



## EMN FOCUSED STUDY 2014

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

### 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 Focused Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

In Estonia, the detention of persons to be removed on the basis of the Obligation to Leave and Prohibition on Entry Act (henceforth OLPEA) and the detention of asylum seekers on the basis of the Act on Granting International Protection to Aliens (henceforth AGIPA) are regulated separately.

For the detention of asylum seekers in detention centres (henceforth DC), the contents of the Obligation to Leave and Prohibition on Entry Act regarding the detention of a person to be removed in a DC is applied, by taking into account the differences regarding the detention of asylum seekers provided in the AGIPA.<sup>1</sup>

### 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.***

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<sup>1</sup> AGIPA 36<sup>3</sup> subsections 1,2

## 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.*

It is important to note in the context of the present study that in Estonia, the stay in country, the detention and leaving of foreigners (including asylum seekers) is regulated by:

- Obligation to Leave and Prohibition on Entry Act
- Aliens Act
- Act on Granting International Protection to Aliens
- Administrative Procedure Act

The detention of a person to be removed on the basis of the Obligation to Leave and Prohibition on Entry Act is regulated separately as is the detention of an asylum seeker on the basis of the Act on Granting International Protection to Aliens.

For the detention of asylum seekers in a Detention Centre, the regulation of the Obligation to Leave and Prohibition on Entry Act on the detention of a person to be removed in a DC is applied, by taking into account the differences for detaining an asylum seeker provided in AGIPA.<sup>2</sup>

The foreigners being detained in detention centres in Estonia can be grouped as follows:

- detention of foreigners for the purpose of sending them out of the country (a precept to leave has been issued for the person, but the person has not left during the period for voluntary leaving and the precept must be enforced; or the precept to leave has to be enforced immediately; asylum seekers, if their asylum application has been denied and a precept has been issued for them to leave the country);
- detention of foreigners upon their arrival to the country or during their stay in the country, if the person has no legal grounds for staying in the country (the purpose of this type of detention is rather a temporary detention of the person for the verification of documents or for determining the legal grounds);
- detention of asylum seekers upon arriving in the country for 48 hours (e.g. for personal identification, verification of documents) and submitting an asylum application during the stay in the DC.

An unaccompanied minor can be detained in a DC in the latter two cases, an accompanied minor in all of the cases.

It is important to note that a decision to detain a person in Estonia for longer than 48 hours can only be made **with the permission of an administrative court**. Therefore, the placement of persons into DCs only happens under the supervision of administrative courts in Estonia.

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<sup>2</sup> AGIPA 36<sup>3</sup> subsections 1,2

Before applying for a detention permit of a person from an administrative court, the PBGB performs a thorough analysis to determine whether the detention of the person in a DC is required for the alien or it be sufficient to apply surveillance measures to the person. If there is no necessity, it is also possible not to apply surveillance measures to the person.

The following is an overview of all categories of detained persons.

### **Detention of aliens for the purpose of expulsion from the country**

An alien must have legal grounds for staying in Estonia. It is prohibited for aliens to stay in Estonia without legal grounds. For an alien who is staying in the country without legal grounds, an **obligation to leave** applies when the person's grounds for staying in the country expire, if it is not prolonged and the alien has no other grounds for staying.

To aliens that are staying in Estonia illegally, a **precept** is issued:

- to legalise their stay in the country (**legalisation precept**) i.e. a precept with the obligation to apply for a residency permit in Estonia;
- that obliges the person to leave Estonia, a **precept to leave** the country.

A precept to leave is issued:

1. with a period of voluntary compliance with the obligation to leave, i.e. the person leaves the country voluntarily within the period assigned for it;
2. is enforced:
  - 2.1 immediately within 48 hours or
  - 2.2 if it is not possible to enforce the precept to leave immediately, the person may be detained for up to 2 months upon the permit of an administrative court, for which period the alien will be placed in a DC.

If an alien is issued a precept to leave with a period of voluntary compliance (7-30 days), then a notice is made about application of the enforcement penalty in the case of failure to comply with the precept to leave, as well as a warning about the enforcement execution of the obligation to leave; in case of necessity, the prohibition on entry can be applied with regard to the alien.

The term for voluntary compliance with the obligation to leave stipulated in the precept to leave may be extended by up to 30 days at a time if the compliance with the obligation to leave turns out to be too disproportionately burdensome for an alien within the term stipulated in the precept to leave, taking account of:

- 1) the duration of the stay in Estonia of an alien;
- 2) impact on a child attending school;
- 3) family and social relationships of an alien in Estonia and
- 4) other relevant circumstances.

To guarantee the execution of the obligation to leave, PBGB may oblige the alien, in the precept or with a decision, to comply with surveillance measures and to pay an enforcement penalty. To guarantee the execution of the obligation to leave, the following surveillance measures arising from the OLPEA apply an alternative detention of the person in the context of this study: 1) residing in a determined place of residence; 2) appearing for registration at PBGB at prescribed intervals; 3) appearing at PBGB to clarify circumstances that ensure compliance with a precept;

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- 4) notifying PBGB of the changes of residence of the alien and of his or her prolonged absence from the place of residence;
- 5) notifying PBGB of the changes in the alien's marital status;
- 6) depositing of a travel document of a foreign country or an identity document of an alien at PBGB or the Security Police.

PBGB and the Security Police have the right to check whether an alien is residing in the determined place of residence.<sup>3</sup>

At the same time, the term for voluntary leave determined in the precept to leave may be shortened and the obligation to leave enforced before the expiry of the term for voluntary leave<sup>4</sup> or a term for voluntary compliance with the obligation to leave cannot be assigned at all and the enforcement of the obligation to leave be carried out immediately<sup>5</sup>. If the immediate enforcement of the precept to leave is manifestly unreasonable or manifestly disproportionate for an alien, the term for voluntary compliance may still be assigned in the precept to leave.

Upon expiry of the term for obligation to leave as assigned in the precept to leave, the obligation to leave may be enforced with regard to an alien at any time. The obligation to leave regarding an alien shall be subject to enforcement by means of the detention and expulsion of him or her from Estonia. The expulsion will be completed within 48 hours from the detention of the alien.

If it is not possible to complete the expulsion within 48 hours, the person to be expelled will be placed into a **Detention Centre** until expulsion, upon the request of the government agency that requested the expulsion or is

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<sup>3</sup> OLPEA, section 10, subsections 1,2,3

<sup>4</sup> According to OLPEA, section 7<sup>2</sup>, subsection 6 if:

- 1) there is doubt that the alien may escape or evade compliance with the precept to leave;
- 2) an alien has been refused the issue of a residence permit or the granting of international protection because the application for residence permit or international protection is manifestly unjustified;
- 3) an alien has submitted false information or falsified documents about the circumstances relevant in the proceedings concerning the issue of a residence permit or international protection or
- 4) an alien poses a danger for public order or national security.

<sup>5</sup> According to OLPEA, section 7<sup>2</sup>, subsection 2 if:

- 1) this is necessary to ensure public order or national security;
- 2) this is necessary for the prevention, investigation and detection of crime and bringing it to justice;
- 3) a precept to leave is imposed on an alien who has arrived in Estonia illegally;
- 4) a prohibition on entry applies to an alien;
- 5) a decision to refuse admission into the country has been made with regard to an alien;
- 6) a precept to entry is imposed at the border check point to an alien leaving Estonia whose permitted period of stay on the territory of a member state of the Schengen Convention has expired;
- 7) an alien who is conditionally sentenced or released on parole before the prescribed time has no residence permit or the right of residence;
- 8) there is doubt that the alien may escape or in any other manner evade compliance with the precept to leave;
- 9) an alien has been refused the residence permit or the granting of international protection because the application for a residence permit or the granting of international protection is obviously unjustified or;
- 10) in the proceedings of the issue of the residence permit or granting international protection, the alien has submitted false information or falsified documents about the circumstances relevant in the proceedings.

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executing the expulsion (PBGB or Security Police), for a period not longer than 2 months. If it is impossible to enforce expulsion within the term of detention in the DC, an administrative court shall, at the request of a competent official of PBGB, extend the term of detention in the detention centre of a person to be expelled by up to two months at a time until expulsion is enforced or until the alien is released, but not for longer than 18 months from the date of apprehension of the person to be expelled.<sup>6</sup> Judgments concerning the detention of persons to be expelled and extension of the term of detention shall be made by an administrative court pursuant to the provisions of the Code of Administrative Court Procedure on giving permission for administrative proceedings.

The OLPEA to become effective in the autumn, from 1 Oct 2014 will specify the right of detention of an alien, according to which an alien can be detained if application of the surveillance measures specified in section 10 of OLPEA does not guarantee fulfilment of the obligation to leave, and especially if:

- 1) there is a risk that the alien will escape;
- 2) the alien does not fulfil his or her obligation to co-operate or
- 3) the alien does not have the documents necessary for returning, or their arrival from the receiving or transit state is delayed.

Pursuant to the new OLPEA to become effective, an alien can be detained on the basis of the mentioned points if it is impossible to apply surveillance measures in an effective manner. The detention must be in accordance with the principle of proportionality and relevant details related to an alien must be considered with regard to each specific case of detention.

