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EMN European Migration Network

Ad-Hoc Query

2024.37 Detention of third country nationals under the Returns Directive, the Reception Conditions Directive and the Dublin Regulation

European Migration Network
Ad-hoc query

AD-HOC QUERY ON 2024.37 DETENTION OF THIRD COUNTRY NATIONALS UNDER THE RETURNS DIRECTIVE, THE RECEPTION CONDITIONS DIRECTIVE AND THE DUBLIN REGULATION

REQUESTED BY EMN NCP NETHERLANDS ON 21 JUNE 2024

Responses from: EMN NCP Austria, EMN NCP Belgium, EMN NCP Bulgaria, EMN NCP Croatia, EMN NCP Czech Republic, EMN NCP Estonia, EMN NCP Finland, EMN NCP France, EMN NCP Germany, EMN NCP Hungary, EMN NCP Italy, EMN NCP Latvia, EMN NCP Lithuania, EMN NCP Luxembourg, EMN NCP Malta, EMN NCP Netherlands, EMN NCP Poland, EMN NCP Portugal, EMN NCP Serbia, EMN NCP Slovakia, EMN NCP Slovenia, EMN NCP Spain, EMN NCP Sweden **(23 in total)**

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BACKGROUND INFORMATION

One of our national courts has put preliminary questions to the Court of Justice of the European Union (CJEU) regarding the way we have implemented the articles 15 Of the Return Directive (2008/115 EU), article 8 of the Reception Conditions Directive (2013/33 EU) and article 28 of the Dublin Regulation (EU 604/2013 EU), articles which pertain to the detention of third country nationals. To answer these questions, it is important for us to understand the way these elements are implemented in other member states. As the procedures are put in the PPU track, (Procedure Prejudicielle d'Urgence) there is a great urgency in receiving these answers. The deadline for our written observations is 28 of June 2024, the hearing is set for 15 July 2024.
Seeing the tight deadlines and the urgency we have obtained the clearance from the chair of the AHQWG to launch this ad-hoc query with a deadline of two weeks. We thank in advance for your collaboration.

WE WOULD LIKE TO ASK THE FOLLOWING QUESTIONS:

We would very much appreciate your responses by **5 July 2024**.

1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate.

2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other)

3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate.

4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate.

RESPONSES

		Wider Dissemination?	
	EMN NCP Austria	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, in Austria the imposition of detention pending removal is regulated in Art. 76 Aliens Police Act. Detention pending removal may only be ordered if

			this is necessary to secure the proceedings on an application for international protection with a view to issuing a measure terminating residence, provided that the alien's stay is a threat to public order or security, there is a risk of absconding and detention pending removal is proportionate, this is necessary to secure the procedure for issuing a measure terminating residence or for removal, provided that there is a risk of absconding and detention pending removal is proportionate, or the requirements of Art. 28 para. 1 and 2 of the Dublin Regulation are met.--- Source: Ministry of the Interior 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/a --- Source: Ministry of the Interior 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. YES: If a foreigner files an application for international protection while being detained pending removal, the detention pending removal imposed can be extended if it can be assumed that the application was only filed in order to delay the enforcement of a measure terminating residence. In this case, no new decision on detention pending removal is to be issued, but the existence of the requirements is to be recorded in a file note. In Dublin constellations, i.e. if the asylum application is made from an existing Dublin detention pending removal, there is no need to resort to the above-mentioned procedure. Detention pending removal ordered in accordance with Art. 28 Dublin III Regulation in conjunction with Art. 76 para. 2 subpara. 3 Aliens Police Act can therefore be extended on the basis of these provisions, in particular the continued existence of a significant risk of absconding, even after an application for international protection has been filed. The intention to delay is not relevant here. NO:

			In other cases where there is a change from Dublin to non-Dublin or from non-Dublin to Dublin, a new decision on detention pending removal must be issued. The previous decision does not have to be revoked or rectified. In these cases, the new decision replaces the old one. The changes (facts, detention, legal basis) must be addressed both in the findings and in the reasons for the new decision. --- Source: Ministry of the Interior 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. For the first part of the question, please refer to the answer to question 3. A procedural error can be remedied by a new decision, but detention pending removal until a new decision is issued is unlawful. In the event of an appeal against detention pending removal, the competent court can declare the previous detention pending removal to be unlawful, but declare the further detention pending removal to be in accordance with the law and thus approve the continuation of the detention pending removal. --- Source: Ministry of the Interior
	EMN NCP Belgium	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, detention based on article 8, paragraph 3 (a), (b), (d) and (e) of the Reception Conditions Directive is implemented in article 74/6, § 1, first subparagraph, of the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals. Detention based on article 8, paragraph 3 (c) of the Reception Conditions Directive is implemented in article 74/5, § 1, first subparagraph, 2°, of the aforementioned law. Detention based on article 8, paragraph 3 (f) of the Reception Conditions is implemented in article 51/5 of the aforementioned law.

			Detention based on Article 15 of the Return Directive is implemented in Article 7 of the aforementioned law. Detention based on Article 28 of the Dublin Regulation is implemented in Article 51/5 of the aforementioned law. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) NA 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes, since Belgian national law has distinct legal grounds for detention, the Immigration Office has to take a new detention decision when the legal basis for the detention changes. After all, a detention decision is based on a well-defined provision of the law. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. According to the Immigration Office, this doesn't affect the second detention decision since the distinct legal frameworks pursue different objectives and set out different conditions for the imposition and/or continuation of retention. Nevertheless, the person concerned shall be entitled to claim compensation for the period during which he was unlawfully detained.
	EMN NCP Bulgaria	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate.

