



**AD HOC QUERY ON 2020.69 The legal and organizational solutions providing a temporary place to stay for a juvenile foreigner until transfer to border guard detention center**

**Requested by Joanna SOSNOWSKA on 18 November 2020**

**Compilation produced on 25 January 2021**

**Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (25 in Total)**

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**1. Background information**

Due to the growing cases of illegal crossing of the state border to Poland, the Polish Border Guard units have recently encountered the problem of proper placement of TCN minors who stays under the care of their parents (or other legal guardians), who have been detained. In connection with the above, this emerges a need to provide such a category of persons with appropriate housing conditions in which they could safely wait in

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a proper environment to be placed in a guarded center for foreigners (after the court decision). At this point, Poland does not have sufficient legal solutions provided for such a matter.

Consequently to the above, we are intending to introduce adequate organizational and legal measures, to address this problem with the right approach. In order to work out the best solutions, we would like to compare how the other Member States dealt with the problem presented, especially in the legal and organizational context.

## **2. Questions**

- 1. Does the Member States provides such temporary places for TCNs who are minors with their legal guardians to stay until transfer to detention center? Yes or No?**
- 2. If no – please clarify where such TCNs are being placed ?**
- 3. If yes – In case of stopping foreigners directly after illegal border crossing, at what place juvenile or minor foreigners stays with their legal guardians, until they are transferred to detention center for a foreigners (to secure administrative procedures)?**
- 4. If yes - Could you please describe how is it organized with details? What measures do you use to prevent them from absconding, and simultaneously to provide them an appropriate environment (adjusted for minors and their parents)?**
- 5. If yes - Please share a details about legal solutions applies to address this issue.**

We would very much appreciate your responses by **18 December 2020**.

## **3. Responses**



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

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. No</p> <p>2. Families with minors: when intercepted at the border by the Belgian border police, the Immigration Office might take a decision of refusal of entry with order to turn back, and can also decide to detain the family in a community based family unit (FITT-unit). In Belgium families are not detained in a closed detention center (In the government agreement of 30 September 2020 is written that minors won't be detained in a closed detention center.) This decision will be taken very quickly (within hours) after the interception. The decision is motivated in fact and in law and can be challenged before the court. The family can leave the FITT-unit under strict regulations. But from a legal point of view the family is however detained (at the border).</p> <p>Unaccompanied minors (UAM): in Belgium UAMs are not detained in closed detention facilities, nor the FITT units are in use for UAM. They can go to an observation and orientation centre for UAMs. There they can stay up to 15 days as part of the border procedure. In this period the</p>

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

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			<p>Immigration Office, the UAM and his guardian will look into a durable solution for the minor.</p> <p>3. Not applicable</p> <p>4. Not applicable</p> <p>5. Not applicable</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. N/A</p> <p>3.</p> <p>Illegal crossing of the state border of the Republic of Bulgaria is a crime under the Criminal Code of the Republic of Bulgaria. In case of detention of third-country nationals who have violated the regime of entry into the Republic of Bulgaria, actions are taken in accordance with the Bulgarian legislation as the Directorate General “Border Police” detains third-country nationals only within the period of 24 hours set by the Law on the Ministry of Interior, in strictly compliance with the rights of detainees, regulated by the Constitution of the Republic of Bulgaria, the 1951 Convention relating to the Status of Refugees, the 1967 New York Protocol and the European Convention on Human Rights and Fundamental Freedoms.</p> <p>Third-country nationals detained at the border, including minors and their parents or legal guardians, are taken to the administrative area of the relevant Border Police Department, where all detainees are issued a police detention order for a period of 24 hours.</p>



