

EMN AD HOC QUERY SUMMARY

**DETENTION AND REMOVAL OF UNACCOMPANIED AND ACCOMPANIED MINORS**

*Comparative overview of policies and practices in 18 (Member) States*

February 2015

*Ad-Hoc Queries of the European Migration Network (EMN) are a means by which a (Member) State or the European Commission can collect in a relatively short time, via focused questions on a specific asylum- and migration related topic, information from different (Member) States.*

Below you can find a comparative overview/summary of an ad-hoc query launched by the Belgian EMN Contact Point on detention and removal of unaccompanied and accompanied minors, including the answers of 18 (Member) States: Austria, Belgium, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Romania, Slovak Republic, Spain, Sweden, United Kingdom, Norway.

**Detention of unaccompanied minors**

In the vast majority of (Member) States, detention of unaccompanied minors is **prohibited, rarely used in practice or only in exceptional circumstances**:

- **Prohibited** in Belgium (except during age assessment – 7 cases in 2013), in some *Länder* in Germany, in France, Hungary, Ireland, Italy, Lithuania, Romania, Slovak Republic, Spain. Prohibited under a certain age: in Austria (<14 years), Latvia (<14 years). Prohibited for applicants for international protection: the Netherlands.
- **Rarely done in practice** in Luxembourg (0 cases in 2013)
- **Applied only in exceptional circumstances or as a measure of last resort** in Finland (a few annually; 10 in 2013), Germany (differences between the *Länder*), Latvia (exceptionally and only if between 14 and 18 years), the Netherlands (in cases of forced return), Norway (very short period before removal), Sweden (10 cases in 2013 – night before removal), UK.

**Detention of accompanied minors**

Overall accompanied minors are still **more often detained than unaccompanied minors** but according to the answers received detention is only **used as a measure of last resort or in exceptional cases**. In some (Member) States, accompanied minors are **never or rarely detained**.

- **Not detained** in Ireland, Italy, Romania. Not detained under a certain age: in Austria (<14 years).
- **rarely detained** in Belgium (very short duration, see below), Spain, Sweden (37 in 2013 – very short duration).
- **are being detained as a measure of last resort or only in 'exceptional cases'** in Finland (31 in 2013), France (92 in 2013), Germany, Hungary, Lithuania and UK (provisional figure of 229 in 2013).

## Length of detention of minors

When **minors** are detained, this is usually for a limited time period.

### - Information received on **unaccompanied minors**:

- seldom longer than 24 hours in Norway (day of or day preceding removal)
- on average 1 day in 2013 in Sweden
- on average 3 working days in Belgium (during age assessment)
- on average 20 days in Finland in 2013
- ⇒ No cases of detention in 2013 / not applicable in France, Hungary, Ireland, Lithuania, Luxembourg, Romania, Slovak Republic, Spain, UK.
- ⇒ No (separate) information available on the duration of detention from Austria (max 2 months), Germany and the Netherlands.

### - Information received on **unaccompanied minors**:

- seldom longer than 24 hours (day of or day preceding removal) in Norway
- max 48 hours upon arrival and one night before removal in Belgium
- usually no longer than 24 hours and maximum 72 hours in Luxembourg
- For a maximum of 30 days in Hungary.
- One case of detention in Latvia in 2011 (none in 2012-2014) held for 48 days.
- ⇒ Not applicable (no cases of detention in 2013) in Ireland, Italy and Romania.
- ⇒ No (separate) information available on the duration from Austria (max 2 months), Finland, France (average length of detention in Metropolitan France for all TCN: 11,9 days), Germany, Lithuania, the Netherlands, Slovak Republic, Spain, Sweden, UK.

### - Some Member States provided information for **all minors**:

- On averaged 1,1 days in Sweden in 2013
- On average 11,8 days in Finland in 2013
- In the UK the vast majority of minors is detained for 3 days or less. A considerable number between 4 and 7 days, and in a limited number of cases detention did last until over 28 days.

## Forced removal of minors

Concerning forced removal, the numbers seem to be **limited and concern mainly accompanied minors**. From the 18 (Member) States that responded, no unaccompanied were removed in 2013 in 9 States and no accompanied minors in 6 of the States. For a number of (Member) States this information is not available.

