

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



The Institute of International Relations (IIR) of Panteion University of Social and Political Sciences implemented the study

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The European Migration Network (EMN) was established in 2003, originally as a preparatory action of the European Commission, with the aim of providing the European Commission and the Member States with objective, reliable, comparable and up-to-date data on migration and asylum, to build policymaking in the European Union and hence their national policies in these areas. Subsequently, the Council of the EU in 2008, with the No. 381/2008/EK Judgment founded the EMN, as permanent structure that will operate within the European Commission, with the participation of member states in order achieve these goals.

More information on the EMN and its work can be found on the website <http://emn.intrasoft-intl.com/html/index.html> or on the Greek website <http://emn.ypes.gr>

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**EMN FOCUSSED STUDY 2014****The use of detention and alternatives to detention in the context of immigration policies (Greece)****Top-line "Factsheet" (National Contribution)***National contribution (one page only)*

*Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

This study is intended to make a comparative research on the application of the measure of administrative detention and the use of alternatives to detention in the context of European Union Member State immigration policies.

The Greek contribution includes the legislative framework of detention and alternative measures. However, concerning their implementation, the study is limited to administrative detention because the alternative measures provided by law are not implemented at the moment.

The Greek study initially presents the transposition of secondary European law on detention of third-country nationals into national law (Section 1) and then lists the categories of third-country nationals who are placed under administrative detention, citing in detail the reasons provided by law for its enforcement (Section 2). The study then continues with an analysis of the data considered by the competent authorities –police, administrative and judicial authorities- when deciding about the enforcement of the measure of detention or its continuation (Section 3). In the next Section, we attempt to list the different types of places where aliens are detained for the lack of a residence permit, while specific reference is made to the conditions of detention. Sections 5, 6 and 7 that concern the application of alternative measures to detention and comparative analysis between the use of detention as a last resort measure of deprivation of liberty and less coercive measures, such as the alternative methods proposed instead of detention, unfortunately could not be reviewed because there are no comparative data on the implementation of the alternatives provided for by law.

There are certain instances, where after a relevant court ruling, third-country nationals coming from countries where deportation has been suspended (e.g. Syria) are called to appear regularly before the authorities; yet, in absence of relevant computer data, we are not able to consider these cases in relation to the measure of detention for these respective groups.

More precisely, article 30 par. 1, Law 3907/2011 stipulates that third-country nationals who are the subject of return procedures are placed in detention in order to prepare their return and to carry out the removal process only if, in each specific case, no other sufficient but less coercive measures can be applied effectively, such as those stipulated in article 22 paragraph 3 (regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or obligation to stay at a certain place).

These provisions on alternatives to detention lack a systematic application and there are no cumulative statistical data that point to a number of third-country nationals for whom such alternatives have been applied in the past five years. According to the Greek authorities (Petrou Ralli) the measure of granting a deadline for voluntary departure applicable for those not considered a threat to public order, could be considered an alternative to detention; so could regularly reporting before a police department for nationals coming from specific countries (Syria, Somalia, Ethiopia) that face humanitarian crises, conflicts etc, following a court ruling (in response to objections). This of course is not provided for by law, which demands such restrictive measures to be implemented before detention and not after a relevant court ruling for release. Even in cases where this is applied right after identification, current Hellenic Police computer systems keep no cumulative

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data thereon; thus, it is impossible to draw any conclusions as to the efficacy of the system of alternatives to detention in the past five years.

Summing-up the most important outcomes and recommendations of the study, we should initially note that the Hellenic Police, which is authority responsible for detention, upkeeps a computer system that is not supported on a country-wide level. The good practices of certain Detention Centres (e.g. Petrou Ralli) by specifically registering (individually) third-country nationals arrested, detained until identification, transferred to other Detention Centres and eventually deported are a pilot system. Considering however that this system is not automatically updated and provides no categorised cumulative data for third-country nationals, it should definitely be upgraded and extended. Until that moment, we are faced with a serious lack of drawing safe conclusions as to the overall number of aliens detained, the efficacy of the system or the cost of detention as compared to alternatives.

Therefore, it is very important to immediately upgrade the relevant system, to enable better mapping of the situation and the efforts made in the past two years that have not been outlined in relevant Studies, neither by the Citizen Ombudsman, nor by international inquiry committees and NGOs present in detention areas. A second recommendation would be to imminently introduce a system for applying systematically alternatives to detention provided for by law, which would decongest detention areas and would make the work of the Greek authorities, particularly the Hellenic Police, much easier.

**Executive Summary***Synthesis Report (up to three pages)*

*Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.*

Summing up the most important outcomes of the study and taking into account that this study –at a European level- is aimed at comparatively reviewing the enforcement of the measure of administrative detention and the use of alternatives to detention in the context of EU Member States, we should note that the Greek contribution refers to the law framework both on detention and on alternative measures, but as regards measures of implementation, the study contains itself to reviewing administrative detention, considering that at least up to now no alternatives to detention provided for by law are applied, or they are not systematically applied before detention, as the relevant law framework foresees.

As regards the structure of the document, the Greek report starts by presenting how Greek legal order has been aligned with the secondary European law on the detention of third-country nationals (Section 1) and then cites the categories of third-country nationals placed under administrative detention, outlining in detail the reasons in terms of law for its enforcement (Section 2). The study then continues with an analysis of the data considered by the competent authorities –police, administrative and judicial authorities- when deciding about the enforcement of the measure of detention or its continuation (Section 3). In the next Section, we attempt to list the different types of places where aliens are detained for the lack of a residence permit, while specific reference is made to the conditions of detention. Sections 5, 6 and 7 concerning the application of alternative measures to detention and the comparative analysis between the use of detention as a last resort measure of deprivation of liberty and less coercive measures, such as the alternative methods proposed instead of detention, unfortunately cannot be reviewed because there are no comparative data on the implementation of the alternatives provided for by law. There are certain instances, where after a relevant court ruling, third-country nationals coming from countries where deportation has been suspended (e.g. Syria) are called to appear regularly before the authorities; yet, in absence of relevant computer data, we are not able to assess these cases in relation to the measure of detention for these respective groups.

As regards the legislative framework –i.e. the transposition of relevant EU Directives in the Greek legal order- Law 3907/2011 that established the Asylum Service and First Reception Service was the one also to align Greek laws with the Directive on the Return of illegally staying third-country nationals, i.e. stipulating the common standards EU Member States must meet in return and removal procedures. The Greek law-maker chose to adopt the maximum limit of detention provided for by the Directive, i.e. 18 months of overall detention (under P.D. 113/2013). Note that any extension to detention beyond eighteen months would be a violation of both Greek and EU laws<sup>1</sup>. After Law 3907/2011 was introduced, maximum period of detention of asylum-seekers that recently was three months before being extended to six months rose to eighteen (18) months by P.D. 116/2010 that amended the relevant provision of P.D. 114/2010. At the moment, asylum-seeker detention is governed by the relevant provisions of P.D. 114/2010 for those that had applied for asylum before 7.6.2013 (when the Asylum Service was launched) and by P.D. 113/2013 for those detainees applying after 7.6.2013. Although the provisions of both PDs concerning detention (Article 13, PD 114/2010 and Article 12, PD 113/2013) are identical, the procedures for examining applications differ considerably, both in the first and second instance, considering that they require different review authorities. Particularly important is the fact that although the aforementioned provisions in PDs 114/2010 and 113/2013 stipulate that “an alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has entered and stays illegally in the country”, asylum-seekers, without this being their fault, end up being in the disadvantaged position provided for in the provisions above, i.e. that “an alien or a stateless person who submits an application for international protection while in detention shall remain in detention”, under certain conditions<sup>2</sup>.

<sup>1</sup> See Opinion by the Legal Council of State on the maximum time-limit provided for by the national law that integrates Directive 2008/115, available at: <http://www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=1868995>

<sup>2</sup> See joint press release by NGOs AITIMA, ARSIS, NETWORK FOR THE SOCIAL SUPPORT OF REFUGEES AND IMMIGRANTS, GREEK COUNCIL FOR REFUGEES, GREEK FORUM FOR REFUGEES, CENTRE FOR SUPPORT TO REPATRIATED AND IMMIGRANTS – ECUMENICAL REFUGEE PROGRAMME, GROUP OF LAWYERS FOR REFUGEES AND IMMIGRANTS RIGHTS, PRAKSIS, INITIATIVE FOR THE RIGHTS OF DETAINEES of December 19<sup>th</sup>, 2013 “First conclusions from running the New Asylum Service”, available at: <http://asylum-campaign.blogspot.gr/search?updated-min=2013-01-01T00:00:00%2B02:00&updated-max=2014-01-01T00:00:00%2B02:00&max-results=5>



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As regards detention overall and relation to alternatives, Article 30 par. 1, Law 3907/2011 stipulates that third-country nationals who are the subject of return procedures are placed in detention in order to prepare their return and to carry out the removal process only if, in each specific case, no other sufficient but less coercive measures can be applied effectively, such as those stipulated in article 22 paragraph 3 (regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or obligation to stay at a certain place). These provisions on alternatives to detention lack systematic application; neither do cumulative statistical data point to a number of third-country nationals for whom such alternatives have been applied in the past five years. According to the Greek authorities (Petrou Ralli) the measure of granting a deadline for voluntary departure applicable for those not deemed dangerous to public order, could be considered an alternative to detention; so could the regular appearance before a police department for nationals coming from specific countries (Syria, Somalia, Ethiopia) that face humanitarian crises, conflicts etc, following a court ruling (in reply to objections). This of course is not provided for by law, which demands such restrictive measures to be implemented before the detention and not after a relevant court ruling for release. Even in cases where this is applied right after identification, Hellenic Police current computer systems keep no cumulative data thereon; thus, it is impossible to draw any conclusions as to the efficacy of the system in the past five years.

