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Ad-Hoc Query on 2022.60 Guidelines and/or procedures for the reception of LGBTIQ+ in detention centres

Requested by EMN Luxembourg on 7 November 2022

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden (23 in Total)

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1. BACKGROUND INFORMATION

The Luxembourg Detention Center is in the process of reviewing its guidelines and procedures regarding the procedure of reception of detainees. One of the issues that has been raised is the reception procedures concerning LGBTIQ+ individuals. As this type of population could be considered vulnerable, the Luxembourgish authorities would like to know how other Member States regulate the reception of these individuals.

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We would like to ask the following questions:

1. Does your Member State have guidelines on the reception of LGBTIQ+ individuals in detention facilities?

Available choices: Yes, No, Not Applicable


2. If your answer to Q1 is YES, can you please briefly describe these guidelines? (If possible, can you please attach a copy of them in word or pdf format? It is not necessary that they be in English).

3. If your answer to Q1 was NO, how does your Member State deal with the reception of these individuals? (Please describe the procedure).

We would very much appreciate your responses by **5 December 2022**.

2. RESPONSES

¹

		Wider Dissemination	
	EMN NCP Austria	Yes	1. No Own guidelines on how to proceed in the event of the arrest/detention of LGBTIQ persons do not exist. So far, the relevant Austrian laws on the police execution of administrative custodial sentences and detention pending

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




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			<p>removal (Administrative Penal Act, Detention Regulation, Aliens Police Act) foresee a differentiation between the genders male/female. The relevant key provision in this context is the separation obligation under Article 53c Administrative Penal Act – enforcement of penal sanctions. See there right away under para 1: “Detainees shall be separated from detainees held under provisions other than under this Act as possible, and male detainees shall in any case be separated from female detainees.” Following this provision in the Administrative Penal Act, such a separation obligation is also to be found in the Detention Regulation (AnhO) of the Ministry of the Interior. See there under Article 4 para 3 Detention Regulation: “The detention of the detainees generally takes place as community detention. Detainees in detention pending removal, detainees on whom an administrative detention sentence is being executed (administrative detention detainees), and detainees who are being held on the basis of an arrest made by an official of the public security service on their own initiative or in execution of a judicial warrant (custodial detainees) are to be detained separated from each other as possible. Women are to be kept separate from men, minors separate from adults.” The same applies to the search of persons who are taken into police custody. See under Article 6 para 4 Detention Regulation: “Each detainee shall undergo a search upon reception, which may only be executed by someone of the same gender.” In respect to the social and societal developments in connection with LGBTIQ persons, however, an explanation for the separation obligation regarding persons with non-binary or diverse gender identity was included in the decree “explanations for the Detention Regulation – standards in the execution of administrative detention and detention pending removal” by the department responsible for detention enforcement. Other provisions in decree form do – due to the absence of a legal basis – currently not exist (yet). For the time being, no change is envisaged in this regard. Source: Ministry of the Interior</p> <p>2. n/a Source: Ministry of the Interior</p> <p>3. Please see the response to Q1. Source: Ministry of the Interior</p>
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	EMN NCP Belgium	Yes	<p>1. No</p> <p>2. N/A</p> <p>3. Belgium has no specific guidelines for LGBTIQ+ persons in detention centers. However, the staff is sensitized on that matter. During the intake procedure at a detention facility, the staff will make an individual assessment on a case by case basis, in concertation with the concerned person. If necessary, specific measures can be taken in order to guarantee a peaceful cohabitation of all detainees. In article 7 of the Royal Decree of 02/08/2002, regulating the functioning of the detention center, it is specifically mentioned that “all resident will be treated by the staff in the same way, correctly and respectfully, taking into consideration the private life of the resident and without any discrimination”.</p>
	EMN NCP Bulgaria	Yes	<p>1. No</p> <p>2.</p> <p>3. LGBTIQ+ individuals are accommodated according to the general rules, based on external sex characteristics. According to the national law, two sexes are determined in the country – male and female. Additionally, upon reception, an individual assessment is carried out to establish whether the person is part of a vulnerable group (a special definition of a “vulnerable person” exists in the national legislation), in order to provide further care and protection in such cases.</p>
	EMN NCP Croatia	Yes	<p>1. No</p> <p>2. n/a</p>



