



AD HOC QUERY ON 2020.59 Detention of minors

Requested by Bram DEVOS on 26 August 2020

Compilation produced on 24 September 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden plus Norway (24 in Total)

Disclaimer:

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1. Background information

On 16 September 2020 the Committee Home Affairs of the Belgian Parliament will hold hearings on a legislative proposal (only available in French and Dutch) to prohibit the detention of minors in the context of migration. EMN Belgium is asked by the Belgian Parliament to provide a comparative overview of the policy on the detention of minors in the other Member States and Norway. In this context, EMN Belgium would like to collect up to date and comparable data.

Not all the requested information and statistical data are available in EMN outputs and on Eurostat.

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2. Questions

1. How many families with minor children were detained* in a holding facility (not at the border) in 2017, 2018 and 2019? Please provide numbers for each of these three years separately. How many families with minor children were effectively returned from detention in 2017, 2018 and 2019?

* Definition detention in EMN Glossary: non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented. Not to be confused with semi-open structures, alternatives to detention or prison.

2. Is it possible to detain one of the parents, and not the rest of the family (other parent and minor children)? If yes, please elaborate

3. Is it possible to detain illegally staying / entering TCNs who claim to be unaccompanied minors during (!) the process of age assessment? Please explain (whether yes or no)

We would very much appreciate your responses by **7 September 2020**.

3. Responses

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		Wider Dissemination ²	
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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.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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	<p>EMN NCP Austria</p>	<p>Yes</p>	<p>1. Data linking the categories age or family relationship and form of detention are unfortunately not available.</p> <p>---</p> <p>Source: Ministry of the Interior</p> <p>2. In Austria, foreigners can be arrested and detained (detention pending removal) if the purpose of detention pending removal cannot be achieved by a more lenient means (Art. 76 para 1 Aliens Police Act 2005). Detention pending removal is imposed on a specific person if the prerequisites are met (Art. 76 para 2 Aliens Police Act 2005). Therefore, if detention pending removal is applied to one parent, it is not necessarily extended to the rest of the family.</p> <p>---</p> <p>Source: Ministry of the Interior</p> <p>3. In Austria, detention pending removal may only be ordered if</p> <ol style="list-style-type: none"> 1. it is necessary to secure the proceedings concerning an application for international protection in order to issue a measure terminating residence, provided that the foreigner's residence endangers public order or security, there is a risk of flight and detention pending removal is proportionate, 2. it is necessary to secure the proceedings concerning the issuing of a measure terminating the residence or for removal, in each case provided there is a risk of flight and detention pending removal is proportionate. <p>Pursuant to Art. 76 para 1 Aliens Police Act 2005, underage minors (under the age of 14) may not be held in detention pending removal.</p> <p>If there are considerable doubts that the foreigner will comply with a summons to an examination date or if the foreigner has already failed to comply with a summons to an examination date and it is foreseeable that she/he will disregard another summons or other reasons speak for it, the foreigner may be summoned to an examination date under threat of the coercive means of</p>
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			<p>summons (summons notice). The actual performance of an X-ray examination cannot be enforced despite a summons notice. That means that a foreigner can lawfully refuse an examination on site. The refusal to cooperate must be considered in the assessment of evidence.</p> <p>---</p> <p>Source: Ministry of the Interior</p>
	<p>EMN NCP Belgium</p>	<p>Yes</p>	<p>1. Detained 2017: 0 Detained 2018: 4 Detained 2019: 4 Returned form detention 2017: 0 Returned from detention 2018: 4 (of which 1 directly and 3 after passage to an AtD) Returned from detention 2019: 3 (of which 2 directly and 1 after passage to an AtD)</p> <p>2. This is possible in Belgium, but happens rarely. It can happen when one of the parents poses a risk to public order or national security. Of course the Immigration Office will try to give the rest of the family the opportunity to return together (same flight) with the detained parent that poses a risk. In case of domestic violence within an irregularly staying family, the perpetrator will be detained and returned separately after the rest of the family has returned, because otherwise it's possible that the perpetrator will wait for his or her family members when they arrive at the airport in the third country. It can also happen that the illegally staying family deliberately tries to evade the expulsion measure and doesn't want to return voluntarily. For example when during a control of residence only one parent was found at home, that parent refuses to contact the other family</p>