We should also note that the Hellenic Police, the authority responsible for detention, upkeep a computer system that is not yet supported on a country-wide level. The good practices of certain Detention Centres (e.g. Petrou Ralli) by specifically registering (individually) third-country nationals arrested, detained until identification, transferred to other Detention Centres and eventually deported are a pilot system. Considering however that this system is not automatically updated and provides no cumulative data for nationals detained per category, it should definitely be upgraded and extended. Until that moment, we are faced with a serious lack of drawing safe conclusions as to the efficacy of the system or the cost of detention as compared to alternatives.

The procedure followed according to the applicable legal framework and practice is that all aliens arrested without a residence permit shall be placed in detention until their identification. Thereafter, some are released (because they originate in countries with wars or other humanitarian crises) and the rest remain in Detention Centres for a period that usually adheres to the maximum lawful limit, extended or not by means of court rulings. The court confirms whether or not detention is legitimate, reviews its extension every three months [under Article 30 (3)], and provides for the possibility to revoke rulings in case of imminent deportation.

Identification and review by the country following objections as per the above is according to the Hellenic Police the individual assessment provided for by law. On the other hand, variations to the legal framework as to vulnerable groups (e.g. unaccompanied minors, families) or beneficiaries of international protection are taken into account. However, the decision on the necessity of detention is often not "sufficiently reasoned", (see relevant reports by the Citizen Ombudsman) but relevant documents make a general reference to reasons of "risk" in most cases.

As regards alternatives, it does not seem that the possibility of imposing alternatives is investigated, neither does the computer system in detention centres allow for separately registering individual categories of detainees, average detainees and percentage of those eventually removed. Information kept concerns each individual, and cannot be horizontally grouped for each group, for reasons of detention or for citizenship. An important step is that a comprehensive programme to register personal information and status of aliens managed by each police division and detention centre is now under way by the IT department of the Head Offices of the Hellenic Police.

Until now, cumulative data was only available for all arrests, all third-country nationals detained and information on removals/deportations per year. Such statistics have started to be kept only recently, thus there are no data for the previous five-year period. This makes the assessment of the efficacy of the deprivation of private liberty as to the end pursued, which is to complete removal procedures, extremely difficult. Data are of course available for each centre and therefore each area, but the system does not support the extraction of statistics, other than those presented in this study. Similarly, it is not easy to assess whether continuing detention would serve the rapid and effective review of requests for international protection when submitted by detainees, considering that there are no statistical data available for the duration of the review process, other than an empirical approach of those handling such cases. The same is also true for the cases of detainees subject to the procedures of Dublin II and III Regulation, whose applications are requested to be reviewed or re-examined by another Member State.

As regards conditions of detention, we should underline that such conditions vary significantly depending on the space/facility. Considering that the number of aliens arrested for lack of residence permits under "Xenios Zeus" police operation and at the country's entry points in relation to the exhaustion of the maximum limit for

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detention (18 months) exceeds the capacity of the five areas for detaining aliens (Centres for Restricted Hosting of Aliens –in Greek KKFA) running in the country, some people are still detained in areas such as border stations, special spaces for aliens, pens inside or outside airports and police departments that we were not able to map all across the Greek territory for the purposes for this study.

Therefore, detention conditions outlined in Section 4 hereof concern only KKFAs that run based on an Internal Regulation and Technical Specifications, excluding other areas where aliens are detained<sup>3</sup>. As regards KKFAs, where all relevant technical specifications provided for by the law are respected and despite efforts of improvement (space innovations etc) made lately, this has not changed yet the overall image of the other detention spaces, which remains grim, a fact that among others is also owed to the large number of detainees and the fact that alternatives to detention are not implemented systematically.

We lastly found that the measure of detention is also enforced for people belonging to vulnerable groups, such as victims of torture, mothers with minors and unaccompanied minors until identified, or even after identification, until a hosting area is found. For these groups, effort is made to detain them in separate areas (Detention Centre for Minors in Amygdaleza); the National Centre for Social Solidarity (in Greek EKKA) and Metadrasí NGO make intense efforts to transfer vulnerable groups as soon as possible to Hosting areas outside KKFAs, where possible.

As regards the Recommendations of the Study, priority should be placed to the systematic application of the law, which provides for alternatives to detention. Launching, in the near future, a system to apply systematically alternatives to detention provided for by law would decongest detention areas and would make the work of the Greek authorities, particularly the Hellenic Police, much easier. Second, computer systems should be upgraded to allow for mapping the situation and the efforts made in the past two years that have not yet been outlined in relevant Reports, neither by the Greek Ombudsman, or by international inquiry commissions or NGOs present in detention areas.

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<sup>3</sup> See for example decisions by the European Court of Human Rights *Tabesh v. Greece*, 26 November 2009, § 41 and *S.D. v. Greece*, 11 June 2009, § 51, *M.S.S v. Belgium and Greece*, 21 January 2011 § 162. See also Public Statement regarding Greece by the Committee on the Prevention of Torture of March 15<sup>th</sup>, 2011, available at: <http://www.cpt.coe.int/documents/grc/2011-10-inf-fra.pdf> and par. 133 of Report of 16.4.2013 by the Commissioner for Human Rights of the Council of Europe following his visit to Greece from January 28<sup>th</sup> to February 1<sup>st</sup>, available at: <http://www.refworld.org/docid/516e76bb4.html> [consulté le 14 Décembre 2013]



**Section 1: Overview of EU *acquis* (Maximum 2 pages)**

*This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation in relation to detention and alternatives to detention. **This section will be developed by the EMN Service Provider and no input from the EMN NCPs is required.***

***Although this Section will be completed at a European level, in its Greek version we opted for referring to the European legal framework as reflected at a national level.***

In the context of the European harmonisation of asylum and migration, EU primary and secondary Law stipulate a number of grounds when third country nationals can be detained and a variety of procedural guarantees for aliens deprived of freedom. However, Member States have discretion to decide how to transpose the EU provisions and there are no common guidelines on the operationalisation of alternatives to detention. The design, selection, codification and implementation of alternatives to detention are left to EU Member States.

More precisely, according to Article 18 of the Asylum Procedures Directive (2005/85/EC), it is not acceptable to detain a person solely for the reason that s/he has lodged an asylum application. Moreover, the recast of the Reception Conditions Directive (Directive 2013/33/EU) introduced an exhaustive list of detention grounds (Article 8), a number of procedural guarantees for detained persons seeking international protection (Article 9) and regulates the detention conditions (Article 10).

The Schengen Borders Code (Regulation 562/2006) requires that third-country nationals who do not fulfil the entry conditions are refused entry into the EU. Article 13 par. 4 stipulates that border guards should prevent irregular entry on the territory of the Member States. To that effect, national provisions in some Member States allow for the short-term detention at the border-crossing point, such as in a transit area of an airport. In addition, the recast of the Reception Conditions Directive (2013/33/EU) provides that an applicant for international protection can be detained upon entry in the territory of the Member State in order to determine the applicant's identity.

The Return Directive for illegally staying third-country nationals provides common standards for EU Member States to follow in return and removal procedures. According to Article 15 par. 1 of the Directive, detention is permitted in particular in two cases – i.e. when there is a risk of absconding or the third-country national concerned avoids or hampers the preparation of return or removal process. According to the Directive (Recital 16, Article 15 par. 1), “detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient”. Article 15 par. 6 allows Member States to extend detention for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third State (the latter is a ground that is not related to the behaviour of the person concerned, as opposed to the others).

Article 28 of new Dublin Regulation No 604/2013, applicable from 1<sup>st</sup> January 2014, regulates detention for the purpose of transfer. According to the Regulation (Article 28), “when there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.” Detention in this case must not exceed three months.

Under EU law, Article 11 of the Recast of the Reception Conditions Directive 2013/33/EU provides for the detention of vulnerable persons and persons with special needs. Specific provisions regulate the detention of unaccompanied minors, families and female applicants. Article 17 of the Return Directive provides for the detention of minors and families stipulating that detention of these categories should be a measure of last resort. Detention of (potential) victims of trafficking in human beings is also outlined in Article 11 of Trafficking Directive (2011/36/ EU).

However, International and European Law of Human Rights establish substantial restrictions and procedural safeguards in order to exclude arbitrary administrative detention. While in principle International Law contains a presumption against detention, places clear restraints on its usage and requires that where it does take place, the conditions are humane and the human rights of detainees are respected. Special attention is also given to

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standards relating to particular groups of concern, including children and other vulnerable categories<sup>4</sup>. It should be noted that according to the UN Working Group on arbitrary detention, deprivation of liberty is arbitrary if a case falls into one of the following three categories<sup>5</sup>:

- A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty;
- B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;
- C) When the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character.

