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Ad-Hoc Query on 2024.62 Ad hoc query on detention of third-country national without judicial review

Requested by EMN NCP Estonia on 11 November 2024

Compilation produced on 3 January 2025

Responses from EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Greece, EMN NCP Hungary, EMN NCP Ireland, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden (22 in Total)

Exported for: Wider Dissemination

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1. BACKGROUND INFORMATION

In Estonia, the time limit for which an administrative authority may detain an applicant for international protection or a TCN subject to return without judicial review, is currently under review. In Estonia, it is possible to detain the TCN without judicial authorisation for 48 hours. Currently an extension of this time limit is under consideration as it would reduce the burden on the court system. In this context, the Ministry of the Interior would like to ask the following questions from Member States.

We would like to ask the following questions:

- 1. How long can a administrative authority detain an applicant for international protection, without judicial review?**
- 2. How long can a administrative authority detain an illegally staying third- country national who is subject to return, without judicial review?**
- 3. Does your national legislation provide any exemptions from the deadlines indicated in Q.1 and Q.2 (e.g in case of mass influx)? YES/NO. If you answer yes, please explain.**


We would very much appreciate your responses by **3 December 2024**.

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2. RESPONSES

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	<p>1.</p> <p>In Austria, detention pending removal may only be ordered in specific cases, for example if it is necessary to secure the proceedings</p> <ul style="list-style-type: none"> • on an application for international protection with regard to the issuing of a measure terminating residence, provided that the foreigner's stay endangers public order or security, there is a risk of absconding and detention pending removal is proportionate, or • for issuing a measure to terminate residence or removal, provided there is a risk of absconding and detention pending removal is proportionate (Art. 76 para. 2 Aliens Police Act 2005). <p>Detention pending removal needs to be ordered by written administrative decision (Art. 76 para. 4 Aliens Police Act 2005). The person concerned has the right to appeal this decision before the</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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			<p>Federal Administrative Court that has to decide within one week on the continuation of detention pending removal, unless the detention of the foreigner would have ended earlier (Art. 22a para. 2 Federal Office for Immigration and Asylum Procedures Act).</p> <p>2. In Austria, the same rules apply as described in Q1.</p> <p>3. No.</p>
	<p>EMN NCP Belgium</p>	<p>Yes</p>	<p>1. <u>Detention of an applicant for international protection at the border:</u> the general rule is that detention is two months (if the person does not have the necessary documents to enter BE). The period may be extended by a period of two months if the asylum seeker is the subject of an enforceable measure of expulsion and the necessary steps to remove the TCN were taken within seven working days from the decision of expulsion, if they are pursued with due diligence and the effective removal of the latter is still possible within a reasonable period of time.</p> <p>-----</p> <p><u>Detention of an applicant for international protection on the territory:</u> the general rule is that detention is two months (if, on the basis of an individual assessment, it proves necessary and no other less coercive measures can be effectively applied) and on the following restrictive grounds:</p> <ul style="list-style-type: none"> - to establish or verify the identity or nationality of the applicant; - in order to obtain the information underlying the application for international protection that could not be obtained if the applicant were not detained, in particular where there is a risk of the applicant absconding


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		<p>- where the applicant is detained in preparation for the return and/or for the implementation of the removal process, and it can be demonstrated on the basis of objective criteria, such as the fact that the applicant has already had the possibility of access to the asylum procedure, that there are reasonable grounds to believe that the person has lodged the application for international protection for the sole purpose of postponing or thwarting the implementation of the return decision</p> <p>- where the protection of national security or public order so requires.</p> <p>If the Belgian authorities want to detain an applicant for international protection (at the border or on the territory) for a fifth month, this can only be done by the Minister himself (or Secretary of State).</p> <p>If necessary for the protection of public order or national security, the detention of the TCN after five months, can be extended by one month each time, without however allowing the total duration of the detention to exceed eight months.</p> <p>For the sake of completeness, the duration of detention is suspended by operation of law during the period used by the TCN to submit an appeal to the Council for Alien Law Litigation. If a period is granted to the Commissariat General for Refugees and Stateless persons, or the applicant or intervening party to examine the new elements introduced by one of the parties or to communicate its observations, the duration of the detention is also suspended ipso jure during this period.</p> <p>2.</p> <p>The general rule is that detention is two months and to the extent strictly necessary for the implementation of the return and if no other adequate but less coercive measures can be applied effectively.</p> <p>The Minister or his authorised representative may extend this detention for a period of two months each time if the necessary steps to remove the foreign national were taken within seven working days of the foreign national's detention, if they are continued with due diligence and if the effective removal of the latter is still possible within a reasonable period of time.</p> <p>If we want to detain the person concerned for a fifth month, this can only be done by the Minister himself (or Secretary of State).</p>
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			<p>In cases where this is necessary for the protection of public order or national security, the detention of the foreign national can be extended by one month each time, without allowing the total duration of the detention to exceed eight months.</p> <p>As for judicial review: this is at the request of the TCN concerned (and is possible every other month). When the Minister (or Secretary of State) makes a decision to detain (i.e. from the fifth month onwards), the Minister (or Secretary of State) must himself or herself file an appeal to check whether the detention is legal.</p> <p>So during the first four months, there is only a judicial review if the TCN himself or herself appeals, from the fifth month onwards, each extension requires a review by the Court at the request of the Minister himself.</p> <p>3. Please see above.</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. The legal framework governing detention is outlined in the Law on Foreigners in the Republic of Bulgaria (LFRB) and the Law on Asylum and Refugees (LAR), along with supporting regulations. The LFRB applies to individuals who have not applied for international protection or whose claims have been finally rejected, while the LAR addresses the detention of asylum seekers.</p> <p>For the purposes of the international protection proceedings, after assessing the circumstances of the specific case, a foreigner seeking international protection may be temporarily accommodated for the shortest possible period in a closed-type center.</p> <p>The law specifies four grounds for imposing this measure:</p> <p>1. In order to determine or verify his or her identity or nationality;</p>