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			<p>members and refuses to ask them to come home in order to be brought to a FITT unit (FITT stands for Family Identification and Return Unit, FITT-units or open family units consist of individual houses and apartments). Then it's possible to detain and return that parent separately.</p> <p>3. Yes. Right now this is possible in Belgium. But the legislative proposal wants to put an end to this, by extending the current ban on the detention of unaccompanied minors to TCNs claiming to be underage and of whom the age assessment is still pending.</p> <p>The Immigration Office states that a lot of foreigners who are intercepted or detained and claim to be minors, turn out to be adults after the age assessment. If they are indeed underage, they are transferred within 24 hours to an (open) observation and orientation centre (OOC) for unaccompanied minors. According to the Immigration Office, if a foreigner looks underage (physical characteristics) he or she definitely won't be detained. The Immigration Office fears that if the legislative proposal is adopted, a lot of irregularly residing or entering adults who are intercepted, will falsely claim to be underage in order not to be detained or removed.</p> <p>There are no statistics available regarding alleged unaccompanied minors who are intercepted or detained on the territory. Please find below some statistics regarding alleged unaccompanied minors who are intercepted at the Belgian border:</p> <p>Number of foreigners who claim to be unaccompanied minors at the border: 43 (2017), 34, (2018), 43 (2019) Of whom the alleged minority is not disputed (no detention, will be brought to an OOC): 31 (2017), 19 (2018), 12 (2019) Of whom the alleged minority is disputed (detention): 12 (2017), 15 (2018), 31 (2019) --> Result age assessment: adult (stays detained): 9 (2017), 11 (2018), 14 (2019) --> Result age assessment: minor (released and brought to an OOC): 3 (2017), 4 (2018), 17 (2019)</p>
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	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. Detained families with minor children:</p> <ul style="list-style-type: none"> • In 2017 – 329 • In 2018 – 79 • In 2019 - 50 <p>Returned families with minor children:</p> <ul style="list-style-type: none"> • In 2017 - 28 • In 2018 - 20 • In 2019 - 8 <p>However, there have been cases when minors have been return only with one of his/her parents.</p> <p>2. The administrative authority that imposes compulsory administrative measures "Accommodation in the Special homes for temporary accommodation (detention centers)" makes an individual assessment for each specific case. Therefore, the hypothesis is possible.</p> <p>3. The police authority, which has established the third country national on the state territory, makes an initial identification of the third country national within the 24-hours police detention. If the detained third country national claims that he/she is an unaccompanied minor, the Social Services are notified. A police officer and a social worker consult the third country national about his/her rights and the opportunity to apply for international protection. If the third country national submits an application for protection, he/she is accommodated in a center with an open type to the State Agency for Refugees (SAR). If the third country national does not want to apply for international protection, he/she is accommodated in the Social Services.</p> <p>If there are no identity documents and there are doubts about the age of the third country national, the authority to which the third country national is handed over (SAR or Social Services) may initiate additional identification. This is a medical examination to determine the age.</p>
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	EMN NCP Croatia	Yes	<p>1.</p> <table border="0" data-bbox="846 391 1758 486"> <tr> <td></td> <td style="text-align: center;">2017</td> <td style="text-align: center;">2018</td> <td style="text-align: center;">2019</td> </tr> <tr> <td>ACCOMODATED</td> <td style="text-align: center;">28</td> <td style="text-align: center;">49</td> <td style="text-align: center;">46</td> </tr> <tr> <td>RETURNED</td> <td style="text-align: center;">9</td> <td style="text-align: center;">27</td> <td style="text-align: center;">23</td> </tr> </table> <p>The figures refer to number of families with minor children</p> <p>2. As a rule, in Croatia, the whole family is placed in detention, i.e. there is no separation of family. The only exception is if a family member is in the hospital.</p> <p>3. No. In case of doubt in the age of the person posing as an UAM, the person is still placed in facilities for UAM under the jurisdiction of the social welfare system.</p>		2017	2018	2019	ACCOMODATED	28	49	46	RETURNED	9	27	23
	2017	2018	2019												
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	EMN NCP Cyprus	Yes	<p>1. None. It is Cyprus' national policy not to detain minors or families with minors. In the rare case of a return, it is a voluntary return that takes place, without prior detention.</p> <p>2. Yes. In this case, it is always the father that may be detained. Such cases are examined on an ad-hoc basis, giving priority to alternatives to detention.</p> <p>3. No. During the process of age assessment, the TCN is considered and treated as a minor.</p>												
	EMN NCP Czech Republic	Yes	<p>1.</p> <p>Numbers of families with minor children detained in order to realize an administrative expulsion are the following: 2017 – 6 families</p>												

