

# EMN INFORM

## The Use of Detention in Return Procedures

### 1. KEY POINTS TO NOTE

This EMN Inform highlights the main findings of the **EMN REG Ad-Hoc Query on the Use of Detention in Return Procedures (2015.1008)**. It is based on the information provided by 21 EU Member States – namely Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom – and Norway (**22 in total**).<sup>1</sup>

### 2. FREQUENCY OF USE

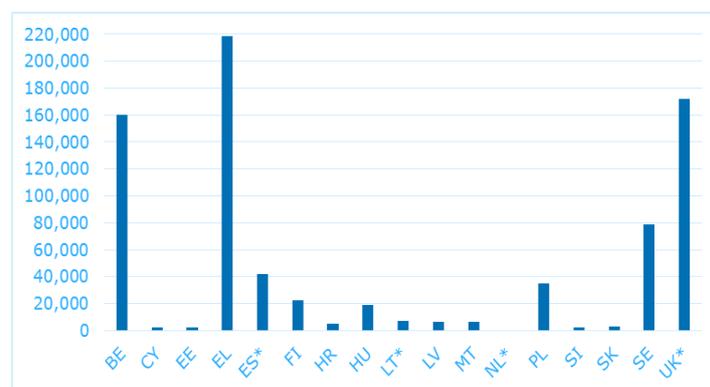
In the Ad-Hoc Query, Member States were asked to provide data on the total number of third-country nationals who had been ordered to leave and the total number of third-country nationals who had been ordered to leave and were subsequently placed in detention for the period 2012-2015 (until and including October).

On the basis of the information gathered, it is not possible to estimate the percentage of third-country nationals ordered to leave who were placed in detention in a specific year, the reason being that someone may have been ordered to leave for example in 2014 but only detained the subsequent year.

Figures 1 and 2 provide an overview of the total number of third-country nationals ordered to leave and of the total number of third-country nationals ordered to leave and subsequently placed in detention in the period 2012-2015 in the Member States.

<sup>1</sup> Further details are provided in the Excel workbook accompanying this document. These include also data supplied by Frontex (see first worksheet under the title 'Detention Centre').

Figure 1: Total number of TCNs ordered to leave 2012-2015



Source: EMN data<sup>2</sup>

<sup>2</sup> Additional details on the data corresponding those Member States marked with an \* are available below:

\*ES: TCNs ordered to leave extracted from Eurostat by the Service Provider.

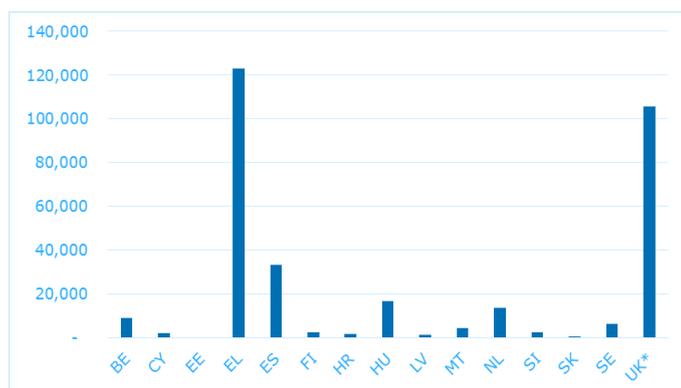
\*IE: Ireland does not use detention for TCNs subject to return decisions.

\*LT: In practice, the majority of TCNs, who received expulsion decision, have already been detained. Decision to return applies to TCNs, who are not placed in detention.

\*NL: Netherlands chooses not to provide data on TCNs ordered to leave at this time, because they are not accurate.

\*UK: Source: Eurostat table migr\_eiord (Third-country nationals ordered to leave) extracted on 12/01/16. Figures for 2015 will be available in March 2016. Please note the advice provided in the Eurostat meta data ([http://ec.europa.eu/eurostat/cache/metadata/Annexes/migr\\_eil\\_esms\\_an2.pdf](http://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_eil_esms_an2.pdf)) concerning the UK figures for TCNs ordered to leave: "According to the British national authorities, once a person is found to be illegally present in the country, he/she is served with enforcement papers that at the same time inform the person of the intention to remove. As such, the figures on persons found to be illegally present are the same as those who are subject to an obligation to leave. This category includes persons served with enforcement papers, persons served with a notice of intention to make a deportation order, persons identified under the Facilitated Return Scheme and persons identified as subject to automatic deportation."

