

# Welcome

## Webinar EMN Netherlands 'Alternatives to detention in the EU and The Netherlands'

### Start at 10:30 CEST



Immigration and Naturalisation  
Service  
*Ministry of Justice and Security*



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# Program

- 10:30-10:40 Welcome  
**Mr. Hans Lemmens**, Coordinator EMN Netherlands
- 10:40-10:50 Presentation EMN Study 'Detention and alternatives to detention in international protection and return procedures'  
**Mrs. Marie Bengtson**, Expert EMN Sweden/Swedish Migration Agency
- 10:50-11:00 Overview of national practices in relation to alternatives to detention in the Netherlands  
**Mrs. Julia Koopmans**, Researcher, EMN Netherlands
- 11:00-11:10 Reflection on national practices and priorities in relation to alternatives to detention in the Netherlands and Europe  
**Mr. Lambert Obermann**, Senior advisor Dutch Advisory Council on Migration (ACVZ)



# Program [2]

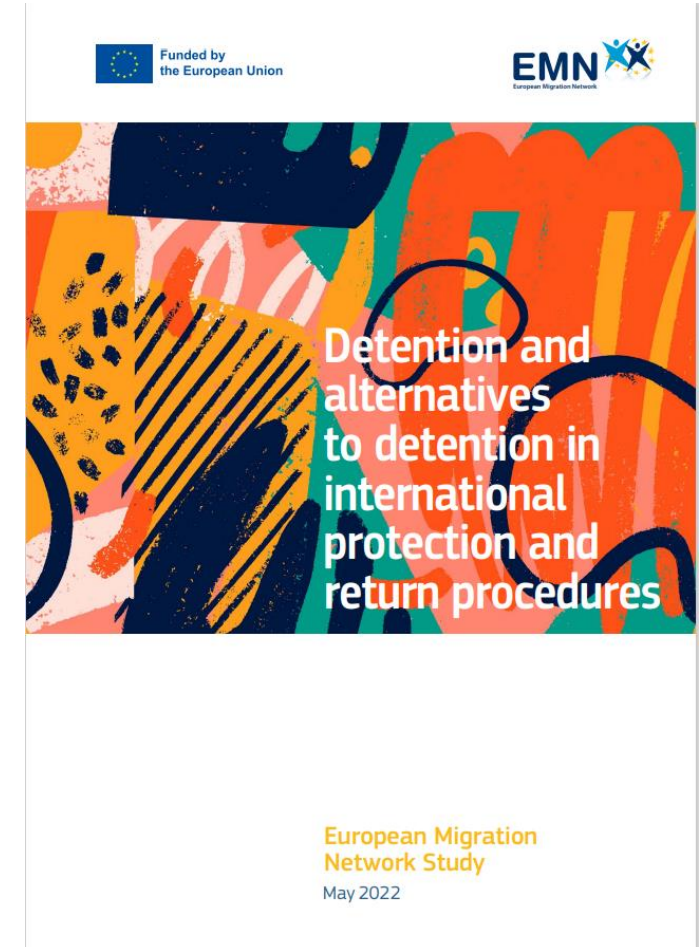
- 11:10-11:25 Q&A, poll questions
- 11:25-11:35 - Break -
- 11:35-12:10 Panel discussion on practical implementation of alternatives to detention in immigration procedures
- Finland: **Mrs. Liisa Lintuluoto**, Superintendent, Helsinki Police Department
  - Estonia: **Mrs. Triin Lõhmus**, Development expert, Police and Border Guard Board/Border Management Bureau
  - Netherlands: **Mr. Peter Verheij**, Operational specialist, National Police/Aliens Police Department (AVIM)
- 12:10-12:15 Concluding remarks  
**Mr. Hans Lemmens**, Coordinator, EMN Netherlands

EMN Study

# Detention and alternatives to detention in international protection and return procedures

**Marie Bengtsson**

**EMN Sweden**







# Scope of the EMN Study

Contributions from 25 EMN National Contact Points in EU Member States

- Austria (AT)
- Belgium (BE)
- Bulgaria (BG)
- Cyprus (CY)
- Czechia (CZ)
- Germany (DE)
- Estonia (EE)
- Greece (EL)
- Spain (ES)
- Finland (FI)
- France (FR)
- Croatia (HR)
- Hungary (HU)
- Ireland (IE)
- Italy (IT)
- Lithuania (LT)
- Luxembourg (LU)
- Latvia (LV)
- Malta (MT)
- Netherlands (NL)
- Poland (PL)
- Portugal (PT)
- Sweden (SE)
- Slovenia (SI)
- Slovakia (SK)