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			<p>2018 – 18 families 2019 – 4 families</p> <p>There were no forced or voluntary returns of families with minors realized during the a/m years. Usually, the families with minors apply for international protection during the detention period and thus the detention is terminated.</p> <p>2. No, it is not possible in accordance with our law.</p> <p>We would like to point out that minors of the parents, who are detained, are not detained in the sense of the a/m definition from the EMN Glossary, so they can freely move, have various activities outside the detention facility accompanied by teachers etc.</p> <p>3. Yes and it's in accordance with the Act on the Residence of Foreign Nationals. Such person is usually placed into a specific part of the detention facility determined for single women, families etc., thus he/she is separated from other detained persons.</p>																
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1.</p> <table border="0"> <thead> <tr> <th colspan="2">Number of families detained</th> <th colspan="2">Number of families returned from detention</th> </tr> </thead> <tbody> <tr> <td>2017</td> <td>1 (6 persons)*</td> <td></td> <td>0</td> </tr> <tr> <td>2018</td> <td>0</td> <td></td> <td>0</td> </tr> <tr> <td>2019</td> <td>1 (2 persons)*</td> <td></td> <td>0</td> </tr> </tbody> </table> <p>*Both families were released to the reception centre for applicants of international protection.</p>	Number of families detained		Number of families returned from detention		2017	1 (6 persons)*		0	2018	0		0	2019	1 (2 persons)*		0
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			<p>2. Yes, it is possible. As a rule the whole family will not be detained, if there is basis for detention. If there is a risk of absconding and a basis for detention (see the circumstances in the lists below), then probably one member of the family will be detained (the person of whom the child is less dependent upon) and other members of the family will placed into an accommodation facility. In this process the best interests of the child will be taken into account (normally it is not in the best interest of the child to detain them and thus only one member of the family will be detained if necessary of whom the child is less dependent upon).</p> <p>The basis for detention:</p> <ul style="list-style-type: none">• According to the Act on Granting International Protection to Aliens Article 361 an applicant for international protection may be detained if it is unavoidably necessary on the following bases (if the efficient application of the surveillance measures provided for in this Act is impossible):<ul style="list-style-type: none">○ identification of the person or verification of the identity;○ verification or identification of the citizenship of the person;○ verification of the legal bases of the entry into and the stay in the state of a person;○ identification of the circumstances relevant to the proceedings of the application for international protection, primarily in the case when there is a risk of escape;○ there is a reason to believe that the person has submitted an application for international protection to postpone the obligation to leave or prevent expulsion;
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			<ul style="list-style-type: none">○ protection of the security of state or public order;○ transfer of a person in the procedure provided for in Regulation (EU) No 604/2013 of the European Parliament and of the Council, if there is a risk of escape of a person. <p>The detention shall be in accordance with the principle of proportionality and upon detention the essential circumstances related to the applicant for international protection shall be taken account of in every single case.</p> <ul style="list-style-type: none">• According to the Obligation to Leave and Prohibition on Entry Act Article 15 an alien who has irregularly entered the country/ is irregularly staying in the country may be detained if the application of surveillance measures provided for in this Act does not ensure the efficiency of the compliance with the obligation to leave and, primarily, in the case:<ul style="list-style-type: none">○ there is a risk of escape of the alien;○ the alien does not comply with the obligation to co-operate or○ the alien does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed. <p>The detention shall be in accordance with the principle of proportionality and upon detention relevant circumstances related to the alien shall be taken account of in each case.</p> <p>3. According to the Obligation to Leave and Prohibition on Entry Act the Police and Border Guard Board or the Estonian Internal Security Service shall decide on treating an alien as minor. Thus, if a TCN is treated as an adult it is possible they could be detained if there is a basis for detention. If the TCN is treated as a minor, then in practice UAMs are not detained</p>
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			<p>(even though by law it is possible, it is not used in practice). If however a reasonable doubt arises at the Police and Border Guard Board or the Estonian Internal Security Service about the correctness of the data submitted about the age of an alien, medical examination may be carried out to determine the age of the alien with the consent of the alien or his or her legal representative.</p> <p>Also, in Estonia the TCN has a right to refuse medical examination to determine the age. In that case the Police and Border Guard Board or the Estonian Internal Security Service shall deem the alien to be an adult, except in the case if the person is manifestly minor.</p>
	EMN NCP France	No	
	EMN NCP Germany	Yes	<p>1. There are no exact numbers available concerning how many families were detained and returned from detention, since the category of a “family” is not separately recorded.</p> <p>2. In the Federal Republic of Germany, foreigners that do not possess a residence permit or a right of residence must leave the country according to Section 50 (1), (2) of the Residence Act. If the obligation to leave the country is not fulfilled voluntarily, it can be enforced with a removal following Section 58 of the Residence Act. To ensure the removal, the Residence Act provides for the possibility of detention in accordance with Sections 62, 62a and 62b. These provisions are also applicable to families. However, according to Section 62 (1) Sentence 2 and 3 of the Residence Act, such detention is only a measure of last resort and applied only for the shortest appropriate period of time. According to section 62.0.5 of the Administrative Regulation to the Residence Act, it shall only be applied for detention for one parent in the case of families with minor children being returned. According to current administrative practice, detention is only ordered for the father, while the mother</p>