### **Unaccompanied minors** removed by force in 2013:

- None in Belgium, France, Ireland, Latvia, Lithuania, Luxembourg, Romania, Slovak Republic, Spain
- 20 in the Netherlands
- No information available from Finland, Germany, Hungary, Norway, Sweden.

### **Accompanied minors** removed by force in 2013:

- None in Ireland, Italy, Latvia, Romania, Slovak Republic
- 56 in France, 20 in Luxembourg, 120 in the Netherlands. Maximum 5 families in Belgium (no exact data available on the number of minors).
- No information available from Finland, Germany, Hungary, Norway, Lithuania, Spain, Sweden

In the UK, in total 84 **minors** (provisional figure) were removed by force in 2013.

**Table: Overview / summary of responses to the Belgian ad-hoc query on detention and removal of (unaccompanied and accompanied) minors, by country.**

	Are <u>un</u> accompanied minors being detained?	Are accompanied minors being detained?	Number of minors held in detention?	Length of detention?	Number of minors removed by force?
Austria	<p><b>Yes if</b> ≥14 years. If they are between ≥14 years and &lt;16 years, only if accommodation and care are provided that are appropriate for their age and level of development (and for a maximum of two months)</p> <p><b>No if &lt;14 years</b></p>	<p><b>Yes if</b> ≥14 years. If they are between ≥14 years and &lt;16 years, only if accommodation and care are provided that are appropriate for their age and level of development (and for a maximum of two months)</p> <p><b>No if &lt;14 years</b></p>	Not available	<p><i>Unaccompanied</i> +</p> <p><i>accompanied:</i> Not available - max duration of 2 months foreseen by law</p>	Not available
Belgium	<b>No except</b> during a short period during age assessment (when there is a doubt it concerns a minor).	In recent years families were in practice <b>not being detained unless</b> for a short period on arrival or just before departure. However, detention of families with minors is <b>legally possible</b> if in adapted structures and for as short as possible duration. The new government <b>plans to create</b> in the near future specialized, <b>adapted detention units</b> for families <b>as a measure of last resort</b> .	<p><i>Unaccompanied</i> 2012: 19 2013: <b>7</b> (age assessment)</p> <p><i>Accompanied:</i> 2012 and 2013: Not available (till October 2014: Not available. Only the total number of persons of the families available, including children and adults: 104)</p>	<p><i>Unaccompanied:</i> Average of <b>3 working days</b></p> <p><i>Accompanied:</i> Max. 48 hours upon arrival and one night before removal</p>	<p><i>Unaccompanied:</i> 2012: 0 2013: 0</p> <p><i>Accompanied:</i> 2012: N/A - max 5 families 2013: N/A - <b>max 5 families</b></p>
Finland	<p>Legally possible, however in practice only in <b>exceptional circumstances</b> (a few annually).</p> <p><u>Legislative proposal</u> in discussion: No detention &lt; 15 years. For UAMs over 15 years, only possible after the decision to deport them has become enforceable and for a duration of 72 hours, renewable once.</p>	<p><b>Yes, as a last resort.</b> Minors can be detained together with their guardian(s), but it is also possible to detain only one (adult) family member.</p>	<p><i>Unaccompanied</i> 2012: 4 2013: <b>10</b></p> <p><i>Accompanied:</i> 2012: 22 2013: <b>31</b></p>	<p><i>Unaccompanied:</i> <b>20 days</b></p> <p><i>All children:</i> <b>11,8 days</b></p> <p>(Average detention periods in 2013)</p>	Not available
France	<b>No</b>	<b>Yes</b> , together with their parents in suitable centres (list in law). A circular of 2012 stipulates it is a <b>measure of last</b>	<p><i>Unaccompanied</i> 2012: 0 2013: <b>0</b></p>	<p>Not available</p> <p>Average length in 2013</p>	<p><i>Unaccompanied</i> 2012: 0 2013: <b>0</b></p>