We could also add that detention will only be lawful when the authorities can demonstrate in each individual case that it is necessary and proportionate to the objective to be achieved, that it is on grounds prescribed by law and justified in conformity with international and regional norms applied to asylum seekers<sup>6</sup>. Detention should also be applied in a non discriminatory way and be subject to judicial or administrative review considering whether its extension is necessary and there should be the possibility of release when nothing justifies it. In any case, the basic principle should be that the detention should be avoided because of the pain it causes, and must not be imposed rather than as a last resort and with full respect for the rules of human rights protection<sup>7</sup>.

Concerning now the transposition of the EU Directives in the Greek legal order, Law 3907/2011 which established the Asylum Service and the First Reception Service transposed at the same time the Return Directive. The Greek legislator adopted the maximum length of detention provided by the Directive which is 18 months (according to PD 113/2013). It should now be stressed that any extension beyond 18 months constitutes a violation of both Greek and EU laws<sup>8</sup>. Following the adoption of Law 3907/2011, the maximum duration of detention of asylum seekers which until recently was three months before increasing in six, became also 18 months with PD 116/2012, which amended the relevant provision of PD 114/2010. At present, the detention of asylum seekers is regulated by the relevant provisions of PD 114/2010 for those who had applied before 06.07.2013 (when the Asylum Service was launched) and PD 113/2013 for those who submitted their application after 07.06.2013. Although the provisions of the two PDs dealing with detention (Article 13 of Presidential Decree 114/2010 and Article 12 of Presidential Decree 113/2013) are identical, the procedures for examining requests differ significantly both in the first and in the second instance as they require different review authorities. It should also be stressed that whereas the aforementioned provisions of PD 114/2010 and 113/2013 provide that "an alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has submitted an application for international protection, and that he/she entered and stays illegally in the country" full access to asylum procedures is not guaranteed so asylum seekers turn out to fall into the scope of a different provision providing

<sup>4</sup> See page 2 Amnesty International, *Détention et migration: La détention des migrants, demandeurs d'asile ou réfugiés au regard des normes en matière de droits humains, Guide du chercheur*, Novembre 2007, available at: <http://www.unhcr.org/refworld/docid/476b7d322.html>

<sup>5</sup> Commission of Human Rights, *Avis adoptés par le Groupe de travail sur la détention arbitraire concernant les droits civils et politiques et, notamment la torture et la détention*, E/CN.4/1999/63/add.1, Avis no 1/1998 (Cuba) [1999] par. 3 and Report of the Working Group on Arbitrary Detention, *Critères retenus par le Groupe pour apprécier le caractère arbitraire ou non de la privation de liberté*.

<sup>6</sup> Page 11 Amnesty International, *Détention et migration: La détention des migrants, demandeurs d'asile ou réfugiés au regard des normes en matière de droits humains, Guide du chercheur*, available at: <http://www.unhcr.org/refworld/docid/476b7d322.html>. See also UN High Commissioner for Refugees Guideline No. 3 on the detention of asylum-seekers. Entire text available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=51a48a5a4>

<sup>7</sup> Conclusion n° 85 UNHCR ExCom. See also page 89 UNHCR, *Self-Study Module 5: Human Rights and Refugee Protection (Vol. II)*, 15 December 2006, διαθέσιμο εδώ: <http://www.unhcr.org/refworld/docid/4669434c2.html>

<sup>8</sup> See Opinion by the Legal Council of State attempting to justify the possibility of extending detention beyond the maximum limit provided for by the national law that transposes Directive 2008/115, available at: <http://www.nsk.gov.gr/webnsk/gnwmodothsh.jsp?gnid=1868995>

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that “an alien or a stateless person who submits an application for international protection while in detention shall remain in detention” under certain conditions<sup>9</sup>.

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<sup>9</sup> See joint press release by NGOs AITIMA, ARSIS, NETWORK FOR THE SOCIAL SUPPORT OF REFUGEES AND IMMIGRANTS, GREEK COUNCIL FOR REFUGEES, GREEK FORUM FOR REFUGEES, CENTRE FOR SUPPORT TO REPATRIATED AND IMMIGRANTS – ECUMENICAL REFUGEE PROGRAMME, GROUP OF LAWYERS FOR REFUGEES AND IMMIGRANTS RIGHTS, PRAKSIS, INITIATIVE FOR THE RIGHTS OF DETAINEES of December 19<sup>th</sup>, 2013 “First conclusions from running the New Asylum Service”, available at: <http://asylum-campaign.blogspot.gr/search?updated-min=2013-01-01T00:00:00%2B02:00&updated-max=2014-01-01T00:00:00%2B02:00&max-results=5>

**Section 2: Categories of third-country nationals that can be detained, national provisions and grounds for detention (Maximum 3 pages)**

*This section aims at providing an overview of the categories of third-country nationals that can be placed in detention in (Member) States according to national law and practice. The section also examines whether the possibility to detain each category of third-country national is enshrined in national legislation, the grounds for detention that apply and whether national legal frameworks include an exhaustive list of grounds. EMN NCPs are asked to provide their answers to these questions in the table provided overleaf. The section considers whether special provisions regarding detention are in place for persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs. Finally, the section examines national provisions on (release) of detention of persons who cannot be returned and/or are granted tolerated stay.*

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

Categories of third-country nationals	Can third-country nationals under this category be detained? (Yes/No)	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the <b>grounds</b> for detention for each category of migrant that can be detained in your (Member) State.  Is there an <b>exhaustive list</b> of grounds outlined in your national framework?
<b>Applicants for international protection in ordinary procedures</b>	Yes	Yes		According to Article 13 par. 1 and 2 PD 114/2010 and Article 12 par. 1 and 2 PD 113/2013, an alien or a stateless person who submits an application for international protection while in detention shall remain in detention for one of the following reasons: <ul style="list-style-type: none"> <li>a. For the determination of the actual data of his/her identity or origin, or</li> <li>b. If he/she constitutes a danger for national security or public order, according to the reasoned judgment of the police authority, or</li> <li>c. If detention is deemed necessary for the prompt and effective completion of the examination of his/her application.</li> </ul>
<b>Applicants for international protection in fast-track (accelerated) procedures</b>	Yes	No	The law doesn't provide that detention may be imposed to applicants for international protection in accelerated procedures. However, persons who apply while detained are subject to accelerated procedures because according to Article 17 par. 4 (b) PD 114/2010 an application shall be considered to be manifestly unfounded when the applicant has filed the application for abusive reasons or intentionally in	

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			<p>order to mislead authorities. Thus, in the case of persons who have been arrested without disposing any documents and apply for asylum while detained, the authorities apply this provision. Respectively, according to Article 16 par. 4 g PD 113/2013 the competent examination authorities shall examine an application under the accelerated procedure when the applicant has submitted the application only to delay or impede the enforcement of an earlier or imminent deportation decision or removal by other means.</p>	
<b><i>Applicants for international protection subject to Dublin procedures</i></b>	Yes	No	<p>Concerning the request to take charge of a detained applicant, authorities apply different practices depending on the detention place and if PD 114/2010 or PD 113/2013 is applicable. Applicants who have been accepted from the country where they wish to travel and have their claim examined continue being detained until their transfer but sometimes are also released until the travel arrangements are completed. Concerning the</p>	



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			request to take back an applicant who is free, the Asylum Service has informed the NGOs that in principle he/she won't be detained <sup>10</sup> .	
<b>Rejected applicants for international protection</b>	Yes	Yes		According to Articles 21 par. 1 and 30 par. 1 of Law 3907/2011, third-country nationals who are the subject of return procedures and their application for a residence permit has been rejected are kept in detention in order to prepare the return and to carry out the removal process.
<b>Rejected family reunification applicants</b>				
<b>Other rejected applicants for residence permits on basis other than family reunification (Please provide details)</b>	Yes	Yes		See above
<b>Persons detained at the border to prevent illegal entry (e.g. airport transit zone)</b>	Yes	Yes		See above
<b>Persons found to be illegally present on the territory of the (Member) State who have not applied for international</b>	Yes	No	Persons who are intercepted to enter the country illegally are placed in detention <sup>11</sup> .	

<sup>10</sup> Information regarding authorities' practice in this regard comes from the Legal Service of the Greek Council for Refugees.

<sup>11</sup> Particularly in airport transit areas, Law 3907.

