



THE USE OF DETENTION AND ALTERNATIVES TO DETENTION IN THE CONTEXT OF IMMIGRATION POLICIES IN BELGIUM

Focused Study of the Belgian National Contact Point
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The European Migration Network was set up with the purpose of providing up-to-date, objective, reliable and comparable information in the areas of asylum and migration for the European institutions, national authorities and other stakeholders.

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The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

Belgian study and EU comparative study

This is the **Belgian Contribution** to the EMN focused study on The Use of Detention and Alternatives to Detention in the Context of Immigration Policies. **Other EMN National Contact Points** (NCP's) produced a similar report on the topic for their (Member) State.

The different National reports were prepared on the basis of a **common template** to ensure, to the extent possible, comparability. References to questions from the common template are made in this report (e.g. Q1 refers to Question 1 in the common template).

On the basis of all national Contributions a **Synthesis Report** is produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCP's. The Synthesis Report gives an overview of the topic in all (Member) States.

The **aim of this EMN study** (Synthesis Report) is to:

- (1) Provide information on the scale of detention and alternatives to detention in each Member State by collecting statistics available on the number of third-country nationals (by category) that are subject to these measures;
- (2) Identify the categories of third-country nationals that can be subject to detention and/or provided an alternative to detention;
- (3) Compare the grounds for placing third-country nationals in detention and / or providing alternatives to detention outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions in individual cases;
- (4) Identify and describe the different types of detention facilities and alternatives to detention available and used in (Member) States;
- (5) Collect any evidence of the way detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures, and identify examples of good practice in this regard.

The Belgian report, the Synthesis report and the links to the reports of the other (Member) States and to the Common Template are available on the **website** www.emnbelgium.be.

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SECTION 1: SHORT OVERVIEW OF RECENT DEVELOPMENTS IN THE BELGIAN RETURN POLICY

The EMN Synthesis report of this study will give – in the first section – an overview of the EU *acquis* on the study topic. In the first section of this national report, the liberty is taken to give a more general introduction to the national framework on return and to describe relevant recent evolutions on the matter. Knowledge of this broader context, which is closely interlinked with the policy on (alternatives to) immigration detention, is necessary for a good understanding of the study topic.

Institutional and regulatory framework

The State Secretary for Migration and Asylum Policy is responsible for the entry into the territory, the residence and consequently, the removal of foreign nationals from the territory. The competent government administration for the implementation of forced return policies is the Immigration Office. Assisted voluntary return on the other hand, falls under the competence of the Federal Agency for Reception of Asylum Seekers (Fedasil). In practice Fedasil closely cooperates with the International Organization for Migration (IOM) and a number of NGO's to carry out assisted voluntary returns. Fedasil is the government agency that coordinates the network of (open) reception facilities for asylum seekers.

The Immigration Office encompasses the central services located in Brussels, the immigration detention facilities spread over the country and at the national airport, the family units (alternative to detention) and the 'open return centre' for irregularly staying families. Fedasil and the Immigration Office closely collaborate in this open return centre, as well as in the so-called 'open return places' (in the reception facilities) for mainly failed asylum seekers.

The main regulations concerning return decisions, immigration detention and forced return are stipulated in the so-called Immigration Act. Every foreign national who does not comply with the rules on immigration or residence can be subject to removal. Removal measures are facultative and individual. So there is no obligation to remove foreseen by law.

Alternatives to detention for children

Under the pressure of public concern and jurisprudence, different measures were taken over the years to adapt the former detention policy for unaccompanied and accompanied minors. Since 2004, *unaccompanied minors* found on the territory are no longer detained. Since 2007, also unaccompanied minors arriving at the border are in principle no longer placed in a detention facility, but in a so-called Observation and Orientation Centre (OOC)¹, which is open to all unaccompanied minors regardless of their administrative status. These OOC's are not closed facilities but are secured.

Furthermore, the Belgian government decided that from 1 October 2008 *families with minor children*, present on the Belgian territory, are no longer detained but are brought to family units. From 1 October 2009 families with children arriving at the border (who are not removable within 48 hours after arrival), are also brought to the family units. The family units are individual houses and apartments which are provided for the temporary stay of the concerned families. Legally, these families are being detained in the housing units but in practice the said housing units are normal houses and the families have liberties of movement. Every family gets support from a case manager or coach.

¹ There are two OOCs in the towns of Steenokkerzeel (50 places) and Neder-Over-Heembeek (50 places).

Detention of unaccompanied minors is forbidden by law. Detention of families remains legally possible under specific conditions. However in practice, the adapted detention units that make detention of families possible are not (yet) created and families are only held in family units (except just after arriving or just before departure).

Towards a more effective return policy

The third-country national who has received a return order is asked to leave the country independently, on his own initiative, and to return to his country of origin (or a country where he is allowed to reside). The person can organise this return by his own means, or ask for assistance from the International Organisation for Migration (IOM). Either way, the person is supposed to follow the order received by the Immigration Office.

However, in reality most people don't comply with the order. In response to this problem, the Belgian framework on return, removal and detention was modified in recent years, putting more emphasis on effective return of irregularly staying migrants: the law was modified; initiatives are taken for a better follow-up of return decision, for a strict cooperation with local authorities and for the promotion of voluntary return.

Transposition of the Return Directive

An important legal development is the transposition of the Return Directive² into Belgian law in early 2012. With this modification, the period foreseen for voluntary return in the return order was extended for irregularly staying persons, in principle from five days to 30 days (subject to exceptions)³. Upon request and when necessary for the preparation of the voluntary departure, the period can be extended. Moreover, a removal decision can now be accompanied by an entry ban⁴, for example for non-compliance with the obligation to return. The direct changes to the rules on immigration detention remained limited. The use of detention as a last resort is explicitly mentioned. Priority must be given to other suitable safety measures that are less invasive. However, if there is a risk that the foreign national goes into hiding or if a previous order to leave the territory was ignored, a detention measure may be used.

Follow-up on return decisions

By lengthening the period given to leave the country and the threat of a possible entry ban, emphasis is put on voluntary departure. At the same time, the Immigration Office increased its efforts to track whether people effectively execute the order.

In June 2011 a new service 'SEFOR' (=SEnsitization, FOLlow-up & RReturn) inside the Immigration Office was put into operation. SEFOR is responsible for the follow-up of all files concerning a return decision ('order to leave the territory'). The so-called SEFOR-procedure works on (assisted) voluntary return on the one hand and the preparation of forced return (identification) on the other. Via the website www.sefor.be, SEFOR provides concerned and/or interested TCN's and other social assistant services with information, in

² Transposition in Belgian legislation by the Law of 19 January 2012 amending the Immigration Act (Belgian Official Gazette of 17 February 2012).

³ The order to leave the territory stipulates how much time the recipient has to leave the territory (voluntary): 30 days in general (at request and when necessary for the preparation of the voluntary departure, the period can be extended); between seven and 30 days for foreigners that were never allowed to remain three months on the Belgian territory; less than seven days or no term at all in a specific number of cases (e.g. when there is a risk of absconding, when preventive measures were not respected, when the person is a risk for public order and national security, ...) [and 45 days for people who have filed an application according to the procedure for victims of human trafficking].

⁴ In short, an order to leave the territory is accompanied by an entry ban of (maximum) 3 years if no period for voluntary departure has been granted, or if the obligation to return has not been complied with. In cases of fraud, the length of the entry ban can be up to 5 years, and even more than 5 years if the person involved is a serious threat to public order or security. There are possibilities to suspend or withdraw the entry ban.

22 languages, on the consequences of an 'order to leave the territory' and the possibilities for voluntary return. During the validity of the return decision, SEFOR starts the process of identifying the person concerned with a double purpose: a quick removal (optimal use of the detention facilities) and a limited detention period (humane approach). In case a person does not leave voluntarily, SEFOR strives to localize the person to be able to remove him. In this case, the person is given an entry ban.

SEFOR works closely together with local authorities. When a negative decision is taken on a residence application, the third-country national is summoned to present himself before the local authorities, where he has to sign the return decision (a so-called 'order to leave the country'. Local authorities are obliged to inform the person about removal procedures and the possibilities for voluntary return. Additionally, the municipality has the obligation to transfer an identification-form about the person concerned to SEFOR. The third-country national must inform the municipality about the date and destination of his return and additionally has to provide a copy of his return-ticket.⁵ The municipality is obliged to verify that the person left his place of residence and has to send a report to SEFOR.

Return desk

To further invest in promoting voluntary return, a 'return desk' of Fedasil opened in 2012 in the central building of the Immigration Office in Brussels. Migrants who wish to return to their country voluntarily and who are not accommodated in the reception facilities for asylum seekers, can ask the return desk for professional support on (assisted voluntary) return.⁶

Return accompaniment for failed asylum seekers and special (open) return places in the reception facilities

The promotion of voluntary return is also achieved through an intensified accompaniment of third-country nationals.

For asylum seekers, the concept of "return track" was introduced in the law in early 2012⁷: a framework for individual counselling on return, offered by Fedasil, whereby priority is given to voluntary return. The return track starts (1) with informal counselling: asylum seekers are informed about the possibilities for voluntary return. This occurs from the moment they file their asylum request. At the moment a negative decision is taken on their asylum request (2), asylum seekers in the reception facilities are formally offered return accompaniment (during the period of possible appeal or the period foreseen by the order to leave the country). An individual project of return must be elaborated and signed by the person involved. The Immigration Office must be informed. At the moment a negative appeal decision is taken (3), the person is transferred to special open return places (see below), where the return accompaniment continues. During the period of validity of the order to leave the country, the authorities don't carry out a forced return and all efforts are placed on voluntary return. On a regular basis conversations are organised with the person on the subject of return. When the period foreseen by the order to leave the country elapses and the return project is evaluated in a negative way (no willingness to voluntarily return), the Immigration Office can start the forced return procedure (including administrative detention).

⁵ In the case the TCN does not provide himself to the local authorities after issuing an order to leave the territory or the date of the order has elapsed, the municipality (the local police) has to initiate a control of the dwelling of the TCN, which is carried out by the local police. The municipality has the duty to transfer this information to SEFOR.

⁶ More information on the website of Fedasil: <http://www.fedasil.be/en/news/retour-volontaire/1-3-return-return-desk>

⁷ By the law of 19 January 2012, which modified the Reception Act (Belgian Official Gazette of 17 February 2012).

As mentioned, after a negative appeal decision, asylum seekers are transferred to special open return places for the last part of their individual return project. Fedasil created in 2012 'open return places' inside four reception facilities (four times 75 places, counting for a total capacity of 300 places). Starting from September 2012 failed asylum seekers were allocated to these places.

Although Fedasil provides for the open return places, the Immigration Office has a liaison officer in each of the four facilities. The liaison officer, which gathers information for identification, follows up newly submitted procedures and ensures fast processing and approval. He is in constant contact with enforcement services. Together with Fedasil, the liaison officer assesses whether a voluntary return is a realistic option.

If residents are still in open return places when the order to leave the territory expires and they have failed to register for voluntary return, SEFOR follows the liaison officer's indication to call the police to detain them to be repatriated or to issue a new order to leave the territory with an entry ban. The police removes residents who do not present themselves after being called.

Since the end of September 2013, the accommodation in open return places and the return accompaniment is also opened up to certain target groups other than failed asylum seekers (e.g. unaccompanied minors that became 18 years and have a negative decision on a residence application, certain persons that applied for voluntary return at the "return desk", ...)

Open return centre for irregularly staying families

Certain irregularly staying families (not asylum seekers) are legally entitled⁸ to a reception place on the basis of the fact that the minors (who reside with their families illegally in Belgium) are indigent. The social services of the municipality of the place of residence verify that the family fulfils the conditions and, if the families wish to benefit from reception, they are referred to Fedasil.

Before 2013, these families were provided accommodation in the reception facilities for asylum seekers. Since May 2013, they are given accommodation for a limited time period (in principle 30 days) in a specific open return facility that became operational in the town of Holsbeek (105 places). In the framework of an agreement with Fedasil, this facility is managed by the Immigration Office. During the stay in this reception centre (generally during one month), two different options are being looked into: the obtaining of a residence permit or the voluntary return in the country of origin.

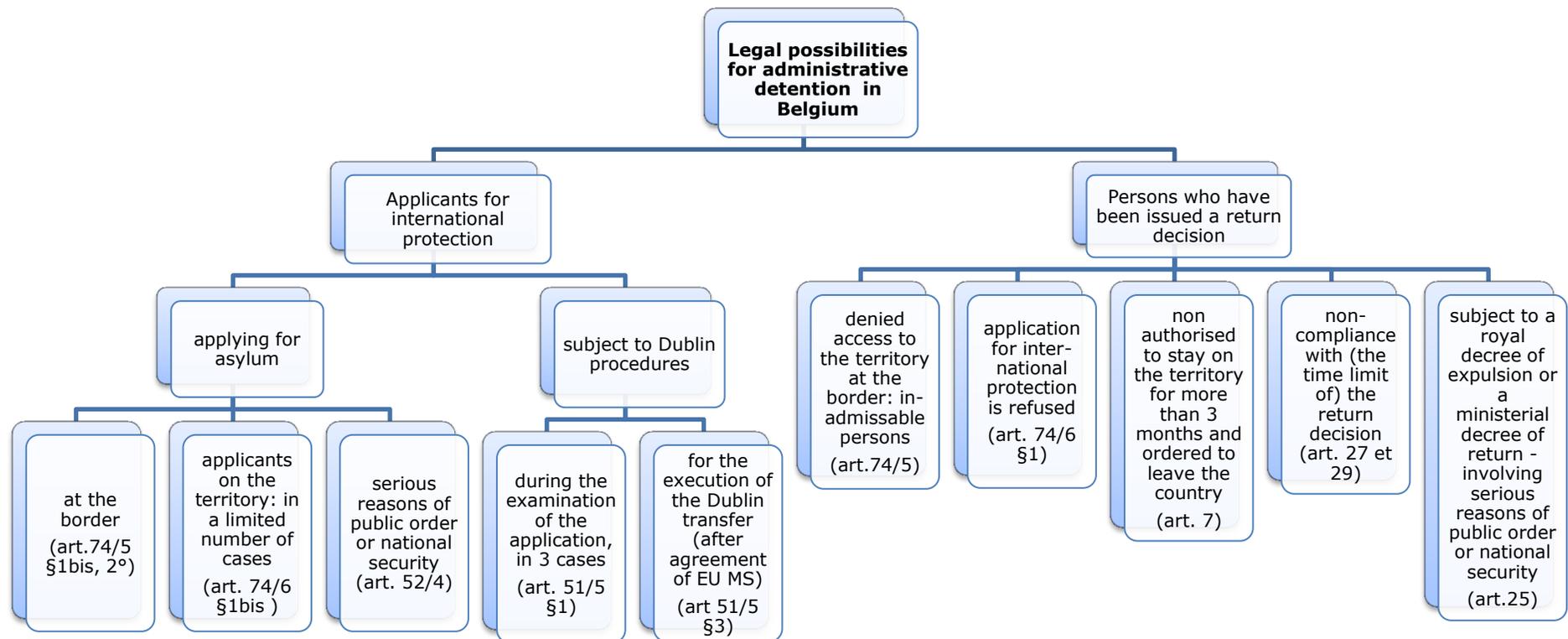
If these two options fail, the Immigration Office can transfer the families to the family units in order to organize their removal (see above and further in this study – the family units are an alternative to detention). The family units are under the direct competence of the Immigration Office.