**The detention of an alien upon their arrival to the country or during their stay in the country, if the person does not have legal grounds for staying in the country**

Before entry to the country, a PBGB checks the legal grounds of an alien to enter the country. If the permission of the alien into the country is obstructed, e.g. upon an additional verification of the person's identity, document or legal grounds for staying in the country, PBGB or Security Police have the right to detain the person for up to 48 hours. Often, the initial detention of a person apprehended on the border takes place in transit zones, such as a border station or an airport.

If a need to detain the person for longer than 48 hours arises, the PBGB will present a request to an administrative court to place the person into a DC. An alien can be detained for the purpose of verification of personal identity, documents and the legal grounds for staying in the country, and primarily in the case when a **risk of escaping** can be determined regarding the alien.

**Detention of asylum seekers upon their arrival into the country and the submission of an asylum application while in a detention centre**

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<sup>6</sup> According to the amendment in OLPEA, section 25, subsection 1,2 that will become effective from 1 Jan 2014, an administrative court will, upon a request by PBGB, prolong the term of detention of the person to be expelled in a DC by periods of two months, but not for longer than six months from the date of apprehension of the person to be expelled. However, if the person to be expelled does not fulfil his or her obligation to co-operate or the arrival of necessary documents from the receiving or transit state is delayed, an administrative court will prolong the term of detention of the person to be expelled in a DC by periods of two months, but not for longer than 18 months from the date of apprehension of the person to be expelled.

The initial detention of an asylum seeker is often related to the task of determining the person's identity and of the initial evaluation of the merits of the asylum application. However, it must be observed that the detention is in accordance with the principle of proportionality and relevant details related to an asylum seeker must be considered with regard to each specific case of detention.

It must also be evaluated whether it would not be more efficient to apply surveillance measures to the applicant as an alternative to detention.

PBGB may, **for a purposeful, efficient, simple and quick execution of the asylum procedure, apply the following surveillance measures towards the applicant:**

- 1) residing in a determined place of residence;
- 2) appearing for registration at PBGB at prescribed intervals;
- 3) notifying PBGB of the applicant's absence from the place of residence for longer than three days;
- 4) depositing of a travel document of a foreign country or other identity document at PBGB.<sup>7</sup>

If PBGB evaluates the application of surveillance measures as insufficient, the asylum seeker may be detained without a permit from an administrative court for up to 48 hours in a DC or in official quarters, and for a detention longer than 48 hours, PBGB or the Security Police will request permission from an administrative court to detain the asylum seeker and to place him or her in a detention centre for up to two months. An administrative court will evaluate the proportionality of the detention of the person.

According to AGIPA<sup>8</sup>, an asylum seeker may only be detained in Estonia **in the case of unavoidable necessity** on the following grounds:

- 1) personal identification or verification of identity;
- 2) verification or determination of the person's citizenship;
- 3) verification of the legal grounds of the person's arriving to and staying in the country
- 4) determination of circumstances of effect to the handling of the asylum application, especially in the case that there is a risk of escaping;
- 5) if there is grounded reason to believe that the person has submitted the asylum application in order to postpone their obligation to leave or to avoid expulsion;
- 6) protection of national security or public order;
- 7) handing the person over according to the procedure<sup>9</sup> of the Dublin Convention.

When the grounds for detaining the asylum seeker cease to exist, the head of the detention centre will immediately release the asylum seeker from the DC.

If an alien submits an asylum application while staying in a DC or while being expelled, PBGB will stop the process of the expulsion of the alien in DC pursuant to OLPEA and will start the alien's asylum proceedings pursuant to AGIPA. PBGB will request a permit for detaining the person for up to two months in a DC from an administrative court within 48 hours from the submission of the asylum application. Detention of the alien for expulsion will be suspended until a decision has been made regarding the asylum application. If a person's asylum proceedings end while the person is in a DC, the detention of the person will be ended pursuant to

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<sup>7</sup> AGIPA, section 29, subsection 1

<sup>8</sup> AGIPA, section 36<sup>1</sup>, subsection 2

<sup>9</sup> Pursuant to the procedure provided in Regulation (EU) No 604/2013 of the European Parliament and of the Council

AGIPA and a court permit requested for detaining the person in a DC so that the person's expulsion procedure can be completed pursuant to OLPEA.

### **Receiving an alien to a DC**

A person to be expelled is received in a DC on the grounds of a copy of decision by an administrative court and a personal identification document, or, if the latter is missing, a document of verification of identity. If it has not been possible to identify a person, a document of verification of identity will be produced on the basis of the person's testimony. While detaining person for short term period (up to 48 h) administrative court decision is replaced by official report of detention.

**Release of the person to be expelled from a DC** takes place upon the permission of the head of the centre if:

- 1) it becomes possible to expel the alien and the person leaves the country;
- 2) the expulsion has not been completed and the expulsion of the person has turned out to be unachievable after 18 months from the date of the decision of placement of the alien in the DC;
- 3) the person to be expelled is apprehended as a suspect or a witness in a criminal case and is placed in a prison facility;
- 4) the precept to leave is annulled or declared void, or a grounds for staying is issued to the alien.

However, releasing a person from a DC on the grounds of paragraph 2 does not give the alien legal grounds for staying in Estonia, and it does not mean that the stay of the person in Estonia is automatically legal. The person must legalise his or her stay in the country through the legal means provided either in the Aliens Act, the Act of Granting International Protection to Aliens or the Citizen of the European Union Act.

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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 <b>grounds</b> for detention for each category of migrant that can be detained in your (Member) State.  Is there an <b>exhaustive list</b> of grounds outlined in your national framework?
<b>Applicants for international protection in ordinary procedures</b>	Yes	Yes		<p>The grounds for detaining an asylum seeker are</p> <ol style="list-style-type: none"> <li>1) personal identification or verification of identity;</li> <li>2) verification or determination of a person's citizenship;</li> <li>3) verification of the legal grounds of a person's stay in the country;</li> <li>4) determination of circumstances relevant to the handling of an asylum application, especially in the case when there is a risk of escape;</li> <li>5) when there is reasonable grounds to presume that the person has submitted the asylum application in order to postpone an obligation to leave or to avoid expulsion;</li> <li>6) protection of national security or public order;</li> <li>7) handing over the person pursuant to the procedure provided in</li> </ol>

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				Regulation (EU) No 604/2013 of the European Parliament and of the Council. <sup>10</sup>
<b>Applicants for international protection in fast-track (accelerated) procedures<sup>11</sup></b>	Yes	Yes		General grounds for detaining an asylum seeker AGIPA, section 36 <sup>1</sup> , subsection 2. As a rule, an asylum procedure cannot be held in Estonia as an expedited procedure with the purpose of granting a person international protection. PBGB may give priority to the applications of applicants with special needs or of unaccompanied minors or to applications that are well founded. PBGB may review a clearly unfounded asylum application as an expedited procedure. <sup>12</sup>

<sup>10</sup> AGIPA, section 36<sup>1</sup>, subsection 2

<sup>12</sup> Pursuant to AGIPA, section 20, an asylum application is considered clearly unfounded if:

- 1) another country can be considered the principal asylum country from the point of view of the applicant, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
- 2) there is reason to consider the applicant's country of origin as a safe country of origin;
- 3) the applicant holds a residence permit in Estonia;
- 4) the applicant has been refused asylum on the basis of this Act or the applicant's application for asylum has been rejected on the basis of this Act and no new circumstances exist that were not known during previous asylum proceedings;
- 5) the applicant has submitted the application for asylum under a false name or has destroyed, damaged or failed to present a document or other evidence of essential importance to the processing of his or her application for asylum, or has presented, without good reason, falsified documents or other false evidence;
- 6) the applicant has knowingly provided incorrect information or given incorrect explanations upon the processing of his or her application for asylum, or has knowingly failed to provide information or give explanations that are of essential importance to the processing of his or her application for asylum;
- 7) the applicant has submitted the application for asylum in order to avoid the enforcement of a return, expulsion or extradition procedure, provided that an earlier application for asylum had been possible;
- 8) the applicant has knowingly ignored the duties provided by this Act, has refused or refuses to be photographed and fingerprinted or give DNA probes, or fails to comply with surveillance measures;
- 9) the alien's actual objective is to settle in Estonia for other reasons, including to find employment or improve his or her living conditions;
- 10) the applicant is unable to provide credible evidence proving that his or her fear of persecution is well-founded;
- 11) the applicant's explanations are inconsistent, conflicting, improbable or lacking in circumstantial or personal details;
- 12) it is obvious that the applicant cannot be considered a refugee pursuant to law;
- 13) the applicant has submitted a new application for asylum with new personal data;
- 14) the applicant has failed to submit an application earlier without good reason, even though he or she had an opportunity to do so;
- 15) the applicant has without good reason failed to fulfil the obligations provided for in clauses 11 (2) 1)-3), 10) and/or subsection 23 (1) of this Act;

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				If a rejection of an asylum application is issued to an alien, a precept to leave Estonia is issued to the alien pursuant to OLPEA. <sup>13</sup>
<b>Applicants for international protection subject to Dublin procedures</b>	Yes	Yes		In the case of unavoidable necessity, an asylum seeker may be detained for handing over according to the Dublin procedure. <sup>14</sup>
<b>Rejected applicants for international protection</b>	Yes	Yes		If a rejection of an asylum application is issued to an alien, a precept to leave Estonia is issued to the alien pursuant to the procedure provided in OLPEA. <sup>15</sup>
<b>Rejected family reunification applicants</b>	Yes	Yes		The residence permit application of a family member of an alien who has been granted international protection may be rejected or the permits prolongation refused or the permit declared void, and the family member will be issued with a precept to leave Estonia pursuant to OLPEA. <sup>16</sup>
<b>Other rejected applicants for residence permits on basis other than family reunification (Please</b>	Yes	Yes		If a rejection of an asylum application is issued to an alien, a precept to leave Estonia is issued to the alien pursuant to OLPEA. <sup>17</sup>

16) the applicant arrived in Estonia illegally and failed to contact the Police and Border Guard Board and/or to submit an application for asylum as soon as possible;

17) the applicant poses a threat to national security or public order or he or she has been expelled from Estonia for the said reasons;

18) the application for asylum of the parent of an applicant who is a minor has been rejected;

19) an applicant who is a minor independently submits an application for asylum that his or her legal representative has already submitted for him or her.