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			<p>According to the Bulgarian legislation, third-country nationals are accommodated in accommodation premises for detained persons. These premises are built and equipped according to the requirements of the regulatory framework. In these premises there are special places for detention of minors and juveniles, corresponding to a number of additional services. Families with minors are accommodated separately from the others, and if possible they are accommodated in the premises for minors and juveniles.</p> <p>4.</p> <p>With regard to families with minors and juveniles detained by the Border police, the principle of preserving the family integrity is applied. This category of third-country nationals is treated with priority over the others and immediately after the completion of the administrative procedures and procedural actions, the family is handed over to the respective national competent authorities before the expiry of the 24-hour police measure.</p> <p>5.</p> <p>In cases when the parents or the legal guardians do not apply for protection to the Directorate General “Border Police”, the families are handed over to the Migration Directorate - MoI for accommodation in the Special homes for temporary accommodation of foreigners (SHTAF).</p> <p>When the parents or the legal guardians apply for protection to the Directorate General “Border Police”, the whole family is handed over to the State Agency for Refugees with the Council of Ministers for consideration of their applications for international protection under the Law on Asylum and Refugees in the Republic of Bulgaria.</p>
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	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. No. Croatia does not provide temporary places for accompanied TCNs minors and/or their families.</p> <p>2. Minors and their families must be transfer to detention center within of 24 hours from apprehension or released. During these 24 hours, they are placed in holding facilities in police stations.</p> <p>Minor third-country nationals and members of their family:</p> <ul style="list-style-type: none"> <li>• may be accommodated at the Centre only if forced removal cannot be provided for in some other way, and that is for the shortest time required.</li> <li>• shall be accommodated at the Centre separately from other third-country nationals.</li> <li>• shall be accommodated in a separate room at the Centre thus providing them with appropriate privacy.</li> </ul> <p>Case file on the accommodation have to be immediately submit to the administrative court ex officio. The court shall, within 5 days, adopt a decision cancelling or confirming the decision on the accommodation.</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	<p>EMN REG Practitioners Cyprus</p>	<p>Yes</p>	<p>1. Cyprus Republic does not provide temporary places for accompanied TCNs minors or</p>


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			<p>their families who have entered the Republic irregularly, unless they are international protection applicants. Also, the Republic does not detain both parents or guardians of underage children in order to ensure that minors remain with at least with one of their guardians/parents. Last, minors are never detained to detention centers.</p> <p>2. In case families whose residence in the Cyprus Republic is no longer legal such as in the case of expired residence permits and have not repatriated and are not asylum seekers, minors remain with their guardians in their current residence until their repatriation.</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. No.</p> <p>2. The minor is accompanied by his/her legal guardian all the time needed for necessary procedures. After the necessary steps are taken they are or place into the specialised detention centre for minors and families either released.</p> <p>3. See reply on Q 1.</p>

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			<p>4. See reply on Q 1.</p> <p>5. See reply on Q 1.</p>
	<p>EMN REG Practitioners Estonia</p>	<p>Yes</p>	<p>1. Yes.</p> <p>2. N/A</p> <p>3. The Police- and Border Guard Board (The PBGB) has made some pre-contracts with hotels/hostels locating in the larger municipalities, just to be able to provide accommodation in thus cases for families with children.</p> <p>4. The families will be transferred by the PBGB to the determined place of stay and in order to prevent person's risk of absconding, they are required to comply with surveillance measures set by the PBGB. Most commonly used surveillance measures in these cases are:</p> <ul style="list-style-type: none"> <li>• residing in a determined place of residence;</li> <li>• appearing for registration at the PBGB at prescribed intervals and</li> <li>• depositing of a travel document of a foreign country or an identity document of a third country national to the PBGB.</li> </ul> <p>5.</p>




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			<p>In <a href="#">Estonia the Obligation to Leave the Prohibition on Entry Act</a> provides the basis and procedures regarding obligations to leave, prohibition of entry and the regime for passage through Estonia. According to this Act (§ 132) - if an alien who is staying in Estonia without a basis for the stay in Estonia has no sufficient finances, the Police and Border Guard Board or the Estonian Internal Security Service may organise accommodation of the alien if this is necessary for humanitarian considerations or for the protection of a vulnerable person and if the alien cannot use accommodation elsewhere. The surveillance measures are stipulated by the same Act § 10.</p>
	EMN REG Practitioners Finland	Yes	<p>1. No.</p> <p>2. The Finnish Alien's Act 121 § permits detainment of an alien only if other restrictive measures has been ascertained to be insufficient. The section 121 applies when a child is detained with his or her guardian. Additional provisions to ensure the welfare of a child are provided in the section 122 of the Finnish Alien's Act.</p> <p>Finnish Alien's Act 122 § permits detainment of a child only if all other restrictive measures has been ascertained to be insufficient and detention declared as a last resort.</p> <p>In addition this the child has been heard and a social worker in a public-service employment relationship who has been appointed by the body responsible for social services has been reserved an opportunity to be heard.</p> <p>Alien's Act further stipulates, that in the case of a child held in detention with the person who has custody of him or her, a further condition is that the detention is essential for maintaining the family contact between the child and the person who has custody of him or her.</p> <p>An unaccompanied child under 15 years of age may not be detained. An unaccompanied child aged 15 years or more who is applying for international protection may not be detained before a decision on his or her removal from the country has become enforceable.</p> <p>A detained unaccompanied child shall be released no later than 72 hours after the start of the</p>