			The detention of a foreigner on the ground of Art. 15 of Directive 2008/115/EC (Return Directive) is implemented in Art. 44, para. 6 of the Law on Foreigners in the Republic of Bulgaria. The detention of a foreigner on the ground of Art. 8 of Directive 2013/33/EC and on the basis of Art. 28 of Regulation (EU) No. 604/2013 is implemented in Section V, Art. 45a, Art. 45b, Art. 45c, Art. 45d, Art. 45e and Art. 45f of the Law on Asylum and Refugees. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Any detention of a foreigner on the ground of the Law on Foreigners in the Republic of Bulgaria should be based on a separate individual administrative act (detention order). The employees in the special homes for temporary accommodation of foreigners (SHTAF) monitor for not accommodating foreigners in the SHTAF for a period longer than 18 months. The State Agency for Refugees with the Council of Ministers is responsible for the detention of a foreigner under the Law on Asylum and Refugees. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. Detention of a foreigner on the ground of the Law on Asylum and Refugees cannot be prolonged with detention on

			the ground of the Law on Foreigners in the Republic of Bulgaria.
	EMN NCP Croatia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. Detention (the restriction of freedom of movement) under the Reception Conditions Directive is determined by the provisions of the Law on International and Temporary Protection, which also regulates the restriction of movement of aliens in transfer according to the Dublin Regulation. The authorities competent for the international protection procedure are competent to issue the decision on detention. Detention according to the Return Directive is prescribed by the Foreigners Act, and these decisions are made by the Ministry of the Interior through police administrations and police stations in the return procedure (officers in charge for illegal migration). 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) n/a 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. If a person detained in the return procedure applies for international protection, the return procedure is suspended and the asylum authorities decide whether the restriction of movement is necessary on the basis of an individual assessment. If it is assessed that the person's movement needs to be restricted, a new decision is issued on the basis of the Law on International and Temporary Protection

			4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. It is possible for the detention on one basis to continue with the detention on another basis, but a new decision must be issued for each ground, against which it is possible to file a legal remedy/lawsuit with the administrative court. Each decision is reviewed by the court separately. Irregularities in the procedure for issuing one decision should not automatically affect the validity of the other decision.
	EMN NCP Czech Republic	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, grounds for detention according to article 8 of RCD - in Asylum Act, article 15 of the Return Directive - Foreigner Act as well as according to article 28 of the Dublin regulation (in Asylum Act and in Foreigner Act), were transposed and implemented into national law. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes, when the ground for detention changes, the new detention decision shall be issued.

			4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. Yes, the continuation of the detention is possible, but as mentioned above new detention decision shall be issued. Concerning the question on procedural irregularity, it is not clear to us. In case the court decided that the decision on detention was unlawful the detained person must be released immediately. Nevertheless, if new grounds arise the new detention decision is possible.
	EMN NCP Estonia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. National legislation stipulates the grounds in which persons may be detained within the international protection (regulated by the Act on Granting International Protection to Aliens). Detention under the Dublin Regulation is included among the grounds for detaining applicants for international protection. An applicant for international protection may be detained if it is unavoidably necessary on the following bases: 1) identification of the person or verification of the identity; 2) verification or identification of the citizenship of the person; 3) verification of the legal bases of the entry into and the stay in the state of a person; 4) identification of the circumstances relevant to the proceedings of the application for international protection, primarily in the case when there is a risk of escape; 5) if the alien has been detained in the proceedings of the obligation to leave Estonia and there is a reasonable basis to believe that the person has submitted an application for international protection to postpone the compliance with the obligation to leave or to prevent expulsion; 6) protection of the security of state or public order; 7) transfer of a person in the procedure provided for in Regulation (EU) No 604/2013 of the European Parliament and of the Council, if there is a risk of escape of a person. Grounds for detention of a person who is in a country without a legal basis to stay, are enacted in the Obligation to

			Leave and Prohibition on Entry Act. Detention of a person who is staying in Estonia without a basis for stay in Estonia is primarily permitted in the case where: 1) there is a risk of escape of the person; 2) the person does not comply with the obligation to co-operate or 3) the person does not have documents necessary for the return or the obtaining thereof from the admitting state or transit state is delayed. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. If there is a change of the person status either from irregular migrant to asylum seeker or vice versa who is detained then the basis for detention also has ceased to exist. The Police and Border Guard Board (PBGB) has to detain the person for 48 hours and apply to an administrative court for permission to detain an alien for a longer period. Every time the status changes or the basis for detention have ceased to exist PBGB would need to apply for a new detention with new circumstances. Even in the case when a Dublin case changes to an regular asylum seeker case (if a MS does not agree to take back the person and Estonia must take responsibility about the persons case), PBGB would need to apply for a new detention as the basis for detention has changed. In the case where there are several basis for detention and one (or more) case ceased to exist, but one bases for detention still exist, then there is no need to apply for a new detention. Also in the case where the person applies for the third time for international protection and the circumstances for international protection have not changed, her/his status will stay the same (irregular migrant) and there is no need to apply for a new detention. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued