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		<p>2. In order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;</p> <p>3. When protection of national security or public order so requires;</p> <p>4. For determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The asylum seeker is accommodated in a closed-type centre with a reasoned decision of the Chairman of the State Agency for Refugees. The decision is taken after assessing the foreigner's belonging to a vulnerable group. It is issued in writing and contains the factual and legal grounds for the accommodation, the procedure and deadline for appeal, as well as the possibility of providing free legal assistance and representation.</p> <p>The accommodation continues until the relevant ground ceases to exist. According to the LAR, a review of ongoing detention must be conducted monthly by the administrative authority. If new information is available or upon request by the foreigner, decision to detain is reviewed by the administrative authority, which issues a written decision which can be appealed in accordance with the Code on Administrative Procedures.</p> <p>2. Special homes have been established under the Migration Directorate, the Ministry of Interior, for temporary accommodation of foreigners who have been issued a return order. Accommodation of foreigners in special homes is carried out on the basis of an order for compulsory accommodation issued by the competent administrative authority. Accommodation continues until the circumstances for its imposition cease to exist, but not more than 6 months. Monthly official inspections are carried out by the Director of the Migration Directorate to determine the existence of the grounds for compulsory accommodation in a special home.</p> <p>Exceptionally, when the person refuses to cooperate with the competent authorities or there is a delay in receiving the necessary documents for return by the date of expiry of the permitted period of</p>
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			<p>compulsory accommodation, the Director of the Migration Directorate may issue an order to continue the compulsory accommodation in the special home for a period not exceeding an additional 12 months.</p> <p>The administrative decision to extend the detention may be appealed by the applicant before the first instance administrative court, as well as before the Supreme Administrative Court. In addition, the foreigner may file a appeal with the administrative court at any time pursuant to the provision of the Administrative Procedure Code prohibiting any actions for which there is no legal basis.</p> <p>3.</p> <p>According to LAR, the failure to complete the proceedings within the time limit provided for by law, not due to the fault of the foreigner seeking international protection, cannot be a reason for continuing the placement in a closed-type center. When it is established by administrative or judicial procedure that the placement in a closed-type centre is unlawful, the foreigner shall be released immediately.</p> <p>According to the LFRB, when, in view of the specific circumstances of the case, it is established that there is no longer a reasonable possibility for legal or technical reasons for the deportation of the foreigner, the person shall be released immediately.</p>
	EMN NCP Croatia	Yes	<p>1.</p> <p>In Croatia detention can be determined by the Ministry of Interior or the police administration or the police station in form of writhing decision on restriction of freedom of movement. Against the decision on restriction of freedom of movement, a claim may be brought before the Administrative Court, within 8 days of the day of service of the decision. The Ministry, the police administration or the police station shall submit the case file to the Administrative Court no later than within 8 days of the day of receipt of the decision by which the Administrative Court requests the case file. The Administrative Court shall render a decision on the claim after a personal interview within 15 days from the day of receipt of the case file.</p>