⁸ According to article 60 of the Reception Act (and a Royal Decree of 24 June 2004).

SECTION 2: CATEGORIES OF THIRD-COUNTRY NATIONALS THAT CAN BE DETAINED, NATIONAL PROVISIONS AND GROUNDS FOR DETENTION

Q1. Categories of third-country nationals that can be detained in Belgium for the purpose of immigration policies⁹

Below a schematic overview is given on the possibilities to detain third-country nationals in Belgium. Furthermore, and to make comparison possible with other States (EMN Synthesis report), the table from the EMN template is completed, with some more details.



⁹ Answer to Q1 of this section: "Please complete the table below with regard to the categories of third-country nationals that can be detained. Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q2) after the table".

Table 1: Categories of third-country nationals that can be detained, and legal grounds.

Categories of third-country nationals	Can third-country nationals under this category be detained? (Yes/No)	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the <u>grounds</u> for detention for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework? Yes.
Applicants for international protection in ordinary procedures	Yes	Yes	Not applicable	In principle (law and practice) applicants for international protection on the territory are not detained, but a number of exceptions apply. They can be detained on the following grounds (article 74/6§1bis the Immigration Act). In case the person: <ul style="list-style-type: none"> - was expelled from the Belgian territory less than 10 years ago without the measure being lifted (1°) - resided more than 3 months in a third country (or in different third countries) and left this country without fear of being persecuted or without a real risk of suffering serious harm (2° en 3°) - is in the possession of a travel document for a third country as well as valid travel documents to get there (4°) - introduced its application for international protection beyond the prescribed time (5°) - withdrew on a voluntary basis from the procedure initiated at the border (6°) - did not comply with reporting obligations (7°) (not applied in practice) - did not introduce his application for international protection when he was questioned at the border checkpoint (8°) - introduces a subsequent application (9°) (see

				<ul style="list-style-type: none"> - below – accelerated procedures) - refuses to declare his identity or nationality or gives false information (10°) - destroyed or got rid of his identity or travel document (11°) - introduced an application for international protection to delay or thwart the execution of the previous or upcoming decision leading to removal (12°) - hindered the taking of fingerprints (13°) - did not mention he already introduced an application for international protection in another country upon submission of the application (14°) - refused to file a document upon submission of the application for international protection (15°)
Applicants for international protection in fast-track (accelerated) procedures	Yes	Yes	Not applicable	<ul style="list-style-type: none"> - Applicants for international protection at the border can be detained and are in that case subject to an accelerated asylum procedure (<i>art.74/5§1bis, 2° Immigration Act</i>). - Applicants for international protection introducing a subsequent application can be detained (<i>art.74/6 §1bis 9° Immigration Act</i>)
Applicants for international protection subject to Dublin procedures	Yes	Yes	Not applicable	<p>Applicants for international protection subject to Dublin procedures (<i>art.51/5 Immigration Act</i>) can be detained:</p> <ul style="list-style-type: none"> - during the examination of the application, in 3 cases. In case the person: <ul style="list-style-type: none"> o has a residence permit or a visa issued by another (Dublin) Member State that is no longer valid; o does not have the necessary entry documents and declares he resided in another (Dublin) Member State; o does not have the necessary entry documents and his fingerprints show that he resided in another (Dublin) Member State. - during the time strictly needed for the execution of the Dublin transfer (<i>art.51/5 §3 Immigration</i>

				Act)
Rejected applicants for international protection	Yes	Yes	Not applicable	Rejected applicants for international protection can be detained (<i>article 74/6 § 1 of the Immigration Act</i>) if necessary to guarantee the effective removal from the territory when the return decision becomes enforceable.
Rejected family reunification applicants	/	/	Not applicable	This is not a specific category subject to administrative detention in Belgian law. Persons applying for family reunification have no right of residence. See the more general category below: persons who have been issued a return decision.
Other rejected applicants for residence permits on basis other than family reunification (Please provide details)	/	/	Not applicable	This is not a specific category subject to administrative detention in Belgian law. See the more general category below: persons who have been issued a return decision.
Persons detained at the border to prevent illegal entry (e.g. airport transit zone)	Yes	Yes	Not applicable	Persons at the border can be detained to prevent illegal entry (<i>article 74/5 of the Immigration Act</i>) if the person can be removed (or in case the person applies for international protection at the border, see above).
Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision	No	Not applicable	Not applicable	Not applicable
Persons who have been issued a return decision	Yes	Yes	Not applicable	Persons who have been issued a return decision can be detained for the purpose of removal in the following cases. In case the person: <ul style="list-style-type: none"> - is not authorized to stay on the territory for more than 3 months (<i>art. 7 of the Immigration Act</i>). => He can be detained, unless other sufficient but less coercive measures can be applied effectively, for the time strictly necessary for the execution of the measure, especially when there is a risk

				<p>of absconding or when the alien avoids or impedes the preparation of return or the removal process.</p> <ul style="list-style-type: none"> - is subject to a royal decree of expulsion or a ministerial decree of return (<i>art.25 of the Immigration Act</i>): detention is possible for the time strictly necessary for the execution of the measure. - did not comply with the time limit of his return decision (<i>art. 27 et 29 of the Immigration Act</i>) =>He can be detained, unless other sufficient but less coercive measures can be applied effectively, for the time strictly necessary for the execution of the measure, especially when there is a risk of absconding or when the alien avoids or impedes the preparation of return or the removal process.
Other categories of third-country nationals (Please specify the categories in your answer)	No	Not applicable	Not applicable	Not applicable

Q2. Legal framework on detaining persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs?¹⁰

Unaccompanied children and families with minor children (accompanied children) are in principle not administratively detained in Belgium. For other groups of vulnerable persons and persons with special needs, there is no automatic exclusion from detention foreseen in the national legal framework.

Unaccompanied children

Unaccompanied children are explicitly excluded from detention by law.¹¹ There is only one exception: if there is doubt about the age of the person claiming to be a minor (doubt on the fact that the person is below the age of 18 years), he or she can be detained during an age assessment for a maximum of 3 working days, renewable once.¹² Unaccompanied minors - arriving at the border - are brought to specific centres, called Observation and Orientation Centres (OOCs)¹³.

Families with minor children (accompanied children)

The Immigration Act¹⁴ states that families with minor children (irregularly staying on the territory or applying for asylum at the border) are in principle not detained. However, the same legal provision makes exceptions possible 'if the detention facilities are adapted to the needs of families with minor children'. Furthermore, concerning families with minor children who try to irregularly enter on the Belgian territory, the law¹⁵ also provides for the possibility of detention, 'in adapted detention places' and 'for as short as possible duration' (see also section 5).

In practice families with children are not detained except for a short period on arrival (maximum of 48 hours) or just before departure (the night before a removal). Instead of being detained, families at the border are sent to *Family Identification and Return Units* (below called 'family units') and also families who are irregularly staying on the territory can be brought to these family units.

In conformity with the legal possibility to detain families with minor children in facilities adapted for families with minor children, it was foreseen to create specialized, adapted detention units for families with minor children in the area of one of the detention centres. Due to budgetary reasons these plans have been postponed.

¹⁰ Answer to Q2 of this section: "Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied."

¹¹ Article 74/19 of the Immigration Act.

¹² In practice the age assessment takes on average a little longer (7,6 days). It must however be noted that in the cases an age assessment is done, it turns out that a large part of the declared minors are in fact older than 18 years old. In 2013, 42 foreigners declared at the border to be (an unaccompanied) minor. In 31 cases an age assessment was done. After the assessment 26 out of 31 were identified as over 18 years old (not minor). In total, 16 people were considered unaccompanied minor at the border in 2013. Source: Immigration Office, *Activiteitenrapport 2013* [Activity report 2013]. June 2014.

¹³ Article 41 of the Reception Act. More information: EMN Belgium, *Unaccompanied minors in Belgium. Reception, return and integration*. July 2009. A new EMN study on this topic is expected in October 2014.

¹⁴ Article 74/9 §1 of the Immigration Act (inserted by the Law of 16 November 2011).

¹⁵ Article 74/9 §2 of the Immigration Act (inserted by the Law of 16 November 2011).

Pregnant women

There is no legal provision prohibiting the detention of pregnant women. They can be detained for as long as they can still be removed from the territory. Internal guidelines of the Immigration Office state that pregnant women with an uncomplicated pregnancy can be removed with "light coercion" until 28 weeks of pregnancy. After 28 weeks, they can only be removed if there is no resistance to it.

Ill persons

There is no legal prohibition to detain ill persons. There are however a few provisions on a possible transfer to a specialised medical centre or release from immigration detention in specific cases:

- In case the doctor affiliated to the detention facility judges that the necessary treatment cannot be given in the closed centre, in case of childbirth or in case of a life threatening condition, a transfer is carried out to a specialized medical service outside the detention centre¹⁶.
- In case the doctor affiliated to the detention facility formulates medical objections in relation to the removal of a person or judges that the mental or physical health of the resident is seriously damaged by pursuing the detention, the director of the closed centre formulates the objections to the Director-General of the Immigration Office. The Director-General can ask for a second opinion from the doctor affiliated to another closed centre. When this doctor confirms the advice of the first doctor, the Director-General has to suspend the decision of removal or the detention decision. If the doctor does not confirm, the advice of a third doctor is decisive.¹⁷

There are also a few provisions on special attention and care for persons susceptible of committing suicide.¹⁸

Other vulnerable persons / persons with special needs

There is no legal prohibition to detain persons from other vulnerable groups. See below, on the individual assessment.

Q3. Release from detention of persons who cannot be removed and/or are granted tolerated stay^{19 20}

In principle, a person can only be detained (in the context of immigration policy) with the purpose of effective removal. A third country national who cannot be removed or can no longer be detained, is released.

If it concerns a person with national security issues, the Immigration Office makes all possible efforts to identify the person to be able to remove him.

¹⁶ Article 55 of the Royal Decree on the Immigration Detention Facilities.

¹⁷ Article 61 of the Royal Decree on the Immigration Detention Facilities.

¹⁸ Article 115 to 117 of the Royal Decree in the Immigration Detention Facilities.

¹⁹ According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

²⁰ Answer to Q3 of this section: "Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals".

SECTION 3: ASSESSMENT PROCEDURES AND CRITERIA FOR THE PLACEMENT OF THIRD-COUNTRY NATIONALS IN DETENTION

Q1.- Q2. Individual assessment procedures or other mechanisms to determine the appropriateness of detention²¹ and legal basis²²

There is no standard individual assessment procedure foreseen in Belgian law to determine the appropriateness of the immigration detention. The Immigration Office points out that every decision is taken on a case-by-case basis. Whether the Immigration Office decides to give a third country-national a 'simple' return decision or a return order accompanied by a detention decision, depends on the category of persons involved, individual aspects of the case, return possibilities, elements of vulnerability, practical considerations and policy priorities. Last but not least, the presence of minor children is an important element. The aspects and questions below are taken into consideration:

- **Category of persons involved**
 - Applicants for international protection:
 - *at the border*: They are in practice administratively detained (in Belgium a fast track procedure applies to asylum seekers in detention), except in exceptional circumstances (highly pregnant women, persons with a very dangerous contagious disease, ...) and families with minor children and unaccompanied minors.
 - *Dublin cases*: Most Dublin cases are being administratively detained while waiting for the transfer to the responsible Member State.
 - *in ordinary procedures*: In most cases asylum seekers on the territory are not detained. They have access to open reception facilities across the country. However detention is legally possible in a number of cases and this is applied in practice (see: Section 2, Q2).
 - Rejected applicants for international protection:
 - When they have been in detention during the treatment of their asylum application, rejected applicants for international protection are in principle further detained with the purpose of their removal, except in exceptional cases.
 - When they have not been in detention during the treatment of their asylum application, rejected applicants for international protection (on the territory) are in most cases not detained immediately. During the validity of their return decision, they can reside in special open return places to prepare their voluntary return (see Section 1). Afterwards, they can be detained for the purpose of forced return.
 - Persons at the border without the necessary entry documents are in principle detained, unless in exceptional cases (and except accompanied and unaccompanied minors).
 - Persons who have been issued a return decision have in principle the possibility to leave the territory on a voluntary basis during the period

²¹ Answer to Q1 of this section: "Please indicate whether an individual assessment procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments. If individual assessment procedures are not used, please indicate the mechanisms used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?"

²² Answer to Q2 of this section: "Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the legal basis on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines)".

foreseen by the return decision (see more information in Section 1). In case there is no period foreseen in the return decision, or in case the period of validity expired, the person can be held.

- **Possibility to remove the person**

Since a person can in principle only be detained with the purpose of removal, the Immigration Office assesses if a person can be removed: Is the person identifiable in the short term? Are there copies of the identification documents in the file? Which nationality is involved (since some nationalities are difficult or even impossible to remove)?

- **Individual aspects and considerations of vulnerability**

The Immigration Office also looks if there are elements available that can hinder or obstruct a removal or should be taken into consideration, like vulnerability.

- **Practical issues**

Practical issues also need to be taken into consideration by the Immigration Office: availability of places in the closed centres and of a (special) flight to the country of destination involved.

- **Policy priorities, including public order issues**

Policy priorities also play a role. The Immigration Office assesses the presence of public order issues at the moment of the arrest or before, considers if removal to the country of destination is a political priority, etc.

- **Are minor children involved?**

Furthermore, the Immigration Office decides if the detention decision will be executed in the form of a detention or an alternative to detention (in practice the family units or the OOC for unaccompanied minors). The criterion to choose an alternative to detention is the presence of minor children. In recent years consensus grew that detention is not appropriate for minor children.²³ As a consequence, families with minor children are not being detained in closed facilities and also unaccompanied minors are not being detained (see supra: Section 2, Q2).

Q3. Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure?²⁴

In Belgium there is no individual assessment procedure by means of an interview. There is no face-to-face contact with officers from the Immigration Office before the decision is taken to detain a person.