		<b>resort</b> , when the family has previously failed to comply with an order to leave the French territory or has not respected the obligations associated with their assignment to residence. Numbers dropped after this circular.	(prohibited)  <i>Accompanied:</i> (2011: 487) 2012: 137 2013: <b>92</b>	for all TCN in detention in Metropolitan France was <b>11,9 days</b> .	<i>Accompanied</i> <sup>1</sup> : (2011: 57) 2012: 52 2013: <b>56</b>
Germany	In general: Yes in <b>exceptional cases</b> and only for as long as reasonable.  In some Länder it is <b>not</b> permitted or not permitted for certain unaccompanied minors (e.g. under the age of 16; or under the age of 14, or if they are attending school, have a training position, ...)	Yes, however only in <b>exceptional cases</b> and for as long as is reasonable for the well-being of the child.  As a rule, <b>detention can only be filed for one parent</b> (father) although this rule can be waived under certain circumstances.  (Additional rules in some Länder, e.g. Berlin: one night at most)	Not available	Not available	Not available
Hungary	<b>No</b>	<b>Yes, as a last resort</b> and taking into account the primary needs of the minor, it is possible under specific circumstances for the purposes of asylum detention and/or executing expulsion.	No information received	Unaccompanied minors: Not applicable  Accompanied minors: Legally possible for a maximum of 30 days	No information received
Ireland	<b>No</b>	<b>No</b>	<i>Unaccompanied: 0</i>  <i>Accompanied: 0</i>	Not applicable	<i>Unaccompanied: 0</i>  <i>Accompanied: 0</i>
Italy	<b>No</b> <sup>2</sup> . Detention and forced removal of minors is prohibited.	<b>No.</b> Detention and forced removal of minors is prohibited. <sup>3</sup>  If an adult parent is detained, the minor is entrusted to a family member, inter alia, through their return to the country of origin after family tracing. If voluntary return is not possible for reasons of safety and interest of the minor, the minor is entrusted to the Social Services.	<i>Unaccompanied: 0</i>  <i>Accompanied: 0</i>	Not applicable	<i>Unaccompanied: 0</i>  <i>Accompanied: 0</i>

<sup>1</sup> The data provided only concern forced removals organized by air by the border police and do not include forced removals through commercial flights. However, it should be noted that most of forced removals of families with minor children are organized by air by the border police.

<sup>2</sup> Although, in the event that a UAM is accused of a criminal offense (a proceeding is opened), they are assigned to the Centre for Juvenile Justice (CGM).

<sup>3</sup> AMs are in Italy registered on their parents' residence permits. If one parent is irregular, the minor is entitled to a residence permit on the grounds of minor age. If the parent is removed, the child is entitled to follow him/her to the country of origin.

		The Social Services will place the child in a reception centre within the national territory while awaiting placement with a foster family or repatriation, depending on age.			
Latvia	<b>No</b> if under 14 years <b>Yes</b> if between 14 years and 18 years under certain conditions <sup>4</sup> - as a <b>measure of last resort</b>	In practice, <b>no</b> detention or very exceptionally (if necessary accommodated together with detained parents.)	<i>Unaccompanied</i> Since 2011, <b>1</b> unaccompanied (in 2014) was detained (not removed yet because of family tracing).  <i>Accompanied</i> Since 2011, <b>1</b> accompanied minor was detained (also in 2014) and was removed after detention, together with his relatives. He was held in detention for 48 days.		
Lithuania	<b>No</b>	Yes, however only in <b>exceptional cases</b> and taking into account the best interests of the child.	<i>Unaccompanied</i> (2011: 4) 2012: 0 2013: 0  <i>Accompanied:</i> Not available	No information received	<i>Unaccompanied</i> (2011: 1) 2012: 0 2013: 0  <i>Accompanied:</i> Not available
Luxembourg	<b>No.</b> However legally possible if in an appropriate and adapted place. <sup>5</sup>	They can be detained for a maximum of 72 hours, however in practice <b>usually no longer than 24 hours.</b>	<i>Unaccompanied</i> 2012: 0 2013: <b>0</b>  <i>Accompanied:</i> 2012: 55 2013: <b>28</b>	<i>Unaccompanied</i> Not applicable  <i>Accompanied:</i> Usually no longer than 24 hours	<i>Unaccompanied</i> 2012: 0 2013: <b>0</b>  <i>Accompanied:</i> 2012: 49 2013: <b>20</b>
Malta					
Netherlands	<b>If asking for asylum at the border: no. If forced return: yes, as a last resort</b> to realize forced return, for as short as possible and under strict conditions.	<b>Yes, as a last resort</b> to realize return. For in principle a <b>maximum of two weeks.</b>  Since October 2014 detention of families is executed in a closed family facility (more information in the reply of the Netherlands).	<i>Unaccompanied</i> 2012: 50 2013: <b>30</b>  <i>Accompanied:</i> 2012: 350 2013: <b>170</b>	No information received	<i>Unaccompanied</i> 2012: 40 2013: <b>20</b>  <i>Accompanied:</i> 2012: 250 2013: <b>120</b>
Norway	<b>Yes for a short period (usually less than 24 hours)</b> to prevent absconding (on the day of or the day preceding	Yes, with other family members. To prevent absconding.	Not available	Not available. <b>Longer than 24 hours is very</b>	Not available