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			<p>usually remains with the underage children.</p> <p>Most federal states in Germany usually refrain from taking unaccompanied minors, pregnant women, families or single parents with school-age children and minors into detention. Regulations vary across the country.</p> <p>In Bremen, Hamburg and Niedersachsen, families in general are not detained. Other measures can be observed in Brandenburg, Northrhine-Westphalia, Rhineland-Palatinate, Saxony-Anhalt, Schleswig-Holstein and Thuringia.</p> <p>In Brandenburg, Nr. 5.3 of the General Directive No. 07/2019 to the Residence Law states that if not all family members are found during a removal procedure and there is a threat of underage children being separated from their families, the measures initiated must be suspended. The initiated removal has to be terminated if it is not ensured that underage children remain in the care of one parent, which demonstrates that one parent may be arrested solely as well.</p> <p>In Northrhine-Westphalia, according to Nr. 5 of the Guidelines for Detention Awaiting Removal, both parents in families with children under 14 years of age shall generally not be detained. However, if the care of the child or children is ensured and in individual cases the order of detention is essential, only one parent may be detained.</p> <p>In Saxony-Anhalt, parents are not taken into detention together with their minor children. If, in exceptional cases, a family has to be detained, a pending removal request is only made for one parent, usually for the father. The family is reunited at the departure airport.</p> <p>In Schleswig-Holstein, according to the Decree of September 1, 2017 (Regulations for the Implementation of Detention Awaiting Removal) in the case of families with children, it should be avoided that the whole family is detained. If, due to a special situation, detention is absolutely necessary, only one parent shall be detained. The Ministry of the Interior, Rural Areas and Integration must be informed immediately of such cases.</p> <p>In Thuringia and Rheinland-Palatinate, it is also possible to detain one parent.</p> <p>In Hesse, Saarland, Saxony, Baden-Württemberg and Mecklenburg-Western Pommern, no facility</p>
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			<p>for detention awaiting removal for families exists, thus no information is provided by these states. This information provides for the legal background of the detention of families.</p> <p>3. As soon as a TNC claims to be an unaccompanied minor, the youth welfare office is involved. The age assessment will then take place pursuant to Section 42f of the Social Code, Book VIII. The youth welfare office is held to establish the necessary willingness to cooperate among young people and convince them of a procedure that is ultimately intended to serve their well-being. However, Section 42f of the Social Code, Book VIII, does not provide a legal basis for detention.</p>						
	EMN NCP Hungary	Yes	<p>1. Data is not available regarding these questions.</p> <p>2. No.</p> <p>3. An unaccompanied minor shall not be detained in the asylum procedure. If the fact of being a minor is established during the proceedings, the detention of the unaccompanied minor shall be terminated immediately.</p>						
	EMN NCP Ireland	Yes	<p>1.</p> <table border="0"> <tr> <td style="text-align: center;">Number of families with minor children that were detained in a holding facility (not at the border)</td> <td style="text-align: center;">Number of families with minor children that were effectively returned from detention</td> </tr> <tr> <td style="text-align: center;">20170</td> <td style="text-align: center;">0</td> </tr> <tr> <td style="text-align: center;">20180</td> <td style="text-align: center;">0</td> </tr> </table>	Number of families with minor children that were detained in a holding facility (not at the border)	Number of families with minor children that were effectively returned from detention	20170	0	20180	0
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			<p>20190</p> <p style="text-align: center;">0</p> <p>Note: Ireland does not participate in the Return Directive (2008/115/EC). Ireland does not detain minors. In family situations, while adults may be detained, the children will be taken into care by social services and the family reunited at the airport. Section 5(6) of the Immigration Act 1999, as amended, provides at c): "(c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in loco parentis or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Child and Family Agency of the detention and of the circumstances thereof."</p> <p>We have therefore not provided data on the number of families effectively returned, as the question has asked for the number of families with minor children effectively returned <u>from detention</u>.</p> <p>2. A person subject to a deportation order may be subject to arrest and detention, if they do not comply with the conditions set out in the deportation order and accompanying arrangements letter. Minors are not detained. If parents/guardians are detained, children are taken into the temporary care of social services and the family will be reunited at the airport for removal. Section 5(6) of the Immigration Act 1999, as amended, provides at c): "(c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in loco parentis or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Child and Family Agency of the detention and of the circumstances thereof."</p> <p>It is possible that only one parent would be detained. In these circumstances, the children would remain in the care of the other parent.</p> <p>3. Ireland does not use forced return for unaccompanied minors. Ireland does not detain minors (under 18 years).</p> <p>A deportation order may be issued under section 3 of the Immigration Act 1999 (illegally staying TCNs) or section 51 of the International Protection Act 2015 (rejected protection applicants). In the case of the International Protection Act 2015, the provisions in relation to pre-removal detention under section 5 of the Immigration Act 1999, as amended, also apply. Ireland does not detain</p>
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			<p>minors. However, section 5 (6)(b) of the Immigration Act 1999 provides that if, and for so long as an immigration officer/member of An Garda Síochána (national police) has reasonable grounds for believing that the person is not under the age of 18 years, the provisions in relation to detention under section 5 apply as if they were 18 years old.</p>
	EMN NCP Italy	Yes	<ol style="list-style-type: none"> 1. In Italy, there are no Repatriation Centers suitable to host families with children under 18. We are not able to provide data on repatriation of families because our systems only show information about the holder of the expulsion order and not his/her family members. 2. Yes, it is possible to detain one of the parents of a minor under the age of 18, subject to the protection of the unaccompanied minor. 3. No, it is not possible to detain irregular foreigners who have declared themselves minors, during the age assessment process.
	EMN NCP Latvia	Yes	<ol style="list-style-type: none"> 1. In Latvia families with minors can be placed in Detained Foreigners Accommodation Centre in special section for families. In accordance to Immigration law a third country national, who has reached 14 years, can be detained. Number of detained families: 2017 - 9 families,