In case of an administrative control or arrest by the police or by the border police, the (border) police has to fill in a standardized report for the Immigration Office called 'administrative report - control of aliens'²⁵. There is no standard procedure for informing the third-country national on possible next steps.

²³ Although it is possible to detain accompanied minors in specially adapted places – but at the moment, this is not applied in practice (see: section 2, Q2).

²⁴ Answer to Q3 of this section: "Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?"

²⁵ Available on the website of the Immigration Office: https://dofi.ibz.be/sites/dvzoe/NL/Documents/20080926_n_Administatieverslag.pdf

In the following cases however, specific return information is given by officers of the Immigration Office, social workers of the Federal Agency for the Reception of Asylum Seekers (Fedasil), or officers from local authorities:

(1) Failed applicants for international protection in the open return places

(Failed) asylum seekers in the reception centres and the open return places, are informed on the possibilities for voluntary return and the consequences of not leaving voluntarily during individual counselling on return. This is done by social workers of Fedasil and a liaison officer of the Immigration Office (see section 1).

(2) Persons issued a return decision in the SEFOR-procedure

In the so-called SEFOR-procedure, where third-country nationals are summoned to present themselves before the local authorities to receive a return decision (following a negative decision on a residence application), local authorities need to inform the person on the possibilities for voluntary return and on removal procedures, and follow-up on voluntary return. Local authorities together with the person need to fill in a document with information concerning the identification of the person, possible pending procedures and other relevant elements.

(3) Irregularly staying families in the open return centre

Irregularly staying families in the open return centre (see section 1) get counselling on return, including information on the possibilities for voluntary return and the consequences of not leaving voluntarily. This is done by officers from the Immigration Office and by social workers of Fedasil.

Q4. Vulnerability assessment²⁶

There is no standardised vulnerability assessment. There is also no standardised way – for example through an interview – for the third country national to inform the Immigration Office on aspects of vulnerability, special needs and other (recent) individual information. Upon arrival in a detention facility, there is a medical screening. There is no other specific screening to identify vulnerability or special needs.

However, the Immigration Office does point out that vulnerability is looked into on the basis of other information they have available or receive before a decision is taken to detain.

- (1) First of all, the *Immigration Office has information on the third country nationals who are known to them* (past asylum application, residence application, interception, ...). For example, for persons with an earlier negative decision on a request for a residence permit on medical grounds, the Immigration Office reports to systematically look into the (medical) file again to check what medical grounds were invoked at the time. Even though, the invoked arguments were not 'enough' to be given residence rights, they are taken into consideration when a detention is considered. In detention there is special guidance for certain special needs. The Immigration Office also makes use of the differences between the centres, e.g. elderly persons are brought to a detention centre with fewer stairs.
- (2) Secondly, the *Immigration Office receives information from the (border) police, its liaison officer in the open return places and/or the local authorities* (through the procedures described under Q3 of this section).

²⁶ Answer to Q4 of this section: "Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used".

It is worth mentioning that in the 'administrative report - control of aliens', the (border) police officer provides 'yes' or 'no' answers to the following questions:

- Are there signs of human trafficking and / or certain aggravated forms of smuggling of migrants? Yes / No (If yes, indicate the specialised reception centre which was contacted.)
- Is medical aid necessary? Yes/No
- Pregnancy? Yes/No
- Handicap? Yes/No
- Confused impression? Yes/No
- Contagious diseases? Yes/No

(3) Thirdly, the *Immigration Office sometimes receives information from third parties* that intervene in the specific situation of a third-country national (lawyers, certain NGO's, ...)

The Immigration Office indicates that it does happen regularly that the Immigration Office finds out certain aspects of vulnerability or special needs only when the third-country national is in a detention centre.

The Federal Ombudsman and several NGO's are of the opinion that there is no or not enough attention paid to the identification of vulnerable groups before the detention decision is taken and also in detention.²⁷ The Immigration Office states that they are dependent on the information they receive, that they invest a lot of time in staff and tools to improve the assessment and that there is a follow-up of persons in detention (daily and weekly meetings concerning the persons on the "extra care" list, see Section 4, Q7).

Q5. Criteria /indicators used to decide whether particular grounds for detention apply in individual cases based on the grounds for detention permitted in EU law²⁸

For the cases falling under the application of the return directive, the Belgian Immigration Act²⁹ states that 'unless other sufficient but less coercive measures can be applied effectively, the foreigner may be held for the purpose of removal, for the time strictly necessary for the implementation of the measure, especially when there is a risk of absconding (see a) or when the foreigner avoids or impedes the preparation of the return or the removal process (see b)'.²⁸

Furthermore, the Immigration Act contains a number of situations where the Immigration Office can decide not to provide a period for voluntary return in the return decision, which means that a forced removal (and possibly a detention measure) is possible.

²⁷ On this issue, see among others: Federal Ombudsman, *Onderzoek naar de werking van de gesloten centra beheerd door de Dienst Vreemdelingenzaken (Research to the functioning of the detention centres managed by the Immigration Office)*. A study commissioned by the Federal Parliament.

²⁸ Answer to Q5 of this section: "Please provide more detailed information on the criteria /indicators used to decide whether particular grounds for detention apply in individual cases. EMN NCPs are asked to answer this question by listing the criteria / indicators that are used to determine the circumstances in which the following grounds for detention, permitted in EU law, apply. However, if the grounds for detention are not applicable in your (Member) State, EMN NCPs may identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply".

²⁹ Article 7,3 of the Immigration Act.

a) Ground 1: If there is a risk of absconding

The Belgian Immigration Act (article 1,11^o) defines the concept of 'risk of absconding' as "a real and actual risk that the third-country national, who is the subject of a procedure of removal, may abscond from the authorities". The Immigration Office decides "on the basis of objective and serious elements". The concept is used elsewhere in the Act (e.g. article 7, article 74/14 §3, 1^o), but the legislation does not list objective criteria to measure this risk.

The explanatory memorandum of the Immigration Act lists the following examples of elements that can give an indication of the risk of absconding³⁰:

- staying on the territory after the period foreseen in the return decision;
- having entered irregularly into the Schengen territory and not having asked for international protection or a residence permit;
- being removed before, or non-compliance with (or resistance to) an earlier removal order;
- being subject to a SIS hit because he is a threat to public order and security or because he is subject to an entry ban;
- non-compliance with earlier preventive measures;
- change of place of residence during the period of validity of the return decision without informing the Immigration Office;
- false declarations or information on elements of the identification or refusal to give the real identity;
- use of fraud, false means, false information or documents in a residence permit application in order to be able to stay on the territory;
- not responding on several occasions to convocations of the local authorities in the framework of the notification of a decision on a residence application.

Furthermore, an internal service note of the Immigration Office describes a non-exhaustive list including the following elements: transit migration (e.g. an irregularly staying person intercepted in a container in the way to the UK), unknown address, refusal to give any personal details, giving a false identity, having used one or more aliases). The Immigration Office is working on a new service note to provide further clarifications.

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

The Immigration Act foresees the fact that the third-country national avoids or hampers the preparation of a return or removal process as a detention ground (see supra). The Act does not give any further specifications.

In practice the following examples can be given: the person destroyed his identity documents, the person does not want to give details in view of his identification (name, nationality, ...), the person did different declarations on different occasions (different names, different nationalities, ...), the person does not follow the instructions of the local authorities during the SEFOR-procedure (e.g. does not provide information on his planned return, see introduction).

³⁰ Kamer van Volksvertegenwoordigers (the House of Representatives of the Belgian Parliament), Doc 53 1825/001, pp.16-17.

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

The Immigration Act³¹ foresees that requirements of national security or public order can justify a removal/detention order (no period to return on a voluntary basis), but no further criteria are specified in the law.³²

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

Furthermore the Immigration Act³³ foresees the following situations where the Immigration Office can decide not to provide a period for voluntary return:

- when the foreigner did not comply with an earlier return decision within the timeframe foreseen by this decision;
- when the foreigner did not comply with imposed preventive measures
- when the residence permit of the foreigner was withdrawn because the use of false elements, fraud or misleading information was decisive in getting it;
- when the foreigner introduced more than two asylum applications without new elements.

Q6. Is the possibility to provide alternatives to detention systematically considered when assessing whether to place a person in detention?

No. In practice there is only one real alternative to detention: the family units. The criterion to decide between a detention centre and the alternative (the family units), is the absence or presence of minor children. Only families with minor children are not being detained but are accommodated in family units. Unaccompanied minors are also not being detained (see above: Section 2, Q2).

The other alternatives, release on bail and reporting obligations, are not applied in practice. In other cases, the choice is made between a detention decision and a 'simple' return decision, or a prolongation of the return decision (see Section 5, Q1).

Q7. Responsible national authorities³⁴

The Belgian Immigration Office (Home Affairs) is responsible for deciding on the placement of a third-country national in detention, and the accompanying (assessment) procedures.

³¹ The Immigration Act Article 74/14 §3, 1°, 3°,4°,6° of the Immigration Act.

³² The Federal Migration Centre analyses public order elements in the context of immigration detention and removal in the Annual Migration Report 2013 (Available in Dutch and French by the end of June 2014 on www.diversiteit.be).

³³ The Immigration Act Article 74/14 §3, 1°, 3°,4°,6° of the Immigration Act.

³⁴ Answer to Q7 of this section: "Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on the placement of a third-country national in detention."

Q8. Judicial authorities involved in the decision to place a third-country national in detention³⁵

Judicial authorities are not involved in taking the administrative detention decision, but they are competent to do the judicial review of the detention measure that is taken. There is no automatic judicial review of the administrative detention measure, but once a month a person in detention can ask for release.³⁶

Third-country nationals have a right to petition a measure of deprivation of liberty before the Chamber of the Council³⁷ of the criminal court. Decisions of the Chamber of the Council (release or confirmation of the detention measure) are subject to an appeal to the Chamber of Indictments³⁸ of the Court of Appeal and in last resort to the Court of Cassation. An appeal can be lodged by the third-country national, by the Immigration Office, or by the public prosecutor³⁹. These procedures do not suspend the removal⁴⁰ and after a failed removal attempt, a new detention decision is taken (a new petition is in that case necessary to make judicial review possible).

The scope of the judicial review is limited to the assessment of the legality of the detention measure (check if the decision was formally taken in conformity with the law). The court is not competent to assess the opportunity (or the 'appropriateness') of the measure. However since the transposition of the Return Directive in Belgian law in 2012 some elements of proportionality related to the application of 'less coercive measures' and of the application of 'the risk of absconding' are taken into consideration. But this appreciation remains very limited and does not apply to migrants who do not fall under the personal scope of the Return directive, such as inadmissible migrants at the borders or asylum seekers.

Q9. Challenges associated with the implementation of existing assessment procedures⁴¹

a) Better identification of all relevant aspects of an individual case prior to detention, including vulnerability

There seems to be consensus that the individual assessment should be improved to better identify all relevant aspects of an individual case including possible vulnerability of the person involved. However, the extent of this challenge and possible solutions vary between the government/Immigration Office from one side and NGO's/other organisations to the other.

Several NGO's argue that there is no in-depth individual assessment and that a systematic interview of the persons involved would be preferable to determine the appropriateness of a detention measure.

Representatives from the Immigration Office report that they are not always informed on all relevant aspects of the individual case (missing or incorrect information) to make a complete and correct assessment. Sometimes they only find out certain

³⁵ Answer to Q8 of this section: "Please indicate whether judicial authorities are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (E.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)."

³⁶ Article 71 and following of the Immigration Act.

³⁷ French: *Chambre du conseil* / Dutch: *Raadkamer*.

³⁸ French: *Chambre des mise en accusation* / Dutch: *Kamer van Inbeschuldigingstelling*.

³⁹ Also in case of appeal by the Public Prosecutor the persons remains in detention during appeal.

⁴⁰ This means the person can be removed in the meanwhile. Different legal remedies exist to petition the suspension of an imminent removal.

⁴¹ Answer to Q9 of this section: "Please identify any challenges associated with the implementation of existing assessment procedures in your (Member) State."

elements at the moment the person arrives in a detention facility. For this reason they also point out the need for improvement on this point. However, they indicate that from a budgetary and practical point of view it is not possible to make the personal interview part of the standard assessment procedure. To illustrate this, the police intercept many thousands of third-country nationals every year. It is argued that it is impossible to organise a personal interview for each of them before taking a decision. From the point of view of the Immigration Office, improvement should be realised through training: (border) police and local officers – who have a personal contact with third-country nationals involved (see Section 3, Q3) – need to be better trained to provide the Immigration Office with necessary elements to take a decision.

Representatives of the Federal Migration Centre⁴² indicate that – if a systematic interview is not feasible – a personal interview should at least be made possible upon request of the third-country national (a right to be heard by the Immigration Office).

b) Quasi-systematic detention of asylum seekers at the border and high numbers of asylum seekers detained in the context of the Dublin regulation

Different non-governmental organisations argue that there are particular lacks in the individual assessment of asylum seekers at the border and of asylum seekers in the context of the Dublin Regulation. They argue that these asylum seekers are quasi systematically detained and that this practice is not in conformity with the recommendations of the UNHCR, the European Commission and of the Council of Europe.⁴³

c) Specific attention to asylum seekers and vulnerable groups, visible in the motivation of a detention decision.

In addition to the former challenge, different non-governmental organisations also point out the need for a special assessment and treatment⁴⁴ of asylum seekers in detention. The Belgian Refugee Council⁴⁵ argues that – on the basis of the Asylum Procedures Directive and the Reception Conditions Directive – an individual assessment of the necessity of a detention measure should be made for every asylum seeker (taking into account elements of vulnerability), and a detention decision should be motivated accordingly.⁴⁶

d) Lack of judicial review on the appropriateness of a detention measure

⁴² The Federal Migration Centre, an independent public service with competences relating to the analysis of migration flows, the respect the fundamental rights of foreigners and the fight against human trafficking, also grants information and legal advice to migrants who seek for assistance. In this context, the Federal Migration Centre is frequently in contact with (administrative) detainees and their lawyers in order to inform them on the legal proceedings.

⁴³ These element is also a concern of the UN Committee against Torture to in the *Concluding observations of the third periodic report of Belgium* (p.7), 3 January 2014: “[...]However, the Committee remains concerned by reports that, as a result of the application of the Dublin II Regulation, asylum seekers are systematically detained for the entire duration of the asylum procedure and by the information provided by the State party during the dialogue, according to which, asylum seekers may be deprived of their liberty for as long as 9 months in such cases (arts. 11 and 16). The Committee urges the State party to ensure that the detention of asylum seekers is used only as a last resort and, where necessary, for as short a period as possible and without excessive restrictions. It also urges the State party to establish and use arrangements other than the detention of asylum seekers.” Available on:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/400/46/PDF/G1440046.pdf?OpenElement>

⁴⁴ See also Federal Ombudsman, §167 and 168.