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			<p>detention. For special reasons the detention may be extended by up to 72 hours. The decision of detainment is made by police officer of commanding rank or by Border guard at least the rank of lieutenant. Alien's Act 123a § stipulates on the placement of detained aliens. Subsection 4 off the 123a § states: If the detained alien is a child, he or she may not be placed in police or Border Guard custody facilities but shall always be placed in a detention unit. In the case that the welfare of the child so requires, the child can be placed into a family or institutional care with a decisions made by municipal officeholder appointed by the municipal body responsible for social services who is professionally qualified as a social worker. (Child Welfare Act (417/2002))</p> <p>The referred sections and links to the corresponding legislation are listed in the attachment. relevant_sections_of_alien_act.docx</p> <p>3.</p> <p>4.</p> <p>5.</p>
	<p>EMN REG Practitioners France</p>	<p>Yes</p>	<p>1. France does not have such structure. Indeed persons placed in waiting zones after their irregular entry in France are not concerned in a second step by retention centers. They are either returned to the country of origin or they are freed and authorized to enter France.</p> <p>2. In the event that foreigners accompanied by under-age children are refused entry at the border, the family will be kept in a waiting area in spaces dedicated to families. In the process of drawing up a removal order, which may indirectly concern a minor, the best interests of the child are taken into account by the competent administrative authority when issuing a decision to refuse entry to one of his or her parents, under the supervision of the administrative judge.</p>


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			<p>The only case when people are put in retention centers after being placed in waiting zones are those who are held in police custody (which corresponds to their admission to the French territory), who then receive an order to leave the territory and then are placed in retention centers pending the execution of the removal order.</p> <p>Once the removal measure has been taken, the legislator gives greater priority to the assignment of families because of the very restrictive conditions for placement in administrative detention. Indeed, families can only be placed in administrative detention in the event of non-compliance with the house arrest, escape during the execution of the removal order or for a very short time before departure.</p> <p>3. n/a</p> <p>4. n/a</p> <p>5. n/a</p>
	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. No</p> <p>2. Minors and their family members are placed together in detention centers but in separate sectors in relation to other detainees.</p> <p>3. N/a</p> <p>4. N/a</p> <p>5. N/a</p>


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	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. In Hungary, families with minor children subject to custody ordered in aliens policing procedure shall be accommodated in detention centre operated by the police. Custody of such families can only be ordered for the shortest possible duration, by taking into account the best interest of the child, for a maximum of 30 days.</p> <p>Upon the admission of vulnerable families, one must proceed by taking into account the interest of the minor as a priority. Under Article 61 (2) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, while carrying out the custody, males shall be isolated from females (except for spouses), and families with minor children shall be separated from others in custody, ensuring the protection of privacy.</p> <p>Those in custody are free to use community and dining areas outside sections used for the isolated accommodation of persons in custody and the yard established for being in open air together, independent from their gender, and may jointly take part in community programs organized. For them, three meals a day – five meals for minors – shall be provided.</p> <p>In order to ensure conditions for family coexistence, families with children shall be provided with a separated living area, and minors living in such families shall be ensured conditions and equipment necessary for educational and leisure activities corresponding their age and maturity, especially a playroom. For the sake of occupying children and ensure their development, a child educationist or a specially educated social care professional shall deal with minors individually.</p> <p>3</p> <p>In Hungary, the detention centre for families with minor children subject to aliens policing custody may accommodate up to 27 persons, and in order to engage children it is equipped with 110 pieces of toys and other equipment marked 0+, 3+, 4+, 6+, 7+ and 8+. Some of these can be found in the community room and the activity room, some in the living area, furthermore, a playroom and a wellequipped outdoor playground with a sandpit, slide and a game station are also available.</p> <p>Families with minor children may therefore be accommodated in a detention centre, however, their</p>
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			<p>aliens policing custody can only be ordered as a final action. As an alternative to aliens policing custody, the aliens policing authority may order families to reside in a designated place for the duration of the aliens policing proceeding.</p> <p>2. See above.</p> <p>3. See above.</p> <p>4. See above.</p> <p>5. See above.</p>
	<p>EMN NCP Ireland</p>	<p>Yes</p>	<p>1. No.</p> <p>2. Ireland does not operate immigrant detention centres. In the context of return, individuals subject to a deportation order may be detained pending removal in places of detention as defined in regulations under the Immigration Act 1999. This includes certain prisons. Minors are never detained. In situations where parents/guardians are detained pending deportation, minors will be placed in the statutory care of Tusla, the Child and Family Agency, and the family will be reunited at the airport on removal.</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>