<sup>13</sup> AGIPA, section 25, subsection 2 and section 26

<sup>14</sup> Pursuant to AGIPA, section 36<sup>1</sup> subsection 2, point 7 and the Regulation (EU) No 604/2013 of the European Parliament and of the Council

<sup>15</sup> AGIPA, section 25, subsection 2 and section 26

<sup>16</sup> AGIPA, section 46, subsections 8, 16

<sup>17</sup> AGIPA, section 25, subsection 2 and section 26

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<i>provide details)</i>				
<b>Persons detained at the border to prevent illegal entry (e.g. airport transit zone)</b>	Yes	Yes		If a receiving country refuses to accept the person to be expelled or other circumstances obstructing the completion of expulsion arise during the transportation of the person to be expelled to a border station or while in the border station, the person to be expelled is detained pursuant to administrative procedure until the expulsion is completed or the person is placed into a DC, but not longer than 48 hours. <sup>18</sup>
<b>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</b>	Yes	Yes		Person may be detained for up to 48 hours (ex for identification of person). A precept to leave Estonia shall be issued to an alien who is staying in Estonia without a basis for stay <sup>19</sup> ; a precept to leave will also be issued to an alien who has arrived in Estonia illegally. <sup>20</sup>
<b>Persons who have been issued a return decision</b>	Yes	Yes		An alien is expelled from Estonia when the term of the enforcement of a precept to leave arrives. <sup>21</sup>
<b>Other categories of third-country nationals (Please specify the categories in your answer)</b>	-	-		-

<sup>18</sup> OLPEA, section 22<sup>19</sup> OLPEA, section 7<sup>20</sup> OLPEA, section 7<sup>2</sup><sup>21</sup> OLPEA, section 14, subsection 1

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

Estonia's legal system also provides the opportunity to detain persons belonging to vulnerable groups in a DC.

In the case of detention of these people, pursuant to OLPEA, protection must be provided to vulnerable persons, i.e. PBGB is obliged to take into consideration the special needs of minors, unaccompanied minors, handicapped persons, elderly persons, pregnant persons, single parents with minors as well as persons who have been victims of torture, rape or other forms of grave mental, physical or sexual violence.<sup>22</sup>

OLPEA provides the participation in expulsion procedures separately for accompanied as well as unaccompanied minors.

Overall, the general regulation also applies to minors in expulsion procedure. The main substantive differences related to minors in the general procedure of OLPEA are mostly related to the compilation of a precept to leave for a minor and to the determination of age; also, the expulsion regulation of minors is specified.

#### **Accompanied minor –**

If a minor or an adult with restricted active legal capacity without legal grounds for stay is accompanying an alien in Estonia to whom a precept is issued, the parent, guardian or other responsible adult is given, with the same precept, the obligation to organise compliance with the precept with regard to the minor or adult with restricted active legal capacity as well.

#### **Unaccompanied minor –**

OLPEA provides the possibility to issue a precept to leave to a minor only in the following cases:

1) upon the issue of the precept, the representation of the unaccompanied minor alien is ensured and his or her interests have been taken into account; 2) the unaccompanied minor alien is sent back to his or her family member or appointed guardian or to the reception centre of the receiving state.<sup>23</sup>

At the moment the regulation of detention of minors can be considered under-regulated in Estonia.<sup>24</sup> When detaining a minor general regulation is applied and the administrative body should consider the interest of the minor. The OLPEA to become effective on 1 Oct 2014 supplements the regulation of unaccompanied minors regarding compulsory school attendance,<sup>25</sup> spending of spare time (age-appropriate activities will be organised for the minor to be expelled and necessary means provided)<sup>26</sup> and specifies the differences regarding the issuing of precepts to minors.<sup>27</sup>

<sup>22</sup> OLPEA, section 6<sup>7</sup>

<sup>23</sup> OLPEA, section 12, subsections 1,3

<sup>24</sup> E. Belitchev “Alaealiste kinnipidamine väljasaatmismenetluses” (“Detention of minors in a detention procedure”), 2013

<sup>25</sup> OLPEA to become effective on 1 Oct 2014, section 26<sup>5</sup>, subsection 8

<sup>26</sup> OLPEA to become effective on 1 Oct 2014, section 26<sup>5</sup>, subsection 7

<sup>27</sup> OLPEA to become effective on 1 Oct 2014, section 12

As Estonia has very minimal experience in the detention of minors compared to that of other Member States, which was an average of 1,477 apprehended minors, while in Estonia the number was 35 in 2012, limited experience with minors can explain the deficiencies in related special regulations. For example, in 2010, no unaccompanied minors were placed into a DC. All in all, 3 minors with a family member were placed in a DC in 2010. In 2011, a total of 4 unaccompanied minors were accommodated in the centre, 3 out of whom were later identified as adults as a result of a medical examination and 1 turned out to be an actual minor. In 2012, the general numbers of detained minors grew considerably compared to previous years and all in all, 17 minor citizens of third countries were detained in the centre in 2012. Of the persons detained in the detention centre<sup>28</sup> in 2012 and identified as minors at the moment of their apprehension, 10 turned out to be adults as a result of medical examination and 4 abandoned their claim to be minors before a medical examination, while in the expulsion centre. Of the 17 persons, 2 were documented as minors and 1 was treated as a minor pursuant to the results of an age determination test.<sup>29</sup>

*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.*<sup>30</sup>

The present legal regulation does not support tolerated illegal stay in Estonia. Pursuant to OLPEA, a person to be expelled is released from the DC or police detention facility or his or her accommodation outside the DC under surveillance is ended if the expulsion has not been completed within 18 months from the date of the alien being placed in the DC. At the same time, however, being released from a DC does not give an alien legal grounds for staying in Estonia and his or her stay in Estonia is illegal, if he or she does not have a legal grounds for staying in Estonia as provided in the Aliens Act, the Act of Granting International Protection to Aliens or the Citizen of the European Union Act.<sup>31</sup> As an exception, it is possible to issue legal basis for staying to those aliens who have previously had a residence permit to settle with a spouse or with a close relative, if the person has died or marriage is revoked and the alien still has a reasonable excuse for staying (taking care of children or close relatives who is in need of assistance, or other reasons that show that an alien has integrated and has close ties with country).<sup>32</sup>

### [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*

<sup>28</sup> The detention centre was renamed as expulsion centre on 1 Oct 2013.

<sup>29</sup> E. Belitchev "Alaealiste kinnipidamine väljasaatmismenetluses" ("Detention of minors in a detention procedure"), 2013

<sup>30</sup> According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

<sup>31</sup> OLPEA, section 24, subsection 5

<sup>32</sup> EE NCP ad query on tolerated-stay launched on 8 April 2014

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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, the appropriateness of detention is evaluated case by case in Estonia. The initial evaluation about the need of detention is given by PBGB and the detention decision is always made by an administrative court.

#### **Assessment of an alien's detention by PBGB**

The initial assessment of the need of detention of a person is made by a **PBGB**, who handles the case. If a risk of escaping can be determined regarding the person to be expelled or of a threat to national security, the official will present a detention request for the person to an administrative court. All aliens staying in the country illegally go through an assessment of the proportionality of detention. A detention must strictly adhere to the principle of proportionality (its purpose, necessity and reasonableness are evaluated), while also the circumstances regarding the specific case must always be taken into account (e.g. vulnerability of the person, etc.).

An asylum seeker may be detained if it is not possible to apply alternative detention efficiently. The detention of an asylum seeker must be unavoidably necessary, i.e. an asylum procedure cannot be guaranteed without it. In the case of detaining a minor, the official of PBGB must first evaluate whether all interests of the minor are protected in the detention centre and whether detaining the minor is in correspondence with protecting his or her best interests. The effective OLPEA does not regulate the existence of a social worker or the person's access to a social worker while in the centre. In accordance with the professional skills of a social worker, he or she could be of assistance to the PBGB official, who may not be aware of all important circumstances that should be considered.<sup>33</sup>

#### **Assessment of detention by an administrative court**

Pursuant to the effective regulation of the detention of aliens in Estonia, the detention of an alien for longer than 48 hours always has to pass examination by a court. For placing an alien to a DC, an **administrative court** must issue an order with a permission of the corresponding administrative act. The court evaluates the proportionality of detention as well as the perspective of expulsion of the person. The detention of a person to be expelled (for up to two months) and the detention term (by periods of up to two months until the alien

<sup>33</sup> E. Belitchev "Alaéaliste kinnipidamine väljasaatmismenetluses" ("Detention of minors in a detention procedure"), 2013

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is released or expulsion completed) is decided by an administrative court pursuant to the procedures of issuing permits for administrative acts of the administrative court regulation.<sup>34</sup>

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).