⁴⁵ The Belgian Refugee Council (known in French and Dutch by its acronyms CBAR-BCHV), which is a non-profit organization that offers legal aid to asylum seekers, recognized refugees and beneficiaries of subsidiary protection. Since 1993, it has become the UNHCR’s Belgian operational partner.

⁴⁶ See: Belgian Refugee Council [Comité Belge d’Aide aux Réfugiés / Belgisch Comité voor Hulp aan Vluchtelingen], *Frontière - Asile - Détention: Législation belge, normes européennes et internationales* [Border – Asylum – Detention: Belgian legislation, European and international standards], January 2012.

As described under Q8 of this section, the judicial review does not include the appropriateness of a detention measure. This is seen by different organisations as a challenge.

Another related problem concerns the lack of expertise on administrative detention of the judges. Although the judicial control of administrative detention in immigration situations is distinct from the control on preventive detention in criminal matters, the same judges are responsible. However, these judges are in the first place specialised in criminal matters and not in (detention in the framework of) immigration law.

This challenge is even bigger since the (often state-appointed, free) lawyers defending detained third-country nationals, are often not specialised and/or are not prepared to invest in the time-consuming activity to defend their detained clients.⁴⁷

To end with, it is worth mentioning that Belgium was condemned two times in 2013 by the European Court for Human Rights because of a violation of the obligation to decide speedily on the lawfulness of a detention measure.⁴⁸

Q10. Good practices in relation to the implementation of assessment procedures⁴⁹

Although it is early to evaluate the recent changes in return policy and practice, in the opinion of the Immigration Office in particular, the set-up of the SEFOR-procedure (see section 1), makes possible a better assessment and selection of the persons who are being held in detention. By focussing on pre-identification, the percentage of effective removals in relation to the number of detained persons should go up (slight increase in 2013 in relation to 2012). Ideally the detention period should also become shorter. This is not yet visible in the statistics.

Further improvement is needed on to harmonise approaches between local authorities and to better identify aspects of vulnerability of the persons concerned (see Q9 a).

⁴⁷ See also : Jesuit Refugee Service Europe, *From Deprivation to Liberty. Alternatives to detention in Belgium, Germany and the United Kingdom*, December 2011, p. 24.

⁴⁸ European Court of Human Rights, *Firoz Muneer versus Belgium*, 11 April 2013, 56005/10 and European Court of Human Rights , *MD versus Belgium*, 14 November 2013, 56028/10. More information: Federal Migration Centre, *Jaarverslag Migratie 2013* [Annual report 2013]. June 2014, p. 180.

⁴⁹ Answer to Q10 of this section: "Please identify any good practices in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)".

SECTION 4: TYPES OF DETENTION FACILITIES AND CONDITIONS OF DETENTION

Q1. Specialised immigration detention facilities in Belgium⁵⁰

Belgium has five specialized immigration detention facilities:

- *Caricole* Centre⁵¹ near Brussels Airport;
- Repatriation Centre 127bis, near Brussels Airport;
- Centre for Illegally staying persons in Bruges (CIB);
- Centre for Illegally staying persons in Merksplas (CIM), near Antwerp;
- Centre for Illegally staying persons in Vottem (CIV), near Liège.

In 2013, the five facilities had all together an average capacity of 521 places. On a daily basis, the immigration detention facilities had on average 474 residents. In total 6.285 persons were registered in the facilities in 2013.⁵²

In the *Caricole* Centre, near Brussels Airport, most 'inadmissible passengers/migrants' are detained with the purpose of removal because they were refused entry onto the Belgian territory. However, it is worth mentioning that there are also five zones for "inadmissible passengers" located in the five regional airports recognized as Schengen border posts: in Bierset (Liège Airport), Gosselies (Brussels South Charleroi Airport), Deurne (Antwerp Airport), Oostende (Ostend-Bruges International Airport) and Wevelgem (Kortrijk-Wevelgem International Airport).

Q2. Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances? ⁵³

Every third-country national can in principle be detained in any of the detention facilities. The place of detention is dependent on the availability of places, the conduct of the person, specific circumstances (e.g. elderly persons will in principle be detained in a facility without stairs, ...) and transfers can be done for a number of reasons.

In practice foreign nationals who apply for asylum at the border and foreign nationals who were denied access to the territory (because they do not comply with the conditions) are mostly held in the *Caricole* Centre. Other detained asylum seekers are mostly held in the Centre 127bis, together with illegally staying persons. The residents of the other facilities are mostly failed asylum seekers and illegally staying persons. In the Centres in Merksplas and Vottem, mostly males are being detained. A project is in preparation to make a separate wing in Vottem for residents considered to be security risks (see Q7 of this section).

It is planned to create – as an ultimate measure – special units inside the domain of a detention facility to hold families with minor children (e.g. for families who did not respect the rules in the open family units, specific border cases). For political reasons, this project is on hold (no consensus).

To end with, it is worth underlining that the detention facilities must be differentiated from:

⁵⁰ Answer to question Q1 of this section: "Are there specialised immigration detention facilities in your (Member) State, which are not prisons? (Yes/No) If yes, please indicate how many exist and how they are distributed across the territory of your (Member) State".

⁵¹ The centre *Caricole* is in place since May 2012. Because of the aged infrastructure, the former centre for inadmissible passengers in the transit zone and the former 'Transit centre 127' were replaced by a new centre.

⁵² Source: Immigration Office.

⁵³ Answer to Q2 of this section: "Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)? (Yes/No). If yes, please provide a brief overview of the different types of immigration detention facilities."

- the (open) family units - for irregularly staying families and families applying for asylum at the border (see part on alternatives to detention).
- the open return centre - for indigent irregularly staying families during the validity of the return order (see section 1)
- the open return places in the reception facilities - for failed asylum seekers and certain other third-country nationals during the validity of the return order (see section 1).

Q3. Responsible authorities for the specialised immigration detention facilities⁵⁴

The Immigration Office (Home Affairs) is responsible for the running of the specialised immigration detention facilities.⁵⁵

Q4. Please describe any measures taken to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.

The Immigration Office works within the limits of the actual capacity in the detention facilities. The Immigration Office makes sure the detention facilities are never completely occupied. Free places are always foreseen, e.g. for detaining foreigners intercepted by the police (e.g. transit-migration towards the United Kingdom).

Q5. and Q6. Are third-country nationals detained in prisons? If yes, under which circumstances and are they held separately from general prisoners?⁵⁶

No, third-country nationals are not detained in prisons in the context of immigration policy, except in cases they are convicted of a criminal offence. Illegally staying foreigners (with an enforceable removal order) can be removed directly from prison after fulfilment of the criminal penalty. If this is not possible, they can under certain conditions be held in prison for another seven days (in principle separated from other prisoners), or they can be transferred to a specialised immigration detention centre.⁵⁷

Q7. Immigration detention conditions⁵⁸

The Royal Decree of 2 August 2002 on the immigration detention facilities⁵⁹ (complemented by internal regulations of the detention facilities) contains the rights and obligations of third-country nationals placed in detention.

Table 2: Overview of immigration detention conditions

⁵⁴ Answer to Q3 of this section: «Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in your (Member) State?»

⁵⁵ Except for the 5 zones for inadmissible persons located in the regional airports, mentioned under Q1 of this section. The responsibilities for these zones are more complicated. They are mainly managed by the police and airport staff. More information: Centre for Equal Opportunities and Opposition to Racism, *De regionale INAD-centra en de grondrechten voor vreemdelingen* (The regional centres for inadmissible persons and the fundamental rights of foreigners), 2013.

⁵⁶ Answer to Q5 of this section: "Are third-country nationals detained in prisons in your (Member) State? If yes, under which circumstances?" and Q6. "If third-country nationals are detained in prisons in your (Member) State, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?"

⁵⁷ Article 74/8 §1, Clause 2 and Clause 5 of the Immigration Act; and Ministerial Circular 1815 of 7 March 2013.

⁵⁸ Answer to Q7 of this section: "Please provide the following information about the conditions of third-nationals who have been placed in an immigration detention facility in your (Member) State: (Please indicate if the facilities in question are prisons or specialised immigration detention facilities)."

⁵⁹ The Royal Decree of 2 August 2002 laying down the rules and regulations applicable to premises in the Belgian territory, managed by the Immigration Office, where a foreigner is detained, placed at the disposal of the government or maintained under provisions referred to in Article 74/8 §1 of the Act of 15 December 1980 on access to the territory, the residence, the establishment and the removal of aliens (Below: Royal Decree on the immigration detention facilities).

Conditions of detention	Statistics and/or comments
Average available surface area per detainee (in square meters)	Not available – differs from facility to facility
Average number of detainees placed in one room per detention facility	Not available – differs from facility to facility
Are families accommodated in separate facilities?	Families are currently not being detained – they reside in specific (open) family units (see Section 2, Q2. and below in Section 5). It is planned to create – as an ultimate measure – special family units inside detention facilities.
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	In principle children are not separated from their parents, but it does happen that one parent is put apart in a detention facility (then at least one parent stays together with the children). This can happen for a number of reasons (risk for the children, as a measure to prevent the family from absconding, ...)
Are single women separated from single men?	Yes
Are unaccompanied minors separated from adults?	Unaccompanied minors are in principle not detained (see Section 2, Q2.)
Do detainees have access to outdoor space? If yes, how often?	Yes. At least two hours a day, unless in exceptional cases. ⁶⁰
Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?	Yes. ⁶¹ <ol style="list-style-type: none"> (1) Family members (in first line, spouse or partner, brother and sister, uncle and aunt): every day, minimum one hour. (2) Legal representatives: every day, between 8 a.m. and 10 p.m. (3) Members from appointed organizations (UNHCR, Federal Migration Centre, ...) and members of Parliament etc. (4) Accredited organisations: In practice 25 NGO's are accredited to regularly visit detainees in detention centres. (5) Other persons: after authorization from the director of the facility.
Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way	Yes. ⁶² <ol style="list-style-type: none"> (1) Mail: unlimited. (2) Telephone: residents have the right to one free phone-call upon arrival, can call for free with their lawyer and can use their mobile phone (without camera), at least during the day. (3) Internet and e-mail: there is only in one facility (<i>Caricole</i>) access to internet. <p>Messages and phone calls are not screened.</p>
Are education programmes provided (e.g. school courses for minors and language classes for adults)?	Yes, but no school courses because there are no minors in detention.
Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?	Yes. There is access to books in a library, some sport options, television, a room for prayer, basic language courses ... Creative and entertainment activities are provided by educators.
Can persons in detention leave the facility and if yes, under what conditions? Can persons move	Persons in detention cannot leave the facility, except for certain medical reasons.

⁶⁰ Article 82 of the Royal Decree on the Immigration Detention Facilities.

⁶¹ Article 26 and following of the Royal Decree on the Immigration Detention Facilities.

⁶² Article 18 and following of the Royal Decree on the Immigration Detention Facilities.

freely within facility or are their movements restricted to some parts/rooms of the facility?	In some facilities they cannot move freely (group regime), in others they have more freedom of movement.
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	<p>Yes. They can choose their own private lawyer or they can have a state-appointed lawyer (free of charge) if they do not have the necessary resources.⁶³</p> <p>In certain facilities (Bruges and Vottem) lawyers organize free legal consultations.</p> <p>Furthermore some (non-governmental) organizations visit the facilities and provide legal assistance.</p>
Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?	The resident has the right to have explanations (about (the motives of) the decision, the rules of the detention facility, his rights and obligations, the procedures) in a language that is understandable to him. He can request a written summary of main parts of the decision in his language or a language he understands (however, most residents ask only an oral translation). If necessary, it is possible to use certain interpretation services (over telephone). However, in most cases another resident interprets. The rules of the detention facility, the rights and obligations of the residents as well as explanations on the procedures are available in writing and "on tape" in about 20 different languages.
Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?	<p>Yes.⁶⁴ There is a medical service available during the day (and at night a doctor can be called), and access to a psychologist. The available medical care is not limited to emergency care.</p> <p>Every resident is systematically subject to a medical examination upon arrival in the facility ("intake" examination) and before removal ("fit to fly"). In between, medical examinations are possible upon request or when deemed necessary by the doctor.</p> <p>Residents may also contact doctors of their choice at their own expense, ensuring that it is notified to the doctors attached to the facility.</p> <p>Special conventions exist with psychiatric care institutions.</p> <p>See also: answer Section 2, Q2.</p>
Are there special arrangements for persons belonging to vulnerable groups? Please describe	Arrangements are foreseen for persons qualified as "Extra Care Residents" (in 2013 it concerned 87 persons), who have special medical, psychological or psychiatric needs. They can receive specific accompaniment inside or outside the detention facility and

⁶³ Article 62 of the Royal Decree on the Immigration Detention Facilities.

⁶⁴ Article 52 and following of the Royal Decree on the immigration detention facilities.

	<p>also during and after removal. Persons for whom it is necessary to take specific actions and have specific problems (health, psychological, character, behaviour, ...) . There is a daily multidisciplinary meeting in the detention centres to assess the persons on the list. There is also a weekly meeting between all services involved in the files of the persons on the extra care list, at the Immigration Office, in order to prioritise specific actions.</p>
<p>Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe</p>	<p>Yes. The director of a detention facility can decide in certain cases to place a person in an adapted regime (outside the group regime) or even in isolation⁶⁵. Also a project is in preparation to make a separate wing in one facility (Vottem) for this category of residents.</p>

⁶⁵ Article 98, §1, 4° of the Royal Decree on the immigration detention facilities.

SECTION 5: AVAILABILITY AND PRACTICAL ORGANIZATION OF ALTERNATIVES TO DETENTION

Q1., Q2. and Q3. Availability of alternatives to detention for certain categories of third-country nationals and legal base⁶⁶

The Immigration Act⁶⁷ contains no explicit legal provisions on alternatives to detention, however there are a number of provisions that can be interpreted and are being used as grounds for alternatives to detention. The most important measures taken concern unaccompanied and accompanied minors, and they were set up under pressure of public concern and jurisprudence of the European Court of Human Rights against Belgium.

(1) Alternatives to detention are being used for families with minor children, who are placed in *Family Identification and Return Units* (below called 'family units'). This is the most important alternative to detention in Belgium. Families with minor children are in practice not detained except for a short period on arrival (maximum of 48 hours) or just before departure (the night before a removal). Since October 2008, families who are irregularly staying on the territory are brought to these family units instead of going to a detention facility. Since October 2009, this is also the case for families applying for asylum at the border are brought. See also Section 2, Q2.