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			<p>The restriction of movement shall be examined, at reasonable time intervals, by the competent administrative court of its own motion or at the request of the applicant, in particular where the movement restriction continues for more than one month and in the event circumstances change or new emergence, which may affect the legitimacy of the restriction on applicant's movement. If administrative court finds that the decision restricting the freedom of movement is not legitimate, the Ministry shall act upon the imposed judgment and release the applicant without delay. The measure of restriction of freedom of movement (including detention in reception center for foreigners) to applicant for international protection can be imposed for as long as there are reasons for this, but for no longer than 3 months. As an exception, for justified reasons, restriction of freedom of movement may be extended for no longer than additional three more months. In the case of Dublin transfer, the measure may be imposed until the enforcement of transfer, but for no longer than 6 weeks from the establishment of the responsibility of another member state of the European Economic Area.</p> <p>2. Illegal staying third country national may be arrested and detained for a maximum period of 48 hours if this is necessary in order to establish his identity, or if this is necessary in order to establish the circumstances of illegal border crossing or illegal stay, or if this is necessary in order to carry out forcible removal and there is a risk that the third-country national will abscond. The third-country national may be detained for a maximum of another 24 hours if it is reasonably expected that the identity or the circumstances of illegal border crossing or illegal stay can be established within that time limit or forcible removal can be carried out within that time limit.</p> <p>3. No</p>
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 <p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. Detention of an applicant for international protection is generally not possible under national law if there is no available remedy. However, applicants for international protection must remain in the reception center until the initial medical examination and identification procedures are completed (usually within a few days). The Police Act provides for the detention of a foreign national for up to 48 hours under certain circumstances (for identification purposes). If the foreign national applies for international protection during this period, the restriction of personal freedom is not lifted.</p> <p>2. An illegally staying third-country national who is subject to return can be detained by an administrative authority for up to 48 hours. If the detention is to be extended, it must be based on the administrative decision which may be subject to an appeal to a court.</p> <p>3. NO. Czech legislation does not generally provide exemptions from these detention time limits. Even in extraordinary situations, such as a mass influx of persons, procedural safeguards, including the right to judicial review of detention, must be observed.</p>
 <p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. An applicant for international protection can be detained for up to 48 hours without the permission in accordance with national legislation. In case it is necessary to detain the person for longer than 48 hours, a permission has to be obtained from the administrative court.</p> <p>2.</p>

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			<p>An illegally staying third-country national who is subject to return can be detained for up to 48 hours without the permission in accordance with national legislation. In case it is necessary to detain the person for longer than 48 hours, a permission has to be obtained from the administrative court.</p> <p>3. No, there is no exemptions. In order to verify the legal bases for the arrival and stay of a third country national in Estonia, the Police and Border Guard Board may detain a person for up to 48 hours without the permission of an administrative court.</p>
+	EMN NCP Finland	Yes	<p>1. The official who detained the foreign national must notify the district court about the detention without delay and no later than the day after the detention. The district court must hear a matter concerning detention without delay and no later than four days after the person was detained. In the case of the detention of an unaccompanied child, the matter shall be heard no later than 24 hours after notification. (Alien's Act 301/2004, Section 124)</p> <p>2. Same deadlines apply as in Q1.</p> <p>3. Currently no.</p> <p>However, a legislative proposal has been submitted to the Parliament on 3 October 2024. The proposed legislation would allow for an exemption from the deadlines indicated above. (Link to the Government Proposal, in Finnish: https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/HE_143+2024.pdf)</p>

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			<p>According to the proposed new Section 123 b which would be added to the Alien's Act, if question is of an emergency situation as specified in Article 18 of the Return Directive, where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacities of the detention facilities or on its administrative or judicial staff, an exemption would be allowed to the deadlines indicated in Aliens Act Section 124.</p> <p>According to the legislative proposal, in an emergency situation as described above, the district court must hear a matter concerning detention no later than seven days after the person was detained. In the case of the detention of an unaccompanied child, the matter shall be heard no later than two days after the person was detained.</p> <p>In the legislative proposal there is no change to the deadline according to which the official who detained the foreign national must notify the district court about the detention no later than the day after the detention.</p>
■	EMN NCP France	Yes	<p>1. Since law no. 2024-42 of 26 January 2024, which inserted a new article L. 523-1 into the French code for the entry and stay of foreign nationals and right to asylum (CESEDA) and thus completed the transposition of directive 2013/33/EU of 26 June 2013, it has been possible to detain asylum seekers for the purpose of determining the elements on which their asylum application is based if they present a risk of absconding or if they present a threat to public order, provided that other less coercive measures cannot be effectively applied. Thus, for example, an illegal immigrant who, when questioned, submits an asylum application with a view to obstructing the issuing of a return decision may, if the conditions are met, be placed under house arrest or, if necessary, detained.</p>