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<b>protection and are not (yet) subject to a return decision</b>				
<b>Persons who have been issued a return decision</b>	Yes	Yes		According to Article 30, par. 1, Law 3907/2011 the step of detention is applied when: a) there is a risk of absconding; b) the third-country national avoids or hinders return or removal process; or c) for reasons of national security.
<b>Other categories of third-country nationals (Please specify the categories in your answer)</b>	Yes	Yes		<p>Apart from the categories of third-country nationals detained under Article 30 par. 1 of Law 3907/2011 which are listed in Article 21 par. 1 (in case of rejection of an application for or renewal of residence permit, as well as in case of revocation of a valid residence permit), the following categories of aliens can also be detained according to par. 3 Article 76 of Law 3386/2005 "if they are considered on the basis of the general circumstances, suspect for escape or dangerous for the public order or avoid or obstruct the preparation of departure or the procedure of expulsion":</p> <p>a. He/she has been irrevocably sentenced to a freedom-depriving sentence of at least one year or, irrespective of sentence, for crimes against the regime or treason, drug-related crimes, money laundering, international financial crimes, crimes with the use of high technology, currency-related crimes, resistance, child abduction, crimes against sexual freedom and economic exploitation of sexual life, theft, fraud, misappropriation, extortion, usury, violation of the law on intermediaries, forgery, false statement, slander, smuggling, crimes relating to weapons, antiquities, forwarding of illegal immigrants in the country or facilitation of their transport or forwarding or provision of accommodation thereto for hiding, and provided that his/her expulsion was not ordered by the court;</p> <p>b. He/she has infringed the provisions of Law 3386/2005;</p> <p>c. The alien's presence in the Hellenic territory poses a threat for the country's public order or security;</p> <p>d. The presence of the person in the Hellenic territory poses a threat to public health, because the person</p>

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				suffers from an infectious disease or belongs to vulnerable groups, mainly because of the status of public health in the country of origin or because of the intravenous use of illicit drugs or because of being a person practicing prostitution, within the meaning of article 2734/1999 or because the person resides in places where general rules on hygiene are not followed, as these issues are defined by health provisions.
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*Q2. Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.*

Detention of vulnerable groups is not explicitly provided for by law. However, by the specific references made to such detention as regards conditions, we can conclude that detention of vulnerable groups is allowed. Thus, Article 31 par. 3 of Law 3907/2011 stipulates that third-country nationals in detention receive emergency health care and the necessary treatment of illness and particular attention shall be paid to the situation of vulnerable persons. Moreover, Article 32 par. 1, 2, 4 and 5 of Law 3907/2011 regulates the issues of detention of minors and families; "unaccompanied minors and families with minors shall only be detained as a measure of last resort, only when no other adequate and less coercive measure can be used for the same purpose, and for the shortest appropriate period of time. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education, in accordance with the provisions of article 72 of law 3386/2005. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal." With regard to applicants for international protection, Article 13 par. 6 a, b and c PD 114/2010 and 12 par. 8 a, b and c PD 113/2013 stipulate that the competent authorities shall see to that women are detained in a place separate from men, avoid detaining minors, children separated from their families and unaccompanied minors shall be detained only for the necessary time till their safe referral to adequate centres for accommodation of minors and they shall avoid detaining women in an advanced state of pregnancy or who have recently given birth.

Particularly problematic is the detention of unaccompanied minors in the same places with adults because they have been registered by the authorities as adults, as well the detention of victims of torture having received certification. According to the Greek authorities, all possible efforts are made not to detain them, while the competent authority is the area's Public Prosecutor for Minors under PD 220/2007. One of the biggest problems is to identify that someone is in fact a minor. Regarding minors, the Greek Ombudsman by visits made in the last quarter of 2012 in detention centres has highlighted the Greek Police's failure to separate minors who were "visible to the naked eye" (visit in Corinthos detention centre); the oral explanation to this was that scientific methods of age-determination for those that lack papers are ambiguous<sup>12</sup>. This setback, according to the Hellenic Police, is being offset in the past few months by the presence of social workers and psychologists.

As regards certified victims of torture for whom intervention by the Greek Ombudsman has been sought by the Legal Service of the Greek Council for Refugees, the competent police authorities have not lifted detention, despite Ombudsman's recommendations, while the same was the case with a court ruling that rejected as inadmissible the objections against the detention of an asylum-seeker certified as a victim of torture (Administrative Athens Court First Instance 4433.29/8/2013). The biggest problem in these cases according to the police is that detention continues because of court rulings they cannot disregard.

The Ombudsman also notes that the image of detained mothers with babies in the women's wing of the detention facility of the Attica Aliens' Police Directorate (Petrou Ralli) is problematic as they should be placed in hospitality centres according to the Law 3907/2011<sup>13</sup>. During its visit on 12.04.2012, the Ombudsman found two detained mothers with

<sup>12</sup> See page 4, Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

<sup>13</sup> See page 4, Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

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minor children, one of whom was a citizen of the EU (Bulgaria) who was detained with her one-year child<sup>14</sup>. During January and February 2014, the Greek Council for Refugees provided legal assistance for their release to four refugee women from Syria and one from Iraq who were detained from ten days to two months with the minor children. The 10 children were between one and ten years old. Regarding all the above, the Hellenic Police's position is that all incidents of detention of vulnerable groups are exceptionally owed to the lack of sufficient hosting spaces. They are held until such accommodation areas are found. However, this is only true for asylum-seekers. The rest are detained because of illegal entry in the country.

*Q3. Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.*<sup>15</sup>

According to Article 30 par. 4 of Law 3907/2011 "When it becomes manifest that there no longer exists a reasonable prospect of removal, for legal or other considerations, or the conditions laid down in paragraph 1 (risk of absconding or the third-country national concerned avoids or hampers the preparation of return or the removal process or for reasons of national security) no longer exist, detention ceases and the third-country national shall be released immediately." Moreover, Article 76 par. 5 of Law 3386/2005 provides that in case the alien to be expelled is not regarded as suspect of an eventual escape or is not deemed dangerous to public order or the president of the Administrative court of first instance disagrees with the detention, the same decision allows the alien a period of time not exceeding thirty days in which to leave the country, unless there are grounds for non-expulsion.

The Ombudsman has observed during visits in 2012 that the use of detention, which should be a limited administrative measure applied only if necessary in view of deportation /removal, has become a general practice even in cases where it is impossible to expel foreign nationals from the country (e.g. impossible expulsion to countries of origin, lack of co-operation by the competent consular authorities, unidentified citizenship etc). According to the Ombudsman this practice constitutes a violation of the proportionality principle which should regulate every measure restrictive of liberty (Article 5 par.3of the Constitution, Article 5 ECHR). See among others the judgment of the ECtHR, *Tabesh v. Greece* application 8256/07, (2009), detention for impossible expulsion<sup>16</sup>. The systematic use of detention, even if the expulsion is impossible, has been also noted by the Commissioner for Human Rights of the Council of Europe in his report, following his visit to Greece (28/1-1/2/2013)<sup>17</sup>. Facing these observations, the Hellenic Police replies that the step of detention is in fact applied where expulsion is impossible, only when the specific aliens concerned are deemed dangerous for public order and security.

Furthermore, incidences have been noted, where people released following the lapse of the maximum time-limit (18 months) and given a deadline to leave the country, after the deadline expires, they are arrested again and placed under detention pending expulsion, despite the fact that this was impossible when previously detained.

Moreover, although compulsory returns to certain countries are as a rule not carried out (e.g. currently in Syria, Somalia, Eritrea, Myanmar, Palestine and Mauritania<sup>18</sup>), a number of citizens originating in the said countries are in fact detained although their compulsory return is impossible, usually for reasons of threat to public order<sup>19</sup>.

<sup>14</sup> See page 19, Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

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

<sup>16</sup> P. 7, Greek Ombudsman document dated 29.5.2013, available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

<sup>17</sup> [www.coe.int](http://www.coe.int), see particularly par.141 et seq. of the Report.

<sup>18</sup> See relevant information to the Committee of Ministers of the Council of Europe in the context of enforcing ECtHR Ruling, *M.S.S. v. Greece and Belgium*: DH-DD (2013) 1225F, 13 novembre 2013, 1186 réunion (3-5 décembre 2013), (DH) - Communication de la Grèce relative à l'affaire

### **Section 3: Assessment procedures and criteria for the placement of third-country nationals in detention (Maximum 5 pages)**

*This section examines the assessment procedures and criteria/benchmarks that are used by (Member) States in order to decide whether detention is justified in individual cases. It begins with a series of questions which explore the extent to which individual assessment procedures (e.g. interviews) are used in all cases before placing third-country nationals in detention, or whether individual assessment procedures are only used in the case of certain categories of third-country national. Where individual assessments are used, EMN NCPs are asked to describe the procedures involved and whether they include an assessment of the vulnerability of the individual in question. Finally, EMN NCPs are asked to provide information on the challenges associated with the assessment procedures in their Member States and to identify any elements of good practice.*

*Q1. Please indicate whether an **individual assessment** procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No.*

*If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.*

*If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?*

The law provides for the individual assessment for those arrested, as also confirmed in meetings with officials of the Hellenic Police, but we have no cumulative statistics or other information in detention areas that would prove that such an assessment took place or that specific mechanisms were triggered. After mass arrests and until

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M.S.S. contre Belgique et Grèce (Requête n° 30696/09) - Informations mises à disposition en vertu de la Règle 8.2. a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables), [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2013\)1225&Language=lanFrench&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2013)1225&Language=lanFrench&Site=CM)

<sup>19</sup> As an example, we cite the following:

-Document by the Greek Council for Refugees dated 12.12.2013 to Ministry of Public Order and Citizen Protection, Hellenic Police Headquarters, the applicable Police Division and the Greek Ombudsman regarding the detention of 44 Somali and Eritrea citizens;

-Judgement No. 33.17/2/2014 by the Administrative Court of First Instance in Corinthos rejecting the objections of a detained Somali citizen;

-Intervention of the Greek Ombudsman following a report by the Greek Council for Refugees (document 26/9/2013 to Hellenic Police Headquarters) regarding the detention of 7 Syrian citizens.



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identification is complete, each case is assessed individually based on the information available in the relevant folder and a decision on detention is made. Typical was the case of 345 third-country nationals that were arrested in April 2014 in Crete; those coming from Egypt were detained and Syrians were released. Nevertheless, different views have also been expressed, such as by the Greek Ombudsman; following a visit to detention areas in 2012, the organisation considers that there is no individual assessment for any category of third-country nationals and there is no other mechanism to assess the adequacy of the measure of detention and that "all categories of aliens apprehended for lack of residence permits are detained without a distinction"<sup>20</sup>.