			by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. NO. The PBGB must always apply for a new detention if the status of an alien has changed.
	EMN NCP Finland	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. In principle YES. The grounds for detention established in the Finnish legislation are not derived as such from the Reception Conditions Directive, Return Directive and Dublin Regulation. However, all these different detention grounds established in the aforementioned three EU legislation are present in the Finnish legislation as grounds for detention. In the Finnish national legislation there are six separate grounds for detention, as opposed to three. For more information, please see response to Q2. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) Section 121 of the Finnish Aliens Act prescribes the conditions/grounds for detention as follows: If the precautionary measures (=alternatives to detention) referred to in sections 118–120 are insufficient, the alien may be detained on the basis of an individual assessment, if: 1) taking account of the alien's personal or other circumstances, there are reasonable grounds to believe that the alien will hide, abscond or in some other way considerably hinder the issue of a decision concerning him or her or the enforcement of a decision to remove him or her from the country; 2) detention is necessary for establishing the alien's identity; 3) the alien has committed or is suspected of having committed an offence and the detention is necessary to secure the preparations for or the enforcement of a decision on removal from the country; 4) the alien has, while in detention, lodged a new application concerning international protection predominantly for

			delaying or disrupting the enforcement of a decision on removal from the country; 5) the detention is based on Article 28 of the Council Regulation on determining the State responsible for examining an asylum application; or 6) taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that he or she will pose a threat to national security. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Based on legislation and legal practice in Finland, when the legal basis for the detention changes, there is no need to issue a new detention decision. As regards the example given in brackets above, the new basis for detention is evaluated/considered when a decision on continuation of the detention is made. The person in detention has the right to request that the matter is reconsidered at court based on the new detention basis. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. YES. Detention can be continued based on a different legal basis.
	EMN NCP France	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, these three categories of detention have different purposes and therefore have their own legal bases, which require the administrative authority to give reasons and the courts to review each situation. -the decision to place asylum seekers in detention, as it is asylum seekers, as set out in Article 8 of the Reception Conditions Directive, is based on article L. 523-1 et seq. of the French code for the entry and stay of foreign

			nationals and right to asylum (CESEDA). It is limited to cases where the asylum seeker poses a threat to public order or has submitted an asylum application to an incompetent authority and is also at risk of absconding. -the decision to detain asylum seekers, as set out in Article 28 of the Dublin Regulation, is based on article L. 751-9 et seq. of the CESEDA, either to determine the Member State responsible for the asylum application, or to execute the transfer decision. -the decision to detain foreign nationals in an irregular situation, as set out in article 15 of the Return Directive is based on the article L. 741-1 et seq. of the CESEDA. All these measures involving deprivation of liberty are taken after an individual examination of the situation and if no other less coercive measure appears appropriate. Each system sets specific criteria criteria, particularly for assessing the risk of absconding. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) n/a 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. (in application of article L. 754-3 of the CESEDA), if it considers on the basis of objective criteria that the asylum application is made for the sole purpose of preventing the enforcement of the removal decision. In this case, the detainee will only be held for the purpose of processing the asylum application (under the accelerated procedure) by the competent asylum authority, during which time the applicant obviously cannot be deported. The decision by the administrative authority to keep the person in detention may be appealed to the administrative court. If the asylum application is inadmissible or rejected, the foreign national will remain in detention and will automatically be returned to the detention regime provided for the enforcement of the removal decision. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued

			by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. Legally, this is not an extension, but a new detention decision (for the specific case where the detention of an asylum seeker is followed by detention to remove the foreign national whose asylum application has been rejected), due to the change in legal basis. The judicial judge intervenes for each extension decision or for a new detention decision.
	EMN NCP Germany	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, there are separate provisions in German law based on Article 8 of the Reception Conditions Directive, Article 15 of the Return Directive and on Article 28 of the Dublin Regulation. Dublin Regulation: This particular provision corresponds to Section 2 para. 14 of the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act). It provides a national definition of the term “risk of absconding” and rules on the national procedure for detaining asylum seekers. Section 2 para. 14 Residence Act stipulates: “(...) (14) Insofar as Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for ascertaining which member state is responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31) concerning detention for the purpose of transfer is relevant, section 62 (3a) applies accordingly as regards the refutable presumption of the risk of the foreigner absconding within the meaning of Article 2 (n) of Regulation (EU) No 604/2013 and section 62 (3b) nos. 1 to 5 applies accordingly as objective criteria for presuming that there is a risk of the foreigner absconding within the meaning of Article 2 (n) of Regulation (EU) No 604/2013; in all other cases, Article 28 (2) remains relevant within the scope of Regulation (EU)

			No 604/2013. Furthermore, indications of the risk of absconding may exist if: 1. the foreigner has left a member state prior to the conclusion of proceedings being conducted there to determine competence or to examine an application for international protection and the circumstances of apprehension in the federal territory provide concrete indications that he or she does not intend to return to the competent member state in the foreseeable future, 2. the foreigner has already filed several asylum applications in other member states under the scope of Regulation (EU) No 604/2013 and has left the other member state without waiting for the outcome of the proceedings initiated there to determine competence or to examine the application for international protection. The authority responsible for applying for detention for the purpose of transfer may detain a foreigner without a prior judicial order and place such foreigner in temporary custody, if a) there is a strong suspicion that the conditions defined in sentence 1 or 2 apply, b) it is not possible to obtain the judicial decision on the order for custody to secure transfer beforehand and c) there is a well-founded suspicion that the foreigner intends to evade the order for detention for the purpose of transfer. The foreigner is to be brought before the court without delay for a decision on ordering detention for the purpose of transfer. The provisions of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit) applies accordingly to the procedure for ordering detention for the purpose of transfer in accordance with Regulation (EU) No 604/2013, unless the procedure is regulated in another manner under Regulation (EU) No 604/2013." Article 8 of the Reception Conditions Directive has been transposed by means of provision Section 62c Residence Act. Article 15 of the Return Directive has been transposed by means of provision Section 62 para. 3 Residence Act. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other)