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		<p>The administrative authority may place the person in detention for an initial period of 48 hours. Thereafter, the court intervenes to review the decision to detain and then rule on the administrative authority's request to keep the foreign national in detention for a non-renewable period of 28 days. <i>(article L. 523-3 of the CESEDA).</i></p> <p>2. Illegal foreign nationals who are subject to a return order may be held in detention by the administrative authority for the purpose of enforcing their obligation to leave the country, pursuant to article L. 741-1 of the CESEDA.</p> <p>Foreign nationals may be placed in detention by the administrative authority for an initial period of 4 days if they do not present effective guarantees of representation to prevent the risk of evading the enforcement of the removal order and no other measure appears sufficient to effectively guarantee the enforcement of this order. The public prosecutor (magistrate) is informed immediately of any detention. <i>(article L. 741-8 of the CESEDA)</i></p> <p>Then, after four days, the judicial judge reviews the detention decision and rules on the administrative authority's request to extend the period of detention. At the request of the administrative authority, the judge may extend the period of detention:</p> <ul style="list-style-type: none"> * a first time by 26 days ; * a second extension of 30 days * finally, the judge may agree to a further extension of 15 days, renewable once. <p>In all cases, including in the context of question 1, the detention measure may only be extended with the authorisation of the judicial judge, who retains the possibility of interrupting the extension of detention at any time, on his or her own initiative or at the request of the foreign national, in accordance with articles L. 523-3, L. 742-8 and L. 743-2 of the CESEDA.</p> <p>In addition, an illegal immigrant who is the subject of a return decision and who applies for asylum in detention will be detained for the time strictly necessary for his or her asylum application to be examined by the responsible authority (French office for the protection of refugees and statelessness</p>
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			<p>persons - OFPRA). This decision may be appealed to the administrative judge within 48 hours, who must give a ruling within 96 hours.</p> <p>3. NO. On the other hand, article L. 743-9 of the CESEDA provides that the judge shall take into account the particular circumstances linked in particular to the simultaneous detention of a large number of foreign nationals when assessing the deadlines for notification of the decision to detain, for informing the foreign national of his or her rights and for these rights to take effect. Thus, when foreign nationals are placed in detention, they are informed as soon as possible that they have the right, in the place of detention, to request the assistance of an interpreter, counsel or doctor, and the possibility of communicating with their consulate and any person of their choice, and pursuant to article L. 744-4 of the CESEDA, these rights are notified as soon as possible if a large number of foreign nationals are placed in detention at the same time.</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<p>1. An applicant for international protection must not be detained without the requisite judicial review in accordance with national legislation.</p> <p>2. According to Section 62(5) AufenthaltsG, an illegally staying third-country national who is subject to return can be detained in case there is a significant risk of absconding, the judicial decision on the order of preventive detention cannot be obtained in advance, and there is a well-founded suspicion that the third-country national intends to evade the order of preventive detention. The third-country national must be presented immediately and without undue delay to the judge for a decision on the order of preventive detention.</p>



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			3. No, there are no exemptions.
	EMN NCP Greece	Yes	<p>1. According to paragraph 1, article 50 of Law 4939/2022, “a third-country national or a stateless person who applies for international protection shall not be detained for the sole reason that he has submitted an application for international protection, or for entering irregularly and/or remaining in the country without a legal residence permit”.</p> <p>However, according to paragraph 2, article 50 of the same law, “a third-country national or a stateless person who submits an application for international protection may be detained exceptionally, if necessary, following an individual assessment and provided that alternative measures, such as those referred to in paragraph 3 of article 22 of Law 3907/2011 (A’ 7) cannot be applied”, while according to paragraph 3 “a third-country national or a stateless person who submits an application for international protection while being detained under the relevant provisions of laws 3386/2005 and 3907/2011, remains in detention exceptionally, if this is necessary, following an individual assessment and provided that alternative measures, such as those referred to in par. 3 of article 22 of law 3907/2011, cannot be applied”. In Greek administrative practice, the measure of detention is primarily imposed if it is established that the person constitutes a risk to national security or public order, under the conditions referred to in the above article. Additionally, according to par. 5, of article 50 of the same law, “the detention of applicants for international protection shall be imposed for the absolutely necessary period of time”, while at the same time “it shall be imposed for a period of up to fifty (50) days and may be extended further for fifty (50) days, by a specifically reasoned decision of the bodies of par. 4, provided that the reasons that imposed it continue to exist. The total extension of this detention may in no case exceed the maximum detention limits, as provided for in article 30 of law 3907/2011, which states that the maximum detention limit for third-country nationals who are subject to</p>



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			<p>return procedures and are detained for the preparation of return and the completion of the removal procedure, cannot exceed a total of eighteen (18) months.</p> <p>2. According to article 30 of law 3907/2011, the total extension of this detention may in no case exceed the maximum detention limits, as provided for in article 30 of law 3907/2011, which states that the maximum detention limit for third-country nationals who are subject to return procedures and are detained for the preparation of return and the completion of the removal procedure, cannot exceed a total of eighteen (18) months.</p> <p>3. N/A</p>
	EMN NCP Hungary	Yes	<p>1. For 72 hours</p> <p>2. For 72 hours</p> <p>3. No</p>
	EMN NCP Ireland	Yes	<p>1.</p>

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			<p>Under section 20 of the International Protection Act 2015, an immigration officer or a member of An Garda Síochána (police) may arrest an applicant without warrant under certain conditions. A person detained in this manner must be brought before a judge 'as soon as practicable'.</p> <p>2. 8 weeks, as per section 5 of the Immigration Act 1999, as amended.</p> <p>3. YES – for persons under the age of 18 (section 6(a) of the Immigration Act 1999, as amended). No exemption for cases of mass influx.</p>
	EMN NCP Italy	Yes	<p>1. Administrative detention can last a maximum of 48 hours before a judicial authority's review for validation.</p> <p>2. See answer 1.</p> <p>3. NO</p>
	EMN NCP Latvia	Yes	<p>1. In accordance with the Asylum Law, the State Border Guard, guided by necessity and taking into account the principle of proportionality, may apply 2 types of restrictive measures to an asylum seeker</p>