(2) Furthermore, specific open reception facilities are being used for unaccompanied minors (observation and orientation centres).

As mentioned before, unaccompanied children are explicitly excluded from detention by law.⁶⁸ There is only one exception: if there is doubt about the age of the person claiming to be a minor (doubt on the fact that the person is below the age of 18 years), he or she can be detained during an age assessment for a maximum of 3 working days, renewable once.⁶⁹ Unaccompanied minors - arriving at the border - are brought to specific centres, called Observation and Orientation Centres (OOCs).

(3) Legally, there are a number of other possibilities that can be used as an alternative to detention. These are however, until now, not often or not applied in practice. It concerns:

- The possibility for a family with minor children (not for families at the border) to stay in their own house under certain conditions.⁷⁰ This alternative is very new. It has only been used for a handful of families.

⁶⁶ Answer to Q1 of this section: "Please indicate whether any alternatives to detention for third-country nationals are available in your (Member) State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below."

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

Answer to Q3 of this section: "For each of the alternatives to detention that are available in your (Member) State, please indicate the legal basis on which they may be granted to particular categories of third country nationals (for example legislation, soft law/guidelines, other)".

⁶⁷ The Immigration Act only states, for the categories of third-country nationals falling under the scope of the Return Directive, that they can be held in detention for the purpose of removal "unless other sufficient but less coercive measures can be applied effectively".

⁶⁸ Article 74/19 of the Immigration Act.

⁶⁹ In practice the age assessment takes on average a little longer (7,6 days). It must however be noted that in the cases an age assessment is done, it turns out that a large part of the declared minors are in fact older than 18 years old. In 2013, 42 foreigners declared at the border to be (an unaccompanied) minor. In 31 cases an age assessment was done. After the assessment 26 out of 31 were identified as over 18 years old (not minor). In total, 16 people were considered unaccompanied minor at the border in 2013. Source: Immigration Office, *Activiteitenrapport 2013* [Activity report 2013]. June 2014.

⁷⁰ Article 74/9 §3 of the Immigration Act.

- The following 'preventive measures' to avoid the risk of absconding of TCN⁷¹ are foreseen by law, but are not (yet) used in practice:
 - An obligation to report regularly (only used by local authorities in the framework of the SEFOR-procedure described in Section 1),
 - Paying a financial bail (not used),
 - Obligation to surrender a copy of identification documents (not used).

(4) It is worth mentioning that Belgium has special open return places in reception centres for failed asylum seekers and an open return centre for certain irregularly staying families. These are no alternatives to detention, because people can stay there only for the time of validity of the return decision to prepare voluntary return. For more information, see Section 1 of this report.

(5) To end with, it is worth mentioning that the Immigration Office can also decide to prolong the validity of the return order in specific circumstances. This can be done for persons who ask for a prolongation because of a clear intention to leave voluntarily (but the return could not be executed in the given period). This can also be done for women during the last weeks of pregnancy (see Section 2, Q2) and, under specific circumstances, after the Easter holidays, for families with children going to school (to be able to finish the school year that ends in June). The order to leave the country can also be prolonged on medical grounds; provided that the illness or medical condition is proven by an attestation by a medical doctor and that the person is following a treatment to cure his condition. Finally, a return order can also be prolonged when the removal must be delayed.⁷²

Table 3: Overview of alternatives to detention in Belgium

Alternatives to detention	Yes/ No and short description if yes, including: <ul style="list-style-type: none"> - Legal base - Category of third-country nationals (TCN) that may be provided with the alternative to detention
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	<p>Yes, there is a legal base for this measure. However, it is not applied in practice unless in the framework of the SEFOR-procedure.</p> <p><u>Legal basis:</u> article 110quaterdecies §1 1° of the Royal Decree executing the Immigration Act (in execution of article 74/14 §2,2 of the Immigration Act).</p> <p><u>Category of TCN:</u> persons who have been issued a return decision.</p> <p><u>Remark:</u> Strictly speaking it was not a 'reporting obligation', but it is worth mentioning that in the past a short (unsuccessful) pilot project was put in place in Belgium in which irregularly staying families</p>

⁷¹ Article 74/14 §2, 2 of the Immigration Act and article 110quaterdecies §1 of the Royal Decree executing the Immigration Act.

⁷² Circumstances are described in article 74/17 of the Immigration Act. In certain cases the immigrant will need to stay in detention.

	were invited to present themselves for an interview on return possibilities. ⁷³
Obligation to surrender a passport or a travel document	<p>No. However, there is a legal basis for surrendering a <i>copy</i> of identification documents (the passport). This measure it is not applied in practice. According to the Immigration Office, this measure is not very efficient as an alternative to detention since it is a copy and not the passport itself.</p> <p><u>Legal basis:</u> article 110quaterdecies §1 3° of the Royal Decree executing the Immigration Act (in execution of article 74/14 §2,2 of the Immigration Act).</p> <p><u>Category of TCN:</u> persons who have been issued a return decision.</p>
Residence requirements (e.g. residing at a particular address)	<p>Yes. Recently a 'new' alternative to detention was put in place: it concerns the follow-up of families with minor children in their own house. This measure has only been used for a very limited number of families. See also below the table. A Royal Decree regulating the conditions of stay in a private house is not yet published.</p> <p><u>Legal basis:</u> Article 74/9 §3 of the Immigration Act (inserted by the Law of 16 November 2011 – the Royal Decree with specific rules and criteria has not been published yet).</p> <p><u>Category of TCN:</u> families with minor children who have been issued a return decision.</p> <p><u>Remark:</u> There are some other provisions with residence requirements in the Immigration Act that are exceptionally used in specific situations.⁷⁴</p>
Release on bail (with or without sureties) ⁷⁵	<p>Yes, there is a legal basis allowing to pay a financial bail instead of going in detention (not release). However, it is not applied in practice.</p> <p>Concerning the determination of the amount, the following is foreseen: the amount will be determined by the responsible Minister or his/her delegate on the basis of the cost of residence in a closed detention centre for a certain duration (with a maximum cost of 30 days residence).</p> <p>The Immigration Office points out that this measure is not easy to implement (e.g. the issue and modalities of returning the money to the person concerned when he left the country).</p>

⁷³ Between February and July 2008, the Immigration Office put a pilot project in place, inviting irregularly staying families to present themselves to the Immigration Office in Brussels for an interview. The purpose was to discuss possibilities for return to their country of origin. The project ended in July 2008 because the initiative was not successful (only 13 % of the invited families presented themselves and no return could be organized).⁷³

⁷⁴ Remark: This measure that is (exceptionally) used in practice concerns for example third-country nationals that endangered public order or security but cannot be removed. They can be placed under a compulsory residence order, obliging the person to stay in a certain place/area. This can be in combination with a reporting obligation with the local police.

⁷⁵ Sub question in the template: « If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)".

	<p><u>Legal basis:</u> article 110quaterdecies §1 2° of the Royal Decree executing the Immigration Act (in execution of article 74/14 §2,2 of the Immigration Act).</p> <p><u>Category of TCN:</u> persons who have been issued a return decision.</p>
Electronic monitoring (e.g. tagging)	No
Guarantor requirements	No
Release to care worker or under a care plan	No
Community management programme	No
Other alternative measure available in your (Member) State. Please specify:	
(1) Family units and coaches	<p>Families with minor children are accommodated in state-owned private housing (apartments or houses which are furnished and equipped) for the time needed for their identification and to prepare their return. They are free to move with some restrictions (e.g. one person should stay in the house at all times). The families are assisted by a case manager/coach of the Immigration Office who provides assistance. It concerns holistic social support (legal and logistical matters, preparation of the return and/or explanations on the on-going asylum procedure or looking into possibilities to stay in Belgium). Today there are 23 family units in 5 different locations, spread around the country, concerning approximately 135 beds. A team of 9 coaches is available, plus a coordinator, one person for technical support and one person for logistical support). The EU Return Fund is sponsoring the family units. See also below the table.</p> <p><u>Legal basis:</u> Royal Decree on the family units</p> <p><u>Category of TCN:</u> Irregularly staying families (with an enforceable return order) and families applying for international protection at the border</p>
(2) Observation and Orientation centres for unaccompanied minors	<p><u>Legal basis:</u> Article 41 of the Reception Act</p> <p><u>Category of TCN:</u> Unaccompanied minors arriving at the border.</p>

For more information in English on the family units and coaches, it is worth consulting a study undertaken by Jesuit Refugee Service Europe⁷⁶ and quoting a note⁷⁷ from the Immigration Office:

"[...]Since the family units are open, the families can leave the houses under specific rules, in order to e.g. visit their lawyer, bring their children to school, buy groceries or participate in religious celebrations. Visits in the family units are allowed.

⁷⁶ More specifically we refer to the part on the Belgian approach: Jesuit Refugee Service Europe, *From Deprivation to Liberty. Alternatives to detention in Belgium, Germany and the United Kingdom*, December 2011. pp.18-24.

⁷⁷ Verbauwhe G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwhe is Advisor of the Directorate General of the Immigration Office), 2014. p.2.

Supporting officers (coaches) are appointed by the Immigration Office to accompany the families during their stay in the family units. These civil servants collect all necessary information for the further identification of the families, inform the families about the legal procedures (asylum, appeals, ...) and assist the families in the preparation of the return to their country either in case that the persons are inadmissible or if their asylum request is rejected or if they are irregularly staying on the Belgian territory. If a return has to be prepared, the coaches first of all propose a(n) (assisted) voluntary return scheme to the families and try to help to lift the barriers which could impede the return.[...]

The coaches also take care of all appointments – if necessary – with lawyers, schools, municipal administration, police services, medical practitioners, local merchants, pharmacies, ... in order to give a logistical, administrative and medical support to the families. They also organize meetings with diplomatic and consular representations, in cooperation with the competent services of the Immigration Office.

It is important to emphasize that all educational, medical, logistical, administrative and nutritional costs are borne by the Immigration Office.

There are however some limitations: there is a weekly budget per family for logistical and nutritional costs and medical costs are only reimbursed if the physician has been contacted by the coaches. Every family can apply for a pro bono lawyer.”

In the same note⁷⁸ from the Immigration Office, further information is given on the initiative to follow-up/coach families in their own houses:

“On February 27, 2012, the new article 74/9 of the Immigration Act of 15.12.1980, which had been voted on July 20, 2011, came into force. This legislative change – which was a parliamentary initiative – foresees that, in principle, families with minor children should not be detained in order to organize the return to a country of origin or a third country. These families have the possibility to stay in their own private houses (if they have rented one) pending their return. There are however exceptions possible (mainly linked to public order). The word “detention” in this context does not mean that the family will be put in a detention centre. Since the family units are also considered – from a legal perspective – as “place of detention”, those families who do not meet the criteria to remain in their private houses, will be lodged in the family units. Some supplementary rules and criteria have still to be put into force by royal decree (in the next months).

The families should be coached at their private houses or “on neutral grounds” (e.g. offices of the municipality) through the same process as in the family units. It is however doubtful that this part will already be implemented, since budgetary constraints do not enable yet to employ the necessary amount of coaches.”

Q4. Responsible authorities⁷⁹

The Immigration Office (Home Affairs) is responsible for taking decisions on alternatives to detention and the organisation of the alternatives to detention.

⁷⁸ *Ibid*, p.3.

⁷⁹ Answer to Q4 of this section: “For each of the alternatives to detention that are available in your (Member) State, please indicate the authorities/organisations responsible for (a) deciding and (b) administering the alternative. Please indicate in particular whether the responsible organization is a non-governmental organization.”

Q5. Consequences if the third-country national does not follow the conditions of the alternative to detention⁸⁰

The mechanism foreseen by the legislation is that a family staying in the family units (or coached in their own house) that does not follow the imposed conditions, can – as a measure of last resort and for a period as short as possible – be detained in special units inside the domain of a detention centre, adapted to the needs of families with minor children⁸¹ (see also Section 2, Q2). However, due to political (and budgetary) reasons, the construction of these units is put on hold. Therefore, this 'stick' is currently not available.

For all other categories of third-country nationals (except unaccompanied minors who cannot be detained), a detention measure is the foreseen consequence.

Q6. Challenges associated with the implementation of the alternatives to detention⁸²

a) Implementing the different alternatives foreseen by law

Different alternatives to detention are foreseen by law, but the practical and budgetary challenge is to put them in place.

The project of follow-up of families in their own house, is only in a pilot phase. Since the number of family units is limited, this follow-up mechanism would make it possible to accompany much more families than today. However, to accompany many families in their houses, a lot of coaches need to be recruited and this is currently difficult due to budgetary reasons.

Concerning the legal possibility of a bail, the practical organisation of this alternative is difficult to put in place. Concerning the copy of the passport, the Immigration Office argues that it is not efficient to work with a copy of documents, but there is no legal basis to work with the original documents themselves.

b) Challenges related to the implementation of the family units

- ***The absconding rate in the family units***

The rate of absconding in the family units is relatively high compared to this rate in the immigration detention facilities: approximately one in four families residing in the family units abscond⁸³. It is inevitable that this rate

⁸⁰ Answer to Q5 of this section: "For each of the alternatives to detention that are available in your (Member) State, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention."

⁸¹ The law provides no further specifications on the issue. The Belgian Constitutional Court ruled at the end of 2013 that it is possible to maintain illegally staying families with children in specific detention facilities. Five non-governmental organizations had introduced an appeal against the Law of 16 November 2011 inserting Article 74/9 in the Immigration Law. This article prohibits in §1 the detention of illegally staying families with children except if it is adapted to the needs of families with minor children. In §2, Article 74/9 provides for the possibility to maintain in such places, for as short as possible duration, families with minor children who try to irregularly enter on the Belgian territory. In its ruling n° 166/2013 from 19 December 2013, the Constitutional Court concludes that Article 74/9 of the Immigration Law is compatible with the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Convention on the Rights of the Child and complies with the Constitution. Nevertheless the Court reminds that a child can't be maintained in a place designed for adults under the same conditions as adults and that he/she can be maintained only for the shortest possible duration. The arguments of both parties can be found in the Courts ruling.

⁸² Answer to Q6 of this section: "Please indicate any challenges associated with the implementation of the alternatives to detention in your (Member) State (based on existing studies/evaluations or information received from competent authorities)."

⁸³ Most families abscond very quickly (within hours or a few days after arrival at the family unit) or just after having been informed that a removal will take place.

is higher than in the (closed) detention facilities. The other side of the coin is that 75% of the families comply with the rules in the family units, and this despite the very limited restrictions. Nevertheless, the absconding rate remains a point of criticism and concern for a number of actors involved.