# Alternatives to detention for third-country nationals across EU Member States

Alternative to detention	Established in law or administrative regulation [blue: Used in practice]
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK
Requirement to reside at a designated place (e.g. a facility or specific region)	AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, MT, NL, PL, SI
Obligation to surrender a passport, travel document or identity document	BG, CY, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, PL, SE
Obligation to communicate address to authorities (including requesting permission for absences/ changing address)	CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LU, MT, PT, SE
Release on bail (with or without surety)	AT, BG, CY, CZ, EL, HU, IE, PL, SK

# Alternatives to detention for third-country nationals across EU Member States [2]

Alternative to detention	Established in law or administrative regulation [blue: Used in practice]
Deposit or financial guarantee	BG, CY, DE, FI, HR, HU, LU, NL
Accommodation in return and asylum facilities	BE, CY, DE, FR, SI
Electronic monitoring (e.g. tagging)	DE, HU, LU, PT
Return counselling, coaching or awareness-raising initiatives	BE, EE
Release to a guardian/guarantor	DE, LT
Release to a care worker	IE (children only)

# Criteria used by EU Member States to decide whether to apply detention or provide an alternative to detention

Criterion	International protection procedure [number of EU Member States]	Return procedure [number of EU Member States]
Level of risk of absconding	22	25
Vulnerability	21	24
Suitability of the alternative to the needs of the individual case	20	23
Less invasive measures impacting on human rights	17	22
Nationality or country of origin/return	3	7
Cost-effectiveness	2	3
Other criteria	7	7



# Fundamental rights safeguards during detention and alternatives to detention (in law and practice)

Rights and safeguards	Detention [number of EU Member States]	Alternatives to detention [number of EU Member States]
Legal aid	25	21
Right to be heard	25	23
Right to healthcare	25	25
Right to visits	16	1
Right to receive or send correspondence	17	
Social and psychological counselling	11	

# Benchmark EMN Netherlands Detention and alternatives to detention in the Netherlands

**Julia Koopmans**  
**EMN Netherlands**



The benchmarks of EMN Netherlands compare the Dutch results of EMN studies with the results of other EU Member States and Norway. What are the most relevant similarities and differences? Benchmarks are drafted on the basis of EMN studies, in consultation with Dutch experts. See the EMN Netherlands website for more information about the studies (Dutch): [www.emnnetherlands.nl/onderzoeken](http://www.emnnetherlands.nl/onderzoeken).

## Introduction

In the area of migration in the European Union, detention<sup>1</sup> can be used within the context of international protection and return procedures and should be used as a last resort. If possible, alternatives to detention<sup>2</sup> have to be used, in line with the principles of necessity and proportionality, legality, non-arbitrariness and the right to liberty and security. These alternatives must be imposed on a case-by-case basis. Despite the legal obligation to consider their use, it has been noted that alternatives to detention remain widely underused by Member States.<sup>3</sup> Therefore, in 2021, the EMN conducted a study on the use of detention and alternatives to detention, in which 25 Member States participated.<sup>4</sup> The study follows the 2014 publication of the EMN study on 'The Use of Detention and Alternatives to Detention in the Context of Immigration Policies'.

## Table of contents

<b>1. Assessment procedures and criteria for placing third-country nationals in detention or providing alternatives to detention</b>	<b>3</b>
• Overview of procedures used to place a person in detention or to provide an alternative to detention	3
• Decision-making process to assess whether or not to place the third-country national in detention or to provide an alternative to detention	3
<b>2. Types of alternatives to detention</b>	<b>4</b>
• Reporting obligations	5
• Requirement to reside at a designated place	5
• Obligation to surrender a passport, travel document or identity document	5
• Obligation to communicate the address to authorities	6
• Financial alternatives to detention (issue of a deposit / release on bail)	6
• Other alternatives	6
<b>3. Effectiveness of detention and alternatives to detention</b>	<b>7</b>
• Ensuring compliance with migration procedures	7
• Cost-effectiveness	7
• Guaranteeing fundamental rights	8
<b>4. Lessons learnt: challenges and advantages of alternatives to detention</b>	<b>8</b>



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# Detention: competent authorities



Royal Netherlands Marechaussee



National Police: Aliens Police/AVIM, Seaport Police



Repatriation and Departure Service  
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# Alternatives to detention

- Reporting requirements
- Submission of a financial deposit
- Surrendering documents
- Freedom-restricting measure art. 56 Aliens Act (VBL)
- Freedom-restricting measure art. 6, paragraph 1 Aliens Act



# Alternatives by category/procedure

Category/procedure	Possible alternatives
<ul style="list-style-type: none"> <li>Irregular migrants detected in the territory</li> <li>Persons subject to return decision</li> <li>Dublin procedure</li> </ul>	<ul style="list-style-type: none"> <li>Reporting requirements</li> <li>Surrendering documents</li> <li>Financial deposit</li> <li>Freedom-restricting measure (VBL)</li> </ul>
<ul style="list-style-type: none"> <li>Applicants for international protection</li> </ul>	<ul style="list-style-type: none"> <li>Reporting requirements</li> <li>Surrendering documents</li> </ul>
<ul style="list-style-type: none"> <li>Irregular migrants detected at the border</li> </ul>	<ul style="list-style-type: none"> <li>Freedom-restricting measure (airport)</li> </ul>
<ul style="list-style-type: none"> <li>Border procedures (applicants for international protection + Dublin)</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>