Estonian legislation does not have so-called manuals for evaluating a person's detention in a DC. An official of the PBGB who is handling the case evaluates an individual facts the following with regard to the alien to be expelled: how has the alien co-operated previously, has the person been co-operative or is there a risk of absconding, or is there a risk to national security; under what circumstances has the person not left during the period of voluntary leaving; vulnerability of the person; the familial status of the person (whether vulnerable family members of the person to be expelled will be expelled with him or her). Each case will be handled by the official considering the principles of proportionality.

When considering a person's detention an administrative court will also evaluate PBGB's assessment and the groundings and proportionality of detention when considering a person's detention.

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?

Yes, all stages of the precept to leave are explained to the person to be expelled, as is the right of an alien to contest his or her expulsion, and the fact that the contesting will not postpone the expulsion automatically for the duration of court proceedings. The probability of being placed in a DC is explained to a person in case the person does not leave during the period noted in the precept to leave or does not fulfil the surveillance measures applied to him or her.<sup>35</sup>

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.

A detention must strictly adhere to the principle of proportionality (its purpose, necessity and reasonableness are evaluated), while also the circumstances regarding the specific case must always be taken into account, including the vulnerability of the person.

For example, the detention of an asylum seeker must be unavoidably necessary, i.e. an asylum procedure cannot be guaranteed without it.<sup>36</sup> An asylum seeker can be detained in the case of unavoidable necessity, while determining the circumstances relevant to the asylum application proceedings, especially when there is a risk of absconding.<sup>37</sup>

The proportionality is evaluated separately in the case of detaining an accompanied child (e.g. with family), by considering the best interests of the child (e.g. when the child has to attend school compulsorily, the DC

<sup>34</sup> OLPEA, section 26, subsection 1

<sup>35</sup> OLPEA, section 16, subsection 1

<sup>36</sup> Explanatory letter to AGIPA

<sup>37</sup> AGIPA, section 36<sup>1</sup>, subsection 2, p 4

does not offer such a possibility). The overall effect of the detention on the child is evaluated.

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**

The OLPEA that will become effective from 1 Oct 2014 regulates that when a precept to leave is issued or an alien is detained, the risk of absconding is evaluated.

The risk of absconding of an alien is present if:

- 1) an alien has not left Estonia or a member state of the Schengen Convention after the term for voluntary leaving determined in the precept to leave has expired;
- 2) an alien has presented false data or a falsified document when applying for legal grounds for staying in Estonia or prolonging it, for Estonian citizenship, for international protection or for a document of personal identification;
- 3) there is grounded doubt on the identity or citizenship of the alien;
- 4) the alien has repeatedly committed intentional criminal offences or committed a crime for which a prison sentence has been ruled for him or her;
- 5) the alien has not complied with surveillance measures that have been applied to him or her for guaranteeing the fulfilment of the precept to leave;
- 6) the alien has informed PBGB or Security Police that he or she will not comply with the obligation to leave;
- 7) the alien has entered Estonia while a prohibition of entry is effective with regard to him or her;
- 8) the alien has been apprehended because of illegally crossing the Estonian border and he or she has not been granted permission or right to stay in Estonia.<sup>38</sup>

An the present legislation, the persons with the risk of absconding may detained in case of asylum seekers and aliens in return process. At the moment the term “risk of absconding” in return process is not defined and understanding of it is up to official. The person staying in the country without legal basis are not allowed to the term for voluntary leaving and person will be enforced to leave immediately.

Asylum seeker may be detained in case of unavoidable necessity, while determining the circumstances relevant to the asylum application proceedings, especially when there is a risk of absconding.<sup>39</sup>

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

An obligation to co-operate is imposed on a person to be expelled, pursuant to which he or she is

<sup>38</sup> New OLPEA, section 6<sup>8</sup>

<sup>39</sup> AGIPA, section 36<sup>1</sup>, subsection 2, p 4

obliged to help in organising his or her expulsion, including:

- 1) to provide governmental authorities enforcing the expulsion with oral and written information and explanations;
- 2) to submit all information and documents and other evidence in his or her possession that are relevant to the proceedings relating to expulsion;
- 3) to co-operate in the obtainment of the documents necessary for expulsion;
- 4) to co-operate in the collection of information needed for identification of his or her person, and for verification purposes.<sup>40</sup>

If the person does not show willingness to co-operate, e.g. in applying for/obtaining documents, this can be deemed grounds for detaining the person.

An asylum seeker may be detained in the case of unavoidable necessity, if there is grounded reason to believe that the person has submitted the application for asylum to postpone the obligation to leave or prevent expulsion.<sup>41</sup>

c) **Ground 3: If required in order to protect national security or public order**

Indicators are: person's previous behaviour and abidance to law, risk of public order and national security. An asylum seeker may be detained in the case of unavoidable necessity, for the purpose of protecting national security or public order.<sup>42</sup>

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

An asylum seeker can be detained in the case of unavoidable necessity on the following bases:

- 1) identification of the person or verification of the identity;
- 2) verification or identification of the citizenship of the person;
- 3) verification of the legal bases of the entry into and the stay in the state of a person;
- 4) transfer of a person in the procedure provided for in Regulation (EU) No 604/2013 of the European Parliament and of the Council.<sup>43</sup>

The criterion for detaining a person to be expelled is the enforcement of a precept to leave, in order to complete expulsion from the state.

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

Yes, in the case of each detention, alternative measures are evaluated for guaranteeing the person's compliance with the obligation to leave. When a person is placed in the DC, always (if possible) the possibility is considered that the person will leave the country during the term of voluntary leaving and if necessary, the term of voluntary leaving is prolonged.

An administrative court also evaluates whether the standpoints of PBGB and the necessity for detention of

<sup>40</sup> OLPEA, section 26<sup>4</sup>

<sup>41</sup> AGIPA, section 36<sup>1</sup>, subsection 2, p 5

<sup>42</sup> AGIPA, section 36<sup>1</sup>, subsection 2 p 6

<sup>43</sup> AGIPA, section 36<sup>1</sup>, subsection 2 p 6, subsections 1,2,3,7

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the person is grounded, in the order of initial detention as well as in the order of prolongation of detention.

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.

Pursuant to OLPEA<sup>44</sup>, the government agencies to execute the expulsion of persons to be expelled are PBGB and Security Police. Usually, the initial assessment of the need of detention of a person is made by an official of the PBGB, who handles the case. If a need for detention arises with regard to a person to be expelled, PBGB will present a request to an administrative court for detaining the person.

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?)

Judgments concerning the detention of persons to be expelled and extension of the term of detention shall be made by an administrative court pursuant to the provisions of the Code of Administrative Court Procedure on giving permission for administrative proceedings.<sup>45</sup> The ruling of the court is obligatory for PBGB.

A court can also suspend the expulsion of an alien;<sup>46</sup> a court suspends the enforcement of a precept to leave or on the proposal of the Prosecutor's Office if the person to be expelled is a victim or a witness in criminal proceedings the object of which is a crime related to human trafficking, in the meaning of the framework decision 2002/629/JSK on the fight against human trafficking. The Prosecutor's Office or, on the order of the Prosecutor's Office, an investigative body informs the person of the possibility of suspension of expulsion and of its conditions.

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

1. Grounding the assessment of the detention of a person in a case when it is known that the expulsion of the person has no perspective, as, on the one hand, the person lacks legal grounds for staying in the country, while on the other hand, there is a risk that the alien will abscond across state borders into the European Union.
2. It is also difficult to evaluate whether the accommodation together of asylum seekers and persons to be expelled doesn't influence the persons to be expelled so that they will see, in the centre, the submission of an asylum application as a possibility to prolong their stay in the country/the enforcement term of the expulsion, which in turn may lead to abuse of the asylum proceedings and unreasonable increase in administrative burden.
3. As access to education is not guaranteed for children who are subject to compulsory school attendance in a DC, it should be taken into consideration when placing a minor into a DC, in order to guarantee the best interests of the child.

<sup>44</sup> OLPEA, section 22

<sup>45</sup> OLPEA, section 26, subsection 1

<sup>46</sup> OLPEA, section 14, subsection 5

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)

It could be considered a good practice that each case is assessed separately with a view to considering the needs and rights of each person. The initial assessment is done by PBGB, but the final decision is made by an administrative court.

#### 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.

Estonia has only 1 **detention centre**, which is a structural unit of PBGB and the purpose of which is to carry out the detention rulings of persons to be expelled and asylum seekers. The DC is a closed facility with a guarded fence and a person to be expelled is not allowed to leave the DC without surveillance and without the permission of the head of the centre.<sup>47</sup>

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.

There is 1 detention centre in Estonia, where persons to be expelled are accommodated, and, if necessary, also asylum seekers.