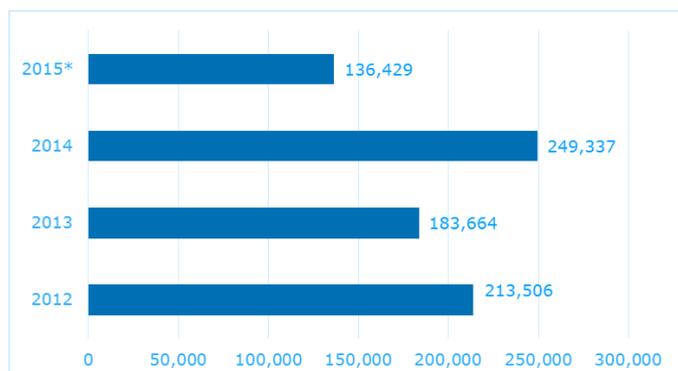
Figure 2: Total number of TCNs ordered to leave subsequently placed in detention



Source: EMN data<sup>3</sup>

Figure 3 shows the overall trend in the number of third-country nationals ordered to leave in the Member States considered. This evidences a decrease from 2012 to 2013, followed by an increase from 2013 to 2014 and then again a decrease from 2014 to 2015. Figure 4 illustrates the sustained decrease in the number of third-country nationals ordered to leave in subsequently held in detention over the period 2012-2015.

Figure 3: Third-country nationals ordered to leave



Source: EMN data

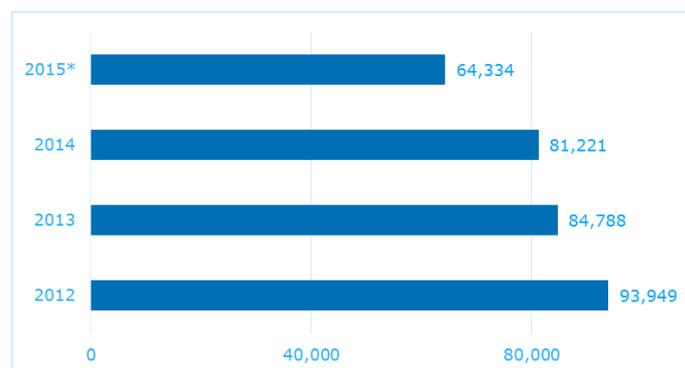
<sup>3</sup> Additional details on the data corresponding those Member States marked with an \* are available below:

\*\*UK: Figures on people ordered to leave and placed in detention are not available. Figures provided are a subset of Home Office Immigration Statistics July to September 2015, Detention tables dt\_04 (People entering detention by nationality);

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/list-of-tables#detention>. Some detainees may be recorded more than once if, for example, the person has been detained on more than one separate occasion in the time period shown, such as a person who has left detention, but has subsequently been re-detained.

The figures presented here include migrants detained under the asylum 'fast track' procedure pending a decision on their asylum claim; they include only Third-country nationals; and 2015 figures are for January to September 2015 only. Q4 2015 figures will be available in February 2016.

Figure 4: Third-country nationals ordered to leave subsequently placed in detention



Source: EMN data

### 3. LENGTH OF DETENTION

#### Maximum length of detention

The maximum length of detention varies among the Member States. Generally detention can be ordered for an initial period of a few days which can then be extended if needed for one or several periods.

As regards the absolute maximum length of detention allowed, this is 18 months in 10 Member States (namely **BG, CY, CZ, EE, HR, LT, LV, MT, NL, PL**), 12 months in five Member States (**FI, HU, SE, SK and SI**), 5 months in **Belgium** (and in cases of public order 8 months) 60 days in **Spain** and 45 days in **France**. In **Ireland**, detention is not used for the purpose of removal, while in the **UK** there is no statutory limit to the length of detention.