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	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. Not specifically. In general, with regard to foreign minors – both accompanied and unaccompanied - Italian legislation and practise avoid the use of dangerous measures such as refusal at the border and administrative detention. Detention is not an expulsion but a form of execution of the expulsion. At present, it is not possible to detain minors because there are no detention centers for families or vulnerable categories such as minors.</p> <p>2. In case of expulsion of the parents or fosters, the minor with his parents or foster remains in the reception centers (not a detention center) until the execution of the expulsion order. However, it may be necessary to point out that - according to the Italian law (art. 19 of law 286/1998) - in general, minors shall not be expelled, except in cases of danger to public order and security. While for unaccompanied minors the ban of expulsion is absolute, <u>for those accompanied the law provides the right to follow their parents or foster also if subjected to an expulsion decision</u> Even in cases of minor's expulsion, the order has to be issued by the Juvenile Court (upon request of Commissioner) which carefully values the absence of a danger of serious damages for the minor and ensure the compatibility of the return measures with the particular conditions of the case (art. 19 c. 2 bis and art. 31 comma 4 of law 286/1998).</p> <p>3.</p> <p>4.</p> <p>5.</p>
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	EMN NCP Latvia	Yes	<p>1. No.</p> <p>2. There are 2 Detained Foreigners Accommodation centers in Latvia, where can be placed foreigners detained in accordance with Immigration law and asylum seekers detained in accordance with Asylum law. In accordance with Immigration law the State Border Guard has the right to take a decision on detention of a foreigner, who has reached the age of 14 years and who does not comply with entry, stay, transit and exit conditions in case if there are grounds to believe that he or she will avoid the removal procedure or will impede the preparation thereof, or there is a risk of absconding of the foreigner, and it is substantiated by any of the circumstances mentioned in Article 51 (2) of Immigration law. Upon the decision taken by the State Border Guard a foreigner is detained for a period not exceeding 10 days and on the ground of this decision is accommodated in Detained Foreigners Accommodation Center. The detention of a foreigner can be prolonged for more than 10 days only upon Court decision. The Court can take a decision on detention of a foreigner for a time period of up to two months or refuse a detention.</p> <p>In case if accompanied minor is not detained, but his/her family member/s or legal guardian is detained at the request of the detained family member or legal guardian in order to preserve family unity, they may be placed together at the Detained Foreigners Accommodation Center. If such request is not submitted the minor will stay with relatives legally staying on the territory of Latvia or will be placed in child care facilities.</p> <p>There are no temporary facilities established in Latvia for foreigners waiting for their transfer to the Detained Foreigners Accommodation center. The State Border Guard immediately after initial procedural activities and decisions on detention taking transfer persons to the Detained Foreigners Accommodation center.</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p>
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	<p>EMN REG Practitioners Lithuania</p>	<p>Yes</p>	<p>1. Third-country nationals who have crossed the state border of Lithuania illegally are detained by the decision of SBGS officers for up to 48 hours. The third-country nationals are accommodated in the premises for detainees at the SBGS frontier stations. Third-country nationals can be detained for a period exceeding 48 hours by the court decision. In such cases third-country nationals are accommodated in Foreigners' Registration Centre under the SBGS. Their minor children are accommodated together with their family members by the decision of the court.</p> <p>2. For 48 hours the third-country nationals are accommodated in the premises for detainees at the SBGS frontier stations.</p> <p>3.</p> <p>4.</p> <p>5.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. No.</p> <p>2. Luxembourg does not have external borders with the exception of the Luxembourg International Airport. In case, that there is a detection at the Airport of a family that has to be returned, the Police officer in charge will contact the Return Department of the Directorate of Immigration in order to take a decision. If the return is possible to be carried out the same day they will be held in the airport. If the return can be carried out in the next days, the family can be placed in the Detention Center for up to a maximum duration of seven days (article 6 of the amended law of 28 May 2009 on the creation of the Detention</p>