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			<p>2018 – 1 family, 2019 – 5 families.</p> <p>Number of families returned from detention: 2017 – 6 families, 2018 – 1 family, 2019 – 3 families.</p> <p>2.</p> <ol style="list-style-type: none">1. In Latvia a family with minors is placed in detention in the following cases, when:<ol style="list-style-type: none">1. both parents or one parent (if family has single parent) are/is detained, but their minor children are not detained,2. both parents or one parent (if it is single family) are/is detained and minor child (children), who has reached 14 years, is also detained. <p>In case if one of the parents from full family is detained, the rest family members are not placed with this parent in Detained Foreigners Accommodation Centre.</p> <p>In case if both parents are detained or one parent from a single family is detained, but minor child is not detained, upon the request of a parent submitted to the State Border Guard, a minor child can be placed (accommodated) together with him/her in Detained Foreigners Accommodation Centre. If a detained parent (parents) is not willing to have his not detained child to be placed in Detained Foreigners Accommodation Centre, a child will be placed in child care facilities or will stay with relatives of the family legally staying on the territory of Latvia.</p> <p>3.</p> <p>Immigration law defines that a minor third country national, who has reached the age of 14 years, and is illegally staying/entering the territory of Latvia, can be detained only when there are grounds to believe that he or she will avoid the removal procedure or will impede the preparation thereof or there is a risk of absconding of the foreigner, and it is substantiated by any of the circumstances defined in the Immigration law (e.g., the third country national: 1) is hiding his or her identity, provides false information or refuses to co-operate in other ways; 2) has crossed the external border, avoiding border checks, as well as has used a forged travel document, forged visa or residence permit;</p>
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			<p>3) poses threats to the State security, public order or safety; 4) has previously avoided a removal procedure in the Republic of Latvia or in another Member State of the European Union, etc.</p> <p>According to the Immigration law there is no possibility to detain third country national for the purpose of making age assessment. Third country national, who claims to be a minor, is considered as a minor if there is no any document approving his/her age. Third country national, who claims to be a minor, is provided with guarantees foreseen for this group of vulnerable persons defined by legal acts.</p>
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. Article 114(3) of the Law on Legal Status of Foreigners provides that vulnerable persons and families with minor children may be detained only in an exceptional case, taking into account the best interests of the child and vulnerable persons. When deciding on the detention of adult foreign nationals, the court decides to detain adult foreigners with minor children in order to avoid separation of children from their parents. Foreign minors are given access to a kindergarten or school and care is taken for meaningful leisure time.</p> <p>According to the State Border Guard Statistics available in 2016 - 2; in 2017 - 10; in 2018 - 13; foreign minors were detained by a court decision for more than 48 hours.</p> <p>2. There is a legal basis to detain one of the parents and not to detain the other with the children, but this is very rare in practice, as the best interests of the child and the principle of family unity are first assessed. Such a measure could be applied if there is a high probability of persons trying to escape and if this would endanger the best interests of the child.</p> <p>3. When an unaccompanied foreign minor is identified in the Republic of Lithuania, the State Border Guard Service officers shall carry out the actions provided for in the Procedure for the Age assesment, Accommodation and Other Procedural Actions and Services of Unaccompanied Foreign Minors. An unaccompanied foreign minor may be detained for a maximum period of 48 hours to carry out the actions provided for in the description.</p>


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	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Luxembourg Number of families with minor children that were detained* on a holding facility (so not at the border) Number of families with minor children that were effectively returned from detention</p> <table border="0"> <tr> <td>2017</td> <td>28 (101 persons)</td> <td>26 (91 persons)</td> </tr> <tr> <td>2018</td> <td>4 (10 persons)</td> <td>4 (10 persons)</td> </tr> <tr> <td>2019</td> <td>10 (35 persons)</td> <td>6 (19 persons)</td> </tr> </table> <p>2. It is possible but it is not applied in practice, in order to maintain the family unit and also for practical reasons.</p> <p>In Luxembourg, the detention of families with children is allowed for a maximum of seven days in accordance with article 6 (3) of the amended law of 28 May 2009 on the creation of the Detention Centre. However, this maximum period has not been applied in practice. On average, the concerned individuals do not stay more than 48 hours in the Detention Centre.[1]</p> <p>According to the 2018-2023 Coalition Agreement[2] of the current government, the current detention system and semi-open structures as alternatives to detention should be supplemented by structures better suited to the needs and current situation of different groups of people concerned. It is planned to create a specific structure for the detention of women, families and vulnerable persons. Once this specific structure has been created, the legislation on detention will be adapted to ensure that children are no longer placed in the detention centre. The measure of detention is always a measure of last resort, if there are no applicable alternatives. In addition, efforts will be made to propose alternatives to detention. Thus, it is planned to replace the Emergency Accommodation Structure in Kirchberg (SHUK), which is of temporary nature, with a new permanent semi-open structure, to serve as an</p>	2017	28 (101 persons)	26 (91 persons)	2018	4 (10 persons)	4 (10 persons)	2019	10 (35 persons)	6 (19 persons)
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			<p>alternative to the detention centre, which should take into account the needs of different groups of people.</p> <p>[1] Information provided by the Detention Centre on 10 June 2020. [2] https://gouvernement.lu/fr/publications/accord-coalition/2018-2023.html, p.233.</p> <p>3. Article 120 (1) paragraph 2 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration law) allows the placement in detention of minors. They may be detained in an appropriate place adapted to the needs of their age. The best interests of the child are considered in order to be placed in detention. In practice, it is very rare that UAMs are held in detention.[1] However, in the case mentioned above, when an illegally staying TCN is detained and s/he claims to be an unaccompanied minor, the law allows that the “supposed” UAM will be placed in detention during the age assessment process applying the principles mentioned above, until the age determination procedure is finished.</p> <p>[1] Information provided by the Detention Centre on 10 June 2020.</p>
	<p>EMN NCP Malta</p>	<p>Yes</p>	<p>1. The Maltese competent authority, the Principal Immigration Officer, did not issue any Detention Orders in respect of families with minor children. This is in line with Government policy not to subject minors to immigration detention. This is however without prejudice to confinement for quarantine and health purposes.</p> <p>2. Unless there are compelling reasons to detain one family members, e.g. on grounds of public policy or national security, the parents are not subjected to detention. In the context of</p>