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			<p>3. In Croatia, there are not written instructions for dealing with accommodation of LGBTIQ+ individuals in detention facilities and there was very few cases in practice so far. In these situations, officials of Reception Centre have individual approach, respectful towards all individuals and their specific needs or position. In each case, officials will assess individual needs of person in concern. According to specific needs and availabilities, separate accommodation can be insured and other measures may be taken provide security and dignity to that person.</p>
	EMN NCP Cyprus	Yes	<p>1. Yes</p> <p>2. The Police Order 5/3, Rights and Treatment of Detainees- Police Custody and Physical Security- Protocol of Actions includes a special provision in relation to the investigation of transgender and transvestite individuals in detention facilities or in cases of necessary body search.</p> <p>Briefly the Order states,</p> <ol style="list-style-type: none"> 1. If the transgender person underwent gender reassignment surgery, then the person shall undergo the relevant procedures based on her/his new gender. The person shall be asked in advance on how he/she perceives his/her gender identity and sign all correspondence accordingly. In case the person declares him/herself of the opposite sex but no gender reassignment surgery took place, the person shall be asked on the gender preference of the police officer who will conduct the body search before the procedure. In case there is no collaboration or any other obstacles occur, then a medical officer shall assist the procedure. 2. If the person does not declare his/her gender identity or the procedure is happening without notice, then the body search shall be conducted upon the appearance of the person in question. If during this process it becomes evident that the person in question is of the opposite sex, then an officer of the opposite sex should continue the procedure. This should always be done in respect to the person in question. 3. If none of the above can be implemented, then the procedure shall be conducted based on the biological gender of the person in question. 4. For protection purposes, transgender detainees shall always be in solitary prison cells and be treated as

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			<p>a vulnerable group but not in conditions of isolation and marginalization.</p> <ol style="list-style-type: none"> Transgender detainees will have no broader restrictions on their rights than those experienced by the general population of the Detention Center. Body search on transvestite persons, shall not defer from the procedure followed in transgender cases. In regard to their detention, this shall be followed as normal unless if the gender identity along with the dressing preferences differs from the biological gender of the individual, in this case, the detention of the person in a solitary cell, shall be taken into consideration. Police officers should know, respect and protect the individual and social rights of transgender and transvestite persons by preventing any form of physical, psychological or sexual violence against them and at the same time refraining from behaviors and comments that may constitute degrading, inhuman and/or humiliating treatment. <p>astynomiki_diataxi_5.3.docx</p>
	EMN NCP Czech Republic	Yes	<ol style="list-style-type: none"> Yes Some persons are identified as vulnerable during admission to the detention centre. Therefore, they are being admitted to special centre designed to offer a higher level of protection. It is important to note that not all clients who belong to LGBTQA+ are considered as vulnerable and require a special treatment. The client's vulnerability is identified during a personal interview with a social worker. Please find attached the Instruction of Social work in detention facility, Art. 8 - Accommodation of vulnerable persons. N/A <p>social_work_in_a_facility_for_detention_of_foreigners.docx</p>
	EMN NCP	Yes	<ol style="list-style-type: none"> No



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	Estonia		<p>2. N/A</p> <p>3. Estonia has no specific instructions for LGBTIQ+ persons in detention centers. Officials working in the Police and Border Guard Board detention center must treat detainees respectfully, taking into consideration their private life without any discrimination. We approach every individual on a case-by-case basis.</p>
+	EMN NCP Finland	Yes	<p>1. No</p> <p>2. Not applicable</p> <p>3. Finland has two detention units, and both underline the importance of individual case-by-case considerations and personalized arrangements in their practices and policies. A key aim is to ensure a physically and psychologically safe space for everyone. Attention is paid to, for example, the following aspects:</p> <ul style="list-style-type: none"> - Taking into account the wishes and needs of each individual. - Taking into account the ethical requirements of social welfare work, and thus being mindful about special needs of different minority groups, such as LGBTIQ+ individuals. - Mapping special needs and vulnerabilities of individuals systematically (e.g. at health interviews). - Providing safe accommodation conditions for LGBTIQ+ individuals. In practice, this means that accommodation in a separate section from the general section (the general sections are separated by gender) is possible. The wishes of individuals are heard, and individuals can choose to be accommodated in the general section as well. - Monitoring the wellbeing of individuals, and adapting accommodation arrangements if signs of abusive behavior towards LGBTIQ+ individuals are detected. - Arranging psychosocial support discussions, if needed, during the detention of an individual. - Utilizing personnel resources with knowledge on and experience of providing assistance to LGBTIQ+ individuals from other units, such as from a reception centre adjacent to the detention unit in Helsinki.