The Immigration Office points out that the right balance needs to be found to avoid that the family units become a pull factor. According to the Immigration Office, the lack of a sanctioning mechanism for families who abscond or who do not comply with the imposed conditions, hinders the well-functioning of the family units. It argues that the creation of specific family units inside a closed detention area (see Q5 of this section) is needed "in order to have a deterrent and to avoid bogus asylum seekers and migrants"⁸⁴ (at the border). This being said, (non-governmental) organisations are clearly opposed to this project, because from their point of view minors should not, on any account, be detained.

- **Other challenges identified by the authorities**

The Immigration Office conducted an internal evaluation of the family units and coaches. The evaluation is not (yet) public.

The Immigration Office points out among others that – although an overall positive evaluation was made - there is always room for improvement (more training of coaches, ...). A number of difficulties are noted: the need for more coaches, possible networks of human smuggling out of Central Africa, concerns on incidents involving the safety of the coaches, ... The continual challenge is to find triggers to convince families to return.

Another element indicated by the Immigration Office is that the family units should function as part of a bigger framework, which is currently only partly implemented. Both the first phase (follow-up at home) and the last phase (family units in detention) are not yet operational.

- **Other challenges identified by NGO's**

Following a first evaluation in December 2009, different NGO's did a second evaluation of the family unit project in December 2012, leading to a list of recommendations.⁸⁵ Among others, the NGO's plead for:

- Accommodating the families claiming international protection at the border in the regular open reception facilities for asylum seekers instead of in the family units⁸⁶.
- Better (and officially organised) collaboration between the coaches in the family units and external services (schools, NGO's, public service to accompany children, ...)
- Focusing the accompaniment more on both the possibilities for residence and stay in Belgium and for return.

⁸⁴ Verbauwhe G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwhe is Advisor of the Directorate General of the Immigration Office), 22 April 2014.

A more in-depth analysis of the absconding rate is available in this note.

⁸⁵ Flanders Refugee Action, Platform Children on the Move, Jesuit Refugee Service, et al., *'Open woonunits' en 'coaches' voor gezinnen met minderjarige kinderen als alternatief voor detentie. Evaluatie na vier jaar werking.* [Open family units and coaches for families with minor children as an alternative to detention. Evaluation after four years of functioning.], October 2012.

⁸⁶ The two main reasons given are: (1) the different nature of the accompaniment of asylum seekers at the border from the accompaniment of irregularly staying families on the territory, and (2) the lack of return support from the International Organization for Migration for this target group, because - legally speaking - these asylum seekers in the family units did not enter the territory.

- Respecting as much as possible the family unity (they ask not to place one family member in a detention facility while the rest of the family is in a family unit, unless it is necessary because one person endangers the other family members);
- A case-by-case assessment to see if a transfer to a family unit is necessary or a follow-up at the house of the family can be considered;
- More coaches, more training of and support to the coaches, etc.
- An in-depth evaluation of the family unit project.

Other more practical issues raised by (non-governmental) organisations concerns e.g. problems related to the schooling of the children during their stay in a family units (problems related to language, children not going to school if they are in the family units for a very short duration, the need for arrangements with more schools, ...). They also ask for investing more in the families who are free to leave the family units (to avoid that they end up in the streets).

Q7. Good practices regarding the implementation of the alternatives to detention⁸⁷

Both by the authorities and by civil society, the family units are overall evaluated positively and are seen as a good practice.

The open infrastructure, the limited restrictions, and the intense and broad accompaniment by a coach make it a good practice. It is important to note in this regard that the coach does not only focus on return, but also looks into possible residence options in Belgium. As said, also families applying for asylum at the border are transferred to family units. The coaches also accompany these families during their (accelerated) asylum procedure.

Also at international level, the family units are referred to as an example for alternatives to detention:

"Since the creation of the family units, a number of international delegations came to visit these houses and had meetings with the return coaches and their hierarchy. Visitors were as well part of international organisations (IOM, UNHCR, Human Rights Commissioner of the Council of Europe), Non-Governmental Organisations (IDC – International Coalition against Detention) as from other European countries (Netherlands, Luxemburg, Rumania, Bulgaria, Norway, France, Poland, Estonia, Sweden, Bosnia-Herzegovina). The concept of the family units has also been explained and cited as a best practice in various fora : EU Council of Ministers, responsible for Justice and Interior (JAI); EU Commission (WG Readmission and High Level working group asylum); EU Parliament; IGC (Intergovernmental Consultations on Migration and Asylum); IDC, IOM, JRS and UNHCR Conferences on alternatives to detention in Brussels, in Berlin and in Warsaw; side events to the Human Rights Conferences at the UN (Geneva and New York); conference of Ministries of Interior of the *Bundesländer* in Germany (Kiel); conference in London (Home Office) on alternatives to detention. There is also academic interest in these alternatives to detention."⁸⁸

⁸⁷ Answer to Q7 of this section: "Please provide any examples of good practices regarding the implementation of the alternatives to detention in your (Member) State. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)."

⁸⁸ Verbauwhe G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwhe is Advisor of the Directorate General of the Immigration Office), 2014, p.3.

SECTION 6: ASSESSMENT PROCEDURES AND CRITERIA USED FOR THE PLACEMENT OF THIRD-COUNTRY NATIONALS IN ALTERNATIVES TO DETENTION

Q1. In what circumstances can the grounds for detention be displaced in favour of an alternative to detention?⁸⁹

When a positive assessment is made by the Immigration Office (see Q3 of this section, below), families with minor children are automatically referred to an alternative to detention (in practice, the family units). The other alternatives to detention foreseen by the law are not (yet) being used. Detention of families with minor children does happen for a short period on arrival of the families at the border (maximum of 48 hours) or just before their departure (the night before a removal).

Q2. Other considerations before deciding on (an alternative to) detention⁹⁰

Other considerations include the availability of places and the fact that the alternatives to detention are a lot cheaper than detaining a third-country national. The price of providing a place in the family unit is between half and 30% of the price of a place in a detention facility (see 7.2). This being said, the rate of absconding is higher in the family units than in detention facilities.

Q3. Individual assessment procedure?⁹¹

As said before, the ground to determine if one is held in a family unit (as an alternative to detention) is the presence of accompanied minor children.

Families with minor children at the border (at least, if they cannot be removed in a very short period of time e.g. because they apply for international protection) are automatically brought to a family unit.

For irregularly staying families on the territory, an assessment is made about whether or not the family is brought to a family unit (or exceptionally followed-up from their own house) or given a simple 'return' order. The assessment includes different elements that are similar to the elements described in the assessment in case of deciding on a detention measure: possibility to remove the family, practical issues, policy priorities, etc. (see section 3 of this report). Also the risk of absconding is taken into consideration because of the 'open' character of the family units.

Q4. Assessment of the vulnerability of the individual in question⁹²

There is no standard vulnerability assessment, but the Immigration Office takes the vulnerability of the persons concerned into consideration if the information is available

⁸⁹ Answer to Q1 of this section: «In Section 2, Q1, you have identified the grounds on which detention can be authorised for particular categories of third-country national. In what circumstances can those grounds be displaced in favour of an alternative to detention in your (Member) State? Please provide answers in relation to each of the relevant categories of third-country national. If there is a separate set of grounds for providing third-country nationals an alternative to detention in your (Member) State, please indicate this is the case.»

⁹⁰ Answer to Q2 of this section: "Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?"

⁹¹ Answer to Q3 of this section: «Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention. Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.»

⁹² Answer to Q4 of this section: "Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used."

(e.g. a family with a very ill person will not be brought to a family unit). See Section 2, Q2.

Q5. Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?

In principle the assessment is made for all families that are apprehended (see Q3 of this section). Third-country nationals who have already completed a period in detention in principle do not have access to the family units, except in exceptional cases.

Q6. Responsible authorities⁹³

The Immigration Office is responsible for conducting the assessment procedures and for deciding on alternatives to detention.

Q7. Judicial authorities involved in the decision to provide an alternative to detention⁹⁴

See Section 3, Q8.

The involvement of judicial authorities is regulated in the same way as for detention measures.

⁹³ Answer to Q6 of this section: "Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on alternatives to detention

⁹⁴ Answer to Q7 of this section: "Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (E.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)."

SECTION 7: IMPACT OF DETENTION AND ALTERNATIVES TO DETENTION ON THE EFFECTIVENESS OF RETURN AND INTERNATIONAL PROTECTION PROCEDURES

This section of the EMN template aims at exploring the impact of detention and alternatives to detention on the effectiveness of return and international protection procedures. The questions are formulated as a comparison between the impact of detention and alternatives to detention; they do not attempt to compare the impact of detention (or alternatives to detention) on the effectiveness of return and international protection procedures in the case of third country nationals whose freedom of movement is not restricted at all.

Four specific aspects of effectiveness are considered: (i) effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions; (ii) cost-effectiveness; (iii) respect for fundamental rights; and (iv) effectiveness in reducing the risk of absconding.⁹⁵

7.1. EFFECTIVENESS IN REACHING PROMPT AND FAIR DECISIONS ON THE IMMIGRATION STATUS OF THE INDIVIDUALS IN QUESTION, AND IN EXECUTING THESE DECISIONS

7.1.1. Effectiveness in reaching decisions on applications for international protection

Q1. Have any evaluations or studies considered the impact of (alternatives to) detention on the efficiency of reaching decisions on applications for international protection?⁹⁶

To our knowledge, there are no national comparative evaluations or studies on this issue.

In Belgium, both asylum seekers in detention facilities and in the family units are subject to an accelerated asylum procedure.

In an analysis made by the NGO the Belgian Refugee Council on detention of persons claiming asylum at the border, it is argued that the use of accelerated asylum procedures in detention increases the risk of an incomplete assessment, mainly because for persons arriving 'with empty hands' it is difficult to collect all relevant elements in a short period.⁹⁷

Q2. and Q3 Statistics or any other evidence on this regard⁹⁸

⁹⁵ The template further specifies: "Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these dimensions of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously".

⁹⁶ Answer to Q1 of this section: "Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (For example, by affecting the time it takes to decide on international protection status). Yes/No.

If yes, please summarize the main findings here and include a reference to the evaluation or study in an annex to your national report."

⁹⁷ Belgian Refugee Council [Comité Belge d'Aide aux Réfugiés / Belgisch Comité voor Hulp aan Vluchtelingen], *Frontière - Asile - Détention: Législation belge, normes européennes et internationales* [Border - Asylum - Detention: Belgian legislation, European and international standards], January 2012, p.21.

⁹⁸ Answer to Q2 of this section: "Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection. Where

Table 4: Average length of time in determining the status of an applicant for international protection

2013	Detention	Alternatives to detention (Family units)
Average length of time in determining the status of an applicant for international protection	+/- 6 weeks	Applicants for international protection in detention - including in the family units, as an alternative to detention - are subject to an accelerated asylum procedure. This accelerated procedure is applied to all detained applicants for international protection (applicants at the border and on the territory). The legal time period foreseen for a first instance decision is 15 days and in practice the average length of time is indeed 2 weeks. In case of appeal, one should add another 15 days (legal period foreseen to lodge an appeal, which prolongs the detention period) and another 10 days (on average) for the Council for Aliens Law Litigation to decide on the appeal.

7.1.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

Q4. Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:

- *The length of time from apprehending an irregular migrant to issuing a return decision?*

Not applicable. No length of time in between: the return decision is taken when apprehending the migrant without the necessary entry documents at the border or when apprehending the irregular migrant on the territory.

- *The length of time that transpires from issuing a return decision to the execution of the return?*

No. However, statistics on the average duration of stay in an immigration detention facility and in a family unit are made available by the Immigration Office in their annual activity reports⁹⁹.

- *The share of voluntary returns out of the total number of returns?*

No. Statistics on the share of returns via the International Organisation on Migration (IOM) out of the detention facilities are made available by the Immigration Office in their annual activity reports. This share is very low.

- *The total number of removals completed?*

These statistics are made available by the Immigration Office in their annual activity reports (see below).

no information is available, please indicate "No information" and briefly state why no information is available. Where it is not applicable, please indicate "Not applicable" and briefly state why."

Answer to Q3 of this section: "Please provide any other evidence that may be available in your (Member State) on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard. (E.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)."

⁹⁹ Available on the website of the Immigration Office: <https://dofi.ibz.be/sites/dvzoe/index.html>.

Q5. Statistics and any other evidence in this regard¹⁰⁰

Table 5: Statistics on return decisions and executing returns

2013	Detention	Alternative to detention (Family units)
Average length of time from apprehending an irregular migrant to issuing a return decision	No length of time in between: the return decision is taken when apprehending the migrant without the necessary entry documents at the border or when apprehending the irregular migrant on the territory.	
Average length of time from issuing a return decision to the execution of the return	Not available, but the average duration of stay in the immigration detention facilities was, depending on the facility, between 17,6 and 41,7 days in 2013.	Not available, but the average duration of stay in the family units was 23,7 days in 2013.
Number of voluntary returns (persons who opted to return voluntarily)	It is difficult to speak about voluntary return in a context where people are detained. However, in 2013 the return of 48 people out of 4988 (1%) returns from the detention centres, were accompanied voluntary returns via IOM. The conditions for assisted voluntary return from the detention facilities are strict.	Not available for 2013 (only information on the total number of returns out of the family units is collected)
Success rate in number of departures	The share of the returns out of the detention facilities (related to the total of persons held in the detention facilities) was 79% in 2013. ¹⁰¹ [17% was released; Less than 1% absconded; ...] Release includes persons who could not be removed (no	The share of returned families out of the family units (related to the total of persons held in the family units) was 40% in 2013. ¹⁰² [30% was released; 23% absconded; ...]

¹⁰⁰ Answer to Q5 of this section: "Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection. Where no information is available, please indicate "No information" and briefly state why no information is available. Where it is not applicable, please indicate "Not applicable" and briefly state why. Statistics on the success rate in the number of departures should be provided as the number of persons who were issued a return decision and who have returned to their country of origin, and the number of persons who were issued a return decision and who have not returned to their country of origin. Please provide both the numbers and the share they represent out of the total number of persons issued a return decision."

¹⁰¹ 4.988 persons out of 6.285 persons returned in 2013 out of the immigration detention facilities.

¹⁰² 64 families out of 159 families returned in 2013 out of the family units.

	travel documents), persons who received a positive decision on an asylum request or on a residence application, or persons were released on the basis of new elements that were not known on the moment of the detention decision (medical reasons, a planned marriage, ...)	
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For persons held in a detention facility or a family unit, the Immigration Office is bound by the legal maximum durations of an immigration detention, depending on the category of persons involved.