			n/a. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. In cases where the present grounds for detention cease to apply, which were the prerequisite for detention and thus the application for detention, a new application for detention must be issued. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. If the grounds for detention cease to apply, this detention cannot be extended on the basis of another law. A new detention decision with a corresponding justification is always required
	EMN NCP Hungary	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. 2 detention measures are in place, asylum detention and aliens policing detention. Asylum detention is used during the asylum procedure and is also applied for Dublin cases. Aliens policing detention is used for return based detention. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) Asylum detention is defined in Paragraph 31/A of Act LXXX of 2007 on Asylum. Asylum detention can be order for

			the purpose of conducting the asylum procedure or securing a Dublin transfer. Asylum detention can be ordered for a maximum of seventy-two hours by the asylum authority, but may be extended by the courts when justified. Aliens policing detention is defined in Paragraph 132 of Act XC of 2023 on the general rules for the entry and residence of third-country nationals. Aliens policing detention can be order for the purpose of ensuring the execution of returns. Aliens policing detention can be ordered for a maximum of seventy-two hours by the asylum authority, but may be extended by the courts when justified. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. A new detention decision is necessary in case of a legal basis change (such as a negative asylum decision) 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No, a new decision is necessary
	EMN NCP Italy	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes – Article 6 of Legislative Decree No. 142 of 2015 (implementation of Article 8 of the Reception Conditions Directive), Article 14 of Legislative Decree No. 286 of 1998 (implementation of Article 15 of the Return Directive), and Article 6-ter of Legislative Decree No. 142 of 2015 (implementation of Article 28 of the Dublin Regulation). These regulations reflect the corresponding EU provisions. Each case of detention involves a specific administrative procedure and guarantees for the individual concerned.

			2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) NA 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes, it is possible to switch from one form of detention to another if the legal conditions have changed. In such cases, it is necessary to issue a new order and submit it for validation to the competent judicial authority. The most frequent case is the transition from detention under the Return Directive to detention under the Reception Directive, as the person concerned expresses the intention to apply for international protection during the initial detention. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. Please, refer to the previous response. A procedural irregularity concerning the first detention decision could also affect the second one (depending on the case).
	EMN NCP Latvia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. The reasons for detaining TCNs are defined in Article 51 of the Immigration Law, which provides for the right to detain a TCN who is illegally staying in Latvia, with the aim of deporting him from the EU.

			The reasons for the detention of an asylum seeker, including if the necessity of his transfer procedure has been established in accordance with the provisions of Article 28 of the Dublin Regulation, are defined in Article 16 of the Asylum Law. Detention under Article 28 of the Dublin Regulation is one of the reasons for the detention of asylum seekers. The grounds for detaining TCNs and asylum seekers differ. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/a 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. If a person's status changes (for example, a TCN to be returned and he/she apply for an asylum or person with egatived decision in asylum procedure), he or she is immediately released, as the person is no longer subject to the relevant law. A person may be detained in accordance with another law, if there are relevant circumstances justifying the detention. In addition, see the answer to question 4. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. If there are no grounds for detention, then the person must be released, but may be detained within the framework of another procedure after a short while (if the circumstances of the detention have been established).

			Applying Article 5, 1 f. of the European Convention on Human Rights and Fundamental Protection of the Council of Europe of November 4, 1950 subsection and the jurisprudence of the European Court of Human Rights (ECtHR)*, when a TCN who has to be returned and who has been detained in accordance with the Immigration Law applies for the granting of refugee or alternative status, in certain cases (usually when the TCN's who has to be returned requests asylum with the aim of avoiding return procedure, 1-2 cases per year) Latvia continues detention in accordance with the Immigration Law (with the aim of return a TCN from the EU) as long as there are grounds to actually carry out the retrun. *ECtHR 22.09.2015 judgment in case No. 62116/12 Nabit and others v. Hungary Article 38, ECHR 15.02.2016 judgment in case no. C-601/15 Paragraph 79.
	EMN NCP Lithuania	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. The grounds for detention of foreigners are specified in Article 113 of the Law on the Legal Status of Foreigners. The Law specifies separate grounds for detaining foreigners and asylum seekers. Detention under Article 28 of the Dublin Regulation is included among the grounds for detaining asylum seekers. Please find an unofficial translation of Article 113 below: Article 113. Grounds for detention of an foreigner 1. A foreigner who is not a national of a Member State of the European Union, a member of his/her family or any other person who, in accordance with the legislation of the European Union, enjoys the right of free movement of persons may be detained on the following grounds: 1) to prevent the foreigner from entering the Republic of Lithuania without authorization; 2) when the foreigner has illegally entered or is illegally present in the Republic of Lithuania; 3) when the purpose is to return a foreigner who is not admitted to the Republic of Lithuania to the country from which he/she came; (4) where it is suspected that the foreigner is using forged documents; 5) when a decision is taken to expel a foreigner from the Republic of Lithuania or from another State to which Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-