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	EMN NCP France	Yes	<p>1. No</p> <p>2. N/A</p> <p>3. The Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA) provides for the vulnerabilities of persons held in detention (but not exclusively LGBTIQ+ persons) to be taken into account when placing them in detention (Article L741-4 CESEDA), and in the choice of reception conditions in detention. Furthermore, articles R744-6 and R744-11 of the CESEDA provide that collective rooms in detention centres and facilities must be single-sex.</p> <p>In addition, article L744-17 of the CESEDA provides for the possibility of transferring the foreign national to another place of detention if necessary. Finally, article R744-12 states that "In each detention centre, internal regulations, the models of which are set, for detention centres and facilities, by joint order of the Minister of Immigration and the Minister of the Interior, organise daily life in conditions that are consistent with the dignity and safety of its occupants".</p>
	EMN NCP Germany	Yes	<p>1. No</p> <p>2. n/a</p> <p>3. Germany has no specific guidelines for LGBTIQ+ persons in detention centers.</p> <p>The Detention Center Büren (detention facility for persons obliged to leave Germany), for example, only has adult male detainees.</p> <p>Detainees who can't be recognized clearly as male are rejected. Gay detainees are treated as any other detainees, the staff is sensitized to the topic. All detainees are treated correctly and respectful without any discrimination.</p> <p>The detainees always have the opportunity to avoid the open areas.</p>


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	EMN NCP Greece	Yes	<p>1. Yes</p> <p>2. According to the contribution of the Ministry of Citizen ProtectionQ</p> <p>a) All police actions aim, in general, in the protection of public order and security and are based on objective criteria, regardless of nationality/ethnicity, religious or political beliefs, race, discriminations or other distinctive elements/characteristics of persons who may be investigated/checked and, case by case, brought before police and only after personalised indications arise from their behaviour.</p> <p>In the above context, it is noted that in the sector of returns of third-country nationals to their countries of origin, the measures taken for the aforementioned purpose are driven by the respect of the personality and of the fundamental rights of citizens, without exceeding the necessary measure, according to the principle of proportionality.</p> <p>b) In addition to the above, within the framework of the implementation of the National Strategic Equality Plan for the LGBTI+ community of citizens, the Hellenic Ministry of Citizen Protection has undertaken a series of actions and initiatives with the aim of upgrading the services provided to citizens, as well as ensuring the unhindered activity of the operational Services of the Police Corps. From the point of the Hellenic Ministry of Citizen Protection, this Plan is under the coordination of the General Secretary of Public Order.</p> <p>In this context, among other, as goal has been set, to change the way LGBTI+ people are detained in police detention centers, in order to be ensured the dignity and the respect of sexual orientation, as well as of gender identity and expression.</p> <p>At the same time, the orders and instructions that have already been given to the competent police services, continue to be enriched with the new ones, in order to be ensured the equality and the respect of the self-identification of the persons of the LGBTI+ community.</p> <p>Besides, according to para.1, article 3 of Law 2776/1999 (as amended and in force by Article 5 of Law 4985/2022), "any unfavourable discriminatory treatment of prisoners is forbidden, especially that based on race, colour, national, ethnic or social origin, the property status, the disability, the religious or ideological beliefs, the sex or the gender identity or the sexual orientation".</p>
	EMN NCP	Yes	1. Yes