#### Re-detention

In eight Member States (**BE, CY, CZ, FI, FR, MT, SI and UK**) it is possible to re-detain a third country national who has been released from detention under certain conditions:

Table 1: Re-detention in the Member States

<b>BE</b>	<ul style="list-style-type: none"> <li>&gt; If a person refuses to embark in an airplane or lodges a new procedure during his/her detention, this may lead to a new detention order, and then the counter starts back at 0. However, cumulative detention orders may never surpass 18 months, in accordance with the EU Return Directive</li> </ul>
<b>CY</b>	<ul style="list-style-type: none"> <li>&gt; It is possible to re-detain a returnee who has been released from detention in case of non-compliance with the rules of the release (including registration, holding a valid residence permit, the presentation of valid travel documents and a residence address).</li> <li>&gt; When released from detention, both detention and deportation orders are cancelled; thus, new orders</li> </ul>

	are issued again if the person is re-detained according to the maximum authorized length of detention according to national law is 18 months.
<b>CZ</b>	> Re-detention is possible if the returnee released from detention has not left the country within the time period determined in the removal order.
<b>FI</b>	> It is possible to re-detain a returnee according to the same requirements for holding a third country national in detention in the first place.
<b>FR</b>	> It is possible to re-detain a returnee that has been released from detention if the person is again subject to a removal order.
<b>MT</b>	> A returnee who has been released from detention may be re-detained if prospects of return exist.
<b>NL</b>	<ul style="list-style-type: none"> <li>&gt; Re-detention is not allowed within a year after the release, unless there are new prospects of removal.</li> <li>&gt; The conditions under which re-detention is possible are established under specific case-law, focusing on the availability of new perspectives for the removal of a third-country national in combination with time elapsed since the release and the grounds on which that decision was founded.</li> <li>&gt; In case of re-detention, all periods combined could in theory exceed 18 months as with each re-detention, as the calculation of the detention period starts again from day one. If there was a previous detention however, this is taken into account with regards to the assessment prior to the decision to (re-)detain.</li> </ul>
<b>PL</b>	> It is possible to re-detain a returnee who has been released from detention if the maximum period of detention has not been exhausted.
<b>SK</b>	> It is possible to re-detain a returnee released from detention, under conditions stipulated in national law for an additional 6 months with the possibility of extension to 12 months.
<b>UK</b>	> A returnee who has been previously released from detention is liable to be detained alongside and under the same conditions as individuals who have never been previously been in detention.

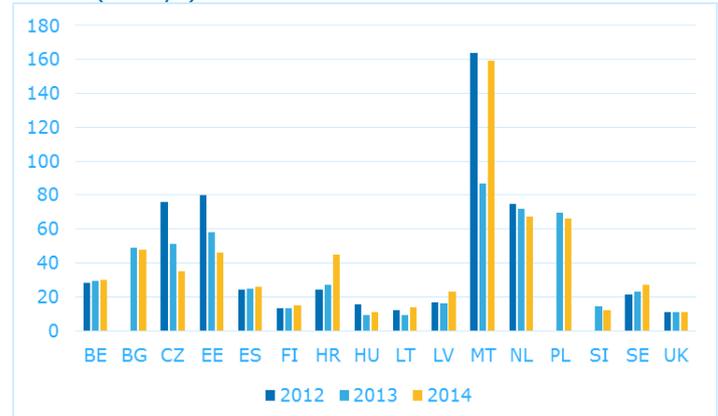
Source: EMN data

#### Average length of detention

The average duration of detention is generally much shorter than the maximum allowed. Figure 5 below provides an overview of the average length of detention in those Member States that provided data in the period 2012-2013.<sup>4</sup>

<sup>4</sup> For the UK, the result shown is the average number calculated from the range that corresponds to the median of a frequency table.

