepts of state security and public order by the case law of the international and national courts.

b) Ground 2: If there is a danger than the foreigner could obstruct or impede the execution of decision on the administrative expulsion

The existence of a ground for suspicion of thwarting or hindering the execution of a decision on administrative expulsion is assessed particularly with regard to the fact that the foreign national stated untrue information on his/her identity or place of residence in the proceedings, or refused to give this information or expressed his/her intention not to leave the Territory, or if such intention is obvious from his/her actions.

These new criteria will be defined by the law, directly in Section 124(1)(b) of the ARFN, based on the amendment to the Act on the Residence of Foreign Nationals, which is in preparation.

c) Ground 3: If the third country national failed to leave the Territory within the time limit specified in the decision on the administrative expulsion

Applicability of this ground is assessed primarily objectively; it is examined whether the foreign national breached this specific obligation.

d) Ground 4: If the foreigner has seriously violated the obligation connected with the special measures for the purpose of departure (alternative for detention)

Investigation is made into whether the foreign national breached the obligation imposed in a decision on imposition of a special measure for the purpose of departure (i.e. in a measure alternative to detention); particularly the individual nature of the breach of the obligation and the severity of the breach of the obligation are assessed.

e) Ground 5: If the third country national is registered in the Information System of the Contracting States

It is investigated whether the foreign national is registered in the given information system.

The grounds for detention defined in the Asylum Act (Sections 46a and 73 of the Asylum Act) and the criteria for applicability of such grounds:

a) Ground 1: If the identity of the applicant has not been established in a reliable manner

These are particularly situations where the identity of the applicant was not established or is disputable (particularly the cases, in which the applicant has no travel document).

b) Ground 2: If the applicant has presented forged or altered identity documents

These are particularly situations where it is impossible to establish the identity of the applicant reliably, while at the same time it has been proved that the applicant did not act in good faith in the process of verifying his/her identity (the applicant acted with the objective of misleading the administrative authorities as concerns his/her identity).

c) Ground 3: If there is a substantiated risk that the foreign national might threaten state security or violate public order, unless such procedure is contrary to the international obligations of the Czech Republic

It is assessed whether there is a ground for suspicion of the risk of threat to the security of the state or disruption of public order with regard to the interpretation of the concepts of the security of the state and public order in the case law of international and national courts. For example, an effort to prevent foreign nationals without the appropriate permit for entry (visa) into the Territory can be included under the protection of public order.

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

Examination of the possibility of imposing measures alternative to detention is a part of the decision-making on detention in the case of foreign nationals who are subject to **treatment under the Act on the Residence of Foreign Nationals** (Sections 123b and 123c of the ARFN). The provision of Section 124(1) of the ARFN specifically stipulates that a foreign national can only be detained for the purpose of administrative expulsion if the imposition of a special measure for the purpose of departure (i.e. imposition of a measure alternative to detention) is not sufficient.

In the case of **applicants for international protection**, the Asylum Act currently does not provide for a possibility to impose measure alternative to their detention but an amendment to the Asylum Act is currently under preparation in connection with the transposition of the revised Directive 2013/33/EU of the European Parliament and Council²⁹ and this amendment will introduce the possibility to impose measures alternative to detention even for asylum seekers.

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

In the case of foreign nationals who are subject to **treatment under the Act on the Residence of Foreign Nationals, the Police of the Czech Republic (partly in cooperation with the Ministry of the Interior)**

²⁹ Which provides the standards for receiving applicants for international protection.

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carries out individual assessment (i) and decides on detention of foreign nationals.

In the case of **applicants for international protection, the Ministry of the Interior** carries out individual assessment (i) and decides on detention of foreign nationals.