Alternatively and as an exception to DC, an alien to be expelled can be detained:

- 1) up to 30 days in a police detention facility. In the case of detention in a police detention facility, the conditions of execution of arrest as stipulated in the Imprisonment Act are applied.
- 2) If the detention of a person to be expelled is not safe in a DC or in a police imprisonment facility for security or health reasons or it is impossible or severely complicated for another reason, a person to be expelled may, upon the decision of the head of the DC, be accommodated outside the building of the DC (e.g. in case when the person to be expelled needs hospital care, he or she can be placed in a hospital, where surveillance of him or her is organised).

<sup>47</sup> OLPEA, section 26<sup>1</sup>, subsections 1,2,5

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- 3) If an alien staying in Estonia with no legal grounds does not have sufficient financial means, PBGB or Security Police may organise the accommodation of the alien, if it is necessary for humanitarian reasons or for the protection of a vulnerable person and if the alien cannot use other accommodation opportunities (starting from 1 Oct 2014). The target group for this kind of accommodation is mostly vulnerable persons like pregnant or disabled persons, and parents with underage children.

An asylum seeker can, as an exception, be detained alternatively to the detention centre:

If the detention of an asylum seeker in the DC is not possible for security or health reasons or it is impossible or severely complicated for other reasons, the asylum seeker may, upon the decision of the head of the DC, be accommodated in a police detention facility or under surveillance outside the DC.

In the case of detaining minors, disabled persons, elderly persons, pregnant persons, single parents with underage children as well as victims of torture, rape or other types of mental, physical or sexual violence, their special needs are considered and PBGB guarantees regular reviewing of their detention.

An alien may also be temporarily accommodated in a border zone, e.g. in Tallinn Airport, where a separate room for the temporary detention of persons has been created and where, if necessary, food is provided for the detained persons, toiletries given, a possibility to take a shower provided and where there is a possibility to smoke either in a special smoking room or outside (with an official present). Also, the special status of persons can be considered when they are being detained, e.g. families with children can use the recreational facilities of officials in the daytime, drawing utilities and toys are provided for children.<sup>48</sup>

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

In Estonia, the DC is a structural unit of PBGB.<sup>49</sup> PBGB, in turn, is an agency of the Ministry of Internal Affairs.

*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.*

Up to January 2013, the DC could accommodate up to 60 persons to be expelled, in February 2013, the capacity of the centre was increased to 80 persons to be expelled. In the case of overcrowding of the DC, persons to be expelled can be accommodated in police detention facilities instead of the DC. As of today, this opportunity has not been used, as there has not been overcrowded for 100% of the DC. In April 2013, the centre, which holds 60 persons, accommodated a record number of persons to be expelled, over 50 persons.

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

No, the DC is an administrative detention facility. If the person is a suspect or accused in criminal

<sup>48</sup> The visit of the Chancellor of Justice to the detention facilities of Tallinn Airport

<http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-tallinna-lennujaama-kinnipidamisruumid>

<sup>49</sup> OLPEA, section 26<sup>1</sup>, subsection 1

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proceedings or in offence proceedings, he or she will not be placed in the DC.<sup>50</sup>  
 However, it is possible that the centre holds persons who are ex-convicts and who have, as a supplementary punishment, been issued a precept to leave the country.

*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?*

In Estonia, prisoners and persons to be expelled are not accommodated together in the DC.

*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)	Surface area 617.3 m <sup>2</sup> , i.e. 7.7 m <sup>2</sup> per person
Please provide any statistics on the average number of detainees placed in one room per detention facility	One room holds two bunk beds, i.e. up to 4 persons can be accommodated in one room. As the centre has not been fulfilled to full capacity yet, the average number of persons per 1 room is 2. Usually the situation is that persons of the same nationality are accommodated in a room; persons of different sex are always accommodated separately. Also, if possible, persons to be expelled and asylum seekers are accommodated separately.
Are families accommodated in separate facilities?	The DC has a house with rooms for accommodating persons to be expelled, where family members will be accommodated together, if possible. <sup>51 52</sup> In 2012, a special family room was created in the centre (with support of European Return Fund and Ministry of Interior), where a toilet and a washing room were created in the accommodation facility of a person to be expelled, among other things. In other rooms, there is no toilet or washing room, which are located in the corridor. The mentioned family room makes it possible to provide complete

<sup>50</sup> Explanatory Letter to AGIPA 354 SE II 22.05.2013

<sup>51</sup> OLPEA, section 26<sup>5</sup>, subsections 1,3

<sup>52</sup> Pursuant to the OLPEA to become effective on 1 Oct 2014, family members will be accommodated together.

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	<p>privacy to families. There are also two separate walking yards in the centre, one of which is separated from adult male detainees. A minimalist children's playground has also been created in the mentioned walking yard. DC has also obtained various toys for children.<sup>53</sup></p>
<p>Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?</p>	<p>Minors are accommodated separately from adult detainees, except in cases where this is clearly against the rights and interests of the minors.<sup>54</sup></p> <p>However, in the case of significant fulfilment of the centre,</p> <p>it is not possible to guarantee the separation of minors from adults. It is possible to separate minors from the adult men in the centre, but in that case the minors have to be in the same living block with adult female persons to be expelled and families. Also, the present living facilities of the centre have been created with the needs of adult persons to be expelled in mind, which means that most of the living facilities do not comply with the needs of minors to be expelled. One of the living facilities was renovated as a family room in 2012, where minors can be accommodated if necessary.<sup>55</sup></p>
<p>Are single women separated from single men?</p>	<p>Yes, male and female persons to be expelled are accommodated in separate rooms.<sup>56</sup></p>
<p>Are unaccompanied minors separated from adults?</p>	<p>Yes, unaccompanied minors are accommodated separately from adults to be expelled, except in cases where this is clearly against the rights and interests of the minor.<sup>57</sup></p> <p>In practice the unaccompanied minors are not detained in DC, only if needed up to 48 hours.</p>
<p>Do detainees have access to outdoor space? If yes, how often?</p>	<p>Yes, a maximum time has not been determined, but according to the house rules of the DC, a person to be expelled can spend time in the</p>

<sup>53</sup> E. Belitchev "Alaealiste kinnipidamine väljasaatmismenetluses" ("Detention of minors in a detention procedure"), 2013

<sup>54</sup> OLPEA, section 26<sup>5</sup> subsection 4

<sup>55</sup> E. Belitchev "Alaealiste kinnipidamine väljasaatmismenetluses" ("Detention of minors in a detention procedure"), 2013

<sup>56</sup> OLPEA, section 26<sup>5</sup>, subsection 2

<sup>57</sup> OLPEA, section 26<sup>5</sup>, subsection 4

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	<p>walking yard on the territory of the centre under surveillance for at least one hour per day.<sup>58</sup></p> <p>In practice the detainees may stay in the walking yard also after night-time.</p>
<p>Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?</p>	<p>Yes, persons to be expelled are allowed to meet:</p> <ol style="list-style-type: none"> <li>1) a consular officer of their country of citizenship;</li> <li>2) a lawyer;</li> <li>3) a minister of religion regarding whose reputation the head of the centre has no grounded doubts;</li> <li>4) representatives of competent state authorities, international or non-governmental organisations. Upon permission from the head of the detention centre, a person to be expelled may have short meetings under surveillance with persons not mentioned above in his or her personal, legal or business interests that the person to be expelled cannot realise through third persons, if the meetings do not obstruct execution of the expulsion. The person to be expelled is only allowed to meet persons regarding whose reputation and motives the head of the detention centre has no grounded doubts.<sup>59</sup></li> </ol> <p>A person to be expelled is allowed to meet up to two persons simultaneously. Minors are allowed on meetings if this has been previously coordinated with the DC.<sup>60</sup></p> <p>The intervals of meetings have not been regulated.</p>
<p>Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?</p>	<p>Yes.</p> <p>Telephone – during the free time allocated in the daily schedule, persons to be expelled can use a phone meant for this purpose by the DC, for their own financial means. A person to be expelled is allowed to own a phone card for</p>

<sup>58</sup> House Rules of the DC, section 21, subsection 1

<sup>59</sup> OLPEA, section 26<sup>10</sup> 1

<sup>60</sup> House Rules of the detention centre, section 23, subsection 5

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	<p>using the telephone. Permission to use the fax machine is given by the head of the DC.<sup>61</sup></p> <p>Mail exchange – the opportunity to exchange mail is provided for persons to be expelled. Mail sent to a person to be expelled is opened by a migration surveillance official at the presence of the person to be expelled, and items that are not allowed in the house rules of the DC are removed.</p> <p>Monitoring the use of communications equipment – the contents of the messages of mail exchange and phone calls as well as other generally used communications channels can only be screened with court permission, as stipulated in the legislation of criminal procedure.</p> <p>The head of the DC may limit the mail exchange, usage of telephone and other communications channels if this can be a threat to the house rules of the DC or prevent the execution of expulsion. Mail exchange of the person to be expelled with state authorities, a lawyer, a minister of religion and consular officers of the country of citizenship is not limited.<sup>62</sup></p> <p>The persons to be expelled have no access to the Internet.<sup>63</sup></p>
<p>Are education programmes provided (e.g. school courses for minors and language classes for adults)?</p>	<p>No.</p> <p>At present there are no studying/teaching opportunities available in the DC.</p> <p>It may be questionable as to whether access to education can be guaranteed at all in the conventional sense in the case of persons to be expelled.</p> <p>Still, so-called instructive activities are needed, if only for the primary reason that the minor retain a sense of</p>

<sup>61</sup> House Rules of the detention centre, section 29

<sup>62</sup> OLPEA, section 26<sup>11</sup>

<sup>63</sup> On his visit to the DC in 2013, the Chancellor of Justice expressed his opinion that persons to be expelled could have access to the Internet; at present, detainees have no access to the Internet in the DC.