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			<p>return, there may be instances when the father is temporarily detained in order to ensure that the return will be effected. This detention is normally very limited and will not exceed a few days.</p> <p>3. Unless it is evident that the person in question is not a minor the competent authorities give the benefit of the doubt and do not subject the person in question to detention during the age assessment process. This is however without prejudice to confinement for quarantine and health purposes.</p>																		
	EMN NCP Netherlands	Yes	<p>1. The Gesloten gezinsvoorziening (GGV; Closed family provision) in Zeist is a closed child friendly facility, both for families with minors in (border) detention and unaccompanied minors in detention. Unaccompanied minors are never in border detention.</p> <p>Average occupancy of the facility in Zeist:</p> <p>2019</p> <table border="0"> <tr> <td>Families with minor children in detention</td> <td style="text-align: right;">70</td> </tr> <tr> <td>Forced returns</td> <td style="text-align: right;">50</td> </tr> <tr> <td>Voluntary returns</td> <td style="text-align: right;"><5</td> </tr> </table> <p>2018</p> <table border="0"> <tr> <td>Families with minor children in detention</td> <td style="text-align: right;">70</td> </tr> <tr> <td>Forced returns</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Voluntary returns</td> <td style="text-align: right;"><5</td> </tr> </table> <p>2017</p> <table border="0"> <tr> <td>Families with minor children in detention</td> <td style="text-align: right;">60</td> </tr> <tr> <td>Forced returns</td> <td style="text-align: right;">40</td> </tr> <tr> <td>Voluntary returns</td> <td style="text-align: right;">/</td> </tr> </table> <p>Source Occupancy: Custodial Institutions Agency (DJI; Dienst Justitiële inrichtingen)</p>	Families with minor children in detention	70	Forced returns	50	Voluntary returns	<5	Families with minor children in detention	70	Forced returns	40	Voluntary returns	<5	Families with minor children in detention	60	Forced returns	40	Voluntary returns	/
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			<p>Source Returns: Repatriation and Departure Service (DT&V; Dienst Terugkeer & Vertrek).</p> <p>2. Yes, but only in exceptional circumstances. In the Netherlands, the starting point is that the unity of the family is respected. If detention is found to be necessary for the departure of the family, the family as a whole will be placed in detention. Only in exceptional circumstances such as danger to public order or national security or frustration of forced return only one of the parents and not the rest of the family will be detained. With the departure of the head of a family from the Netherlands, the third country nationals belonging to the family who also have to leave the Netherlands, will leave together with the head of the family as much as possible. If a joint departure of the family is not possible, separate departure may take place after the family's situation has been assessed and tested by the Repatriation and Departure Service (DT&V; Dienst Terugkeer & Vertrek).</p> <p>3. An TCN can be held in pre-detention ('ophouding') for six hours in order to investigate the identity and residence status of the TCN. During this phase an age assessment can be held if there is a doubt about the age of a TCN who claims to be unaccompanied minor. The phase of pre-detention can be extended with a maximum of 48 hours if more time is needed.</p>
	<p>EMN NCP Poland</p>	<p>Yes</p>	<p>1. According to the Polish law it is possible to place in detention families with minors and unaccompanied minors, as well. Families with minors can be detained both in return and asylum procedure. Unaccompanied minors can be detained only in return procedure.</p> <p>The numbers are as follows: 2017 - 281 minors accompanied by parents were detained / 17 unaccompanied minors were detained 2018 - 210 minors accompanied by parents were detained / 19 unaccompanied minors were detained 2019 - 108 minors accompanied by parents were detained / 24 unaccompanied minors were</p>