Finally, vulnerability is considered as regards the conditions of detention, where possible.

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

The Head of the Expulsion Division of the Attica Sub-Directorate for Aliens, when requested information for the purposes of this study, informed us of the following: the system is that after the interview for identification, an individual assessment according to the law takes place, adhering to the criteria provided for in the law. Those, for whom no expulsion orders can be enforced, if there are no reasons of being a threat to public order or public health, are released. The criteria reviewed are: a) the country of origin and whether return/expulsion is possible; b) if there are reasons to suspend expulsion; c) if there are reasons of risk; d) if they are asylum-seekers; e) if they belong to any of the vulnerable groups eligible for international protection and must be transferred to hosting areas. When the measure of detention is applied, a competent court decides on the duration (every 3 months, or following objections).

*Q3. Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?*

When requested information for the purposes of this study, the Head of the Expulsion Division of the Sub-Directorate for Aliens of Attica informed us that an effort is made immediately after arrest to inform third-country nationals for the reasons of their detention. This usually involves information booklets available in most detention spaces that also include the reasons for detention and their rights. An interpreter explains where such booklets are not available, the reasons for detention.

*Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the **vulnerability** of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used.*

When requested information for the purposes of this study, the Head of the Expulsion Division of the Sub-Directorate for Aliens of Attica informed us that vulnerability is taken into account as regards the conditions of detention, where possible. Vulnerability is confirmed following an interview with the help of an interpreter. There are cases where no elements of vulnerability are recorded (e.g. when aliens refuse to co-operate).

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

<sup>20</sup> Page 7, Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

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identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply.

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

According to Articles 30 par. 1 a Law 3907/2011 and 76 par. 3 Law 3386/2005 detention is imposed when "there is a risk of absconding" and "if the alien is considered, on the basis of the general circumstances, suspect for escape" respectively. In practice, according to the Legal Service of the Greek Council for Refugees, "Administration does not make an individual and sufficiently reasoned assessment; the measure of detention is applied for all aliens lacking a residence permit". On the other hand, the Hellenic Police has data to the contrary regarding hundreds of people released. Based on the data provided by the Head of the Expulsion Division of the Attica Sub-directorate for Aliens when we requested information for the purposes of this study, 48% of the people apprehended in 2013 were released after their identification. There are no statistics however as to those detained for a risk of absconding.

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

According to Articles 30 par. 1 b Law 3907/2011 and 76 par. 3 Law 3386/2005 detention is imposed when "the third-country national concerned avoids or hampers the preparation of return or the removal process" and "the alien avoids or obstructs the preparation of his departure or the procedure of his expulsion" respectively. The relevant provision is adhered to as shown by the area-specific computer systems, but no cumulative statistics are available as to which cases of detainees co-operate or not. The European Return Fund sponsors travel expenses of Consular authorities at the Region at the respective detention centres (even e.g. Afghans from Sofia). NGOs complain in their reports that in practice we cannot confirm that authorities examine whether this term applies.

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

According to articles 30 par. 1 c Law 3907/2011 and 76 par. 3 Law 3386/2005 detention is imposed "for reasons of national security" and "if the alien is considered, on the basis of the general circumstances, dangerous for the public order" respectively. The threat to public order or national security is also a reason for the extension of detention of persons who apply for international protection while detained (Articles 13 par. 2 b PD 114/2010 and 12 par. 2 b PD 113/2013). As regards previous years (2009), case-law of the Council of State states that "the Administration contents itself to appealing to criminal conviction, without formulating a sufficiently reasoned assessment on the risks for public order and security, after assessing an individual's whole personality, taking into account the said criminal conviction, including all other convenient data to form a personal judgement on the said risks"<sup>21</sup>. This information is challenged by the Head of the Expulsion Division of the Attica Sub-directorate for Attica, who presented HCDCP reports on the risks carried by certain categories of detainees, stressing that efforts are made to improve the system with the relevant reports.

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

With regard to applicants for international protection who submit their claim while detained, Article 13 par. 2 (a) and (c), PD 114/2010 provides as reasons for extension of detention the fact that " the applicant does not possess or has destroyed his/her travel documents and it is necessary to determine the identity, the

<sup>21</sup> 427/2009 Council of State, "the administrative act contested is based on the judgement that the appellant is dangerous for public order and security as the appellant was apprehended and sentenced in the first instance by a criminal Court for such violation. This reasoning is not legitimate, because to expel the appellant, [...] the Administration contains itself to invoking his or her criminal conviction, without formulating a specifically grounded judgement on his implied threat to public order and security of the Country, after assessing his whole personality, taking into account the said criminal conviction, including all other information conducive to shaping own judgement regarding the said threat". See also CoS 1127/2009, CoS 2414/2008.

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circumstances of entry and real information on his/her of origin, in particular in the case of mass illegal entries of applicants" and "detention is considered necessary for the speedy and effective completion of the application". The corresponding provision of PD 113/2013 (Article 12 par. 2 a and c) stipulates that the applicant shall remain in detention "for the determination of the actual data of his/her identity or origin, or "if he/she constitutes a danger for national security or public order, according to the reasoned judgment of the police authority" or "if detention is deemed necessary for the prompt and effective completion of the examination of his/her application, including applications submitted within Regional First Reception Services. In this case, the examination authorities shall take the necessary measures for the prompt completion of the procedure." According to the Head of the Expulsion Division of the Sub-directorates for Aliens of Attica, maximum detention time is six months.

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

Data collected do not point to systematic consideration of the possibility of alternatives to detention as provided for in the law. When requested information for the purposes of this study, the Head of the Expulsion Division of the Sub-Directorate for Aliens of Attica informed us of individual instances, in which alternatives to detention have been applied, such as regular reporting before the authorities when released on a court order (e.g. nationals from Syria that are not detained). Yet, application is not systematic, while the steps of producing adequate financial guarantee, submitting documents or the obligation to stay at a certain place have never been applied until the time this study was drafted.

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

Although in practice individual assessment procedures appear not to take place before applying the measure of detention, the law stipulates that authorities who are responsible for conducting individual assessment procedures are also responsible for deciding on the placement of a third-country national in detention. More precisely, according to Article 30 par. 2 Law 3907/2011 and 76 par. 3 Law 3386/2005, detention shall be ordered by decision of the competent Police Director and, in case of the General Police Directorates of Athens and Thessaloniki, by the Police Director in charge of aliens or a higher officer, appointed by the competent General Police Director. The same authorities are also responsible for the applicants of international protection according to PD 114/2010 (Article 13 par. 3) and for applicants who are concerned by PD 113/2013 when detention is deemed necessary a) for the determination of the actual data of his/her identity or origin, or b) if he/she constitutes a danger for national security or public order according to the reasoned judgment of the police authority, or c) for the prompt and effective completion of the examination of his/her application. For applicants who fall under the provisions of PD 113/2013 In cases (a) and (c) the detention decision is taken after a recommendation of the Head of the respective review authority (Asylum Service).

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

According to Article 30 par. 3 Law 3907/2011, in case of an extension of the detention, the relevant orders are forwarded to the President -or to the judge appointed by him- of the first-instance administrative Court which is territorially competent for the Region where the alien is detained, who shall rule on the legality of the detention and shall issue immediately his/her decision, summarize it in written form in a relevant record and forward it immediately to the competent police authority. According to information provided by the Head of the Expulsion Division of the Attica Sub-directorate for Aliens, it appears that legality is in fact placed under the judgement of the competent first-instance judge every 3 months.

Concerning the possibility of judicial appeal against detention decision, Article 76 par. 3 Law 3386/2005 provides that the alien in detention may express objections against the decision for his detention before the president or the judge of the first instance court defined by the latter, in the region of his detention. According to par. 4 of the same Article, the authorised judge shall decide on the lawfulness of the detention or the extension of it and shall

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issue immediately a judgement on the objection, which must be stated briefly in the minutes. Par. 5 sets forth that in case the alien to be expelled is not regarded as suspect of an eventual escape or is not deemed dangerous for public order or the president of the Administrative court of first instance disagrees with the detention, the same decision allows the alien a period of time not exceeding thirty days in which to leave the country, unless there are grounds for non-expulsion.

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

Challenges concern the objective setbacks in applying a system of individual assessments for third-country nationals detained, particularly outside KKFAs (although Greek Ombudsman reports also concern KFAAs), the insufficiency of computer systems that do not allow a relevant entry and thus there are no information for detainees in each detention area stating the reason for detention, while the process of individual assessments is neither recorded or entered into a system. Moreover, co-operation of certain Embassies for issuing travel documents is meager (handling in average 22-23% of the requests). To be more exact, according to information provided by the Head of the Expulsion Division of the Attica Sub-directorate for Aliens, the authorities of Georgia and Algeria co-operate very well, but Morocco, Tunisia, Pakistan, Bangladesh, Afghanistan, China and Russia offer little help; as a result, detention time is extended both for nationals of third countries that co-operate and for those that do not. They are detained for the maximum time allowed. The biggest problem however would be the lack of a single country-wide computer application that would include automatic updates to avoid delays in sending information from the centre to the regional offices.