<sup>4</sup> Latvian immigration law defines that a minor foreigner, who has reached the age of 14 years can be detained, if there are grounds to believe that he or she will avoid the removal procedure or will impede the preparation thereof or there is a risk of absconding of the foreigner, and it is substantiated by any of the circumstances defined in the Immigration law.

<sup>5</sup> In Luxembourg, the Administrative Court questioned (in judgment n° 30869 of 25 July 2012) the reliability of the age assessment test. Thus, since that judgment, an applicant for international protection claiming to be a minor will continue to be treated as such, even though the age test assessed him as being major, and the ad hoc administrator will continue to represent his/her interests during all the procedure.

	removal).			<b>seldom.</b>	
Romania	<b>No</b>	<b>No</b>	0	Not applicable	0
Slovak Republic	<b>No</b>	<b>Yes</b> , only in cases <b>when reasonably necessary and for as short time</b> as possible.	<i>Unaccompanied:</i> not applicable  <i>Accompanied:</i> 2012: 4 2013:8	No information available	<i>Unaccompanied: 0</i>  <i>Accompanied:</i> 2012: 0 2013: 0
Slovenia					
Spain	<b>No</b>	In practice, detention is rarely used. Legally, minors can accompany their parents when these must be detained in a detention facility, if the General Prosecutor's Office informs favourably and there are units in the detention facilities that guarantee the unity and family privacy.	<i>Unaccompanied:</i> 2012: 0 2013:0  <i>Accompanied:</i> Not available	Not applicable	<i>Unaccompanied:</i> 2012: 0 2013:0  <i>Accompanied:</i> Not available
Sweden	In practice, unaccompanied minors are <b>very seldom</b> detained. When it occurs, it is usually for one night in connection with the removal. Legally it is possible in a number of cases.	<b>Only seldom detained.</b> Sometimes one parent can be detained and the other parent stays with the children. Legally it is possible in a number of cases (same rules as for UMAs).	<i>Unaccompanied</i> 2012: 16 2013: <b>10</b>  <i>Accompanied:</i> 2012: 26 2013: <b>37</b>	<i>Unaccompanied</i> Average time in detention 3,9 days in 2012 en <b>1</b> day in 2013  <i>All minors:</i> Average time in detention 12,3 days in 2012 en <b>1,1</b> day in 2013	<i>Unaccompanied</i> Not available (in 2012 and 2013 respectively 144 and 80 UMAs were turned over to the police for forced removal)  <i>Accompanied:</i> Not available
UK	Only in <b>exceptional circumstances</b> : where there may be concerns for their safety and/or welfare and while alternative arrangements are made for their care and safety.  This must be for the shortest possible time, extremely justifiable and gone through rigorous examination.	Only in <b>exceptional circumstances</b> : cases are prioritized and persons are held for the shortest possible time.	<i>All minors:</i> 2012: 242 2013: <b>229</b> (provisional figure)	<i>All minors:</i> <b>Vast majority is detained for less than 3 days</b> (more details in the answer of UK)	<i>All minors:</i> 2012: 108 2013: <b>84</b> (provisional figure)