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	Hungary		<p>2. Government Decree 301/2007 (9.XI.) § 22 * Accommodation in a reception centre shall take into account the gender identity of the person requesting recognition other than his/her registered sex.</p> <p>3. -</p>
	EMN NCP Ireland	Yes	<p>1. No Ireland does not have dedicated immigrant detention facilities. Places of detention for immigration purposes are set out in Regulations and include a number of prisons in the State and police stations. Regulation 19 of the European Communities (Reception Conditions) Regulations 2018 sets out the rules on detention conditions for international protection applicants. Where a detained applicant is vulnerable, Regulation 19 (9) provides that the Minister for Justice shall ensure regular monitoring and that the applicant is provided with adequate support (subject to the specific circumstances of the individual). Conditions of detention for other categories of immigration detainees who are detained in prisons are covered in the Prison Rules 2007. Rule 63 contains special provisions for the protection of vulnerable prisoners, including that a vulnerable prisoner can request to be kept separate from other prisoners 'who are reasonably likely to cause harm to him or her.' Therefore, there is no specific set of guidelines on the reception of LGBTI+ individuals in detention facilities, in the immigration context. However, the national LGBTI+ Inclusion Policy 2019 - 2021 includes specific commitments in relation to protection of the LGBTI+ prison population. It commits to:- Develop a placement and accommodation policy to reflect and build upon existing good practice in the accommodation of vulnerable prisoners including LGBTI+ people.- Provide LGBTI+ awareness and sensitivity training to staff, including RPOs [recruit prison officers], general training to all staff as part of CPD and targeted training to particular Officers, where an operational need exists.- Consider the provision of 'in-reach' LGBTI+ community supports, peer supports, and provision of LGBTI+ informational/recreational literature.</p> <p>2. Not applicable.</p>



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			<p>3. See answer to question 1 and the following information relevant to all prisoners.</p> <p>The Irish Prison Service accepts all prisoners into custody based on their gender and the local prison to the court area.</p> <p>Upon committal, all prisoners are brought to the reception/committal unit of the prison, where there is an opportunity to provide personal and physical details as part of the regular committal interview process. The assessment of the prisoner's needs, may require the Prison Governor to consider the biological gender, legal gender, gender identity, transgender, gender expression, sexual orientation or gender recognition legislation. In such cases the Governor may make a recommendation on the appropriate placement within the prison system, taking into consideration good order, security and operational issues, protection issues for both the prisoner and other prisoners, available accommodation and the healthcare needs of the prisoner.</p> <p>The Irish Prison Service is currently working on an overarching policy to manage LGBTIQ prisoners.</p>
	EMN NCP Italy	Yes	<p>1. Yes c_17_pubblicazioni_2599_allegato.pdf</p> <p>2. Among the legislative references related to the detention of LGBTIQ+ persons, mention is made in the recent CPR Directive, issued by the Department for Civil Liberties and Immigration of the Ministry of the Interior, with Circular dated 15 June 2022, whose Art. 3 states that to assess health conditions and medical assistance during administrative detention: "the overall assessment of health status of detained persons have been the subject of specific attention, also concerning the conditions of vulnerability and unfitness for detention". The CPR Directive mentions - within the same Art. 3 - the reference to the concept of vulnerability as provided by the Legislative Decree 18 August 2015, no. 142 that in transposing the legal bases of the Reception Directive 33/2013/EU, in Art. 17 refers to the "reception of persons with special needs". The definition of vulnerable persons includes "persons suffering from serious illness or mental disorders, persons who have been determined to have suffered torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, victims of genital mutilation".</p> <p>Mention is also made of the document produced in 2017 by the Ministry of Health and entitled "Guidelines for</p>




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			the planning of assistance and rehabilitation interventions as well as for the treatment of mental disorders of holders of refugee status and subsidiary protection status who have suffered torture, rape or other serious forms of psychological, physical or sexual violence ". Within these Guidelines, there is a section specifically dedicated to the specific needs of LGBTI applicants and holders of international protection. circolare_dlci_15.6.2022_accesibile.pdf
	EMN NCP Latvia	Yes	<p>1. No</p> <p>2. N/a</p> <p>3. In Latvia there are no special conditions for the reception of persons in detention centers for third country nationals. All persons are treated equally and without discrimination, respecting the person's faith, culture or belonging to LGBT. If conflicts or misunderstandings arise between the residents of the detention center during accommodation, the person can be transferred to another room, accommodation block or another center (this applies to all persons, not only LGBT).</p>
	EMN NCP Lithuania	Yes	<p>1. No</p> <p>2. N/A</p> <p>3. Taking into account the particular circumstances and the wishes of LGBTIQ+ individuals, the Foreigners' Registration Center of the State Border Guard Service may accommodate them separately from other foreigners.</p> <p>According to the Ministry of Social Affairs and Labour, during the period of influx of migrants from Belarus, Ministry had prepared unofficial recommendations on accommodation. LGBTQ+ were recommended to be accommodated separately. This was implemented in practice.</p> <p>The Human Rights Committee of the Seimas recommended in March 2022 that the Ministry of Social Affairs and Labour and the Ministry of the Interior prepare guidelines for the application of unified criteria in assessing</p>