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

The foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals and applicants for international protection are entitled to file a legal administrative action with an administrative court against a decision on detention. Administrative courts examine particularly the legality of the detention of foreign nationals. This is a review of a decision made by administrative authorities, which means that **administrative courts get involved only in response to a legal action filed by a foreign national/asylum seeker against a decision on detention issued by an administrative authority.**

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

Currently, the priority in this area is proper transposition of the revised Union Directives and Regulations, which contain provisions governing detention (see, for example, the aforementioned revised Reception Directive) and subsequent application of these provisions in practice (for example, introduction of the possibility to impose measures alternative to detention even for applicants for international protection).

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

One example of good practice is the examination of possible barriers to expulsion under Section 120a of the ARFN, in which the Police is obliged to request a binding opinion from the Ministry of the Interior for the purpose of evaluating whether departure of the foreign national is possible (or whether there are grounds preventing departure of the foreign national due to compliance with the non-refoulement principle, see Section 179 of the ARFN). **Assessment of the obstacles to departure is carried out by a special International Protection Department at the Ministry of the Interior**, which, based on its decision-making experience, has information necessary for making a qualified decision. This decision, of course, then also impacts the actual detention of the foreign national, which cannot be carried out if it is not possible to issue or, if applicable, execute a decision on administrative expulsion.

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

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

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

Yes, there is a single facility in **Bělá pod Bezdězem** (the district of Mladá Boleslav, the Region of Central Bohemia).

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

No

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

Refugee Facilities Administration of the MoI

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

Based on the decision by the Chief Public Health Officer of the Ministry of the Interior of the CR, **three levels of accommodation capacity** are defined (basic, increased and emergency levels), which determine how many persons can be accommodated in each room.

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

Based on a court decision

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

Foreign nationals detained for the purpose of departure are not detained in prisons with the exception of those who were committed by the court to the expulsion custody. These foreign nationals are pursuant to Section 7(2) of Act No. 293/1993 Coll. held at custody separately from other accused persons.

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

Conditions of detention	Statistics and/or comments
Please provide any statistics on the average available surface area per detainee (in square meters)	5.67 m ² per person in a room
Please provide any statistics on the average number of detainees placed in one room per detention facility	2
Are families accommodated in separate facilities?	Yes
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might	No

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this happen?	
Are single women separated from single men?	Yes
Are unaccompanied minors separated from adults?	Yes
Do detainees have access to outdoor space? If yes, how often?	Yes, daily; from 7 a.m. to 8 p.m. during winter time, from 7 a.m. to 9 p.m. during summer time and from 7 a.m. to 10 p.m. in June, July and August
Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?	Yes; 1) Family and friends 2 times a week for 1 hour 2) Legal representatives can visit at anytime
Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?	Via a public telephone and via conventional mail (cell phones, notebooks and other communication devices are not allowed). Conversations and correspondence are not under surveillance in any manner; only the incoming packages are checked by the Police in order to make sure that dangerous and prohibited items are not brought inside.
Are education programmes provided (e.g. school courses for minors and language classes for adults)?	Children who must attend school mandatorily according to the law participate in education programmes.
Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?	sports, a music workshop, a visual arts workshop, a bodybuilding centre, a sewing workshop, a children's centre, a film screening centre (a small cinema)
Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?	Persons can leave the facility only if going to court (or an administrative authority) and for the purpose of provision of medical care. However, the person is always escorted by the Police.
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	Yes, free of charge
Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?	Yes, detainees are entitled to this free of charge if the support is for the purposes of administrative proceedings and similar procedures. However, in practice, interpretation is provided free of charge whenever it is necessary.

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Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?	Yes, a practitioner is present in the facility. Specialized care is provided in a nearby hospital.
Are there special arrangements for persons belonging to vulnerable groups? Please describe	No. Only the ones that have been mentioned above.
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe	No

Section 5: Availability and practical organisation of alternatives to detention**(Maximum 6 pages)**

This section explores the availability of different types of alternatives to detention for different categories of third-country national. It further explores the practical organisation of the alternatives to detention, including information on the authorities/organisations responsible for administering the alternatives; the conditions that must be met by the third-country national who has been provided an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions. EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.

