

ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

NATIONAL
STAKEHOLDER
REPORT

September **2019**

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MIGRATION

The increasing use of detention of asylum seekers and irregular migrants in the EU



National Stakeholder Reports aim to inquire the **stakeholders' response to the evolving EU policy agenda** and **assess the unmet needs** in EU Member states. They also offer a key opportunity to bring the recently ReSOMA briefs and outputs on each topic to the attention of the relevant actors at national level. As such, the reports play a key role in linking the current EU policy agenda with the debate and recent developments on migration, asylum and integration within Member states.

In the second year of ReSOMA, the consultations underpinning the reports were conducted via the ReSOMA online platform in order to mobilise the community of experts (the "Expert Database") through thread discussions.

Download this document and learn more about the Research Social Platform on Migration and Asylum at: www.resoma.eu

LINGUISTIC VERSION

Original: EN

Manuscript completed in September 2019

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This project has received funding from the European Union's Horizon 2020 research and innovation program under the grant agreement 770730

National Stakeholder Report

The increasing and controversial use of detention of asylum seekers and irregular migrants in the EU

By Peter Scholten & Zeynep Kaşlı

Asylum-seekers and irregular migrants are facing increased detention across the European Union. It has been used to **enforce return decisions, carry out Dublin transfers or as part of reception procedures** for individual seeking international protection. It is therefore envisaged for **several categories of individuals** with diverse background, status and conditions of vulnerability.

As ReSOMA [ask the expert brief](#) mapping the existing research in this field shows, increasing level of detention is seen part of a wider process of criminalisation of migration manifested in absorption of criminal law enforcement into immigration law enforcement, and management of popular anxiety of “undesirable foreigners” by asserting state control. In ReSOMA [expert interview](#), Arjen Leerkes and Witold Klaus draw attention to three key problems: the conditions and negative socio-psychological effects of separation faced by the detainees as well as the fact that it is used as a measure of last resort. The experts also stress that further research is needed on the effectiveness of the detention in the light of widespread violations of human rights. Similarly the ReSOMA [Discussion Brief](#) emphasizes that:

- We need a better understanding of the existing **EU legislative framework** regarding immigration detention, the proposals put forward to recast the CEAS and the stakeholders' perspectives and concerns;
- It is necessary to have an overview of **current national practices** which may violate the fundamental rights of migrants and EU law;
- A comprehensive assessment is needed on adverse **consequences of migration detention**, from the point of view of migrants' health, vulnerability, psychological wellbeing and social sphere, as well as a consideration of the resort to less coercive alternative measures.

Key issues and controversies further highlighted in the Discussion Brief include:

- The existing and possible new grounds for detention
- The interpretation and implementation of the “risk of absconding”, along with the proposed 16 objective criteria to determine it (see [ECRE's comments](#) on this)
- The length of detention
- The possible limitation of the suspensive effect of legal remedies
- The resort to alternative measures as a gateway to detention
- The current lack of ban on child detention
- The adverse impacts on health, psychological wellbeing and social relations of migrants.

This report summarizes the online discussions via the ReSOMA web portal and survey conducted via the SurveyMonkey platform. The questions for both the online discussion and the survey have been developed based on the needs and specifications of the ReSOMA stakeholder partners and were launched over the course of late June and early July. During that time, experts, who are already registered to the ReSOMA Expert Database, received invitation e-mail to take part in both the online discussions and the surveys. Further promotion was carried out from the ReSOMA twitter account. As a privacy measure, survey responses cannot be matched with Expert Database Profiles whereas the comments posted on the platform match with the name and the institution of each commentator. Summary reports include only the names of the organizations as the comments reflect the views of affiliated institutions.

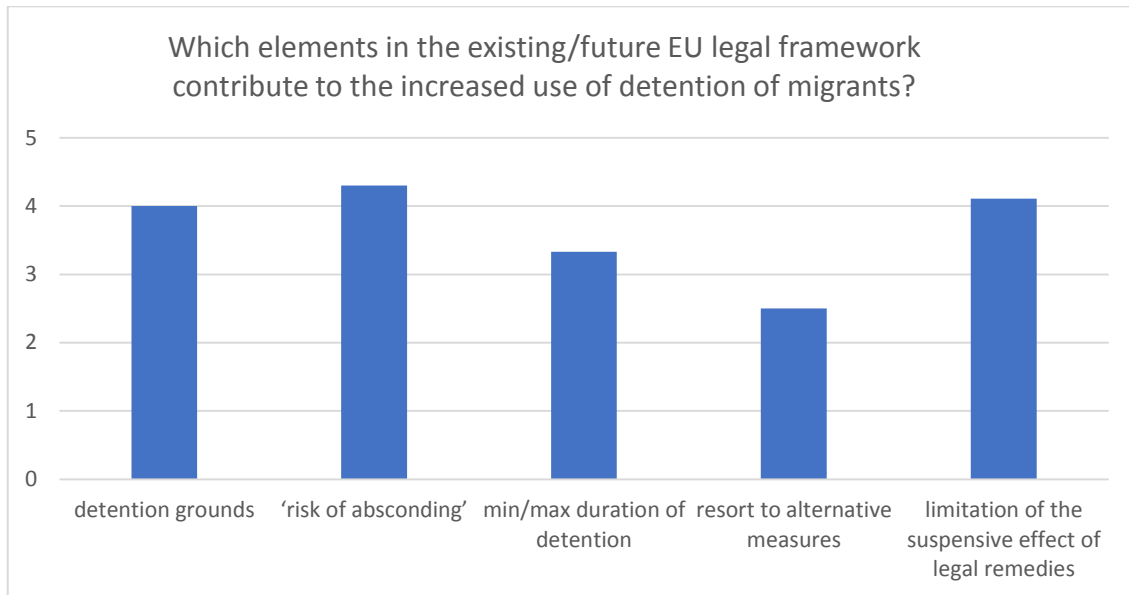
During the online discussions, the respondents were asked to provide input on the following topics: (1) the **conditions and the needs** for better assessment of the use of detention; (2) **policy actions** to ensure that needs are addressed; (3) the **role of the EU and other actors** in monitoring and assessing detention conditions and alternative measures. Although it is hard to make strong inferences due to low response rates, the survey results (N=10) and four inputs mainly from NGOs highlight following points:

- The results of NGOs' monitoring activities are not taken into consideration by officials.
- Even though alternatives to detention are foreseen by law, they do not receive sufficient funding.
- Commission's political and financial support is pivotal to keep migrants themselves engaged in their migration process and achieve case resolution.

Needs for assessment of the use of detention

On this topic, the experts were asked to comment on the following questions: What are the elements in the current and potential future EU legal framework contribute to the increased use of detention of asylum seekers and irregular migrants? Are there measures or systems put in place at the national level to monitor the situation of migrant detention?

Survey respondents believe that the concept of the 'risk of absconding,' along with the proposed 16 objective criteria to determine it, is the element which contribute more to the increased use of detention of asylum seekers and irregular migrants in the EU. This is followed by the possible limitation of the suspensive effect of legal remedies and the grounds for detention (which also considers the newly proposed one based on the risk to public policy, public security or national security). The possible resort to alternative measures seems to be the factor which counts the least. The chart below presents the weighted average of answers given to each factor on a 5-point scale (N=10).



Regarding the monitoring measures, Platform Kinderen op de Vlucht from Belgium notes that Belgium has not yet appointed an independent authority to perform regular monitoring and reporting on the running of its immigration detention centres. The Belgian NGO further notes that, despite the existing Alien Act allows parliamentarians, international organizations and human rights bodies always access to the detention centres, they don't visit the centres regularly. There are several NGOs, subjected to official accreditations, visiting the centres on a weekly basis to provide moral and psychological support to detainees and to assure social and legal aid. In addition, they also monitor the conditions of detention and issue recommendations to the authorities in charge. For example, Vluchtelingenwerk Vlaanderen found the complaint procedure has serious shortcomings. However, the actions of these NGOs are not officially recognised as "monitoring" by the Belgian authorities.

Policy actions to ensure that needs are addressed

On this topic, the experts were asked to comment on the following questions: Are there alternative measures to detention provided at national level for migrants? Which are the most important measures that should receive more EU support? How do you assess whether the practice of migrant detention used at the national level is in line with EU legislation?

As reported by Platform Kinderen op de Vlucht, Belgian legislation foresees three alternatives to detention: (1) the return houses, which are also called FITT-houses or open family units, (2) the possibility to stay in the family house pending a voluntary return; and (3) the "preventive measures to prevent disappearances" based on the EU Return Directive. They also point out that second and third options currently do not meet all conditions of the restricted definition of "alternatives to detention" since no "warrant to detention" is issued, and these measures can be imposed while it is not yet proven that the return is possible or imminent. Even then these alternatives do not receive sufficient funding, hence applica-

tion is limited, although Platform Kinderen op de Vlucht sees them as an opportunity for both the beneficiaries and the governments.

It is necessary to note that PICUM underlines the importance of developing alternatives to detention, but warns from the risk of focusing merely on enforcement-based alternatives drawn from the criminal system (i.e. bail, passport surrender or reporting condition), as these measures do not challenge the use of enforcement and deterrence as major tools in migration management. NGO-run pilot projects have demonstrated that, in order to be effective, alternatives to detention must be based on migrants' engagement in the migration process. PICUM mentions three pilot projects in Bulgaria, Cyprus and Poland, where 97 % of the participants remained engaged or achieved case resolution with the provision of holistic and individualised case management. This means, case managers, who are not responsible for making decision on people's immigration cases, establish link between the individual, the authorities and the community, and help clients to work towards case resolution while ensuring that their fundamental rights and basic needs are met.

The role of the EU and other actors

On this topic, the experts were asked to comment on the following questions: Which actors (the EU national or local actors) could help establishing compulsory mechanisms to provide data on immigrant detention, monitor migrants' conditions in the detention facilities and sanction non-compliant practices? What role could the EU play in fostering good practices and increase the resort to alternative measures?

PICUM reminds states obligations under the EU Directive on Returns to assess the effectiveness of less coercive measures before applying detention. Moreover, in the revised Return Handbook, the European Commission lists a series of possible alternatives to detention that can be applied in the pre-return context, such as "residence restrictions, open houses for families, caseworker support, regular reporting, surrender of ID/travel documents, bail and electronic monitoring". Whereas it is important that the decision on which measure to apply must be based on a genuine assessment of each individual case, the Commission does not provide further guidance on how to take such decisions.

In order to support projects similar to the NGO-run pilot projects applied in Bulgaria, Cyprus and Poland, PICUM underlines that the Commission's political and financial support is pivotal to develop pilot projects that keep migrants themselves engaged in their migration process and achieve case resolution. They therefore call attention to the future AMIF which, in their view, must include strong wording on such engagement-based alternatives to detention and encourage NGOs' involvement in the designing and implementation of the project.



ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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