# Challenges and advantages of alternatives

## Advantages

- Less invasive
- Fewer costs (not all alternatives)
- Positive aspects in return procedure
- Easier to motivate and more staff competent

## Challenges

- Risk of absconding
- Limited time for decision-making

# Alternatives to detention

- Little data available, difficult to measure effectiveness
- Financial deposit: 20 times between 2015-2020
- Reporting requirements: data incomplete
- No data on surrendering documents

	2015	2016	2017	2018	2019	2020
Freedom-restricting measure (VBL)	590	480	810	860	910	550



# Outcomes of the ACVZ advisory report on migration detention in the Netherlands including reflection on alternatives to detention

**Lambert Obermann**

**Dutch Advisory Council on Migration (ACVZ)**



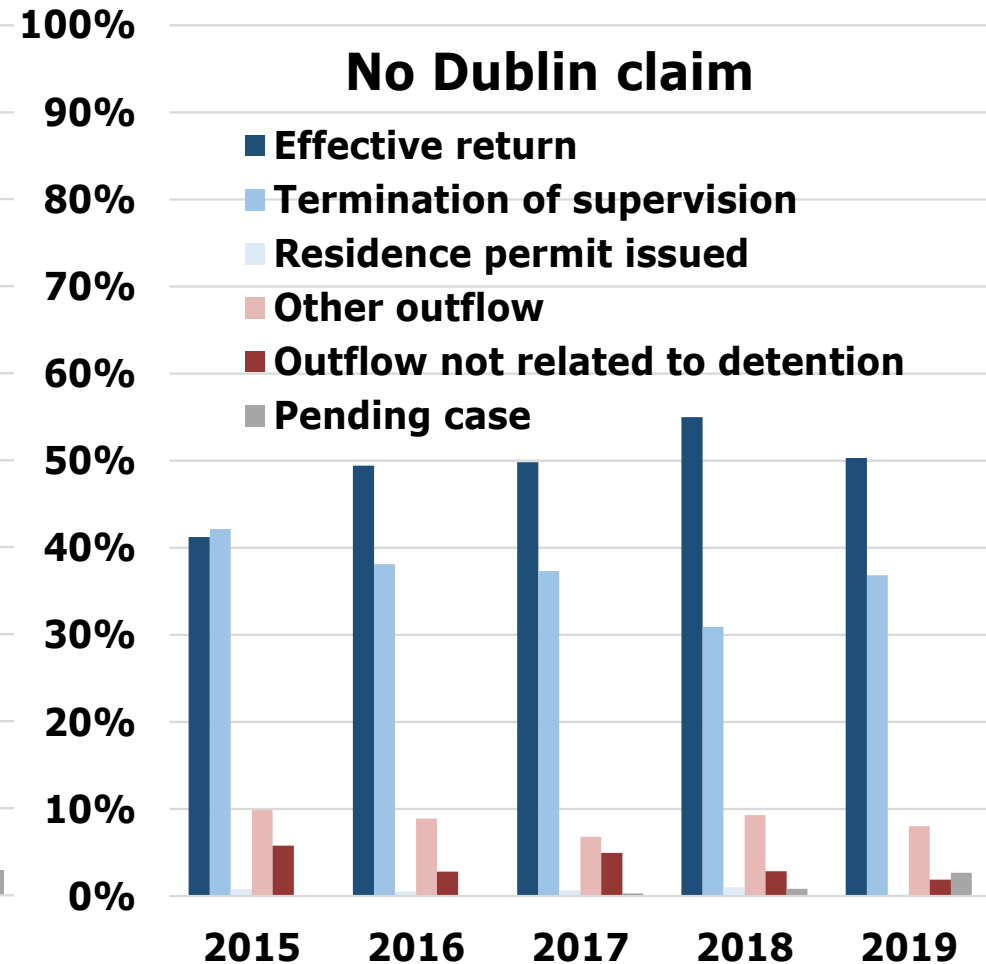
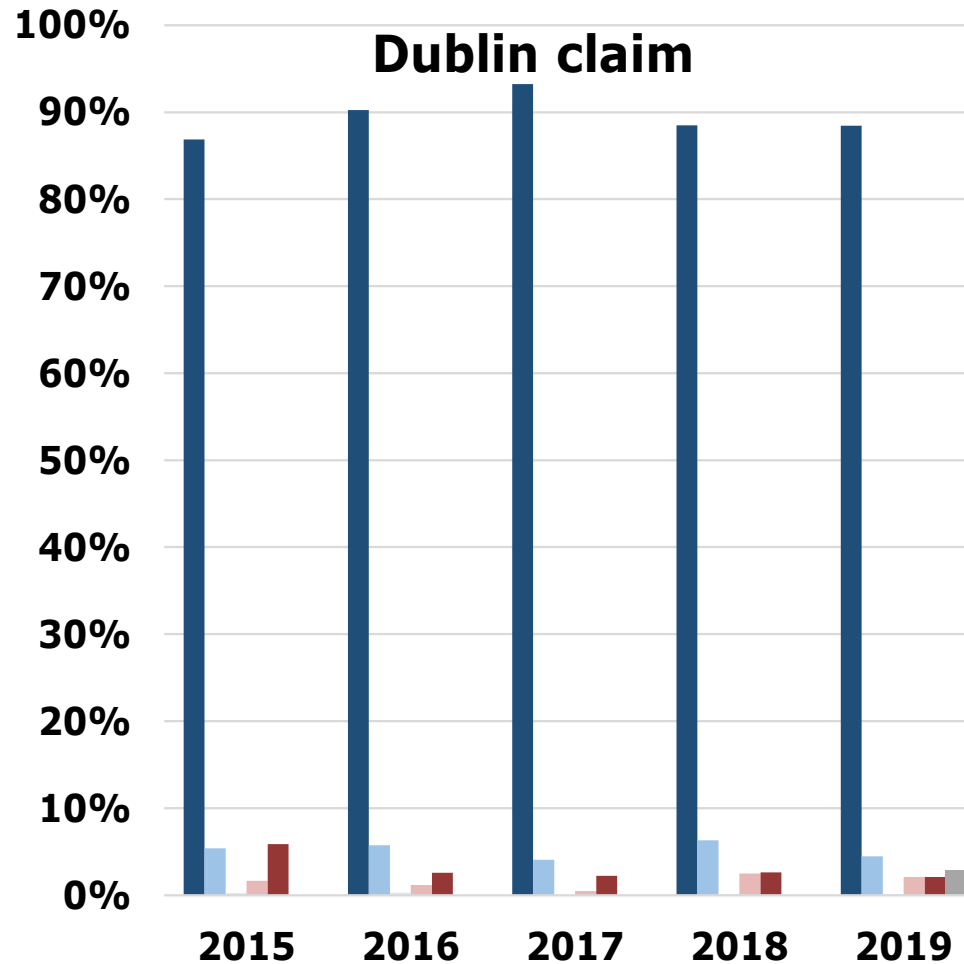