Q1. Please indicate whether any alternatives to detention for third-country nationals are available in your (Member) State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	<i>Example: Third-country nationals subject to reporting obligations are required to report regularly to a monitoring authority once a week. When reporting, the person has to present an identification document and sign the reporting protocol. The third-country national can reside in an address of his/her own or s/he can be accommodated in an open reception centre. If the person fails to comply with reporting obligations, s/he will be placed in detention facilities.</i>
Obligation to surrender a passport or a travel document	No
Residence requirements (e.g. residing at a particular address)	Yes (pursuant to Section 123b of the ARFN No. 326/1999 Coll. – Special Measures for the Purpose of Departure of a Foreign National from the Territory). A foreign national is required to report the address of his/her place of residence to the Police, to reside at that address, to report any change of address to the Police on the following working day and to report in person at a police station within a time limit set by the Police. In practice, this usually involves reporting the place where the foreign

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	<p>national will be staying and regularly reporting to a police station. Most often in one-week intervals until the foreign national departs.</p> <p>This alternative is used.</p>
<p>Release on bail (with or without sureties)</p> <p><i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>Yes, a financial security (pursuant to Section 123b(c) of the ARFN No. 326/1999 Coll.) – money deposited in a freely exchangeable currency to cover the costs expected to be incurred in the administrative expulsion by the foreign national on whom the special measure for the purpose of departure has been imposed; a citizen of the Czech Republic or a foreign national with a long-term or permanent residence permit for residence in the Territory can deposit the money on behalf of the foreign national. The financial security is to be deposited into an account held by the Police and is to be refunded after departure of the foreign national from the Territory or after long-term or permanent residence or residence under a special legal regulation has been granted to the foreign national or after a long-term visa or temporary residence permit has been issued to the foreign national. The Police will agree with the foreign national or the depositing person on the method of refunding the financial security. The costs of refunding the financial security will be borne by the depositing person or the foreign national.</p> <p>This alternative has not yet been imposed in practice.</p>
Electronic monitoring (e.g. tagging)	No
<p>Guarantor requirements</p> <p><i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	No
Release to care worker or under a care plan	No
Community management programme	No
Other alternative measure available in your (Member) State. Please specify.	No

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

- Applicants for international protection in ordinary procedures;
- Applicants for international protection in fast-track (accelerated) procedures;
- Applicants for international protection subject to Dublin procedures;
- Rejected applicants for international protection;
- Rejected family reunification applicants;

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

In the CR the special measures for the purpose of departure of foreign nationals (alternatives to detention) are applicable to the persons, who have been issued a decision on the administrative expulsion.

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

Alternatives to detention of those foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals (referred to as "special measures for the purpose of departure of foreign nationals") are governed by the Act on the Residence of Foreign Nationals (in Section 123b of the AFRN, the list of these measures and the conditions for imposition of these measures is defined, and Section 123c of the AFRN defines one of these measures – financial security – in detail).

Once the amendment to the Asylum Act is approved in connection with adoption of the aforementioned revised Reception Directive, the Asylum Act will also provide for measures alternative to detention of applicants for international protection.

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

The Police of the Czech Republic decides on the imposition of both special measures for the purpose of departure of a foreign national. The Police of the CR also administrates the execution of the imposed special measure for the purpose of departure.

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

Failure to comply with the obligations arising from an imposed special measure for the purpose of departure is a ground for detention of the foreign national.

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

The Czech Republic is currently examining experiences of other countries with the application and practical implementation of other possible alternative measures such as deposit of a travel document, etc. At the same time, the possibilities of applying such practices in the legislative environment of the Czech Republic are being examined.

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

In practice, the only alternative to detention used is the foreign national's obligation to report the address of his/her place of residence to the Police and to report regularly in person at a police station.

Section 6: Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention (Maximum 5 pages)

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

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

The administrative authority examines the matter of imposition of special measures for the purpose of departure for all third country nationals whom possible detention might concern. When the decision is being made on the imposition of special measures for the purpose of departure, great emphasis is placed in practice on whether the alternative to detention will be sufficient.