More precisely, as already referred to in answers 5 (a), (b) and (c) of this Section, police authorities that are responsible for issuing orders of detention of people apprehended lacking a residence permit, during identification process, they register the reasons of detention on a special sheet (electronic folder) for each alien detained. According to the Head of the Expulsion Division of the Attica Sub-directorate for Aliens, this is an individual assessment, in fact reasoned, based also on the court judgements that in fact extend detention until expulsion/return of the alien is possible. To the contrary, as mentioned before, the Council of State has considered in the past (2009) that such judgements are not a reasoned judgement, e.g. in terms of judging risks for public order and security, or the probability of "absconding". Further, even in cases where the detainee "co-operates" with police authorities and does not prevent his removal, by going to his or her consular office and replying to relevant questions facilitating the travel document issuance process, his or her detention is not lifted, but the maximum time-limit is exhausted, despite that the consular office is responsible for the delay and not the alien. According to information provided by the Head of the Expulsion Division of the Attica Sub-directorate for Aliens, the only case when aliens are detained for maximum time is when they do not co-operate. In cases where consular authorities stall in forwarding the relevant documents, intervention by the Ministry of Foreign Affairs is sought.

Regarding the assessment of the administrative judge that rules on objections lodged by aliens detained, we should note that according to par. 4 and 5, Article 76, Law 3386/2005, as amended by Article 55, Law 3900/2010 "the competent judge also rules on the lawfulness of detention or its extension" and "in case the alien to be deported is not considered a suspect for escaping or dangerous to public order or the chair of the administrative court of first instance objects to his or her detention, the court allows the alien a period of time not exceeding thirty days in which to leave the country, unless there are grounds for non-expulsion". Therefore, by Law 3900/2010 the law-maker has explicitly set out that court judgement also extends to the "lawfulness of detention" itself, instead of restricting itself to whether the alien is suspect of escaping or dangerous for public order. According further to explanatory report to Law 3900/2010, this addition was considered necessary for reasons of safety of law and compliance with the decisions of the European Court of Human Rights. Before this law provision was introduced, the European Court of Human Rights had repeatedly<sup>22</sup> ruled that objections to detention under

<sup>22</sup> See for example a number of relevant ECtHR judgements against Greece: S.D. 11.6.2009, Tabesh 26.11.2009, A.A., 22.7.2010, Rahimi, 5.4.2011, R.U. 7.6.2012, Lica 17.7.2012, Mahmudi et al 31.7.2012, Ahmade 25.9.2012, Bygylashvili 25.9.2012, Lin 6.11.2012.

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Article 76, Law 3386/2005 are not an effective remedy to the extent that they do not allow "immediate check of the lawfulness of the detention of an alien detained pending removal<sup>23</sup>". Nevertheless, even after this change in terms of law, there are cases where objections concerning newly-arrived refugees that have no access to the asylum process are rejected and then they are apprehended because of lack a residence permit and detained because they have no known residence (lacking a lease or proof of accommodation) and are considered "suspect of absconding".

Finally, we remark the following absurd phenomenon: while one of the reasons for detention is that aliens are "suspect of absconding", when they are released either on a police or a court order, they are given a deadline of less of one month to leave the country.

According to the Hellenic Police, the law is applied and the relevant court decisions are followed to the letter and objections filed by lawyers producing a passport and stable residence under Articles 30 (2) and (4) are admitted.

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

KKFAs allow for a better assessment system, but considering these structures are new, the system must consider the challenges above to trigger the Internal Regulation that would provide for relevant mechanisms<sup>24</sup>. Very positive is that audits by international bodies and the European Commission regarding the relevant application of the mechanisms foreseen are persistent.

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<sup>23</sup> ECtHR, S.D. v. Greece, 11.6.2009, par. 73.

<sup>24</sup> Judgement No. 6634/1–355613, 29 July 2013, GGB B'1851/29.7.2013 on the Internal Regulation of the Security Service for Alien Detention Facilities.

**Section 4: Types of detention facilities and conditions of detention (Maximum 5 pages)**

*This section of the Synthesis Report will provide a factual, comparative overview of the types of immigration detention facilities that exist in the EU and the conditions of detention associated with these. It examines whether there are specialised immigration detention facilities and explores whether different types of detention facilities are available for different categories of third-country national. The section also reviews the conditions of third country nationals in these detention facilities, including average surface per person, existence of separate facilities for families, visitation rights, access to medical care and legal assistance.*

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

Pre-removal detention centres pursuant to Law 3907/2011 that aligned Greek laws with the 2008 Return Directive for illegally staying third-country nationals have been running in the country since 2012. There are 5 detention centres for aliens, called "Restricted Hosting Centres for Aliens" (in Greek KKFA): in Attica (Amygdaleza), in Corinthos (the Peloponnese), in Komotini and Xanthi (Thrace), as well as in Paranesti, Drama (Eastern Macedonia).

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

There is no distinction when allocating detainees in the five KKFAs. P.D. 113/2013 (Article 12, par. 5) explicitly stipulates that seekers for international protection shall be detained in the facilities provided for illegally staying third-country nationals in Article 31, Law 3907/2011 (i.e. the KKFAs). Moreover, third-country nationals arrested when attempting to illegally enter the country are provisionally detained at the border stations and the Centre or Unit of First Reception applicable to the local area where they were apprehended (Article 13, par. 1, Law 3907/2011). There is such a unit at Orestiada Border Station (Thrace). There are also Special Areas for the Stay of Aliens (in Greek, EXPA) and Alien Identification Centres on Chios and Samos. There are also detention cells in the Sub-directorate for Aliens of Attica and Ellinikon, while aliens are also detained in police department detention cells.

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

The five KKFAs are run day-to-day by the police authorities, to be more exact the five respective Alien Detention Facility Guarding Services (in Greek, YFEKA) established to that effect and staffed by police officers, special guards and border guards.

*Q4. Please describe any measures taken by your (Member) State to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.*

According to the National Action Plan on Asylum and Migration, three new detention facilities are expected to be



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launched in the first six months of 2014 (Lesvos, Macedonia, Euboea); that would raise the number of people detained in KKFAs to 10,000. Considering though that the number of aliens arrested under “Xenios Zeus” police operation exceeds the number of places available in the KKFAs<sup>25</sup>, third-country nationals lacking a residence permit, including seekers for international protection are detained in police departments. For the same reason, newly arrived immigrants are detained at border stations.

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

The law does not rule out this possibility, considering that according to Article 31, par. 1, Law 3907/2011 “detention as a rule involves special facilities; in any case, third-country nationals must be detained separately from common criminal law prisoners”. Those that have a received court ruling for deportation must be detained in a special detention space under the law after serving their sentence.

*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?*

Please refer to the previous answer.

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

The answers to this question outline detention conditions only the special spaces for the detention of aliens (KKFAs) that are not prisons; they do not concern however all areas where aliens are detained, e.g. detention cells, police departments, border stations, identification centres and special spaces for the stay of aliens.

<b>Conditions of detention</b>	<b>Statistics and/or comments</b>
Please provide any statistics on the average available surface area per detainee (in square meters)	There are no relevant statistics. In our first meeting with Hellenic Police representatives, to a relevant question they replied that technical standards in the KKFAs are met. Outside KKFAs, the UN Working Group on Arbitrary Detention noted that several detention facilities visited were overcrowded <sup>26</sup> .
Please provide any statistics on the average number of detainees placed in one room per detention facility	See above

<sup>25</sup> See also pages 5-6 of Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221>

<sup>26</sup> UN Working Group on Arbitrary Detention, Statement upon the conclusion of its mission to Greece (21 - 31 January 2013), 31.1.2013. See also par. 49 UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece, 18.4.2013, A/HRC/23/46/Add.4, <http://www.refworld.org/docid/51b983ab4.html> par. 50.

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Are families accommodated in separate facilities?	No families are detained in KKFAs; in detention areas outside KKFAs, despite the fact that Article 32, par. 2, Law 3907/2011 stipulates that "special accommodation is provided to families detained pending their removal, ensuring sufficient privacy", mothers with minors are detained, separated from the men (see answer below).
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	No. There is no relevant law provision and Hellenic Police officials' answer in this respect for the purposes of this study was negative.
Are single women separated from single men?	Yes. Husbands and wives are also separated when both detained.
Are unaccompanied minors separated from adults?	Efforts are made (see Amygdaleza) but this is not always possible. See answer to question 2 in Section 2 (identifying minors etc).
Do detainees have access to outdoor space? If yes, how often?	Yes. As we were informed by the Head of the Expulsion Division of the Sub-directorate in Attica, access to outdoor space is offered twice a day (in KKFAs). In other spaces, efforts are made for access once a day.
Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?	Yes, once a day detainees may receive the visit of family and friends. Lawyers may visit their clients any time. However, according to the Greek Ombudsman, unhindered access, communication and co-operation of the NGOs offering legal aid to third-country nationals provisionally detained is not always possible, meaning that it is difficult to inform detainees regarding the asylum process, provide legal aid, detect vulnerable cases (e.g. minors registered as adults, victims of torture etc) <sup>27</sup> .
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?	In addition to card phones, detainees may use their cell phones and have access to the internet in the KKFAs of Corinthos, Xanthi and Paranesti; use of cell phones is excluded in the KKFAs of Amygdaleza and Komotini, where communication is supported by card phones.
Are education programmes provided (e.g. school courses for minors and language classes for adults)?	Yes, there are certain educational activities in Amygdaleza, mainly sports and computers.