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	<p>obligation and responsibility. In case of access to education, the social relationships that it entails are no less important.<sup>64</sup></p> <p>PBGB has mapped out a plan that in their opinion education in the following subjects could be offered to persons to be expelled in the future:</p> <p>Estonian, English and Computer Studies.</p> <p>Because of the different linguistic and educational levels of persons in the centre, DC evaluates that language courses using pictograms as well as various manual activities could be offered to the detainees.<sup>65</sup></p> <p>The OLPEA that will become effective on 1 Oct 2014 stipulates that for persons to be expelled for whom school attendance is compulsory, access to education is guaranteed as stipulated in the Basic Schools and Upper Secondary Schools Act.<sup>66</sup></p>
<p>Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?</p>	<p>Yes.</p> <p>Although there is no regulation for this, an official is employed in the DC whose work responsibilities include providing active leisure activities for detainees. For this purpose, courses of Estonian are organised and there are various manual activities offered (moulding, etc.). The extension of sports opportunities is also planned for the DC.</p> <p>At present, the centre has a library, TV, board games, possibility to play football, novuss.</p> <p>The OLPEA that will become effective on 1 Oct 2014 stipulates that for leisure, age-appropriate activities are organised for minors to be expelled and the necessary means provided.</p>

<sup>64</sup> E. Belitchev "Alaealiste kinnipidamine väljasaatmismenetluses" ("Detention of minors in a detention procedure"), 2013

<sup>65</sup> Interview with the head of DC, 11 April 2014.

<sup>66</sup> OLPEA to be become effective on 1 Oct 2014, section 26<sup>5</sup>, subsection 8

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<p>Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?</p>	<p>Generally, no. The DC is a closed facility and a person to be expelled may leave only the DC upon written permission of the head of the DC, under surveillance, if this is unavoidably necessary.<sup>67</sup></p>
<p>Are detainees entitled to legal advice / assistance? If yes, is it free of charge?</p>	<p>Yes. An alien is entitled to legal advice free of charge for contesting a precept to leave, an expulsion or a decision to apply prohibition of entry. The data of various institutions that offer legal advice can be found on the information board of the DC, including the contacts of the Human Rights Centre, the Estonian Red Cross, the Chancellor of Justice, etc.</p>
<p>Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?</p>	<p>Generally, yes. Translation services necessary for the proceedings are guaranteed in the centre, free of charge for aliens.</p>
<p>Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?</p>	<p>Yes. Persons in the DC do not have national health insurance. A health check and the availability of the required health services are guaranteed to persons to be expelled. There is a permanent medication centre for monitoring the health of persons to be expelled in the DC.<sup>68</sup> A doctor's clinic takes place in the medication centre of the DC at least once per month. In the course of the clinic, checks related to the state of health (both physical and mental) of the persons to be expelled are conducted, as well as elementary medical procedures. If a person to be expelled needs immediate medical treatment that cannot be provided in the centre, the person to be expelled is allowed, on the suggestion of the doctor of the DC and upon decision of the head of the DC, to be placed away from the DC, to the central hospital for prisons or to other medical facilities.</p>

<sup>67</sup> OLPEA, section 26<sup>3</sup>

<sup>68</sup> OLPEA, section 26<sup>9</sup>

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	<p>Unavoidable help is guaranteed for persons in the DC. In such a case, the finances spent on the medical treatment of persons are compensated. However, in the case when a person requests, e.g. aesthetic surgery, vitamin treatment, these medicines have to be paid for by the person himself or herself.<sup>69</sup></p> <p>A clinical psychologist visits the centre 2 times per month. At present, the services of the psychologist are only available to detainees that understand Russian or English. In the future, the DC will also try to extend the availability of the services of a psychologist to other detainees, using the help of an interpreter.<sup>70</sup></p>
<p>Are there special arrangements for persons belonging to vulnerable groups? Please describe</p>	<p>Yes.</p> <p>For example, minors are allowed to own items in the DC, the need for which arises from their age. With the permission of the doctor, a person to be expelled may own medical equipment. In</p>

<sup>69</sup> Interview with the head of DC, 11 April 2014.

<sup>70</sup> On his visit to the DC in 2013, the Chancellor of Justice determined that the services of a psychologist are only provided to those detainees who speak Russian or English, while they are not available to others. The Chancellor of Justice pointed out that although he understands that providing psychological counselling with the help of an interpreter is very complicated, the service should still be offered, especially to persons who are in a vulnerable state, like asylum seekers who may have experienced persecution or abuse and who are in a state of uncertainty regarding their being sent back to their country of origin. It is also necessary to pay special attention to victims of human trafficking and to persons who have been detained for a long time.

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	the case of medical treatment prescribed by the doctor, a person to be expelled may own medicines. The medicines of a person to be expelled can be stored in the medical centre of the DC. <sup>71</sup>
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe	<p>Yes.</p> <p>All persons to be expelled are obliged to follow and fulfil the house rules of the DC.</p> <p>Security measures can be applied in the case of a violation of the house rules that constitutes a threat to other persons to be expelled or to migration surveillance officials or threatens the security of the DC in another manner.</p> <p>A person may be separated from others for reasons of security. A migration surveillance official immediately informs the person to be expelled of the application of security measures as well as their reasons in a language that the person understands.<sup>72</sup></p>

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.*

In Estonia, the alternative detention of persons to be expelled and of asylum seekers, i.e. surveillance measures to guarantee fulfilment of obligations imposed on an alien, are regulated separately.

<sup>71</sup> House Rules of the DC, section 33, subsections 2 and 1

<sup>72</sup> House Rules of the DC, section 40, subsection 5

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To guarantee compliance with a precept to leave, PBGB can oblige an alien to comply with surveillance measures and to pay penalties of up to €640<sup>73</sup>. Penalties are applied from the 90th day from the date of issuing the precept, and they may be applied repeatedly.

For a purposeful, efficient, simple and quick execution of the asylum proceedings, PBGB may apply surveillance measures regarding the applicant.

<b>Alternatives to detention</b>	<b>Yes/ No (If yes, please provide a short description)</b>
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	Yes. One of the surveillance measures applied to asylum seekers is the appearance of the seeker to PBGB for registration at predetermined intervals.
Obligation to surrender a passport or a travel document	Yes, one of the surveillance measures applied to persons to be expelled and to asylum seekers is the surrendering of a foreign country's travel document or personal identification document to PBGB or the Security Police. In the case of surrendering a foreign country's travel document or personal identification document, the authority receiving the document issues a certification of depositing the document to the person.
Residence requirements (e.g. residing at a particular address)	Yes, one of the surveillance measures applied to persons to be expelled and to asylum seekers is their residing at a determined address. PBGB and the Security Police have the right to check whether an alien is residing in the determined place of residence.
Release on bail (with or without sureties) <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>	No
Electronic monitoring (e.g. tagging)	No
Guarantor requirements <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</i>	No

<sup>73</sup> OLPEA, section 7, subsection 4

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<i>community group)</i>	
Release to care worker or under a care plan	No
Community management programme	No
Other alternative measure available in your (Member) State. Please specify.	Yes. Also, the following can be applied to a person to be expelled as surveillance measures: appearance to PBGB to clarify circumstances that guarantee compliance with the precept; notifying PBGB of the changes of residence and of a prolonged absence from the place of residence; notifying PBGB of changes in marital status; As a surveillance measure, also notification of PBGB of an absence from the place of residence for longer than three days can be applied.

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

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

Alternative detention can be applied in the case of all the categories mentioned above, except in cases where a precept to leave is issued to a person and immediately enforced in form of detaining and removing. Implementation of alternatives to det. Is decided according to important facts and effectiveness of alternatives measures. At the same time intervention of fundamental rights is assessed proportionally to the

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goal of the measure.

Relying on the experience of PBGB, alternative detention is not applied in the case of aliens apprehended from the border or from an illegal stay in the country, as in the case of these persons there is a risk of absconding; also, such persons may be a threat to national security.<sup>74</sup>

Submitting an asylum application while in the DC does not mean automatic release from the detention centre.

The detention of an asylum seeker in the DC or release from the centre is decided by an administrative court. Generally, detention is seen as an exception and it can only be used as a last resort – for example, when there is a risk that the person will postpone expulsion or abuse the asylum procedure.

*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).*

Surveillance measures for persons to be expelled are regulated in OLPEA, section 10, subsection 2.

Surveillance measures to be applied to asylum seekers are regulated in AGIPA, section 29, subsection 1.

*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.*

Pursuant to OLPEA<sup>75</sup>, the government agencies to execute expulsion of persons to be expelled are PBGB and the Security Police. Usually, the initial assessment on whether to detain a person in the DC or to apply alternative detention is made by an official of the Migration Bureau of the Border Guard Department of PBGB. PBGB may also decide not to use any kind of surveillance measures at all, if the person has shown a good will to co-operate previously. The surveillance measures is determinate by the decision of administrative body. If the person detained regards the alternative measures unlawful the person has right to turn to administrative court. If the implementation of alternative measures cannot achieve the desired goal there is possibility to detain a person.