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

For third country nationals, a decision on the imposition of special measures is always made on an individual basis, while taking into account the actions performed by the third country national up until now and his/her vulnerability (for example, foreign nationals who are unaccompanied minors are not detained in practice). The administrative authority particularly examines whether the imposition of these measures would be sufficient or, in the case of "financial security", feasible at all.

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

For third country nationals, a decision on the imposition of special measures is always made on an individual basis, while taking into account the actions performed by the third country national up until now and his/her vulnerability (for example, foreign nationals who are unaccompanied minors are not detained in practice). The administrative authority particularly examines whether the imposition of these measures would be sufficient or, in the case of "financial security", feasible at all.

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

See questions 3 and 4 (page 26)

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

The administrative authority examines the matter of imposition of special measures for the purpose of departure for all third country nationals whom possible detention concerns.

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

The Police of the Czech Republic

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

Courts can review the decisions made by the Police after regular legal remedies are exhausted. Courts do not impose special measures for the purpose of departure.

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies***Section 7: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures (Maximum 5 pages)**

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

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

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

7.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions**7.1.1. Effectiveness in reaching decisions on applications for international protection**

Q1. Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status). Yes/No.

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

The Czech Republic has not yet prepared any study concerning the impact of detention on the efficiency of proceedings for granting international protection.

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

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

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

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

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time in determining the status of an applicant for international protection	No information -	x*	x*	x*	x*

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	not statistically tracked.				
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* In the case of applicants for international protection, the Asylum Act currently does not provide for the possibility of imposing measures alternative to their detention.

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

No information.

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

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

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

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

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Q5. Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

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

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

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

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

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Applicable year - 2013	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time from apprehending an irregular migrant to issuing a return decision	No Information - - not statistically tracked.				
Average length of time from issuing a return decision to the execution of the return	No information - not statistically tracked.				
Number of voluntary returns (persons who opted to return voluntarily)*	109 – returned voluntarily** 179 - Among TCNs returned voluntarily, the number of TCNs returned as part of an assisted return programme***				
Success rate in number of departures	No information - not statistically tracked.				

* Department for Asylum and Migration Policy

** This category includes foreigners who travelled spontaneously, that is, without help and without financial assistance. They requested assistance of Directorate of Alien Police only for the purpose of securing of land transit.

*** This category includes foreigners returned as part of an assisted return programme of IOM (in cooperation with Directorate of Alien Police Service) and of Refugee Facilities Administration (programme for asylum applicants).

Q6. Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any

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examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

The Czech Republic does not have any survey or evaluation concerning the issues mentioned above.

7.2. Costs

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

The Czech Republic does not have any survey or evaluation concerning the issues mentioned above.

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

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

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

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

Applicable year - 2013	Detention*	Alternatives to detention			
		A1	A2	A3	A4
Total costs	CZK 42 083 000 CZK 119 554 /foreign national				
Staffing costs	CZK 19 614 000 CZK 55 722 /foreign national				
Medical costs	No information				
Food and accommodation costs	8 469 000 CZK 24 059 CZK/foreign national these are operating costs (utilities, food, etc.) An ordinance of the MoI sets the price charged to the clients for accommodation and food at CZK 342 per person and day of stay.				

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Legal assistance	This cannot be quantified - Assistance is provided by NGOs as part of project financing.				
Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify	CZK 14 000 000 CZK 39 772 /foreign national These are costs of a private security service which guards the premises.				

*Refugee Facilities Administration of the Ministry of the Interior of the Czech Republic

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

No information.

7.3. Respect for fundamental rights

Q10 Have evaluations or studies been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?

No study on this topic has been prepared in the Czech Republic.