Q6. Any other evidence in this regard¹⁰³

Table 6: Number of families departed from detention facilities (prior to the existence of the family units), compared to the number of families departed from the family units (after October 2008)¹⁰⁴

Detention	Alternative to detention (Family units)
January – December 2008	October 2008 – March 2014
103 families departed = 70% of the families in detention	269 families departed (out of 617 families) = 44 % of the families in the family units

The Immigration Office compared the number of families removed from the family units between the end of 2008 and the beginning of 2014, with the number of families removed from the detention facilities in 2008, prior to the existence of the family units. Both in absolute numbers (per year) and in relative numbers, the total number of families removed out of the detention facilities was considerably higher (table 6). About 70% of the families in detention could be removed in 2008, compared to 44% from the family units. At the same time, the conditions in the family units are much more humane and adapted to the needs of children. Also, another 22% (133 families) of the families in the family units were given a (temporary or permanent) right to stay on the basis of the procedures they had submitted. For these reasons, the Immigration Office makes – as a whole – a positive evaluation of the family units, but the absconding rate (27%) is an issue of concern and solutions must be found to decrease this rate.

¹⁰³ Answer to Q6 of this section: "Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard. (E.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)."

¹⁰⁴ Verbauwheide G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwheide is Advisor of the Directorate General of the Immigration Office), 22 April 2014.

7.2. COSTS

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

To our knowledge, there are no national evaluations or studies on this issue.

Q8. and Q9 Statistics on costs and any other evidence on the issue¹⁰⁵

Table 7: Cost of the immigration detention facilities¹⁰⁶ and the family units (alternatives to detention) in Belgium in 2013

2013	Detention	Alternatives to detention	
		Family units	
Total costs	35,437,718	696,694	
Staffing costs	27,461,457	367,571	
Medical costs	821,533	129,402	
Food and accommodation costs	3,678,063	199,721	
Legal assistance	Not available	Not available	
Other costs ¹⁰⁷	3,476,644	Not available	

Detention facilities: The capacity of the immigration detention facilities in 2013 was 521 places. The average number of residents on one day was 474. In 2013 6285 people were held in immigration detention facilities.

Family units: At the end of 2013, there were 23 family units in use with a capacity of 135 beds/places. In 2013 159 families concerning 590 people were held in family units.

Holding a person/family in a family unit is a lot cheaper than maintaining a person in a detention facility. According to the Immigration Office: "Until December 2012, the average daily cost of a person in a family unit would be around 90 Euros (with the increase of staff, this would probably increase up to 120 Euros (...)). The average staying cost in a detention centre is however between 180 and 190 Euros."¹⁰⁸

¹⁰⁵ Answer to Q8 of this section: «Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Where costs can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection to measure the costs. Where no information is available, please indicate "No information" and briefly state why no information is available. Where it is not applicable, please indicate "not applicable" and briefly state why.»

Answer to Q9 of this section: "Please provide any other evidence that may be available in your (Member) State on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (E.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)."

¹⁰⁶ The regional facilities for inadmissible persons are not included in the costs. The statistics are delivered by the Immigration Office and come from the general database FEDCOM, a SAP system used to track costs and revenues by all federal public administrations in Belgium.

¹⁰⁷ The template specifies: "This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging. Please specify". It concerns all kind of different costs: cleaning, electricity, etc.

¹⁰⁸ Verbauwhe G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwhe is Advisor of the Directorate General of the Immigration Office), 22 April 2014.

7.3. RESPECT FOR FUNDAMENTAL RIGHTS

Q10. Evaluations or studies on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned¹⁰⁹

In recent years different governmental and non-governmental actors conducted studies on the impact of (alternatives to) detention on the fundamental rights of third-country nationals and developed policy recommendations. There are no comparative studies available so far: each of the studies focuses on respect for fundamental rights in either the immigration detention facilities or in the family units.

Worth mentioning in this regard are two older reports commissioned by the government (Minister of Home Affairs).

- The first is a report¹¹⁰ from 2005 written by a special commission established by the government (the so-called "*Vermeersch Commission II*" named after the professor who presided it). The task of the commission was to adopt guidelines to ensure that the removals are carried out in a more humane manner for all parties involved while at the same time acknowledge the relevance of an effective removal policy. The report gives special attention to vulnerable groups (families, minors, pregnant women ...) and a (small) part of the report and the recommendations are also dedicated to the issue of immigration detention.¹¹¹
- In response to the criticism on the detention of families with minor children, the government commissioned a study on possible alternatives to detention. The study¹¹² was presented in Parliament in April 2005. After a feasibility study of the Immigration Office of the options proposed, the family units were created in the second half of 2008.

There are different reports from (independent) public services on the respect for fundamental rights in the immigration detention facilities:

- Issued by the Federal Parliament, the *Federal Ombudsman* published in 2009 a comprehensive and detailed evaluation report¹¹³ on the functioning of the immigration detention facilities. Also in the annual reports of the Federal Ombudsman the topic is looked at.
- The Migration Department of the *Centre for equal opportunities and opposition to racism* (now the *Federal Migration Centre*) conducted several studies on the issue:
 - o A critical study¹¹⁴ of 2008 on the functioning of Complaints Commission and the procedure foreseen for detained immigrants to issue complaints there;

¹⁰⁹ Answer to Q10 of this section: "Have evaluations or studies been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?"

¹¹⁰ Commission charged with the evaluation of the instructions on expulsion, *Bouwstenen voor een humaan en effectief verwijderingsbeleid* [Building blocks for a humane and effective removal policy], final report, presented to the Home Affairs Minister on 31 January 2005.

¹¹¹ For more information in English on the "Vermeersch Commission", see: Belgian Contact Point of the European Migration Network, *Research Study III: Forced and Voluntary Return in Belgium*, September 2006.

¹¹² SumResearch NV, Study on alternatives to detention of families with children in the closed centres. (Etude portant sur les alternatives à la detention des familles avec enfants dans les centres fermés en vue de leur éloignement). A study commissioned by the Belgian government. Available in French and Dutch.

¹¹³ Federal Ombudsman, *Onderzoek naar de werking van de gesloten centra beheerd door de Dienst Vreemdelingenzaken* [Research on the functioning of the detention centres managed by the Immigration Office]. June 2009.

¹¹⁴ Centre for Equal Opportunities and Opposition to Racism, *De klachtencommissie als verantwoordelijke instantie voor de behandeling van klachten van de gedetineerden van de gesloten centra. Analyse van een*

- Two studies¹¹⁵ on the impact of fundamental rights in the facilities for inadmissible migrants (2008 and 2013).
- In its annual reports on Migration¹¹⁶, the Federal Migration Centre also analyses fundamental right issues related to migration including immigration detention.

There are also different reports from non-governmental organizations, both on (aspects of) immigration detention and the on the family units. To mention a few:

- Report¹¹⁷ on the situation in the immigration detention facilities of 2006;
- Report¹¹⁸ on access to legal aid in the immigration detention facilities
- Two evaluation reports¹¹⁹ on the Open family units and the coaches: one report of 2009, after the first year of functioning of the family units, and one of 2012, after four years of functioning;
- A comparative report¹²⁰ from the point of view of the migrant (through interviews) about vulnerability in detention (2010);
- A comparative report¹²¹ between Belgium, Germany and the UK on alternatives to detention, again from the point of view of the migrant (2011);

To end with, there are of course also some (periodic) reports of international institutions on the issue, like from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN Committee against Torture, etc.¹²²

ontoereikende maatregel. [The Complaints Commission as responsible instance to threat complains from detainees from the immigration detention facilities. Analysis of an insufficient measure], 2008.

¹¹⁵ Centre for Equal Opportunities and Opposition to Racism, *Het INAD-centrum en de grondrechten voor vreemdelingen* [The centre for inadmissibles and the fundamental rights of foreigners], May 2008 and Centre for Equal Opportunities and Opposition to Racism, *De regionale INAD-centra en de grondrechten voor vreemdelingen* [The regional centres for inadmissible persons and the fundamental rights of foreigners], 2013.

¹¹⁶ These annual reports on Migration are available in French and Dutch on: www.diversitybelgium.be.

¹¹⁷ Aide aux Personnes Déplacées, Caritas International België, CIRE, Jesuit Refugee Service Belgium, Ligue des Droits de l'homme asbl, MRAX, Point d'Appui, Protestants Sociaal Centrum, Sociale Dienst Socialistische Solidariteit, Vluchtelingenwerk Vlaanderen, *De situatie in de gesloten centra voor vreemdelingen* [The situation in the closed centres for aliens], 2006.

¹¹⁸ Coordination et Initiatives pour Réfugiés et Étrangers (CIRÉ), Jesuit Refugee Service Belgium, Vluchtelingenwerk Vlaanderen, et al., *Faire valoir ses droits en centre fermé : un état des lieux de l'accès à l'aide juridique dans les centres fermés pour étrangers en Belgique* [Enforcing your rights in the immigration detention facilities: a state of affairs on the issue of legal aid for foreigners in the immigration detention facilities]. November 2008.

¹¹⁹ Flanders Refugee Action et al., *Een alternatief voor de opsluiting van gezinnen met kinderen. 'Open woonunits' en 'coaches' voor gezinnen met minderjarige kinderen als alternatief voor detentie. Evaluatie na één jaar werking.* [An alternative to the detention of families with children. Open family units and coaches for families with minor children as an alternative to detention. Evaluation after one years of functioning.], December 2009.

Flanders Refugee Action, Platform Children on the Move, Jesuit Refugee Service, et al., *'Open woonunits' en 'coaches' voor gezinnen met minderjarige kinderen als alternatief voor detentie. Evaluatie na vier jaar werking.* [Open family units and coaches for families with minor children as an alternative to detention. Evaluation after four years of functioning.], October 2012. Available in French and Dutch.

¹²⁰ Jesuit Refugee Service Europe, *Becoming vulnerable in detention, Civil society Report on the Detention of Vulnerable Asylum seekers and Irregular Migrants in the European Union*, June 2010. More specifically: the Country report on Belgium (pp. 125-140).

¹²¹ Jesuit Refugee Service Europe, *From Deprivation to Liberty. Alternatives to detention in Belgium, Germany and the United Kingdom*, December 2011.

¹²² In the third periodic report the UN Committee against Torture reminds the Belgium authorities of the fact that a detention measure must be an ultimate measure and asks to give preference to alternatives to detention for asylum seekers. UN Committee against Torture, *Concluding observations of the third periodic report of Belgium*, CAT/C/BEL/CO/3, 3 January 2014: Available on: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/400/46/PDF/G1440046.pdf?OpenElement>

Q11. Available statistics on number of complaints and court cases regarding fundamental rights violations¹²³

Table 8: Number of complaints and court cases regarding fundamental rights violations

Applicable year: 2013	Detention	Alternatives to detention (family units)
Number of complaints of violations of fundamental rights lodged with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons)	<p>Complaints Commission (see below the table for information on the Complaints Commission): 30 complaints</p> <p>Federal Ombudsman¹²⁴: 20 complaints</p>	<p>Complaints Commission: 0 complaints</p> <p>Federal Ombudsman: 0 complaints</p>
Number of complaints of violations of fundamental rights upheld by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons)	<p>Complaints Commission: 20 admissible complaints: 19 were judged to be unfounded and 1 led to an arrangement</p> <p>Federal Ombudsman: 0 (but in 3 cases a mediation led the release of the detained person)</p>	<p>Complaints Commission: /</p> <p>Federal Ombudsman: /</p>
Number of court cases in which there have been challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights	<p>Belgian cases before the European Court of Human Rights (art 5 ECHR): 0</p> <p>Constitutional Court: 0 appeals were launched in 2013 on this matter</p>	
	<p>Petitions for release (of foreigners held in immigration detention) to the Chamber of the Council of the criminal court: Not available separately for appeals based on human rights violations (and no differentiation possible between detention and the family units).</p> <p>⇒ 1521 (877 introduced at the French-speaking</p>	

¹²³ Answer to Q11 of this section: Q11. "Please provide any statistics that might be available in your (Member) State on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Please do the same with any statistics that may be available in your (Member) State on the number of voluntary returns. Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection. Where no information is available, please indicate "No information" and briefly state why no information is available. Where it is not applicable, please indicate "Not applicable" and briefly state why."

¹²⁴ Source: information received from the Federal Ombudsman by an email of 8 May 2014.

	chamber + 644 introduced at the Dutch-speaking Chamber)	
Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been upheld	<p>Belgian cases upheld before the European Court of Human Rights (art 5 ECHR) ¹²⁵:</p> <p>2</p> <p>Constitutional Court:</p> <p>1 judgement¹²⁶ was taken on the matter in 2013</p>	
	<p>Petitions upheld by the Chamber of the Council of the criminal court (not only bases on fundamental rights violations), meaning the Chamber of the Council decided to liberate the foreigner:</p> <p>⇒ 205 (162 by the French-speaking chamber + 43 by the Dutch-speaking Chamber)¹²⁷</p>	

The **Complaints Commission**¹²⁸ (and the permanent secretariat) is established by the Royal Decree of 2 August 2002, which regulates the functioning of detention centres for foreigners, asylum seekers and undocumented migrants. The Complaints Commission is charged with the handling of individual complaints of residents regarding the application of the rights embedded in the Royal Decree.

Q12 and Q13. Please indicate if studies exist in Belgium which show negative effects of the alternatives to detention in practice, or any other evidence in this regard ¹²⁹

Both governmental and non-governmental actors evaluate the family units in Belgium as relatively positive and a big step forward. However, even if the stay in a family unit is not comparable to the stay in a detention facility, it is *by its nature* a stressful experience for most of the families involved. For irregularly staying families who have been living in

¹²⁵ It concerns: European Court for Human Rights, *Firoz Muneer versus Belgium*, 11 April 2013, 56005/10 and European Court for Human Rights, *M.D. versus Belgium*, 14 November 2013, 56028/10.

¹²⁶ It concerns: Constitutional Court, 19 December 2013, number 166/2013.

¹²⁷ Concerning the 877 petitions submitted in 2013 at the French-speaking chamber, the Chamber of the Council confirmed the administrative detention measure in 715 cases and judged that the foreigner had to be liberated in 162 cases. Concerning the cases confirming the detention measure, the foreigner involved appealed in 86 cases. Concerning the cases where the Chamber of the Council decided on liberation, the public prosecutor appealed in 43 cases and the competent Minister appealed in 76 cases.

Concerning the 644 petitions submitted in 2013 at the Dutch-speaking Chamber, the Chamber of the Council confirmed the administrative detention measure in 601 cases and judged that the foreigner had to be liberated in 43 cases. Concerning the cases confirming the detention measure, the foreigner appealed in 185 cases. Concerning the cases where the Chamber of the Council decided on liberation, the public prosecutor appealed in 37 cases to appeal and the competent Minister appealed in 2 cases.