# Research question of the study (2020)

*“To what extent can the thoroughness of the detention process, the thoroughness of the detention measures and the effectiveness of detention be improved?”*



# Effectiveness of detention measures: rate of return after detention 2015-2019







# Effectiveness of detention compared to alternatives: 2018-2019

	Detention			All return procedures		
Return Rate	2018	2019	Total	2018	2019	Total
Effective Return	65%	69%	67%	33%	34%	33%
Termination of supervision	23%	23%	23%	46%	45%	45%
Residence Permit Issued	1%	0%	1%	5%	7%	6%
Other Outflow	7%	6%	6%	16%	14%	15%
Outflow not related to detention	3%	3%	3%			
<b>Total</b>	100%	100%	100%	100%	100%	100%



# High financial costs

- **€ 298 per person per day (2020)**
- **Total costs all detentions 2015-2019: € 180 mln**



# Conclusions

- **Detention is not the solution to the return problem**
- **Considerable differences in effectiveness according to destination, nationality and organization**
- **Uncooperative foreign nationals are difficult to remove**
- Most detentions not lifted due to negligent conduct
- Chronic bottlenecks in implementing the detention process



# Recommendations

- **Experiment more with less coercive supervision measures and improve the manner in which they are recorded**
- **Promote voluntary return from detention more actively**
- **Invest more in relations with countries of origin that fail to cooperate or insufficiently cooperate**
- Improve the facilities to ensure closer collaboration
- Achieve closer collaboration between the organisations involved and promote the further development of knowledge and expertise



# Reflection on outcomes of the EMN Study

- EMN: Challenges on the use of alternatives → ACVZ: Challenges and very high financial costs of detention measures
- EMN: Lack of data on the use alternatives for detention for most states and their effectiveness → ACVZ: In line with ACVZ observations in NL
- EMN: limited data suggests detention more effective than alternatives → ACVZ: Can we draw any conclusions on alternatives for detention when the registration and monitoring is inadequate?



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**BREAK 10'**



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# Many thanks for your participation

EMN Study, Benchmark EMN Netherlands [Dutch/English]

'Detention and alternatives to detention in international protection and return procedures'

[www.emnnetherlands.nl/onderzoeken](http://www.emnnetherlands.nl/onderzoeken)

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