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

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

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

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

Applicable year - 2013	Detention	Alternatives to detention			
		A1	A2	A3	A4
Number of complaints of violations of fundamental rights lodged with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	<p>These data are not statistically tracked.</p> <p>Nevertheless, according to the experience of the employees of the Refugee Facilities Administration, a total of 8 complaints have been lodged in this facility (4 complaints about respect of rights, one complaint about shoes stolen by another client and 3 complaints referred for resolution to a medical facility of the MoI – these complaints concerned the health care staff).</p>				
Number of complaints of violations of fundamental rights upheld by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	0				
Number of court cases in which there have been challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of violation and by categories of third-country national)	No information				
Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been upheld (where possible, please disaggregate by types of violation and by categories of	No information				

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

No information.

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

No information.

7.4. Rate of absconding and compliance rate

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

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

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

The Czech Republic does not have any survey or evaluation concerning the issues mentioned above.

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

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

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

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

Applicable year 2013	Detention	Alternatives to detention			
		A1	A2	A3	A4
Rate of absconding	0	Not available	N/A	N/A	N/A
Compliance rate		Not statistically tracked.			

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

No information.

Section 7: Conclusions (Maximum 2 pages)

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

As part of the presented Study, the issue of detention of foreign nationals for the purpose of departure from the Territory and measures alternative to detention were examined.

According to Czech legislation, it is possible to **detain** all the categories mentioned in this Study, that is: applicants for international protection in regular proceedings; applicants for international protection in fast track proceedings; applicants for international protection who are to be readmitted under the Dublin Regulation; failed applicants for international protection; failed applicants for family reunification; other failed applicants for a residence permit other than a permit for the purpose of family reunification; persons detained in the reception centre of the transit area of an airport for the purpose of preventing illegal entry into the Territory; foreign nationals illegally present in the territory of the Czech Republic who did not apply for international protection and for whom a decision on administrative expulsion has not yet been issued; persons for whom administrative expulsion was issued and other categories of third country nationals (for example those who did not use the option of voluntary repatriation under the Asylum Act and also did not file an application for international protection, despite having been invited to do so).

In the case of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals, examination is always conducted in the course of the decision-making process on detention as to whether the imposition of measures alternative to detention is sufficient (these measures are preferred), whether the conditions and grounds for detention, defined by the law, are applicable and possibly whether the person concerned is a vulnerable person the detention of whom is governed by a different legal regulation. In the case of applicants for international protection who are subject to treatment under the Asylum Act, examination is conducted in the course of the decision-making on detention as to whether the conditions and grounds for detention, defined by the law, are applicable and whether the person concerned is a vulnerable person who is exempted from detention.

For the foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals, the Police of the Czech Republic (partly in cooperation with the Ministry of the Interior) is responsible for carrying out individual assessment (i) and for deciding on detention of foreign nationals (ii); applicants for international protection are the responsibility of the Ministry of the Interior.

The foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals and applicants for international protection are entitled to file a legal administrative action with an administrative court against a decision on detention. Administrative courts examine particularly the legality of detention of foreign nationals.

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Decision-making on detention always includes examination of the vulnerability of persons. The category of applicants for international protection who are vulnerable persons is completely exempted from detention pursuant to the Asylum Act. Pursuant to the Asylum Act,³⁰ it is not possible to detain: unaccompanied minors, parents or family with handicapped minors or persons of full age, seriously handicapped persons, pregnant women or persons who have been tortured, raped or subjected to any other forms of serious mental, physical or sexual violence. The category of foreign nationals who are subject to treatment under the Act on the Residence of Foreign Nationals and who are vulnerable persons is not exempted from detention, nevertheless, the law defines a different treatment for some of these persons. Unaccompanied minor foreign nationals younger than 15 years are not subject to detention and are placed in a special facility for foreign children. Unaccompanied minor foreign nationals (from 15 to 18 years of age) can only be detained on special grounds (if there is a reasonable risk that they might threaten state security or might seriously disrupt public order)³¹ and only for a reduced period (i.e. 90 days)³². Accompanied minor foreign nationals are accommodated together with their parents in facilities for detention of foreign nationals, if care for them cannot be arranged for in any other manner.³³ Families with minor children are subject to a reduced period of detention (i.e. 90 days).³⁴

In the Czech Republic, there is a single facility for detention of foreign nationals and this facility is in Bělá pod Bezdězem (the Region of Central Bohemia). The Refugee Facilities Administration of the MoI is responsible for operation of this facility. In exceptional cases, foreign nationals are detained in prisons based on a court decision.