			country nationals applies; 6) when the aim is to prevent the spread of dangerous or particularly dangerous communicable diseases; 7) where the foreigner's stay in the Republic of Lithuania poses a threat to state security, public order or human health. 2. When a decision is taken on the return of a foreigner to a foreign country, expulsion from the Republic of Lithuania, ordering the foreigner to leave the Republic of Lithuania or transferring the asylum seeker to another Member State of the European Union responsible for examining the asylum application, the foreigner may be detained only if the detention is necessary for the adoption and/or execution of the respective decision (if the foreigner obstructs the adoption and/or execution of the decision, or may hide in order to avoid the return, expulsion or transfer). 3. A national of a Member State of the European Union and/or a member of his/her family or any other person who, in accordance with European Union law, enjoys the right of free movement of persons, may be detained only on the following grounds: 1) he/she is suffering from diseases with epidemic potential, as defined in the documents of the World Health Organization, or from other human contagious (infectious or parasitic) diseases, which are subject to control requirements under the laws of the Republic of Lithuania; 2) where the aim is to expel the person from the Republic of Lithuania. 4. An asylum seeker can only be detained in the following cases: (1) for the purpose of establishing and/or verifying his/her identity and/or nationality; 2) in order to ascertain the grounds on which his/her application for asylum is based (where information on the grounds could not be obtained without detaining the asylum seeker), and if, after assessing the circumstances referred to in Paragraph 5(1), (6) to (11) of this Article, there are grounds for believing that the foreigner may hide in order to avoid being returned to a foreign state or expelled from the Republic of Lithuania; 3) where a foreigner who has been detained on the grounds referred to in paragraph 2 of this Article, when his/her return to a foreign State is being decided, submits an application for asylum and there are serious grounds for believing that this application has been submitted only for the purpose of postponing or impeding the execution of the decision to return to a foreign State, and that the foreigner has had the opportunity to benefit from the procedure of granting asylum already;

			(4) in accordance with Article 28 of Regulation (EU) No 604/2013; 5) where the asylum seeker constitutes a threat to national security or public policy. 5. In deciding whether there are grounds for believing that a foreigner may abscond, the following circumstances shall be assessed: 1) the foreigner does not have a document confirming his/her identity and does not cooperate in establishing his/her identity and/or nationality (refuses to provide data about himself/herself, provides misleading information in order to mislead the civil servants or employees of the competent institutions or bodies of the Republic of Lithuania, submits forged documents, etc.); 2) does not have a place of residence in the Republic of Lithuania or does not reside at the address indicated for the place of residence (does not reside); 3) has no family ties with persons residing in the Republic of Lithuania or social, economic or other ties with the Republic of Lithuania; 4) has no means of subsistence in the Republic of Lithuania; 5) has not fulfilled the obligation to leave the Republic of Lithuania within the set time limit, has not voluntarily left the Republic of Lithuania within the time limit set in the decision to return him/her to the foreign state or within the time limit extended on the basis of the grounds referred to in Paragraph 32 of Article 127 of the present Law; 6) fails to comply with an alternative measure to detention imposed by a court decision; 7) the foreigner accommodated in the State Border Guard Service has violated the procedure for temporary departure from the State Border Guard Service; 8. he/she has applied for asylum during the period of a pre-trial investigation in order to avoid criminal liability for illegal crossing of the State border; 9) the foreigner's presence in the Republic of Lithuania may pose a threat to public order; 10) during the examination of the application for asylum or during the examination of the issue of the foreigner's return to a foreign country, the foreigner does not cooperate with the civil servants or employees of the competent institutions or bodies of the Republic of Lithuania; 11) during the examination of the application for asylum, the foreigner has unlawfully left or attempted to leave the Republic of Lithuania; 12) attempted to leave illegally or transited through the Republic of Lithuania; 13) another Member State of the European Union has taken a decision on the return or expulsion of the foreigner; 14) the foreigner is subject to a prohibition of entry into the Member State(s) of the European Union.

			2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. According to Article 118 of the Law on the Legal Status of Foreigners, if the grounds for detaining a foreigner no longer exist, the foreigner has the right, and the State Border Guard Service is obligated, to promptly apply to the district court at the foreigner's location to reconsider the detention decision. Moreover, if a foreigner detained on specific legal grounds submits an asylum application, the State Border Guard Service must immediately request the district court to reconsider the detention. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. If the grounds for detention no longer exist, the SBGS must apply to the district court to reconsider the decision to detain the foreigner. If the foreigner is no longer an asylum seeker and the initial grounds for detention have ceased to exist, the court must be re-approached to request detention on a different basis.
	EMN NCP Luxembourg	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate.

			In Luxembourg the two directives have been transposed into national legislation. Article 15 of the Return Directive is transposed in articles 120 to 124 of the amended law of 20 August 2008 on free movement of persons and immigration (Immigration Law) and article 8 of the Reception Directive has been transposed in article 22 of the amended law of 18 December 2015 on international protection and temporary protection (Asylum Law). Article 28 of the Dublin regulation is comprehended in article 22 of the Asylum Law. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. YES. If the TCN was placed on detention based on article 22 of the Asylum Law and the final decision of the asylum procedure is negative, the rejected international protection applicant must receive a removal decision. In order to execute the removal decision the Minister in charge of asylum and immigration can place the individual in detention based on article 120 of the Immigration Law. So the first decision for placing the individual in detention will be terminated and a new decision based on the Immigration Law will be issued. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. As these are two different administrative acts which are independent with different legal basis the irregularities of the first decision do not have any incidence on the second decision.