If surveillance measures, i.e. alternative detention, are applied to a person, an administrative court is not involved in this decision. The final decision on whether to apply detention to a person to be expelled/an asylum seeker or not is made by an administrative court, pursuant to procedures of issuing permits for administrative acts of the administrative court regulation.

Monitoring of the surveillance measures applied can be performed by PBGB and the Security Police.

*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.*

A person to be expelled is required to co-operate in the organisation of expulsion, and among other things:

- 1) to provide the governmental authorities that are enforcing expulsion with oral and written information and explanations;
- 2) to submit all information and documents and other evidence in his or her possession that are relevant to

<sup>74</sup> Interview with the head of DC

<sup>75</sup> OLPEA, section 23

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the proceedings relating to the expulsion;

3) to co-operate in the obtainment of the documents necessary for expulsion;

4) to co-operate in the collection of information needed for identification of his or her person, and for verification purposes.<sup>76</sup>

An alien is obliged to comply with the surveillance measures applied to him or her.<sup>77</sup> PBGB may also request, in the precept to leave, the payment of penalties if the alien does not fulfil the obligation to leave. Penalties are applied from the 90th day from the date of issuing the precept, and they may be applied repeatedly after the 90 days have passed.

If a person does not comply with the measures of alternative detention applied to him or her, the possibility of the application of actual detention can be considered regarding that person, or the application of another, or the joint application of several methods of alternative detention.

*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)*

No corresponding research has been conducted in Estonia.

In a Master's thesis "The Detention of an Asylum Seeker and Alternatives to Detention" in 2012, the author V. Sirelpu concentrated on the detention of an asylum seeker who submits an asylum application while in the DC (then called a removal centre). The AGIPA in effect until 1 Oct 2013 stipulated an imperative requirement that an asylum seeker who has submitted an asylum application while in the detention centre must remain in the detention centre for the whole asylum proceedings. Although the detention of a person also had to be requested in an administrative court at that time, the court could not ignore the stipulation of AGIPA and rule in favour of alternative detention. The AGIPA that became effective on 1 Oct 2013 declared the mentioned requirement void and stipulated the differences for detaining an asylum seeker.

*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)*

For many aliens to whom a precept to leave has been issued, no surveillance measures are applied. The persons leave the country voluntarily within the designated term for leaving. If the alien has not received a decision of enforcement of the precept to leave, he or she can apply for leaving support from the VARRE voluntary return project of IOM.<sup>78</sup> Persons towards whom expulsion proceedings have been started and who have been placed in the DC with a decision of an administrative court cannot join the voluntary return programme in Estonia. A suspension or cancellation of the expulsion process is needed for joining the programme, and the issuance of a precept with a voluntary leaving term. At present, there is no such practice in Estonia.<sup>79</sup>

<sup>76</sup> OLPEA, section 26<sup>4</sup>

<sup>77</sup> OLPEA, section 6<sup>3</sup> subsection 4

<sup>78</sup> <http://www.iom.ee/varre/index.php?lang=eng>

<sup>79</sup> Mapping of Estonia's return programme, IOM Eesti 2011

## 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 need for detention is evaluated by an administrative court every two months, when the need there is ongoing proportionality for detention. If the court decides in favour of releasing the person, PBGB may consider application of measures of alternative detention to the person. For example, in 2013, the Administrative Court of Tallinn decided to release an asylum seeker from the DC, as the positions of PBGB (that DC is safer for the person and that the handling of his application takes higher priority there) were irrelevant in the view of the court.

According to the court decision, the detention of the asylum seeker is an exception and this measure can only be applied as a last resort - e.g. when there is a risk that the person can postpone expulsion or abuse the asylum proceedings.<sup>80</sup>

Asylum seeker is either released from the DC or the application of differences to him or her is considered (e.g. as alternative detention):

- 1) The head of the DC immediately releases the asylum seeker from the DC after the basis for detention has become void.
- 2) If an asylum seeker is arrested as a suspect or an accused in a criminal case, he or she will be released from the detention centre on the basis of the arrest warrant.<sup>81</sup>
- 3) If a person turns out to be a minor, differences applicable to minors will be applied to him or her.
- 4) If the person turns out to belong to a group of vulnerable persons, special accommodation meant for vulnerable persons can be offered to him or her and the person released from the DC.

*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?*

When assessing the detention or alternative detention of a person, all circumstances related to that person are evaluated as a whole. The appropriateness of alternative detention for the person is evaluated separately (e.g. whether it is reasonable to request registration of the person's place of residence in PBGB once per week or

<sup>80</sup> The Syrian citizen defeated PBGB in court, administrative court ruling no.

<sup>81</sup> AGIPA, section 36<sup>4</sup> subsections 1,2

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once per month, if the person's place of residence is far from PBGB). It is not reasonable to apply surrendering of a document in PBGB if the person is already about to leave the country.<sup>82</sup>

*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.*

Yes, a migration surveillance official of PBGB evaluates separately in each case whether -

- there is a need and the person is co-operative (the alien has done everything in his or her power to leave the country during the term of voluntary leaving), and should surveillance measures not be applied;
- to apply surveillance measures towards an alien, i.e. alternative detention, and if the alien does not comply with the surveillance measures, should penalties be applied towards him or her, or;
- to request an administrative court permission for detaining a person.

In general, the status of the person is taken into account when alternative detention is being considered and a necessary and appropriate surveillance measure is applied to him or her.

*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.*

There is no single instrument for assessing vulnerability in Estonia. Assessment of vulnerability of persons who belonging to group of vulnerable persons is made by PBGB official. If needed it the relevant authority's experts are involved. In the reception centre of asylum seekers, a social worker of the centre can evaluate the vulnerability of a person using a questionnaire that will help assess the person's state and need for assistance. In the DC, the vulnerability of a person is assessed on the basis of whether the person is a minor, pregnant, a mother/father with children, the health of the person, their age and other circumstances.

*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 need for alternative detention or detention is assessed separately in each case, by considering all the circumstances as a whole. In the case of alternative detention (surveillance measures), a penalty is also imposed on the person that will be applied from the 90th day from the issuing of the precept<sup>83</sup> and in cases when the alien has not complied with the conditions of alternative detention. According to PBGB, the payment of penalties has been enforced in a few cases.<sup>84</sup>

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

An alien can be obliged to comply with surveillance measures, in order to guarantee fulfilment of the precept to leave. This obligation can be imposed on an alien by PBGB. In PBGB, the issuing of precepts to leave to aliens is the responsibility of an official of PBGB.

State monitoring of the compliance with surveillance measures is carried out by PBGB and the Security Police.

<sup>82</sup> Interview with a migration surveillance official ...

<sup>83</sup> OLPEA, section 10, subsection 4

<sup>84</sup> Interview with PBGB official Egert

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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?)

Judgments concerning the detention of aliens and extension of the term of detention shall be made by an administrative court pursuant to the provisions of the Code of Administrative Court Procedure on giving permission for administrative proceedings. Therefore, if an administrative court decides that the detention of a person is not unavoidably necessary, this is imperative for PBGB. At the same time, the decision on which measures of alternative detention should be used is made by PBGB. An administrative court can make proposals and suggestions in this case. An administrative court may perform a judicial monitoring of legality of alternative measures if persons apply for this.

Upon a person's release from the DC (if the expulsion of the person has no perspective), an administrative court makes a proposal to PBGB to legalise the stay of the person in the country.

## 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.*

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No, such studies have not been conducted.

However, it can be seen from the statistics of PBGB that out of the persons who have received a precept to leave, alternative detention or no surveillance measures at all have been issued to a larger number. For example, in 2013, precepts to leave were issued in 614 cases, out of which 139 precepts to leave were enforced within 48 hours, detention was applied in 94 cases (number contains also asylum seekers who are not in return process), alternative detention in 193 cases and no measures were applied in more than 100 cases.

Of surveillance measures, living in a determined place of residence was the most used surveillance measure in the period 2009-2013 – it was used in 403 cases.

	Living in a determined place of residence	Notifying of absence	Notifying of change in marital status	Appearance for registration	Appearance for clarification of circumstances	Surrendering a document
2013	92	64	8	14	12	3
2012	104	93	10	22	14	14
2011	112	85	7	8	8	3
2010	41	19	7	16	13	0
2009	44	45	20	24	20	0

Source of table: PBGB

*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.*

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Applicable year	Detention	Alternatives to detention <sup>85</sup>			
		A1	A2	A3	A4
Average length of time in determining the status of an applicant for international protection	According to PBGB, a person is not detained in the DC in order to determine the person's status.	-	-	-	-

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 such studies have been conducted in Estonia. However, PBGB has reason to believe that placing an asylum seeker in the DC at the start of the asylum proceedings may eliminate the risk of the person falling victim to human traffickers/smugglers. Also, staying at the DC helps avoid the risk of asylum seekers absconding. The people that want to move on to other states of the EU are those that abscond. In this case, the DC provides a state defence function. For instance in 2012, 17 asylum seekers left the Illuka asylum seeker reception centre without authorisation, which was 25% of all asylum seekers in Estonia.<sup>86</sup> In 2013, only 3 applicants left the centre without authorisation, which was 3% of all the applicants in Estonia.