¹²⁸ Data from : Federal Migration Centre, *Jaarverslag Migratie 2013* [Annual report 2013]. June 2014.

¹²⁹ Answer to Q12 of this section: Q12. "Please indicate if studies exist in your (Member) States which show negative effects of the alternatives to detention in practice. (For example, ankle bracelets can be socially stigmatizing and cause physical and emotional distress.); and

Belgium for several years, the relocation from their usual habitat to the family units disrupts their normal life.¹³⁰

No negative effects have been described. However, points have been identified with a view to improving the current practice (including an internal evaluation by the Immigration Office) and a range of recommendations was done by NGO's (see Q10 of this section).

7.4. RATE OF ABSCONDING AND COMPLIANCE RATE

The following definitions apply below:

- Rate of absconding is the share of persons who have absconded from all third-country nationals placed in detention or provided an alternative to detention.
- Compliance rate is the share of persons who have complied with the alternative to detention.

Q14. Evaluations or studies on the compliance rate and rate of absconding¹³¹

To our knowledge, there are no comprehensive national evaluations or studies on this issue.

Q15. and Q16. Statistics and any other evidence on the issue¹³²

Table 9: Rate of absconding and compliance rate

2013	Detention	Alternatives to detention
Rate of absconding	<1%	23%
Compliance rate	<99% (79% were removed/returned)	77% 'compliance' covers very different situations: - 40 % returned/were removed; - 30% were released (refugee status, residence permit, medical reasons, judicial decision, ...); - 7% were still accommodated in the beginning of 2014.

¹³⁰ Remark from the Immigration Office: "The Immigration Office considers this disruption as necessary to allow the families to see at last that there is no more possibility to stay in Belgium. But this should be part of a cascade system: first, coaching starting from the private house of the irregular staying family; if this doesn't help, transfer to a family unit, and thirdly, if no compliance from the "open" family unit, there should be as a last resort, and for a very brief period, the possibility to detain families in "closed" family units."

¹³¹ Answer to Q14 of this section: Q14. "Have evaluations or studies on the compliance rate and rate of absconding of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details."

¹³² Answer to Q15 of this section: Q15. "Please provide any statistics that might be available in your (Member) State on the rate of absconding and the compliance rate of third-country nationals in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection. Where no information is available, please indicate "No information" and briefly state why no information is available. Where it is no applicable, please indicate "Not applicable and briefly state why."

Answer to Q16 of this section: Q16. "Any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention."

SECTION 8: SUMMARY AND CONCLUSIONS

Immigration detention is a non-punitive administrative measure in order to enforce a removal measure.¹³³ The EU asylum and migration *acquis* provides that immigration detention is justified in a number of situations, such as preventing unauthorised entry into the territory, preventing absconding in return procedures and in conjunction with applications for international protection. In all cases, EU legislation provides for and encourages the use of alternatives to detention, entailing that detention should be used as a 'last resort'. The aim of this EMN focused study is to identify similarities, differences and best practices with regard to the use of detention and alternatives to detention in the context of Member States' immigration policies.¹³⁴

Detention facilities and alternative detention in family units

In the case of Belgium, the authorities make use of both detention and alternatives to detention in the context of immigration policies. The competent administrative authority is the Immigration Office (Home Affairs).

There are five detention facilities spread over the country with a capacity of approximately 521 places. In 2013, 6285 persons were held in a detention facility. There are also a few smaller detention facilities at the regional airports to maintain inadmissible passengers.

Law forbids the detention of unaccompanied minors. Detention of families with minor children remains legally possible, as an ultimate measure, for a short period and in a place adapted to the needs of children. The modalities of this detention are not further specified by the law. At the moment families are only held in family units, which is an alternative to detention that was put in place in October 2008. Families are accommodated in state-owned private housing (apartments or houses which are furnished and equipped) for the time necessary for their identification and to prepare their return. They are free to move with some restrictions (e.g. one member of the family should stay in the house at all times). The families are closely assisted by a case manager/coach of the Immigration Office. Since October 2009, both irregularly staying families and families claiming asylum at the border are brought to the family units. The specially adapted units inside the area of a detention facility do not exist yet, due to budgetary reasons.

By the end of 2013, there were 23 family units in 5 different locations (approximately 135 beds). In 2013, 590 persons from 159 families were held in a family unit.

Another alternative to detention for irregularly staying families with minor children concerns the follow-up of these families by a coach in their own houses. This measure is very new and has so far only been used for a very limited number of families, also due to budgetary reasons. Since the number of family units is limited, this follow-up mechanism could make it possible to accompany much more families than today. Other alternatives like reporting obligations and the obligation to surrender a copy of the passport, are imbedded in the law, but are not (yet) applied in practice.

For a good understanding, the broader national return framework has to be taken into consideration. Such framework has been considerably modified in recent years to tackle the problem of the large number of persons who did not comply with the order to leave the country, and increased emphasis was placed on effective return of irregularly staying migrants. Initiatives were taken to better follow-up on the execution of a return order.

¹³³ In Belgium, this principle is recalled in article 5 of the Royal Decree on the Immigration Detention Facilities.

¹³⁴ Abstracts from the common template of this EMN study, p. 1.

For asylum seekers a return track was introduced with individual counseling on return. During the period of validity of the return order, failed asylum seekers can stay in special open return places allocated inside four reception facilities. Also an open return center opened for certain irregularly staying families.

Detention of migrants in Belgium – good practice and challenges

Good practice

Although it is early to evaluate the recent changes in return policy and practice, in the opinion of the Immigration Office in particular, the set-up of the SEFOR-procedure is a good practice. This is a procedure to follow-up on return orders by a specifically created service (called SEFOR: Sensitization, Follow-up and Return) inside the Immigration Office, together with local authorities), in cooperation with the local authorities. The Immigration office argues that this procedure makes possible a better assessment and selection of the persons who are being held in detention. By focussing on pre-identification, the percentage of effective removals in relation to the number of detained persons should go up (slight increase in 2013 in relation to 2012). Further improvement is needed on to harmonise approaches between local authorities and to better identify aspects of vulnerability of the persons concerned.

Challenges

It remains a challenge to improve the individual assessment procedure to determine the appropriateness of a detention measure. The law foresees no such individual assessment procedure, but the Immigration Office points out that every decision is taken on a case-by-case basis on the basis of the information they have available or receive. Whether the Immigration Office decides to give a migrant a 'simple' return order or a return order accompanied by a detention decision, depends on different elements: the possibility to remove a person, individual aspects, public order related issues, etc. Given that no personal interview is foreseen before taking a detention decision, it is especially difficult to assess the situation of persons that are unknown to the Immigration Office (e.g. no earlier residence application etc.): this concerns e.g. asylum seekers at the border and certain irregularly staying persons. These groups are more likely to be detained.

Representatives from the Immigration Office report that they are not always informed on all relevant aspects of the individual case (missing or incorrect information) to make a complete and correct assessment. Sometimes they only find out certain elements at the moment the person arrives in a detention facility. Certain NGO's argue that there is in fact no in-depth individual assessment on the necessity and appropriateness of a detention measure, and that there are particular lacks in the assessment of asylum seekers at the border, asylum seekers in the context of the Dublin procedure and vulnerable groups. Some argue that asylum seekers should not be detained and that in general, a systematic interview of the persons involved would be preferable to determine the appropriateness of a detention measure.

From the point of view of the Immigration Office, it is not possible, for budgetary and practical reasons, to include an interview as part of the standard assessment procedure. They believe that improvements can be realised through training of the (border) police and of local officers, who are in direct contact with third-country nationals before a detention decision is taken.

Alternatives to detention in Belgium – challenges and good practice

Good practice

Both governmental and non-governmental actors identify – each from their point of view – issues that need to be addressed – but overall they evaluate the family units positively and as a big step forward. Also at the international level, the family units are referred to as an example for alternatives to detention.

The open infrastructure, the limited restrictions, and the intense and broad accompaniment by a coach together with the relatively good results make it a humane solution and a good practice. It is important to note in this regard that the coach does not only focus on return, but also accompanies the asylum seekers (asylum application at the border) and looks into possible (other) residence options.

Challenges

Although different alternatives to detention are legally foreseen, the family units are the only real alternative in practice. The first, obvious challenge is therefore to overcome practical and budgetary issues and to put in place the other foreseen alternatives. For the follow-up of families in their own house, a lot of coaches need to be recruited and this is difficult due to budgetary reasons. Concerning the legal possibility of a bail, the practical organisation of this alternative is difficult to put in place. Concerning the copy of the passport, the Immigration Office argues that it is not efficient to work with a copy of documents, but there is no legal basis to work with the original documents themselves.

The biggest challenge concerning the implementation of the family units, is the relatively high rate of absconding compared to this rate in the immigration detention facilities: approximately one in four families residing in the family units abscond. It is inevitable that this rate is higher than in the (closed) detention facilities. The other side of the coin is that 75% of the families comply with the rules in the family units, and this despite the very limited restrictions. Nevertheless, the absconding rate remains a point of criticism and concern for a number of actors involved.

The idea is that the family units are part of a bigger framework. However this is currently only partly implemented. Both the first phase (follow-up at home) and the last phase (family units in detention) are not yet operational. The follow-up at home could make it possible to reach a lot more families. Also the special family units inside a detention area are needed to find the right balance to avoid that the family units become a pull factor. According to the Immigration Office, the lack of a sanctioning mechanism for families who abscond or who do not comply with the imposed conditions hinders the well-functioning of the family units.

Other challenges include the continuing search for instruments to convince families to return, dealing with possible networks of human smuggling, etc. Also a number of NGO's have made evaluations of the family units and formulated a series of recommendations.

Detention versus alternative detention (the family units)

From a fundamental rights point of view, it is clear that the approach in the family units is seen as a lot more humane and adapted to the needs of children and families. This is an overall conclusion made by the authorities, by NGO's, international authorities and in studies analyzing the experiences of the migrants themselves.

In terms of costs, the family units are obviously cheaper than the detention facilities. The average daily cost to hold a person for one day in a family unit is 30% to 50% cheaper than holding a person for one day in a detention facility.

When looking at effectiveness, absconding rate and compliance rate, a more complex picture needs to be drawn. The absconding rate remains an issue of concern: around 25% of the families in the family units abscond versus less than 1% of the persons in the detention facilities. The compliance rate is therefore 77% (family units) versus 99% (detention). When looking at the success rate of departures (the percentage of people who departed): 40% successfully departed from the family units versus 79% from the detention facilities. When comparing with the success rate of departures of families from the detention facilities before the family units existed, the family units also show lower numbers. It is important to note in this regard that in the family units a relatively large group (around one in five) were given a (temporary or permanent) right to stay on the basis of the procedures they had submitted.

As a whole, Belgian authorities positively evaluate the family units. However, the absconding rate is an issue of concern and solutions have to be found to decrease this rate. Still, the responsible Secretary of State expressed preference for the solution of the family units with this relatively high absconding rate more than having to detain minors and their families in facilities that are not adapted to their needs. The Secretary of State does want to create the special family units inside the area of a detention facility as a measure of last resort. However, at the moment this is not yet the case (no political consensus) and non-governmental organisations are clearly opposed to any measure detaining minors.

ANNEX 1 : STATISTICS

Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category

	2009	2010	2011	2012	2013	Source / further information
Statistics on number of third-country nationals in detention per category						
Total number of third-country nationals in detention	6439	6553	7034	6797	6285	Immigration Office
Statistics on number of third-country nationals provided alternatives to detention						
Total number of third-country nationals provided alternatives to detention	206	221	463	485	590	Immigration Office

DETENTION FACILITIES

Outflow (2013)¹³⁵

In 2013, 6285 persons were detained in the immigration detention facilities:

- 4988 persons were removed:
 - o 1206 were refused access to the territory at the border;
 - o 3706 were returned by forced;
 - o 48 returned with support of the International Organisation for Migration;
- 1119 persons were liberated;
- 36 persons escaped.

FAMILY UNITS

Inflow (2013)

In 2013, 590 persons were accommodated in the family units. This concerned 159 families of which 35% applied for asylum at the border, 60% was irregularly staying and 4% was held in the framework of the Dublin procedure. In more detail:

- 58 families applied for asylum at the border;
- 43 families were held as a consequence of the SEFOR-procedure (return decision);

¹³⁵ Immigration Office, *Activiteitenrapport 2013* [Activity report 2013]. June 2014.

- 28 families were transferred from the open return centre;
- 3 families were transferred from an open return place in a reception facility;
- 27 families concerned other situations (Dublin, multiple asylum application, irregularly staying but not in SEFOR-procedure).

Outflow since the start from the family units¹³⁶:

“From October 2008 until 28 March 2014, 633 families, with 1224 minor children, stayed in the family units. 617 families have in the meanwhile left the family units for various reasons:

- 269 families returned to their country of origin or a third country (38 with support of the International Organization for Migration, 44 “Dublin”-cases, 10 on the ground of a bilateral agreement, 64 “forced” removals, 96 refusals at the border and 19 voluntary returns without assistance);
- 166 families absconded;
- 181 families were liberated for different reasons (amongst others: 4 regularization, 12 medical grounds, 23 new pending asylum procedures, 6 temporary non removable, 10 court decisions, 22 not identified, 47 recognized refugee status / 22 subsidiary protection status, 9 right to stay);
- 1 of these families has been put for a short period in detention centre because of illness of mother and was afterwards transferred to a reception centre;
- 1 child was transferred to an open centre for minors because it was established that the child was not related to the adult who was accompanying the child. The adult has been put in detention.”

Table 2: Average length of time in detention

Average length of time in detention	2009	2010	2011	2012	2013	Source / further information
Average length of time in detention of all categories of third-country nationals in detention Belgium: average depending on the closed centre. Numbers are given for - the closed centre with the shortest average duration and - the closed centre with the longest average duration, and - for the for the Inadmissible-centre (Inad),	Average between 12.7-37.3 days Inad: 2.1 days	Average between 19.1-34.5 days Inad: 2.6 days	Average between 21.7-32.4 days Inad: 2.4 days	Average between 18.6-33.9 days (Inad: 2.5 days)	Average between 13.5-37.6 days	Immigration Office

The average staying period in the family units (alternative to detention) is 24,1 days.

¹³⁶ Verbauwhe G., *Alternatives to detention for families with minor children – The Belgian Approach*, Note (Geert Verbauwhe is Advisor of the Directorate General of the Immigration Office), 2014.

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Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [referred to as *Asylum Procedure Directive*].

Directive 2008/115/EC of the European Parliament and the council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [referred to as *Return Directive*].

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Law of 15 December 1980 on access to the territory, the residence, the establishment and the removal of foreigners [referred to as *Immigration Act*].

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