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			<p>detained</p> <p>Effective returns of minors directly from detention - such statistical data are not gathered.</p> <p>2. Yes, according to the law it is possible, because there are no legal obstacles against such actions. However, it does not happen often in practice. It could be possible in case when one parent poses threat to the national security and is placed in a more restrictive detention facility which is called arrest for foreigners, while the rest of the family is placed in an open centre. But in most cases we try not to divide/separate the family.</p> <p>3. Yes, it is possible since unaccompanied minors can be placed in detention for the purpose of return. There is only one detention centre which is adequate for unaccompanied minors (there are 15 dedicated places in there, in a separate part of the detention facility). So the alleged minor is placed there and the detention facility conducts the age assessment procedure (which lasts 2-3 days). If it turns out that he/she is a minor, then a person stays in that detention centre adequate for unaccompanied minors. If it turns out to be an adult, the person is immediately moved to a detention centre for single men/women.</p>
	<p>EMN NCP Portugal</p>	<p>Yes</p>	<p>1. NA</p> <p>2. YES. The Immigration Law (Law 23/2007) allows the detention of a foreign citizen in the context of an expulsion process (court decision) or a coercive removal process (administrative decision), provided for in articles 142 and 146, respectively. Note that, in this regard, the detention of a foreign citizen in the context of a coercive removal order (administrative procedure) is always subject to judicial</p>

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			<p>validation (cf. paragraph 1 of art. 146).</p> <p>Article 142</p> <p>Coercive measures</p> <p>1 — Within the scope of deportation proceedings, in addition to the coercive measures laid out in the Code of Criminal Procedure, with the exception of remand in custody, the judge may, if there is a risk of flight, also enforce the following:</p> <ul style="list-style-type: none">a) Periodic appearance at the SEF;b) Obligation to remain at home using electronic surveillance means, pursuant to the law;c) Placement of the individual at a waiting area or similar space, pursuant to the law. <p>Article 146</p> <p>Procedures for a forced removal measure</p> <p>1 — Foreign citizens who enter or remain illegally in Portuguese territory shall be arrested by the police authorities and, whenever possible, handed over to the SEF, accompanied by the respective case record, and must appear, within 48 hours of arrest, before the judge of the local criminal court in the area of jurisdiction, or local district court in other areas of the country, for the validation and potential application of coercive measures.</p> <p>2 — If a decision is made to place the individual in a waiting area or similar space, the SEF shall be informed of this so that it may pursue competent proceedings for the foreign citizen's removal from Portuguese territory.</p> <p>3 — The placement referred to in the above paragraph may not be prolonged for more time than that needed to execute the forced removal measure, without exceeding 60 days.</p> <p>(...)</p> <p>7 — Authorities and authorised agents of the SEF, the National Republican Guard, the Public Security Police, the Judiciary Police and the Maritime Police shall have authority to make arrests pursuant to (1).</p> <p>The fact of having minor children is relevant for the purposes of the decision of removal (and not</p>
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			<p>detention), under the terms of art. 135 (1), points b) and c).</p> <p>Article 135</p> <p>Limits to deportation</p> <p>1 — The following foreign citizens may not be subject to forced removal or deportation from the country:</p> <ul style="list-style-type: none">a) Foreign citizens who were born in Portuguese territory and habitually reside there;b) Foreign citizens who have minor children of Portuguese nationality residing in Portugal in their custody;c) Foreign citizens who have minor children who are third-country nationals, residing in Portuguese territory, who they support and raise with parental responsibilities;d) Foreign citizens who have been in Portugal since before 10 years of age and reside in Portugal. <p>Thus, it is possible to place in detention foreign citizens who have Portuguese minor children or residents in Portugal in the context of an expulsion process (judicial or administrative). The fact that having minor children is only relevant to the expulsion decision.</p> <p>3. YES.</p> <p>The matter relating to the detention of minors is covered in art. 146-A of the Immigration Law, in terms of detention conditions and in the following terms:</p> <p>Article 146-A</p> <p>Conditions of arrest</p> <ul style="list-style-type: none">1 – (...)2 – (...)3 — Foreign citizens held at a waiting area or similar space shall be entitled to receive urgent health care and basic treatment for illnesses, with special care for vulnerable persons, particularly minors, unaccompanied minors, disabled persons, the elderly, pregnant women, families with minor children and victims of torture, rape and other serious forms of psychological, physical or sexual violence.
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			<p>4 – (...)</p> <p>5 – (...)</p> <p>6 – Detained families shall be kept at separate locations guaranteeing their privacy.</p> <p>7 – Accompanied minors shall have the ability to participate in leisure activities, namely games and recreation activities suited to their age, together with access to education in accordance with the duration of their stay.</p> <p>Article 31, covers the refusal of entry of unaccompanied minors as follows:</p> <p>Article 31</p> <p>Entry and exit of minors</p> <p>1 – Notwithstanding youth exchanges and tourism, the competent authority shall prohibit entry into the country to foreign citizens under 18 years of age when not accompanied by an individual with parental responsibilities or when no individual exists in Portuguese territory with responsibility for their stay, duly authorised by a legal representative.</p> <p>2 – Except under exceptional and duly justified circumstances, foreign minors shall not be authorised to enter Portuguese territory when the holder of parental responsibilities, or person to whom the minor is entrusted, is not admitted into the country.</p> <p>3 – If a foreign minor is not admitted into Portuguese territory, the person to whom the minor has been entrusted shall likewise be denied entry.</p> <p>4 – Foreign resident minors travelling without the individual having parental responsibilities, and without this individual's legally certified authorisation, shall be denied exit from Portuguese territory.</p> <p>5 – Unaccompanied minors awaiting a decision on their entry into Portuguese territory or repatriation shall be given all material support and assistance needed to meet their basic needs of food, hygiene, accommodation and medical aid.</p> <p>6 – Unaccompanied minors may only be repatriated to their country of origin, or to a third country willing to receive them, with a guarantee of appropriate assistance and welcome upon arrival. Such refusal may imply, in legal terms, the placement in detention regime, safeguarding all the</p>
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			<p>guarantees related to the accommodation conditions, according to art. 40 of Law 23/2007.</p> <p>Article 40</p> <p>Rights of foreign citizens denied entry</p> <p>1 — During their stay in the international port or airport zone, waiting area or similar space, foreign citizens who have been denied entry into Portuguese territory may communicate with their country's diplomatic or consular office or with any person of their choice, while also benefiting from the assistance of an interpreter and health care, including an attending physician when necessary, as well as all material support needed to meet their basic needs.</p> <p>2 — Foreign citizens who have been denied entry into Portuguese territory shall be ensured timely access to the legal assistance of an attorney, at their expense or, upon request, to legal protection, subject, with the necessary adaptations, to Law no. 34/2004 of 29 July, under the scheme for the appointment of a defense advocate for urgent proceedings.</p> <p>3 — For the purposes of the above paragraph, the guarantee of legal assistance to foreign citizens denied entry may be subject to a protocol between the Ministry of the Interior, the Ministry of Justice and the Portuguese Bar Association (Ordem dos Advogados).</p> <p>4 — Notwithstanding the protection granted by asylum law, citizens subject to a decision of denied entry shall likewise be guaranteed observance, with the necessary adaptations, of the scheme provided for in article 143.</p>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. The Bureau of Border and Foreign Police of the Police Force Presidium does not collect such data. Due to the fact that a high percentage of foreigners placed in the detention facility does not have any valid identity documents, it is not possible to obtain relevant information regarding their family ties.</p>