In the case of an asylum seeker, alternative detention is used throughout the asylum proceedings, i.e. the obligation to surrender a personal identification document to PBGB until the asylum proceedings are finished is applied as a surveillance measure.<sup>87</sup>

### 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

<sup>85</sup> According to PBGB, the Board has no statistics about the determining of a period for a person's status in cases of alternative detention.

<sup>86</sup> Explanatory letter to AGIPA

<sup>87</sup> AGIPA, section 11, subsection 9

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

In Estonia, the shapers of the policy of expelling aliens from the country believe that voluntary return should be preferred to the enforced expulsion of persons. The view is shared by the Administrative Procedure Act, according to which an administrative procedure will be carried out purposefully and efficiently, while also as simply and quickly as possible, avoiding unnecessary expenses and unpleasant experiences for persons.<sup>88</sup>

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

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

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

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

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

Applicable year	Detention	A1 <sup>89</sup>
Average length of time from apprehending an irregular migrant to issuing a return decision <sup>90</sup>	-	-
Average length of time from issuing a return decision to the execution of the return	58 days <sup>91</sup>	

<sup>88</sup> Administrative Procedure Act, section 5, subsection 2

<sup>89</sup> Estonia cannot offer statistics by alternative detention measures. The statistics contain numbers that concern all surveillance measures together.

<sup>90</sup> According to PBGB, this happens almost instantly and the time intervals are measured in hours, not in days. Therefore, no statistics can be offered.

<sup>91</sup> This number entails the length of stay of persons placed in the centre in 2013 and expelled by today.

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Number of voluntary returns (persons who opted to return voluntarily)		In 2013, 614 precepts to leave were issued, out of whom 397 persons left voluntarily. In 2013, enforced expulsion proceedings were started towards citizens of third countries in 209 cases, of which 189 have been completed by today.
Success rate in number of departures	In 2013, the success rate of enforced expulsion was 90%	For persons to whom the possibility to leave voluntarily was offered, the fulfilment rate in 2013 was 98%

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

There is no such studies/evaluations. As a good practice may point out that applying alternatives to detention, not applying the measures and assessment of detention is rather effective, while taking into account that number of voluntary leave is 98%.<sup>92</sup>

## 7.2. Costs

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

No, but according to the Administrative Procedure Act, an administrative procedure will be carried out purposefully and efficiently, while also as simply and quickly as possible, avoiding unnecessary expenses and unpleasant experiences for persons.<sup>93</sup>

The costs of alternative detention are not calculated separately.

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.

<sup>92</sup> Comment made by E. Belitšev

<sup>93</sup> Administrative Procedure Act, section 5, subsection 2

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

According to PBGB, the Board cannot present statistics about the costs of alternative detention. PBGB will present the costs of stay in the DC - medical, food and accommodation costs.

Applicable year		Detention	Alternatives to detention			
			A1	A2	A3	A4
Total costs						
Staffing costs						
Medical costs						
Food and accommodation costs						
Legal assistance						
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						

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)

Deciding in favour of alternative detention does not mean extra burden for an administrative court, and the costs of a person's stay in the DC can be economised. Detaining a person is only applied in cases of extreme necessity, always preferring alternatives if possible.

### 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)?

From the point of view of an asylum seeker -

- V. Sirelpu's Master's thesis on the subject of "The Detention of an Asylum Seeker During Asylum Proceedings and Alternatives to Detention" concentrated on the detention of an asylum seeker in a situation when the person submitted an asylum application while in the detention centre.

The problem that this thesis focuses on has been solved by the amendment to AGIPA that became effective on 1 Oct 2013.

- The analysis "Legal Problems Related to the Detention of Asylum Seekers" by the Human Rights

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Centre.

The analysis looks at the subject and points out that legislation should stipulate clearly that asylum seekers should not be placed into the DC nor their stay there be prolonged, unless it has been determined that the applicant is a threat to national security or public order, or has abused the right to seek asylum.

The analysis also stresses the point that asylum applications of unaccompanied minors should be reviewed as a priority and with a term shorter than 6 months.

On the subject of detaining minors -

- E. Belitchev's Master's thesis on the subject of "Detention of Minors in an Expulsion Procedure". The thesis analyses the correspondence of Estonia's legislation with the Returns Directive 2008/115/EC.

This Master's thesis serves in many ways as analytical input for the legal amendments that will become effective in OLPEA in the autumn of 2014.

At the same time, **the Chancellor of Justice** of Estonia makes check visits to asylum seekers reception centres and presents

summaries of the visits, pointing out suggestions on how to improve the existing situation / help it guarantee human rights. In the framework of his visits, the Chancellor of Justice checks how the basic rights and freedoms of persons detained in the centres are protected, fulfilling the state's role as a preventive institution stipulated in article 3 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. For example, in his letter to PBGB<sup>94</sup> preceded by a visit to the DC, the Chancellor of Justice recognised the steps PBGB has taken towards diversifying the opportunities for leisure activities of persons detained in the centre (language courses, handicraft, sports). The Office of the Chancellor of Justice considers the creation of meaningful activities for spending time for the persons in the centre very important, and direct and joint activities may help lessen the anxiety of detainees and prevent the occurrence of high tension situations. At the same time, the Chancellor of Justice points out deficiencies in the centre and asks for solutions to these within a reasonable time.

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

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

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

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

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>
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<sup>94</sup> Check the visit of the Chancellor of Justice to PBGB detention centre 2013-2014

<http://oiguskantsler.ee/et/seisukohad/seisukoht/opcat-kontrollkaik-politseija-piirivalveameti-valismaalaste-kinnipidamiskeskus>

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		A1	A2	A3	A4
<i>Number of complaints of violations of fundamental rights <b>lodged</b> 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).</i>	-	-	-	-	-
<i>Number of complaints of violations of fundamental rights <b>upheld</b> 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).</i>	-	-	-	-	-
<i>Number of court cases in which there have been <b>challenges</b> 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)<sup>95</sup></i>	-	-	-	-	-
<i>Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been <b>upheld</b> (where possible, please disaggregate by types of violation and by categories of third-country national)<sup>96</sup></i>	-	-	-	-	-

<sup>95</sup> According to PBGB, the Board has statistics regarding all court cases, but not all of them are related to human rights issues and often the cases and decisions have been presented in an aggregated manner.

<sup>96</sup> According to PBGB, the Board has statistics regarding all court cases, but not all of them are related to human rights issues and often the cases and decisions have been presented in an aggregated manner.

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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.)

There is no data concerning the negative effects of alternative detention nor have surveys been conducted in this area.

Also, PBGB does not collect separate statistics on complaints presented in the DC. All letters of detainees of the DC to officials are registered as applications. The following are the most common subjects of complaints by detainees of the centre:

- 1) Food - it is considered either insufficient or not tasty
- 2) Medical services - the quality of work of a medic
- 3) Complaints concerning the work/actions of an official – an official has not expressed himself or herself in a manner understandable to the detainee or the detainee thinks that the official has not behaved properly.<sup>97</sup>

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)

For this, a co-operation agreement has been concluded with the Estonian Red Cross, which presents a monthly report to the Ministry of Internal Affairs regarding detention in the DC and what observations they have made.

They also have the right to make proposals on how to change the situation. This does not mean that other persons cannot monitor the detainees, e.g. the Chancellor of Justice or human rights organisations.<sup>98</sup>

Also, the Chancellor of Justice of Estonia performs regular check visits to the DC with the purpose of checking whether all rights arising from the protection of human rights have been guaranteed for detainees in the DC. The Chancellor presents a report of his check visits to the Director General of PBGB and if necessary, appoints a date for an after-check, and if violations have been found, appoints a date by which the deficiencies should be corrected or practices changed.

#### **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.

No. No surveys been conducted in this area.

<sup>97</sup> Meeting with the head of the DC.

<sup>98</sup> Explanatory Letter to AGIPA 354 SE II

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

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

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

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

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Rate of absconding	There have been no cases of absconding from the DC in 2013. In the past, there have been a total of 4 cases of absconding from the DC.	-			
Compliance rate <sup>99</sup>					

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.

There is no such studies/evaluations. As a good practice may point out that applying alternatives to detention, not applying the measures and assessment of detention is rather effective, while taking into account that number of voluntary leave is 98% and success rate of enforced expulsion was 90%.<sup>100</sup>

## 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.

<sup>99</sup> In Estonia, presenting statistics by alternative detention measures would require a lot of time.

<sup>100</sup> Comment made by E. Belitšev

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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
<b>Statistics on number of third-country nationals in detention per category</b>					
Total number of third-country nationals in detention	55	40	62	93	94
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 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	-	-	-	-	-
<b>Statistics on number of third-country nationals provided alternatives to detention</b>					
Total number of third-country nationals provided alternatives to detention	153	96	223	257	193

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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 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.*

<b>Average length of time in detention</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Source / further information</b>
Average length of time in detention of all categories of third-country nationals in detention	<b>156</b>	<b>84</b>	<b>92</b>	<b>80</b>	<b>58 days</b>	<b>PBGB</b>
Average length of time in detention of applicants for international protection in ordinary procedures	-	-	-	-	-	

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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	-	-	-	-	-	
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	-	-	-	-	-	

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