<sup>27</sup> Page 4, Greek Ombudsman document dated 29.5.2013 available at: <http://www.synigoros.gr/?i=human-rights.el.maziki-kratisi-allodapon.118221> and Newsletter 12/2013 of the Greek Council for Refugees, available at: <http://www.gcr.gr/index.php/en/news/newsletter/item/333-newsletter-12-2013>

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	A big challenge is to confirm minor age. Although there is a special provision, minors held in the five KKFA's have been registered as adults (see answer to question 2, Section 2).
Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?	In certain KKFA's, detainees may play football and basketball during yarding time. There is a ping-pong table at the Centre for Minors (Amygdaleza).
Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?	No. They are Restricted Detention Facilities. In the KKFA in Amygdaleza, where detainees are housed in containers, detainees may have access to outdoor areas during yarding time once or twice a day. In the KKFA's in Corinthos and Paranesti, accommodated in former army camp sleeping quarters, detainees are restricted to their rooms in the night and move freely around the quarters, inside corridors etc in the daytime. The same applies for KKFA's in Xanthi and Komotini, where detainees are housed in former police academies.
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	Free legal aid is offered only by NGOs that fail to meet the needs of the large number of detainees due to their limited finances. As we were informed by the Head of the Expulsion Division of Attica Sub-directorate, a relevant agreement with Bar Associations is anticipated to soon enter into force.
Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?	Yes, there is language support for serving detainees rulings and for their day-to-day communication, when there is no interruption to sponsorships (contracts with NGOs are annual and there are idle periods of two to three months). Language support is free of charge. Translated documents in third country nationals' languages are also available (IOM booklets on returns), as the Head of the Expulsion Division of the Attica Sub-directorate informed us. The situation was different in 2012, according to a Report by the UN Special Rapporteur that confirmed "minimum or non-existent" presence of interpreters/translators <sup>28</sup> .
Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?	Since February 2014, responsibility for the provision of medical services has passed to EKEPY (National Centre for Health Operations of the Ministry of Health). Until then, there was consistent presence of physicians of NGO Medical Intervention (MedIn)

<sup>28</sup> Par. 54 UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Addendum: Mission to Greece, 18.4.2013, A/HRC/23/46/Add.4, <http://www.refworld.org/docid/51b983ab4.html>

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	at the KKFA in Amygdaleza certain hours of the day; missions by the NGOs Doctors without Borders and Medecins du Monde were organised for the other KKFAs. Medical reports speak about severe contagious diseases such as HIV, hepatitis, tuberculosis, scabies etc <sup>29</sup> . In case of severe incidents, detainees are transferred to public hospitals.
Are there special arrangements for persons belonging to vulnerable groups? Please describe	See answer to question 2, Section 2.
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe	Not explicitly. Access to a public hospital and then to a Psychiatric clinic if necessary is provided for.

<sup>29</sup> See Report by the organisation Medecins sans Frontieres dated 1.4.2014, available at <http://www.msf.gr/publications/anafora-drasis-sta-kentra-kratisis-metanaston> and the Observations dated 20.8.2013 by the Head of the Office of the UN High Commissioner for Refugees in Greece, regarding the administrative detention of third-country nationals in Greece, including asylum-seekers, available at: <http://www.unhcr.gr/nea/artikel/2793ecbd10b3df365cbd7384ab67661a/epismanseis-scheti.html>

"Recent reports by the UN Working Group on Arbitrary Detention, the UN Special Rapporteur for Immigrants' Human Rights and the Commission of the Council of Europe on Migration, Refugees and Displaced people that visited police department detention cells and organised detention centres in the period of December 2012 to January 2013 (including among others Evros border station, Amygdaleza, Corinthos and Komotini) speak about inappropriate detention conditions or conditions that fall far below international human rights standards. Detention conditions other than facilities also include all those necessary supporting structures and services that will safeguard dignified living, appropriate hygiene conditions, access to medical care, sufficient and appropriate food and clothing, mattresses and linen, regular access to outdoor spaces, possibility to communicate with their family and lawyer, interpretation into a language that he or she understands, information about rights and obligations, social and psychological support (particularly in case of vulnerable groups) and a series of other self-evident needs that unfortunately are not guaranteed. Following a relevant inquiry, the tragic incident of the death of a patient held at the pre-removal centre of Corinthos that seemed not to receive adequate medical care in sufficient time may be an indication of the dire situation.

See also statement by the Chair of the Greek Federation of Police Employees dated 26.11.2012 after his visit at the KKFA in Komotini, who among other reported that "we are looking to resolve the problems created by the insurgency, including remove illegal immigrants from this space, as health and safety conditions for their accommodation are not met", available at: NAFTEMBORIKI, "Komotini: arrests for the insurgency continue on", 26.11.2012, <http://www.naftemporiki.gr/story/356512>

**Section 5: Availability and practical organisation of alternatives to detention****(Maximum 6 pages)**

This section explores the availability of different types of alternatives to detention for different categories of third-country national. It further explores the practical organisation of the alternatives to detention, including information on the authorities/organisations responsible for administering the alternatives; the conditions that must be met by the third-country national who has been provided an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions. EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.

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

Alternatives to detention are not applied, although provided for by the law. More precisely, article 30 par. 1, Law 3907/2011 stipulates that third-country nationals who are the subject of return procedures are placed in detention in order to prepare their return and to carry out the removal process only if, in each specific case, no other sufficient but less coercive measures can be applied effectively, such as those stipulated in article 22 paragraph 3 (regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or obligation to stay at a certain place).

<b>Alternatives to detention</b>	<b>Yes/ No (If yes, please provide a short description)</b>
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	No.  Third-country nationals released after a court ruling –where expulsion is impossible (e.g. Syria nationals) and they do not pose a threat– are required to report to the police department of their place of residence on the first and fifteenth of each month. There are however no relevant statistics.  Example: Third-country nationals that are obliged to report must regularly report to a supervision authority once a week. The national is called to produce identity proof and sign a report. The third-country national may reside at their own address or be accommodated at an open reception centre. Failure to comply with reporting obligations incurs detention.
Obligation to surrender a passport or a travel document	No. <i>This would be a criminal offence.</i>
Residence requirements (e.g. residing at a particular address)	No
Release on bail (with or without sureties)  <i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or</i>	No

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<i>community group)</i>	
Electronic monitoring (e.g. tagging)	No
Guarantor requirements <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	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.	-

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

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

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

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

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

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

The challenge focuses exclusively on the fact that alternatives to detention are not applied.

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

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### **Section 6: Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention (Maximum 5 pages)**

This section explores the type of assessments made by the competent authorities when considering whether to place a third-country national in an alternative to detention. It includes a number of questions which explore the timing of this assessment – in particular whether the assessment is conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have completed a period in detention. It also includes questions about the practical implementation of the assessment procedure, in particular whether an individual assessment is conducted, what this involves and which organisations are involved in the assessment procedure.

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

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

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

No

Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used.

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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?

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

Law 3907/2011 does not specify.

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

No

## **Section 7: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures (Maximum 5 pages)**

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

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

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

### **7.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions**

#### **7.1.1. Effectiveness in reaching decisions on applications for international protection**

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

No

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

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Q2. Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

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

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

There is no information. For applicants for international protection falling into the scope of PD 114/2010, the Hellenic Police records no information and the Asylum Service has been reviewing requests for asylum only since 7.6.2013, thus there are no statistics for detained asylum-seekers that fall into two different systems. As already pointed out, alternatives to detention are not applied.

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

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time in determining the status of an applicant for international protection					

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

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

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

- The length of time from apprehending an irregular migrant to issuing a return decision? Yes/No
- The length of time that transpires from issuing a return decision to the execution of the return? Yes/No
- The share of voluntary returns out of the total number of returns? Yes/No
- The total number of removals completed? Yes/No

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

There are no relevant studies for any of the questions above. We also remind that alternatives to detention are not applied. Among the information provided by the Hellenic Police, we note the following:

- From 1.8.2012 to 28.2.2014 4.665 people were expelled from Attica; in the same period arrests were 25,000;

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- The rate of consular offices' positive response to issuing travel documents within the time-limit of detention (18 months) is estimated at 22-23%;
- It is estimated that 85% of detainees that request repatriation return to their countries of origin within three months.

*Q5. Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) 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.*

There is no information, because the Hellenic Police fails to record relevant data on the one hand, and no alternatives to detention are applied on the other.

*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.*

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>			
		<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>Average length of time from apprehending an irregular migrant to issuing a return decision</i>					
<i>Average length of time from issuing a return decision to the execution of the return</i>					
<i>Number of voluntary returns (persons who opted to return voluntarily)</i>					
<i>Success rate in number of departures</i>					

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

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

No

Q8. Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

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

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

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

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Total costs					
Staffing costs					
Medical costs					
Food and accommodation costs					
Legal assistance					
Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify					

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

Assessment would not be possible, considering that no alternatives to detention are applied.

**7.3. Respect for fundamental rights**

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

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No

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.

"Not applicable" because no alternatives to detention are applied.

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Number of complaints of violations of fundamental rights <b>lodged</b> with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).					
Number of complaints of violations of fundamental rights <b>upheld</b> by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).					
Number of court cases in which there have been <b>challenges</b> to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of					

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

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

No

Q13. Please provide any other evidence that may be available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

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#### **7.4. Rate of absconding and compliance rate**

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

Compliance rate is the share of persons who have complied with the alternative to detention.