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			<p>in the asylum procedure: registration at a specified time with a structural unit of the State Border Guard and detention.</p> <p>The Asylum Law sets out the conditions under which a decision may be made to detain an asylum seeker. These include the need to ascertain or verify the identity or nationality of the asylum seeker. An asylum seeker may also be detained in cases where there is reason to believe that the person detained within the framework of the expulsion procedure has submitted an application in order to delay or make impossible the execution of the departure order or the decision on forced expulsion.</p> <p>If any of the above-mentioned conditions for detention exist, an official of the State Border Guard may detain an asylum seeker for a period of up to six days, immediately drawing up a detention report at the place of detention of the asylum seeker or after the asylum seeker has been brought to the detention facilities.</p> <p>An asylum seeker may be detained for more than six days only on the basis of a court decision. Taking into account the above, in cases where any of the detention conditions specified in the Asylum Law exist, the State Border Guard must submit to the court (in accordance with the actual place of detention of the detained asylum seeker) a reasoned proposal to detain the asylum seeker for more than six days no later than 48 hours before the end of the detention period. If the court has made a decision to refuse to detain the asylum seeker, the State Border Guard shall immediately, after receiving a copy of the decision and presenting it to the asylum seeker, release the asylum seeker. An asylum seeker may be detained again only if information has been obtained or new circumstances have been established that justify the detention.</p> <p>The detention period shall be counted from the moment the asylum seeker was actually detained.</p>
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			<p>An asylum seeker has the right to appeal the initial detention to a court within 48 hours of being informed of the detention record (reasons for detention), the appeal procedure, the procedure for judicial control over detention and his right to request free legal assistance. An appeal does not suspend detention.</p> <p>In addition, the Asylum Law provides that an asylum seeker or his legal representative may at any time submit an application to a court for an assessment of the necessity for the further application of detention.</p> <p>2.</p> <p>A State Border Guard officer is entitled to make a decision to detain a TCN to be returned if there is reason to believe that he will evade the return procedure or obstruct its preparation or there is a possibility of the TCN's escape, and this is justified by one of the circumstances specified in Law:</p> <ol style="list-style-type: none">1) the TCN conceals his identity, provides false information or otherwise refuses to cooperate;2) the TCN has crossed the external border, avoiding border checks, as well as used a forged travel document, forged visa or residence permit;3) the TCN cannot indicate the place where he will stay until the end of the relevant return procedure and submit a written confirmation from the owner of the apartment or house about the commitment to ensure his accommodation or cannot provide an amount of money sufficient to book a hotel until his return;4) a competent state or TCN authority has provided information that serves as a basis for believing that the TCN poses a threat to national security, public order or safety;5) the TCN is involved in facilitating illegal immigration;6) the TCN has been convicted of a criminal offence committed in Latvia, the penalty for which is associated with deprivation of liberty for at least one year;7) the TCN has previously evaded return proceedings in Latvia or another Member State of the
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			<p>European Union;</p> <p>8) the TCN has unreasonably failed to comply with a departure order;</p> <p>9) the TCN has unreasonably failed to comply with the established obligation to register with the relevant structural unit of the State Border Guard;</p> <p>10) the TCN has previously arbitrarily left the accommodation centre or detention facilities for detained TCNs;</p> <p>11) the TCN has entered the Latvia without complying with the decision on inclusion in the list or the decision on a ban on entry into the Schengen territory.</p> <p>As alternative means of detention, a TCN may be subject to regular registration with a structural unit of the State Border Guard or to the transfer of a valid travel document for storage for a certain period of time at the State Border Guard.</p> <p>Before making a decision on the detention of a person, the responsible official is obliged to assess the possibility of deciding on the application of alternative means to detention that are less restrictive of personal freedoms. Detention is applied as a last resort and for the shortest possible period.</p> <p>In the cases referred to in Immigration Law, a State Border Guard official has the right to detain a TCN for up to 10 days. A TCN has the right to appeal the decision on detention in court. Submission of an application to the court does not suspend the effect of the decision.</p> <p>A State Border Guard official has the right to detain a TCN for more than 10 days only by decision of a judge of a district (city) court (according to the actual location of the detained TCN). Based on the application of the State Border Guard officer (to be submitted to the court no later than 48 hours before the expiration of the period specified in the decision on the detention of a TCN), the judge shall make a decision on the detention of a TCN for a period of up to two months or on the refusal to detain.</p>
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			<p>If it has not been possible to return TCN within the period specified in the judge's decision, the judge, based on the application of the State Border Guard officer, shall make a decision on the extension of the detention period for a period of up to two months or on the refusal to extend the detention period.</p> <p>The State Border Guard officer may submit an application to the court for the extension of the detention period repeatedly, but the total detention period may not exceed six months, except in the case if the TCN refuses to cooperate or there is a delay in receiving the necessary documents from third countries (the judge may make a decision on the extension of the detention period, not exceeding an additional 12 months. The total detention period may not exceed 18 months).</p> <p>The term of detention shall be calculated in hours, days and months. When calculating the term, the hour and day on which the term begins shall be taken into account. The term of detention shall be counted from the moment when the TCN is brought to the premises of the State Border Guard or the State Police in order to draw up a detention report.</p> <p>The TCN or the Chief of the State Border Guard may appeal the decision of the judge within 48 hours from the moment of receiving a copy of the decision. The district (city) court shall immediately examine the submitted complaint and make a decision on the merits. The decision of the regional court adopted in the relevant case shall not be subject to appeal. A copy of the decision shall be sent to the TCN and the State Border Guard within 24 hours from the moment of making the decision. Contesting the detention, appealing or submitting a complaint in itself shall not be a basis for the release of the detainee.</p> <p>3. No, there are no exemptions.</p>
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 <p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. The Law on the Legal Status of Foreigners provides that a foreigner may be detained by a law enforcement officer's decision for a maximum of 48 hours, regardless of whether the individual is an asylum seeker or an unlawfully present person subject to return. Any detention beyond this period requires a court order.</p> <p>Article 114. Detention of a Foreigner</p> <ol style="list-style-type: none"> 1. <i>By a written decision of a law enforcement officer, a foreigner may be detained for no longer than 48 hours. If the law enforcement authority determines that there are grounds to detain the foreigner for more than 48 hours, the individual must be transferred to the officers of the State Border Guard Service within 5 hours from the time of detention.</i> 2. <i>A foreigner may be detained for more than 48 hours only by a court decision and must be held at the State Border Guard Service.</i> <p>2. See the answer to the first question.</p> <p>3. The Law on the Legal Status of Foreigners does not provide additional provisions for detention without a court decision. However, in emergency situations, it allows for the <u>temporary accommodation of a foreigner for up to 5 months, without granting the right to move freely</u> within the territory of the Republic of Lithuania:</p> <ul style="list-style-type: none"> • By a decision of the Migration Department: This applies to foreigners who have submitted an asylum application at border checkpoints, transit zones, or within the territory of the Republic of Lithuania after illegally crossing the state border, until a decision is made regarding their entry into the Republic of Lithuania.
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- **By a decision of the State Border Guard Service:** This applies to foreigners who have entered the territory of the Republic of Lithuania by illegally crossing the state border and are not asylum seekers.