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			vulnerability and for systematic provision of support to vulnerable people that would effectively meet their needs. However, at the moment there are no plans to prepare guidelines specifically for the reception of LGBTIQ+ individuals in detention facilities.
	EMN NCP Luxembourg	Yes	<p>1. No</p> <p>2. N/A.</p> <p>3. Seeing that Luxembourg has not been confronted with this type of cases, we will like to collect information in order to introduce it in our guidelines.</p>
	EMN NCP Netherlands	Yes	<p>1. No</p> <p>2. N/a</p> <p>3. The Netherlands has no specific guidelines for LGBTIQ+ persons in detention centers. However, staff are attentive to the personal circumstances of all third-country nationals placed in detention. When LGBTIQ+ are involved, specific measures can be taken in order to guarantee a peaceful cohabitation of all detainees and this matter is taken into account for the appropriate placement in one of the detention centers. In the case of transgender people, the gender as stated in the passport is leading for placement in a ward within immigration detention. Furthermore, there is a special care unit where LGBTIQ+ third-country nationals can be placed as needed.[1]</p> <p>[1] This information was provided by the National Agency of Correctional Institutions (Dienst Justitiële Inrichtingen – DJI) on 22 November 2022.</p>
	EMN NCP Poland	Yes	<p>1. Yes</p> <p>All issues concerning vulnerable persons, including LGBT+ persons, are a highly sensitive matter. The Border Guard has developed rules for dealing with the above-mentioned categories of foreigners in a document called "Rules of the Border Guard's Conduct with foreigners requiring special treatment". The introduction and</p>


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			<p>application of the above rules obliges and draws special attention of the staff of guarded centers to this category of foreigners. The dedicated center to which the indicated vulnerable group will be directed is the Guarded Center for Foreigners in Kętrzyn, which additionally secures places for families with children, unaccompanied minors and disabled persons. It should be also mentioned that the Border Guard IT system which is used by the Border Guard to reserve accommodation in guarded centers is also adjusted to cater to the above-mentioned vulnerable group of people.</p> <p>2. -</p> <p>3. Not applicable</p>
	EMN NCP Slovakia	Yes	<p>1. No The Slovak Republic does not inquiry about the sexual orientation of foreigners during detention. All possible issues in this regard would be dealt by on an individual basis.</p> <p>2. NA</p> <p>3. See response to question 1.</p>
	EMN NCP Slovenia	Yes	<p>1. No</p> <p>2.</p> <p>3. If the detainee describes themselves as a LGBTIQ+ individual, he will be placed to stay at a department for vulnerable categories. Other services and procedures remain the same.</p>
	EMN NCP Spain	Yes	<p>1. No There are no specific guidelines, but similar consolidated practices in the different detention centres.</p>

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			<p>2.</p> <p>3. In general, detainees are grouped according to their nationality, friendship or other relations. If there are conflicts or special situations recorded by the medical service (vulnerability due to age, sexual condition, gender identity, mental health...), the detainee is placed in a separate module together with reliable room-mate</p>
	EMN NCP Sweden	Yes	<p>1. No</p> <p>2.</p> <p>3. SE do not have any explicit guidelines concerning LGBTIQ+. Instead the SMA responsible for the detention facilities has guidelines addressing vulnerable individuals more in general. Some individuals might feel particularly vulnerable when in detention. The reason for feeling vulnerable in detention can for example be an individual's sexual orientation, religion, ethnicity or national belonging, threats or personal conflicts. In these cases individual solutions have to be found. Individuals who have been identified as vulnerable should be accommodated in a dormitory that is visible from the offices of the staff members. The individual circumstances, access to suitable dormitory, the individual's preference if any and the current situation at the detention centres, shall be taken into consideration when deciding on which detention centre chosen for the particular individual.</p>