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			<p>As regards returns of families with children, in 2019 there was one family effectively returned - a female Albanian national with three children - to their country of origin.</p> <p>2. The Act on Residence of Foreigners does not stipulate the obligation to detain both parents or just one of the parents. This Act enables a police officer to detain a third country national if there are reasons for their detention and the detention has a purpose. Each detention case is considered individually based on the available information and circumstances. In case of detention of a whole family, the family is generally placed into the facility together.</p> <p>3. The Slovak Republic does not detain unaccompanied minors. A third country national who proclaims to be an unaccompanied minor is obliged to undergo a medical examination for age determination if there is a reasonable suspicion that s/he is an adult. If the third country national refuses to undergo the medical examination for age determination, s/he is considered an adult for the purpose of the procedure of the Act on Residence of Foreigners; if s/he undergoes this medical examination, s/he is considered an adult until the result of the examination is available.</p>
	<p>EMN NCP Slovenia</p>	<p>Yes</p>	<p>1. - 2017, 7 families detained, 0 removed. - 2018, 26 families detained, 1 family was removed. - 2019, 21 families detained, 0 removed.</p> <p>2. Yes, in case only one family member is a subject of an enforceable return decision and there is risk of absconding and if for any reason cannot be removed from the country immediately, it is possible to detain only one of the parents.</p>

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			3. Yes. TCNs who claim to be unaccompanied minors are accommodated in accordance with an agreement with a guardian for special cases. If the accommodation in an adequate institution for the accommodation of minors is not possible, it is possible to detain them at the Centre for Foreigners.
	EMN NCP Spain	Yes	<p>1. Although legally possible, detention of minor children together with their families has not been applied in the last years.</p> <p>2. It is theoretically possible, if detention is justified for one of the parents, in order to ensure return, and not for the rest of the family. However, detention of one person is not foreseen as a way to avoid the risk of absconding of other persons.</p> <p>3. Only for the first 24 hours. However, once fingerprints and picture have been taken, UM are put at the disposal of protection institutions as soon as possible. The Prosecutor leads the process of age determination and other procedures with minors. In case of doubt, people are treated as minors.</p>
	EMN NCP Sweden	Yes	<p>1. No information available.</p> <p>2. Yes, depending on the circumstances that could be an alternative</p> <p>3. No</p>
	EMN NCP Norway	No	

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