 Article 140⁸. **Entry of Foreigners into the Republic of Lithuania and Their Temporary Accommodation**

1. *The presence of foreigners in transit zones is not considered entry into the territory of the Republic of Lithuania. The presence of foreigners who have applied for asylum at border control points, transit zones, or within the territory of the Republic of Lithuania after illegally crossing the state border, until a decision is made to admit them into the Republic of Lithuania, as well as foreigners who have entered the territory of the Republic of Lithuania by illegally crossing the state border and are not asylum seekers, in the temporary accommodation locations specified in paragraph 3 of this Article for up to 5 months from the date of their registration in the Lithuanian Migration Information System, is not considered entry into the territory of the Republic of Lithuania.*
2. *If a foreigner, while at a border control point, transit zone, or within the territory of the Republic of Lithuania after illegally crossing the state border, submits an asylum application, the Migration Department shall decide within 48 hours from the moment the application is submitted whether to admit the asylum seeker into the Republic of Lithuania and accommodate them in accordance with Articles 79 and 140¹⁶ of this Law without restricting their right to move freely within the territory of the Republic of Lithuania, except in cases specified in paragraph 3 of this Article.*
3. *If the Migration Department determines that the circumstances specified in Article 76(4) or Article 77(1) of this Law apply and that there are no individual circumstances related to the asylum seeker's age, health condition, family status, or other personal factors that would prevent the restriction of their right to move freely within the territory of the Republic of Lithuania, the Migration Department may decide to temporarily accommodate the asylum seeker who submitted an asylum application at a border control point, transit zone, or shortly after illegally*