	EMN NCP Malta	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Both the national transposition of the Return Directive and that of the Reception Conditions Directive transpose the Articles relating to detention independently. On the other hand the provisions of the Dublin Regulation are directly applicable in their own merits. Consequently, the three detention measures are considered to be separate grounds of detention. A TCN may be originally detained with a detention order under the Reception Conditions Directive. This detention may continue after he is rejected with a final decision as long as a return decision/removal order is issued. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes, a different decision is required every time. If the reason for the detention changed, then, the decision needs to reflect the legal reasons for the current detention. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate.

			As replied in question 1, yes, the detention may continue under a different legal basis as long as a different order, reflecting the new legal basis, is issued.
	EMN NCP Netherlands	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes, in the Netherlands, we have introduced in our national law three separate articles, for 1) detention for the purpose of removal (implementing article 15 of the Return Directive) 2) detention pending the asylum procedure (implementing article 8 of the Reception Conditions Directive) and 3) detention to effectuate a claim under the 'Dublin Regulation (article 28 of the Dublin Regulation). 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) Not applicable. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes(e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. If the legal status of the subject changes (for example, a person detained and to be removed applies for asylum), we are under obligation to end the first detention, and issue a new detention order, based on the appropriate article. This new detention order is subject to legal remedies. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate.

			No, irregularities in issuing the first detention order, will not automatically affect the second.
	EMN NCP Poland	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. In Poland, three separate legal bases for administrative detention have been implemented into the national legal order (the Act on foreigners, the Act on granting protection to foreigners within the territory of the Republic of Poland): 1) on the basis of Article 8 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on the establishment of standards for the reception of applicants for international protection, which is reflected in Article 87(1) of the Act of 13 June 2013 on granting protection to foreigners within the territory of the Republic of Poland . The time limit for detention under the aforementioned Act based on the grounds contained in Article 87 is 6 months in total. 2) On the basis of Article 15 of Directive 2008/115 EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, as implemented in Article 398a of the Act on foreigners of 12 December 2013. The period of stay in a guarded centre or in custody for foreigners may not exceed 6 months, with each subsequent court decision on the matter being issued for a period of no more than 3 months. After the expiry of a 6-month period of detention of a foreigner in a guarded centre or in a detention centre for foreigners, the stay may be prolonged for a specified period of time, not longer than another 12 months in strictly specified cases. In each case the applied detention measure shall be reviewed both ex officio by the authority in charge of the detention centre, a penitentiary judge and upon the foreigner's application submitted within the time limit specified in the decision of the Court deciding on the detention measure. The court shall notify the foreigner in a language which he/she understands of the actions taken and orders issued, as well as of the foreigner's rights in the proceedings before the court. 3) On the basis of Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of criteria and mechanisms for determining the Member State responsible for

			examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, which has been implemented in Articles 393a and 393b of the Aliens Act. If the requesting Member State does not meet the deadline for submitting a request for interception or secondary interception (within two months of obtaining a hit in Eurodac) or if the transfer does not take place within the six-week period referred to in the third paragraph, the person concerned shall not be subject to further detention. Articles 21, 23, 24 and 29 shall continue to apply mutatis mutandis. The judicial authority is always obliged to release a detained person immediately if that detention was or became unlawful at any time during a continuous series of consecutive detentions. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) As indicated in the answer to Q1, apart from the above-mentioned forms of detention and placement in detention, there are only alternative measures to detention or through compulsion to stay in a specific place until a decision ordering return is executed for health reasons which became apparent during detention or placement in a detention centre. Such a person receives benefits in the form of institutional assistance financed for a period of up to 6 months by the Commander-in-Chief of the Border Guard. Until the negative (health) reasons cease to exist, the enforcement of the decision ordering the return is suspended and the person stays in a place where he/she is provided with health care, psychological care and accommodation. 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. If a foreigner is detained and placed on the basis of the provisions of the Return Directive- Article 15, in a detention centre, in the event of his/her application for asylum, the detaining authority shall, on a case-by-case basis, address an application to the court to change the legal basis for the foreigner's stay. If the court grants the application, the foreigner's stay is based on the provisions of Article 8 of Directive 2013/33/EU of the European Parliament and of

			the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. Yes and No . It is possible to continue the detention of a foreigner (stay in a detention centre) as a result of a change in the legal basis of his/her stay. The situation in question is when the foreigner has been placed for the return procedure and has applied for international protection while in the detention centre. If, prior to the initiation of the asylum procedure, the foreigner has received a decision ordering his/her return or such procedure has not been completed with the issuance of a decision - its issuance or execution is suspended until the completion of the asylum procedure. At the same time, the original basis for detention (Article 15 of Directive 2008/115 EC of the European Parliament and of the Council) must be changed to a legal basis in connection with the submission of an asylum application (Article 8 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection). If, while in detention within the period provided for the asylum procedure of 6 months, a final decision terminating the asylum procedure is issued and served on the foreigner, it is possible to change the legal grounds for detention and to continue the detention on the basis of Article 15 of the Return Directives until a decision ordering return is issued and executed. In order to be able to continue a detention measure, it is necessary to demonstrate to the court deciding the foreigner's case factual evidence that a return decision is likely to be issued or enforced. The lack of probability of issuing a return decision at the moment of placing a foreigner in a detention centre, resulting from the fact that no administrative proceedings concerning the obligation to return have been initiated against the person at that moment, may raise doubts as to the further application of the detention measure through its modification after the decision ending the asylum procedure has been issued and served on the foreigner in the detention centre. The court assesses the reasonableness of the detention in each case and may disregard the request of the requesting authority to extend the detention measure.