As concerns **alternatives to detention** of third country nationals, these are governed by Act No. 326/1999 Coll. on the Residence of Foreign Nationals. Pursuant to Section 123, which covers special measures for the purpose of departure of a foreign national from the Territory, there are two alternatives to detention of a foreign national in the Czech Republic: the obligation of a foreign national to report the address of their place of residence to the Police, to reside at that address, to report any change of the address to the Police on the following working day and to report in person at a police station at a time stipulated by the Police on a regular basis; or to deposit a financial security. The first alternative is used very frequently; the second one has not yet been imposed in practice.

The administrative authority examines the matter of imposition of special measures for the purpose of departure for all third country nationals whom possible detention might concern. For third country nationals, decision on the imposition of special measures is always made individually, taking into account their actions performed up until now and their vulnerability (for example, this concerns unaccompanied minor foreign nationals – these foreign nationals are not detained in practice).

³⁰ Section 46a(1) of the Asylum Act; Section 73(7) of the Asylum Act

³¹ Section 124(5) and Section 129(4) of the ARFN

³² Section 125(1) of the ARFN

³³ Section 140(1) of the ARFN

³⁴ Section 125(1) of the ARFN

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The Czech Republic has not yet prepared any study on the impact of detention on the efficiency of the proceedings for granting international protection or on the impact of detention or alternatives to detention on the efficiency of the return policy. Also, no study has been conducted concerning financial evaluation of detention and alternatives to detention and no study with a focus on the impacts of detention/alternatives to detention on the fundamental human rights of detainees has been prepared.

As concerns the available statistics at the national level, most requested statistics could not have been provided due to the fact that this information is not statistically tracked, except for the data on the average period of detention in the facility for detention of foreign nationals and the numbers of third country nationals placed in this facility.

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

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

Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year).

	2009	2010	2011	2012	2013	Source / further information
Statistics on number of third-country nationals in detention per category						
Total number of third-country nationals in detention	1 177	822	370	320	352	records of the Refugee Facilities Administration
Number of third-country national applicants for international protection in ordinary procedures in detention						
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention						
Number of applicants for international protection subject to Dublin procedures in detention						
Number of rejected applicants for international protection in detention						
Number of rejected family reunification applicants in detention						
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)						
Number of persons detained to prevent illegal entry at borders in detention						
Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a						

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return decision in detention							
Number of persons who have been issued a return decision in detention							
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category							
Number of other third-country nationals placed in immigration detention							
Statistics on number of third-country nationals provided alternatives to detention							
Total number of third-country nationals provided alternatives to detention							
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention							
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention							
Number of international protection applicants subject to Dublin procedures provided alternatives to detention							
Number of rejected applicants for international protection provided alternatives to detention							
Number of rejected applicants for family reunification provided alternatives to detention							
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)							
Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention							
Number of persons issued a return decision provided alternatives to detention							
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable							

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persons (for example, minors, persons with special needs, etc.) and by category provided alternatives to detention						
Number of other third-country nationals provided alternatives to detention (Please specify the category(ies))						

Table 2: Average length of time in detention

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

Average length of time in detention	2009	2010	2011	2012	2013	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	60 days	79 days	83 days	77 days	51 days	Directorate of the Foreign Police Service
Average length of time in detention of applicants for international protection in ordinary procedures						
Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures)						
Average length of time in detention of applicants for international protection subject to Dublin procedures						
Average length of time in detention of rejected applicants for international protection						

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