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			<p><i>crossing the state border, at a border control point, transit zone, State Border Guard Service facility, Refugee Reception Center, or other suitable accommodation location, facility, temporary housing, or specially adapted location, without granting them the right to move freely within the territory of the Republic of Lithuania until a decision is made to admit them into the Republic of Lithuania. This restriction of the right to move freely cannot exceed 5 months, except for unaccompanied minors with reasonable doubt about their declared age, in which case the restriction may last until their age is determined, but no longer than 28 days from their registration in the Lithuanian Migration Information System. If the circumstances related to the asylum seeker change and the Migration Department determines that the circumstances specified in Article 76(4) or Article 77(1) of this Law no longer apply and/or new individual circumstances arise that prevent the restriction of their right to move freely within the territory of the Republic of Lithuania, the Migration Department shall make the decision specified in paragraph 2 of this Article.</i></p> <p><i>4. If the State Border Guard Service determines that the circumstances specified in Article 113(5) of this Law apply, it may decide to accommodate a foreigner who has entered the territory of the Republic of Lithuania by illegally crossing the state border and who is not an asylum seeker, in the temporary accommodation locations specified in paragraph 3 of this Article, without granting them the right to move freely within the territory of the Republic of Lithuania until the final decision on their return or removal is enforced or a foreigner's registration certificate is issued. This restriction on the right to move freely cannot exceed 5 months from the date of their registration in the Lithuanian Migration Information System. If the State Border Guard Service does not determine the circumstances specified in Article 113(5) of this Law and does not make a decision to accommodate the foreigner in the temporary accommodation locations specified in paragraph 3 of this Article without granting them the right to move freely, but the grounds for detention specified in Article 113(1) of this Law exist, the State Border Guard Service shall apply to the court for the foreigner's detention or an alternative measure to detention. This paragraph</i></p>
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			<p><i>does not apply to unaccompanied minors, who are accommodated according to the procedure established in Article 32(8) of this Law.</i></p> <p><i>5. A complaint regarding the decisions specified in paragraphs 3 and 4 of this Article to accommodate a foreigner in the temporary accommodation locations specified in paragraph 3 of this Article without granting them the right to move freely within the territory of the Republic of Lithuania may be submitted to the district court according to the foreigner's place of residence or the nearest district court within 14 days from the date the decision was delivered. The decision of the district court may be appealed, and the appeal shall be examined in accordance with the procedure established in Article 117 of this Law.</i></p>
	EMN NCP Luxemb ourg	Yes	<p>1. In Luxembourg an applicant for international protection (AIP) can be placed in detention if the AIP falls in one of the cases foreseen in article 22 of the amended law of 18 December 2015 on international protection and temporary protection. The placement in detention is ordered by the Minister in charge of Migration and Asylum for a maximum duration of three months that can be renewed three additional times (each time for three months). However, against the placement decision the AIP has the right to introduce an appeal before the First instance Administrative Court in a deadline of three months after the decision was notified to the AIP.</p> <p>2. In Luxembourg an illegal staying third country national who is subject to return can be placed in detention in order to execute his/her return in accordance with article 120 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law). Against this decision, the third-country national can introduce an appeal before the First instance Administrative Court that has to be filed in a month after having been notified of the decision (article 123 (2)).</p>


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			<p>The Minister can place the individual in detention for one month which can be extended three times of one month each (article 120 (3)). If the return can not be executed in this time (after 4 months) the placement can be extended for two additional times of one month each but in this case the Minister in charge of Asylum and Migration has to request ex-officio the validation of the President of the First instance Administrative Court in a deadline of 5 days. The President of the First instance Administrative Court will treat the request in urgency and must deliver a decision in a deadline of 10 days.</p> <p>3. It should be noted that individuals or families accompanied by minors who have been placed in the Detention Centre may not be held for more than seven days, regardless of whether they are AIPs or illegal staying third country nationals who are subject to return.</p>
	EMN NCP Netherlands	Yes	<p>1. An administrative authority can detain an applicant for international protection for 49 days without judicial review. In the Netherlands, asylum applicants can be detained for various reasons. In the Netherlands, the authority responsible for ordering detention is not a judge, but rather an administrative authority. The asylum applicant can have the detention order reviewed by the court. If the applicant does not request this judicial review himself, the Minister of Asylum and Migration will notify the court no later than 28 days after the detention order has been issued.[1] This notification is treated in the same way as an appeal by lodged by the applicant. The court will then set a date for the hearing. The hearing must take place no later than the 14th day after receipt of the appeal or notification.[2] The court will then consider whether the detention measure is lawful.[3] The court is obliged to issue a ruling no later than seven days after the conclusion of the investigation.</p> <p>[1] Artikel 94 lid 1 jo. Artikel 6, 6a, 58, 59, 59b Vreemdelingenwet 2000.</p>


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			<p>[2] Artikel 94 lid 4 Vreemdelingenwet 2000. [3] De Rijksoverheid, "Vreemdelingenbewaring" Vreemdelingenbewaring Terugkeer vreemdelingen Rijksoverheid.nl last accessed on 18-11-2024.</p> <p>2. The same time limits apply to judicial review during detention in return procedures. See therefore the answer to question 1</p> <p>3. A asylum applicant can submit an appeal. Subsequently, a hearing is scheduled at the court. As the asylum applicant has already initiated an appeal, the court is not required to undertake this action independently. After the appeal by the applicant, a court hearing will be set. In the event that the asylum applicant does not lodge an appeal, the same deadlines as previously outlined in question 1 apply. [1]</p> <p>[1] Artikel 94 lid 1 Vreemdelingenwet 2000.</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. If there are circumstances justifying the detention of a person who applied for international protection, the Border Guard has 48 hours to refer the application to issue a detention order to the Court, which has 24 hours to issue the order. If a detention order is not issued against a person within 72 hours , that person must be released immediately.</p> <p>2. A foreigner may be detained for a period not longer than 48 hours. If an application to issue a detention order has been submitted to the court during this time, the court has 24 hours to consider the</p>