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			<p>Center). It is important to mention that the Detention Center is close to the Airport and that Luxembourg protects family unity in this type of cases.</p> <p>3. N/A.</p> <p>4. N/A.</p> <p>5. N/A.</p>
	EMN NCP Netherlands	Yes	<p>1. No.</p> <p>2. In the Netherlands border detention of families with children is not allowed. All families with children who are encountered at the border are send to an open reception center. Border detention is only possible if there is doubt about the family ties. In this event the family will be placed in a special closed family location during the investigation. In cases where there is extreme doubt or other suspicions the adult is placed in a closed center and the child with a foster family.</p> <p>3. n/a</p> <p>4. n/a</p> <p>5. n/a</p>
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			<p>children who are encountered at the border are send to an open reception center. Border detention is only possible if there is doubt about the family ties. In this event the family will be placed in a special closed family location during the investigation. In cases where there is extreme doubt or other suspicions the adult is placed in a closed center and the child with a foster family.</p> <p>3. n.a.</p> <p>4. n.a.</p> <p>5. n.a.</p>
	EMN NCP Poland	Yes	<p>1. No</p> <p>2. Until the decision of the court, the minor TCNs with their legal guardians are accommodated in the premises for detainees at the Polish BG stations (no longer than 48 hours). After that time either they are placed in a Polish Border Guard detention center or released.</p> <p>3. Not applicable</p> <p>4. Not applicable</p> <p>5. Not applicable</p>
	EMN NCP Portugal	Yes	<p>1. No</p>


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			<p>2. Minors and family members in the context of return procedures, before the removal takes place, are either placed in detention centres or remain in their usual residence (they may have measures to prevent absconding , including periodic presentations).</p> <p>3.</p> <p>4.</p> <p>5.</p>
	EMN REG Practitioners Slovakia	No	
	EMN NCP Slovenia	Yes	<p>1. No.</p> <p>2. This category of TCNs are in procedure at the police stations and transferred to the detention centre immediately afterwards.</p> <p>3. N/a.</p> <p>4. N/a.</p> <p>5. N/a.</p>



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	<p>EMN REG Practitioners Slovenia</p>	<p>Yes</p>	<p>1. NO.</p> <p>2. The procedures of the Police in Slovenia when it comes to irregular border crossings involving families are the following. Immediately after their apprehension, the first registration of the migrants will be performed including their identification and vulnerability assessments (in case of unaccompanied minors they will be appointed with a guardian). After the registration there are different options as regards next procedures. The family could be:</p> <ol style="list-style-type: none"> <li>1. Transferred to the Asylum Home if they apply for international protection during their registration;</li> <li>2. Granted a time for vulnerable departure;</li> <li>3. Transferred to the detention facility (Centre for Foreigners) if the third country nationals would not apply for international protection. In this case they would be issued with return decisions (the detention has been ordered by administrative authority – Police);</li> <li>4. Handed over to the authorities of the neighbouring country from where they entered Slovenia in line with bilateral agreements;</li> </ol> <p>When a family is accommodated in the Asylum Home or in the Centre for Foreigners they will be placed to a specially designed departments established for vulnerable categories (including families).</p> <p>3.</p> <p>4.</p> <p>5.</p>
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	EMN NCP Spain	Yes	<p>1. Although Spanish alien law allows for detention of minors as part of a family unit, this possibility is not used. Consequently, families with minors are transferred to the social services after the initial police identification procedures have taken place. Minors can only be arrested at police premises for a maximum period of 24 hours.</p> <p>2. See above</p> <p>3.</p> <p>4.</p> <p>5.</p>
	EMN NCP Sweden	Yes	<p>1. No, the minor will stay with his/her family in regular reception facilities or in detention facilities adapted for families.</p> <p>2. See question 1</p> <p>3. See question 1</p> <p>4.</p> <p>5.</p>

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