			In the case of detention of a foreign national under Article 15 of the Return Directive for the purpose of issuing and implementing a decision ordering return, once the asylum procedure has been completed, it is worth reading Case C-181/16, Application of the right to an effective remedy in the EU to an asylum seeker who is the subject of a decision ordering return, SADIKOU GNANDI v. ÉTAT BELGE - Judgment of the Court of Justice ZOTSiSPI 2018/6/I-465, judgment of 19 June 2018. In the body of the grounds of the judgment, reference is made to Article 7(1) of Directive 2005/85, (now recast by Directive 2013/32) the right to remain provided for in this provision expires when the determining authority issues a decision at first instance rejecting the application for international protection. In the absence of a right of residence or a residence permit granted to the person concerned on another legal basis, in particular on the basis of Article 6(4) of Directive 2008/115, allowing an applicant whose application has been rejected to fulfil the conditions of entry, stay or residence in the Member State concerned, the effect of that rejection decision is that, immediately after the decision that applicant no longer fulfils those conditions and his/her stay therefore becomes illegal. A return decision against such a citizen may, in principle, be issued immediately after the said rejection decision or together with it in a single administrative act. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in conjunction with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (recast by Directive 2013/32) and in the light of the principle of non-refoulement and the right to an effective remedy, as enshrined in Article 18, in Article 19(2) and in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the adoption of a return decision pursuant to Article 6(1) of Directive 2008/115 in the case of a third-country national who is illegally staying on the territory of a Member State. Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding the issuing of a return decision under Article 6(1) of Directive 2008/115 to a third-country national who has applied for international protection immediately after the refusal of that application by the determining authority or together with that refusal decision in the same administrative act and thus before the examination of the appeal against that refusal decision, provided, in particular, that the Member State concerned guarantees that all legal effects of the return decision are suspended pending the examination of that appeal, that during that period the applicant in question can exercise his/her rights under Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and that he/she may rely on any change of circumstances occurring after the return decision which may have a significant effect on the assessment

			of the situation of the person concerned in the light of Directive 2008/115, in particular Article 5 thereof, which it is for the national court to verify.
	EMN NCP Portugal	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. In Portugal, our national legislation provides for three separate articles: 1) detention for the purpose of return (implementing Article 15 of the Return Directive), 2) detention pending the asylum procedure (implementing Article 8 of the Reception Conditions Directive) and 3) detention to pursue a claim under the Dublin Regulation (Article 28 of the Dublin Regulation). 1) detention for the purpose of removal (implementing Article 15 of the Return Directive): Articles 142, 146 and 161 of Law 23/2007 of 4 July, as amended. 2) and 3) detention pending the asylum procedure (implementing article 8 of the Reception Conditions Directive) and detention to effect a claim under the Dublin Regulation (article 28 of the Dublin Regulation): articles 35-A and 35-B of Law no. 27/2008, of 30 June, in its current wording (Asylum Law). It should be noted, however, that in the Asylum Law, under the terms of Article 2(1)(h) "Detention" is defined as "a measure of confinement of an applicant for international protection in a special area". 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. The rule laid down by law is that applicants for cannot be held in detention because they have applied for protection. the fact that they have applied for protection. However, if the the legal status of the citizen changes (for

			example, a person detained for removal applies for asylum), the foreign national may continue to be held in a temporary while the application is being examined, up to a limit of 60 days. Whenever the placement has to be validated by a judicial authority there must be a detention decision. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. NO
	EMN NCP Serbia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. The Republic of Serbia incorporated into its national legislation the provisions of Article 8 of the Directive on Reception Conditions, through the Law on Asylum and Temporary Protection, specifically Articles 77 to 80 ("Official Gazette of RS" 24/2018), which refers to the restriction of movement. The provisions of Article 15 of the Return Directive are integrated in the Law on Foreigners ("Official Gazette of RS", No. 24/2018, 31/2019 and 62/23) in Part VI - Detention and Forced Removal, Articles 81 to 94. The Republic of Serbia does not apply the Dublin Regulation, since it is not a member of the EU. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No

			Please elaborate. YES. If the legal basis for an order to stay in a Reception centre for foreigners (i.e. detention) changes, the competent authority is obliged to issue a new decision in accordance with the new legal basis. For example, if a foreigner is detained in a Reception centre for foreigners (i.e. detention) for the purpose of preparation for return or execution of forced removal in accordance with the Law on Foreigners, and during his stay he expresses intention to seek asylum, the Asylum Office is obliged to issue a new decision on restriction of movement if the conditions for the restriction of movement prescribed by the Law on Asylum and Temporary Protection (Art. 77 and 78) are met. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. YES. In accordance with the provisions of the Law on Foreigners and the Law on Asylum and Temporary Protection, there are no obstacles to the above. However, in practice such cases are not possible because of maximum duration of the stay in Reception centre for foreigners (3 months with the possibility of an extension of an additional 3 months), and the deadlines and usual timeline within the appeal and lawsuit proceedings.
	EMN NCP Slovakia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. The detention of third-country nationals in Slovakia is regulated in the Act on the Residence of Foreigners as follows: detention for the purpose of removal (implementation of Article 15 of the Return Directive)detention during the asylum procedure (implementation of Article 8 of the Reception Conditions Directive) and detention for the purpose of making a claim under the "Dublin Regulation" (Article 28 of the Dublin Regulation) According to the Act on the Residence of Foreigners, a police officer is authorized to detain a third-country national a) in administrative expulsion proceedings in order to ensure his/her departure, if: (1) there is a risk of his