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			<p>application. If the Court does not issue an order regarding detention within this time, the person is released.</p> <p>3. NO</p>
	EMN NCP Slovakia	Yes	<p>1. An asylum seeker may be detained for the time strictly necessary, but it may not exceed a period of 6 months, unless his detention is necessary due to a threat to state security or public order, then the period may be up to 18 months in total. The length of detention is determined individually – with regard to the purposefulness of detention. This time limit does not preclude judicial review if a person files an administrative action.</p> <p>2. A third country national may be detained for the time strictly necessary, but for a maximum of 6 months – by a decision on detention. The police department may use the 6 month detention period in its entirety or divide it into several shorter periods of detention, the sum of which may not exceed 6 months. If it can be assumed that despite the actions performed, the enforcement of return will be extended due to the fact that the third country national does not cooperate sufficiently or the embassy has not issued him with an emergency travel document within 6 months, the police department may decide, even repeatedly, to extend the period of detention, while the total period of extension of the period of detention may not exceed 12 months. In total, a person can be detained for 18 months. The period of detention cannot be extended for another 12 months in the case of a family with children or a vulnerable person. This time limit does not preclude judicial review if a person files an administrative action.</p>

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			3. No.
	EMN NCP Slovenia	Yes	<p>1. According to International Protection Act, detention, except detention based on Article 28 of Regulation (EU) No 604/2013, may last until the reasons for detention cease to exist, but not longer than three months. If, after this period, the reasons still exist, detention may be extended for another month by a procedural decision. Detention shall be lifted ex officio if the reasons that for detention cease to exist. The president of the Administrative Court may decide that it is necessary to directly supervise the implementation of detention, and may appoint a judge or judges of the Administrative Court to carry out such supervision within the time limits and at the places designated by the president of the Administrative Court, or in respect of any specific applicants, and to report thereon to the president of the Administrative Court. If, in the course of such supervision, a judge of the Administrative Court finds that the grounds for detention of a particular applicant no longer exist, they shall order that the measure be lifted.</p> <p>The applicant may, within three days of service of the procedural decision on detention, bring an action before the Administrative Court against the procedural decision. After hearing the applicant orally, the court shall decide on the action within three working days. The applicant may, within three days of service of the procedural decision to extend detention, bring an action against the procedural decision before the Administrative Court, which shall decide on the action within three working days.</p> <p>2. The police may, in accordance with the Act on the Duties and Powers of the Police, order detention of a person who is to be handed over to foreign authorities or who has been received from foreign authorities and is to be handed over to the competent authority, e.g. short procedures in accordance</p>

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with the bilateral readmission agreements. Such detention may last only for the time strictly necessary for the handover procedure, but not more than 48 hours. The detention order must be issued and served upon the detainee within six hours of the detention being ordered. The detainee has the right to appeal against the detention order for as long as the detention lasts. The police officer carrying out the detention must ensure that the appeal against is sent immediately to the competent district court. The competent district court must decide on the appeal within 48 hours. The appeal does not suspend the execution of the detention order.

When removal is not possible immediately and a return decision is issued, the person is subject to a detention order in the Foreigners Centre for a period of 6 months, which may be extended for a further period of 6 months. The Foreigners Act does not provide for immediate ex lege judicial review, however, the foreigner has the right to appeal to the Administrative Court against the decision issued by the Police within three days of the issuing of the decision and the Administrative Court must deliver a decision within six days.

The Ministry of the Interior ex officio checks the grounds for the restriction of movement before the expiry of three months. In the case of a restriction of movement exceeding three months, the ex officio review of the grounds for restriction of movement is performed by the Administrative Court. If it is established that the grounds are no longer present, it is ordered that the foreigner be released from the centre immediately.



The foreigner has the right to appeal against the Ministry's decision that the restriction is still justified before the Administrative Court, as well as the right to appeal against the decisions of the Administrative Court before the Supreme to the Supreme Court of the Republic of Slovenia.

It should be noted, that following the recent ruling of the Constitutional Court of the Republic of Slovenia, the article regarding the periodical review of the grounds for restriction of movement must be amended and is currently in the inter-ministerial consultation phase.

3.

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			No.
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. Detention for the sole reason of being an applicant for international protection is not possible. 2. The general rule, established in the Spanish Constitution, applies: 72 hours. 3. No
	EMN NCP Sweden	Yes	<ol style="list-style-type: none"> 1. According to Chapter 10(4) of the Aliens Act, the time limit for detention of a foreigner who has reached the age of 18 without judicial review may not be longer than 48 hours. A child may not be kept in detention for longer than 72 hours or, if there are exceptional reasons, a further 72 hours. 2. According to Chapter 10(4) of the Aliens Act, detention for the purpose of deportation or return may not exceed two months, unless there are special reasons for a longer period. Even if there are such extraordinary reasons, a foreigner may not be detained for longer than three months or, if it is likely that the enforcement will take longer due to a lack of cooperation from a foreigner or it takes time to obtain the necessary documents, longer than twelve months. However, the time limits of three and twelve months do not apply if a foreigner has been deported by a general court due to a crime. A child may not be kept in detention for longer than 72 hours or, if there are exceptional reasons, a further 72 hours.

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			3. No	
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