



DETENTION AND ALTERNATIVES TO DETENTION IN INTERNATIONAL PROTECTION AND RETURN PROCEDURES

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Background

EU legislation regulates the detention of migrants within the context of international protection and return procedures. This EMN study aims to provide a comparative overview of detention procedures and available alternatives to detention in 25 Member States, outlining new developments between 2015 and 2020.

Key questions answered in the study: What are the procedures

established by Member States to place a person in detention or providing an alternative to detention? What are the practical challenges and best practices in the use of detention and alternatives to detention within the framework of both international protection and return procedures? At a glance, the main findings are introduced below.



Key trends and findings

- Since 2015, several Member States have introduced legislative changes in their international protection and return procedures. These included expanding the types of alternatives to detention, prioritising alternative measures over detention, and lowering the minimum age for the compulsory application of alternatives to detention. Others enhanced the safeguards for vulnerable persons, and introduced new rules whereby minors and families with minor children could not be detained in detention centres.
- The most frequently used alternatives to detention are: reporting obligations; the requirement to reside at a designated location; the obligation to surrender a passport or identity document; the requirement to communicate an address; and release on bail. Other alternatives used include financial guarantees, community management programmes, and compulsory return counselling. In practice, Member States do not have all of these alternatives available in their national system and do not use every alternative that is legally available to them.
- Several alternatives to detention, such as residence requirements, release on bail, surrender of document or compulsory stay in reception facilities, can be difficult to apply in practice, for example because of the limited financial means of third-country nationals, the absence of

valid identity or travel documents, and the limited availability of places in dedicated reception facilities.

- When grounds for detention exist, the possibility of providing alternatives to detention is considered the preferred option across all Member States' international protection and return procedures. In most Member States, the assessment whether to impose detention or an alternative to detention is undertaken simultaneously with the consideration of the existence of grounds for detention. Several criteria, such as the level of risk of absconding, vulnerability, and the suitability of available alternatives, are considered when deciding whether to apply detention or an alternative to detention.
- Limited data are available to measure the impact of detention or alternatives to detention on the effectiveness of Member States' return policies and international protection procedures. Based on the information available, detention appears to have a bigger impact on reducing absconding and implementing returns, while alternatives to detention are more often associated with shorter status determination processes and higher appeal rates. Reporting in three Member States indicates that albeit alternatives to detention are less costly, they are also somewhat less effective to ensure compliance with return and asylum procedures.



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