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

No

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

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

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

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

"Not applicable" because no alternatives to detention are applied.



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<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>			
		<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>Rate of absconding</i>					
<i>Compliance rate</i>					

Q16. Please provide any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention.

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**Section 8: Conclusions (Maximum 2 pages)**

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

This study was intended to make a comparative research on the application of the measure of administrative detention and the use of alternatives to detention in the context of European Union Member State immigration policies.

The Greek contribution contains the mapping of the legal framework on detention and alternatives, but as regards measures of enforcement, the study contains itself to examining administrative detention, considering that, at least for now, the alternatives provided for by the law have not been implemented.

The biggest challenges that emerge are that: first, alternatives to detention are not applied, thus it was not possible to make a comparative analysis between the enforcement of detention as a last resort of liberty deprivation and less coercive steps, i.e. alternatives to detention; second, that the Hellenic Police's computer systems do not support extraction of statistics, particularly as regards the overall image of the aliens detained per category of reasons for detention. Although certain cases have been recorded in individual electronic folders, where third-country nationals whose expulsion is impossible (e.g. Syria) are called to regularly report to the authorities, the relevant data are not kept in computers and cannot be considered in relation to the measure of detention for the respective groups.

As regards the legislative framework –i.e. the transposition of relevant EU Directives in the Greek legal order- Law 3907/2011 that established the Asylum Service and First Reception Service was the one also to align Greek laws with the Directive on the Return of illegally staying third-country nationals, i.e. stipulating the common standards EU Member States must meet in return and removal procedures. The Greek law-maker chose to adopt the maximum limit of detention provided for by the Directive, i.e. 18 months of overall detention (under P.D. 113/2013).

After Law 3907/2011 was introduced, maximum period of detention of asylum-seekers that recently was three months before being extended to six months rose to eighteen (18) months by P.D. 116/2010 that amended the relevant provision of P.D. 114/2010. At the moment, asylum-seeker detention is governed by the relevant provisions of P.D. 114/2010 for those that had applied for asylum before 7.6.2013 (when the Asylum Service was launched) and by P.D. 113/2013 for those detainees applying after 7.6.2013. Although the provisions of both PDs concerning detention (Article 13, PD 114/2010 and Article 12, PD 113/2013) are identical, the procedures for examining applications differ considerably, both in the first and second instance, considering that they require different review authorities. Particularly important is the fact that although the aforementioned provisions in PDs 114/2010 and 113/2013 stipulate that “an alien or stateless person who applies for international protection shall not be held in detention for the sole reason that he/she has entered and stays illegally in the country”, because of the hindrances to the access to the asylum procedure, asylum-seekers, without this being their fault, end up being in the disadvantaged position provided for in the provisions above, i.e. that “an alien or a stateless person who submits an application for international protection while in detention shall remain in detention”, under certain conditions<sup>30</sup>.

The procedure followed according to the applicable legal framework and practice is that all aliens arrested without a residence permit shall be placed in detention until their identification. Thereafter, some are released (because

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<sup>30</sup> See joint press release by NGOs AITIMA, ARSIS, NETWORK FOR THE SOCIAL SUPPORT OF REFUGEES AND IMMIGRANTS, GREEK COUNCIL FOR REFUGEES, GREEK FORUM FOR REFUGEES, CENTRE FOR SUPPORT TO REPATRIATED AND IMMIGRANTS – ECUMENICAL REFUGEE PROGRAMME, GROUP OF LAWYERS FOR REFUGEES AND IMMIGRANTS RIGHTS, PRAKSIS, INITIATIVE FOR THE RIGHTS OF DETAINEES of December 19<sup>th</sup>, 2013 “First conclusions from running the New Asylum Service”, available at: <http://asylum-campaign.blogspot.gr/search?updated-min=2013-01-01T00:00:00%2B02:00&updated-max=2014-01-01T00:00:00%2B02:00&max-results=5>

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they originate in countries with wars or other humanitarian crises) and the rest remain in Detention Centres for a period that usually adheres to the maximum lawful limit, extended or not by means of court rulings. The court confirms whether or not detention is legitimate, reviews its extension every three months [under Article 30 (3)], and provides for the possibility to revoke rulings in case of imminent deportation.

Identification and review by the country following objection as per the above is according to the Hellenic Police the individual assessment provided for the by law. On the other hand, variations to the legal framework as to vulnerable groups (e.g. unaccompanied minors, families) or beneficiaries of international protection are taken into account. However, the decision on the necessity of detention is often not "sufficiently reasoned", (see relevant reports by the Citizen Ombudsman) but relevant documents make a general reference to reasons of "risk" in most cases.

As regards alternatives, it does not seem that the possibility of imposing alternatives is investigated, neither does the computer system in detention centres allow for separately registering individual categories of detainees, average detainees and percentage of those eventually removed. Information kept concerns each individual and cannot be horizontally grouped for each group, for reasons of detention or for citizenship. An important step is that a comprehensive programme to register personal information and status of aliens managed by each police division and detention centre is now under way by the IT department of the Head Offices of the Hellenic Police.

Thus, Article 30, par. 1, Law 3907/2011 that provides for alternatives to detention is not applied systematically and there are no cumulative statistics that would point to a number of third-country nationals for whom such alternatives have been applied in the past five years. According to the Greek authorities (Petrou Ralli) the measure of granting a deadline for voluntary departure applicable for those not considered a threat to public order, could be considered an alternative to detention; so could regularly reporting before a police department for nationals coming from specific countries (Syria, Somalia, Ethiopia) that face humanitarian crises, conflicts etc, following a court ruling (in response to objections). This of course is not provided for by law, which demands such restrictive measures to be implemented before detention and not after a relevant court ruling for release. Even in cases where this is applied right after identification, current Hellenic Police computer systems keep no cumulative data thereon; thus, it is impossible to draw any conclusions as to the efficacy of the system of alternatives to detention in the past five years.

Summing-up the most important outcomes and recommendations of the study, we should initially note that the Hellenic Police, which is authority responsible for detention, upkeeps a computer system that is not supported on a country-wide level. The good practices of certain Detention Centres (e.g. Petrou Ralli) by specifically registering (individually) third-country nationals arrested, detained until identification, transferred to other Detention Centres and eventually deported are a pilot system. Considering however that this system is not automatically updated and provides no categorised cumulative data for third-country nationals, it should definitely be upgraded and extended. Until that moment, we are faced with a serious lack of drawing safe conclusions as to the overall number of aliens detained, the efficacy of the system or the cost of detention as compared to alternatives.

Therefore, it is be very important to immediately upgrade the relevant system, to enable better mapping of the situation and the efforts made in the past two years that have not been outlined in relevant Studies, neither by the Citizen Ombudsman, nor by international inquiry committees and NGOs present in detention areas. A second recommendation would be to imminently introduce a system for applying systematically alternatives to detention provided for by law, which would decongest detention areas and would make the work of the Greek authorities, particularly the Hellenic Police, much easier.

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Statistics from EU-harmonised sources, such as Eurostat and the EMN Annual Policy Report, on inter alia the outcome of international protection applications and return, including voluntary return will be used in the Synthesis Report to contextualise the statistics provided in this annex.

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

**Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year).**

	2009	2010	2011	2012	2013	Source / further information
<b>Statistics on number of third-country nationals in detention per category</b>						
Total number of third-country nationals in detention						
Number of third-country national applicants for international protection in ordinary procedures in detention						
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention						
Number of applicants for international protection subject to Dublin procedures in detention						
Number of rejected applicants for international protection in detention						
Number of rejected family reunification applicants in detention						
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)						
Number of persons detained to prevent illegal entry at borders in detention						
Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a return decision in detention						
Number of persons who have been issued a return decision in detention						

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Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category						
Number of other third-country nationals placed in immigration detention						
<b>Statistics on number of third-country nationals provided alternatives to detention</b>						
Total number of third-country nationals provided alternatives to detention						
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention						
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention						
Number of international protection applicants subject to Dublin procedures provided alternatives to detention						
Number of rejected applicants for international protection provided alternatives to detention						
Number of rejected applicants for family reunification provided alternatives to detention						
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)						
Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention						
Number of persons issued a return decision provided alternatives to detention						
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category provided alternatives to detention						

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Number of other third-country nationals provided alternatives to detention (Please specify the category(ies))						
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**Table 2: Average length of time in detention**

Please provide information on the methodology used to calculate the average length of time in detention, including whether the mean or the median was used to calculate the average.

<b>Average length of time in detention</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Source / further information</b>
Average length of time in detention of all categories of third-country nationals in detention						
Average length of time in detention of applicants for international protection in ordinary procedures						
Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures)						
Average length of time in detention of applicants for international protection subject to Dublin procedures						
Average length of time in detention of rejected applicants for international protection						
Average length of time in detention of rejected family reunification applicants						
Average length of time in detention of other rejected applicants for residence permits on basis other than family reunification (Please specify)						
Average length of time in detention of persons detained to prevent illegal entry						
Average length of time in detention of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied						

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for international protection and are not (yet) been issued a return decision)						
Average length of time in detention of persons who have been issued a return decision						
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category						
Average length of time in detention of other third-country nationals placed in immigration detention						

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