			absconding, or (2) the third-country national avoids or obstructs the process of preparing for the execution of his or her administrative expulsion; b) for the purpose of carrying out an administrative expulsion or executing an expulsion sentence, c) for the purpose of ensuring the preparation of his transfer in accordance with a special regulation, if there is a significant risk of his escape, or d) for the purpose of his return under an international treaty, if he has illegally crossed the external border or is staying illegally in the territory of the Slovak Republic. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) NA 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. The person in question is “re-detained” following the Act on Residence of Foreigners, i.e. the first detention is terminated and new decision on detention will be issued. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. Procedural irregularity will not affect the second decision.
	EMN NCP Slovenia	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the

			Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Yes. Detention based on Article 8 of the Reception Conditions Directive and detention based on Article 28 of the Dublin Regulation are defined in Article 84 of the International Protection Act. Detention based on Article 15 of the Return Directive is implemented in Foreigners Act in Articles 76, 78, 79, 79a and 83: with a view to preparing or carrying out the removal, surrender or extradition procedure, the police shall impose the restriction of movement and accommodation in the Centre for foreigners for who is to be removed in accordance with the provisions of this Act and who is to be returned, surrendered or extradited to the competent authorities in accordance with an international treaty. Restriction of movement may only last for the period necessary to achieve the purpose referred to, but for not more than six months. It is ordered by the police by a decision. A foreigner shall have the right to bring an action with the administrative court against a decision on accommodation within three days of the service of the decision. An action shall not stay the execution of the decision. The administrative court must decide on the action within six days. If it is not possible for objective reasons to remove a foreigner after a period of six months, the police may issue a decision extending the foreigner's accommodation in the Centre for a further six months due to his or her non-cooperation in the removal procedure or delays in obtaining the required documents from third countries or if the procedure for establishing identity is still pending, provided that the conditions laid down in this Act are met and that it can be reasonably expected that it will be possible to remove a foreigner in that period. An action may be brought with the administrative court against a decision extending restriction of movement. The court shall decide on the action within eight days. An action shall not stay the execution of the decision extending restriction of movement. The ministry responsible for the interior shall verify, ex officio, the grounds for the restriction of movement in accordance with Article 78 of this Act before the expiry of three months from the ordered restriction of movement in the Centre. If the court establishes that the reasons for the restriction of movement have ceased to exist, it shall order the police to release the foreigner from the Centre without delay. If the restriction of movement in accordance with the preceding Article is longer than three months, the grounds for the restriction of movement shall be verified, ex officio, by the administrative court before the expiry of three months from the ordered restriction of movement. If the court establishes that the reasons for the restriction of movement have ceased to exist, it shall order the police to release the foreigner from the Centre without delay. A foreigner shall have the right to bring an action in an administrative dispute against the ministry's finding that the restriction of movement is still reasonable. A foreigner shall have the right to file a complaint with

			the Supreme Court of the Republic of Slovenia against the decision of the administrative court stating that the restriction of movement is still reasonable. In the complaint the foreigner may submit new facts and evidence. The accommodation of a foreigner in the Centre shall be terminated when all grounds therefor cease to exist or when the purpose thereof has been achieved. Accommodation in the Centre may also be terminated at the request of a foreigner if the police determine that the conditions are in place for a less stringent measure in accordance with this Act. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) / 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes. The national law requires the competent authority to issue a new detention decision when the legal basis for the detention changes. In addition, the competent authority for issuing the detention decision to a person in irregular situation is the Slovenian Police, while the competent authority for issuing the detention decision to an applicant for asylum is the Ministry of the Interior. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. No. For a detention based on a different legal basis, new detention decision needs to be issued by the competent authority.

	EMN NCP Spain	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate. Only detention based on the Return Directive has been implemented in Spain. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. In this case, the TCN remains in detention while an accelerated admissibility procedure, lasting 8 days, is applied. If the asylum application is admitted, detention ends. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. See answer to question 3.
	EMN NCP Sweden	Yes	1. In your (Member) State, are the three detention measures (detention based on article 8 of the Reception Conditions Directive, detention based on article 15 of the Return Directive and detention based on article 28 of the Dublin Regulation) implemented as three separate grounds for detention in national law? Yes/No, please elaborate.

			Yes. 2. If you answer NO to Q.1, can you explain how the detention of a TCN is implemented in your national legislation? (For example, as opposed to three separate grounds for detention, there is one comprehensive provision for all detention measures, or other) N/A 3. Does your national law require you to issue a new detention decision when the legal basis for the detention changes (e.g., a person in an irregular situation is detained and to avoid being removed applies for asylum)? Yes/No Please elaborate. Yes, this relates to the fact that a new circumstance/-s calls for us to make a new decision, given that there will be new reasons that calls for a new detention order. 4. It is possible in your Member State that detention based on one legal basis (e.g., asylum procedure) be continued by a detention based on a different legal basis (e.g., return procedure)? YES/NO. If you answer YES does a procedural irregularity that affects the first detention decision would affect the second detention decision? YES/NO, please elaborate. Following a new decision, the ground for detention can shift depending on which part of the process the TCN is in at the given moment. There will be no procedural irregularities due to this.

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