Figure 5: Average length of detention in the Member States (in days)

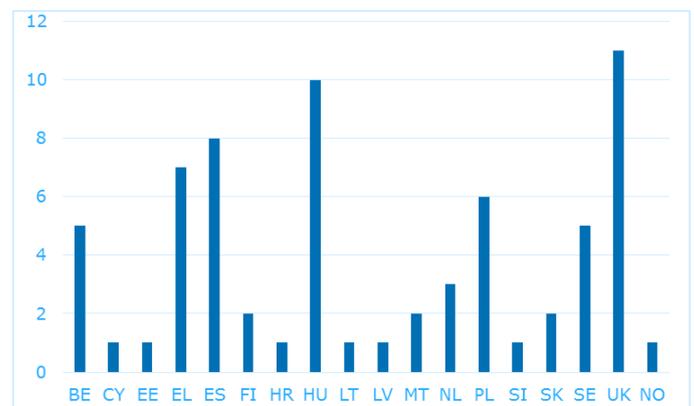


Source: EMN data

#### 4. DETENTION CAPACITY

The number of detention centres in the Member States varies from one (in **CY, EE, HR, LT, LV, Si and NO**) to 11 (in the **UK**) – for an overview see Figure 6 below. Some Member States (**BE, UK**) provided additional details on the various types of centres. **Belgium** noted, for example, that the period of detention was highly dependent on the target group of the centre, with the INAD/transit centre hosting mainly people refused at the external borders for short stays. In the **UK**, in addition to the 11 IRC (Immigration Removal Centre) reported, there were three STHF (Short Term Holding Facility, for maximum two-day detention periods or seven-day with ministerial approval), and one PDA (Pre-Departure Accommodation, also for maximum two-day detention periods or seven-day with ministerial approval).

Figure 2: Number of detention centres in the Member States

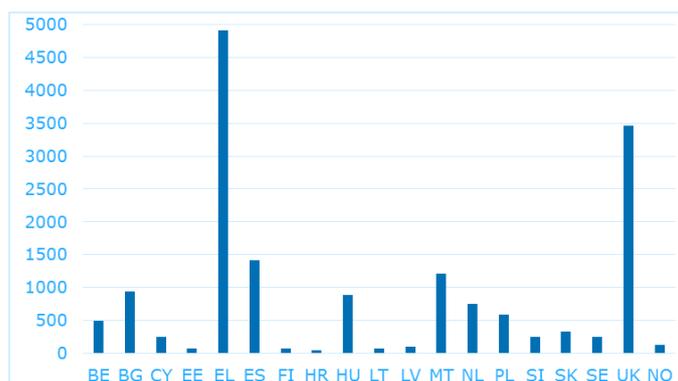


Source: EMN data

As it may be expected, given the extent to which Member States' needs vary in this area, the detention capacity (measured in terms of the number of places

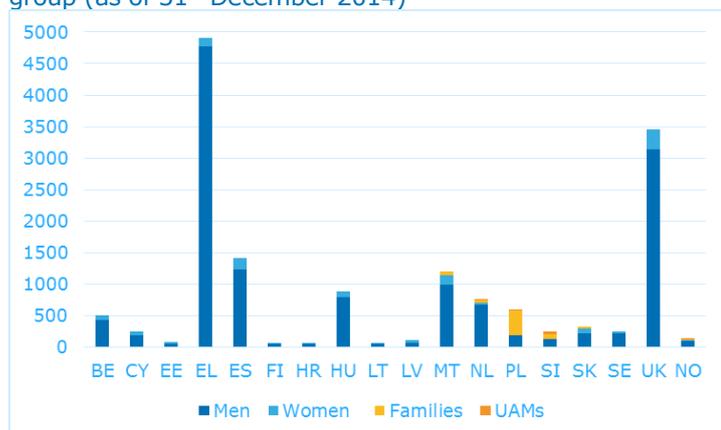
available in detention centres) also differs significantly. Figures 7 and 8 provide an overview of the number of places available in various Member States as of 31<sup>st</sup> December 2014 and give an indication of the number of places specifically devised for the detention of men, women, families and unaccompanied minors (UAMs).

Figure 7: Number of detention places available in the Member States (as of 31<sup>st</sup> December 2014)



Source: EMN data

Figure 3: Number of detention places available per target group (as of 31<sup>st</sup> December 2014)



Source: EMN data

A number of Member States reported slight changes in their detention capacity over the period 2012-2014 and indicated the reasons for such increase/ decrease. In **Belgium** the detention capacity had (slightly) decreased because of a lack of staff and because of some necessary maintenance works but at the beginning of 2016 the capacity increased significantly again. **Poland** also reported that the detention capacity had decreased due to the introduction of changes in the infrastructure of detention centres, and in particular to establish new common areas such as prayer rooms, club rooms, gyms and computer rooms. The detention capacity had also recently decreased in **Slovenia** (from 220 to 180 places) and **France** (from 1,870 places to 1,739 places) on similar grounds. In contrast, small increases were reported in **Finland** (30

more places established in 2014) and **Sweden** (with the addition of 22 beds as a result of a transit detention centre being created in the proximity of an existing centre). **Slovakia** noted that, while the detention capacity had decreased in 2012-2014, an increase had taken place in 2015 due to the migration crisis.

Significant (planned changes) were reported by **Cyprus** and the **Netherlands**. In **Cyprus**, following the recommendation of the Committee for the Prevention of Torture (CPT) at the end of 2015, it had been decided to cut the capacity of the existing detention centre by half, thus in 2016 the total capacity would amount to 128 places (96 men and 32 women). The **Netherlands** reported that the detention capacity had declined by 65% since 2010, the reason being a general decline in the trend to the use of administrative detention due to amended legislation and Court decisions which led to the closure of some detention facilities.

## 5. CHALLENGES

Overall the challenges reported by the Member States reflect the general issues encountered when trying to enforce returns of illegally staying third-country nationals, namely the lack of cooperation on the part of the third country national and the third country concerned in the re-identification/ re-documentation process. This kind of challenges were mentioned by eight Member States (**BE, CZ, EE, LV, MT, NO, SI, ES**). In general, the delay in placing returnees in detention after a detention order had not been perceived as a problem, as in most Member States this happened immediately or within a very short delay (around 24h). Most Member States reported that once a returnee had been placed in detention, absconding was no longer an issue.

The following Member States reported particular challenges:

- ★ The **Netherlands** reported that the implementation of the Return Directive and the (strict) interpretations of the European case-law by national courts and Council of State had made the process of placing returnees in detention (more) complicated. In addition, the police gave priority to arresting criminal foreigners over ordinary returnees.
- ★ **Sweden** mentioned two main types of obstacles: 1) procedural and practical challenges related to the fact that the detention of third-country

nationals was managed by the Swedish Migration Board, as opposed to other specialized authorities in the field, such as police or the prison authority; 2) the cost of keeping individuals in detention, which was significantly higher compared to that of individuals residing in government provided housing.

- ★ **Norway** reported two main types of obstacles: 1) the lack of legal grounds for detention, for example if the police could not prove that there is a risk of absconding; 2) the fact that detention put demands on a variety of resources (including the police and the court system).

In general, Member States considered that the length of detention was sufficient to carry out the necessary formalities to return third-country nationals. **France** noted, in particular, that a longer detention period would only have a very limited impact, as 45% of removals of detained returnees were carried out during the first five days of detention.

## 6. EVALUATION

None of the Member States had not conducted any systematic evaluation of the impact of detention on the return success rate, although some of them provided some information in this regard. On the basis of internal ad hoc assessments made by the Immigration Office on the duration of detention for specific nationalities and categories of persons, **Belgium** reported that the over the past few years the effectiveness of the detention policy had increased (with a success rate between 75 and 80%). The main reason for this high success rate was that identification was increasingly conducted before detention and that detention focused on documented or already identified persons. The **Netherlands** referred to 'Last-Minute-Application-procedure' at the airport, whereby if a third-country national applied for asylum at the airport to hamper or stop his return this application could be dealt with at the spot, which was considered as a good practice in the Schengen evaluation. **Norway** reported that from the point of view of law enforcement authorities, detention was useful to enforce return as it helped avoid absconding, gave the police time to acquire the necessary identity documents and allowed the authorities to psychologically and practically prepare third-country nationals for their return. Finally, Spain provided some data on the percentage of detained returnees who had been successfully returned.

## FURTHER INFORMATION

You may obtain further details on this EMN Ad-Hoc Query Summary and/or on any other aspect of the EMN, from: HOME-EMN@ec.europa.eu.

*Produced in January 2016*