

# Bringing child immigration detention to an end: The case of EU return procedures

**Anastasia Karatzas**

---



# Table of contents

<b>Executive summary</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>The plain truth: Detention is inherently harmful to children</b>	<b>4</b>
<b>A new norm? Detention not even as a measure of last resort</b>	<b>5</b>
<b>Alternatives to detention as the clear substitute</b>	<b>5</b>
<b>The EU a step behind the times? The Return Directive and its recast</b>	<b>6</b>
<b>Reflections on the extent (and merit) of detention versus alternatives in the EU</b>	<b>7</b>
<b>Recommendations on the way forward</b>	<b>8</b>
<b>Endnotes</b>	<b>9</b>

---

## ABOUT THE AUTHOR



**Anastasia Karatzas** is a Programme Assistant in the European Migration and Diversity programme at the European Policy Centre.

---

## DISCLAIMER

The support the European Policy Centre receives for its ongoing operations, or specifically for its publications, does not constitute an endorsement of their contents, which reflect the views of the authors only. Supporters and partners cannot be held responsible for any use that may be made of the information contained therein.

# Executive summary

In response to an accumulating body of evidence attesting to the clear harm caused by even brief periods of child immigration detention, an international consensus has emerged firmly against the practice. This position has been adopted by various prominent international and non-governmental organisations, who, at the same time, have advocated for the use of case management and community-based care alternatives.

Any such consensus is, however, yet to be reflected in the policies of the EU, which is not least illustrated in the context of the Return Directive. As it stands, the detention of minors is permitted by the Directive and remains a plausible option both according to the European Commission's proposal to recast it, and the Council of the EU's position on the matter.

Although the Directive mandates member states to explore all plausible alternatives and to use child immigration detention only as a measure of last resort, evidence suggests that detention is prolific and alternatives underused. In the recast, little has changed on this front either, with the use of alternatives having fallen mostly by the wayside.

Should the recast Directive therefore retain the possibility to detain children and deprioritise the use of alternatives, it will stand in stark contrast not only to the evidence of harm posed by placing children into detention, but also to the growing international consensus against its continued use. With negotiations on the recast ongoing, however, the time for the EU to shift gear, ban the practice and mandate alternatives is now opportune.

# Introduction

The harmful consequences of immigration detention on children are increasingly well-documented. Studies have consistently found pervasive levels of post-traumatic stress disorder (PTSD), depression and anxiety among young detainees. Emotional outbursts and behavioural difficulties are commonly observed, as is self-harm. In combination with the principle of the best interests of the child, growing evidence of these harms materialising has contributed to the emergence of an international consensus that stands firmly against the immigration detention of minors, even when used as a measure of last resort. Instead, and as several prominent human rights and non-governmental organisations in the EU and internationally have called for, case management and non-custodial, community-based alternatives should be made mandatory.

In the EU, however, the pre-removal immigration detention of minors is both permissible in the context of the Return Directive (2008/115/EC), and firmly an option on the table in the context of negotiations to recast the Directive. According to the existing framework, the detention of minors pending return can only occur as a measure of last resort, and after the consideration of all plausible alternatives.<sup>1</sup> In reality, however, at least 26 out of 38 European states make use of the practice.<sup>2</sup> In 2018, the European Commission proposed to recast the Directive. The proposal retains the provisions on the detention of minors, simultaneous to an expansion of the grounds of detention. The amendments are not accompanied by additions regarding the use of alternatives to detention, nor are additional safeguards for minors included.

---

**The detention of minors pending return can only occur as a measure of last resort, and after the consideration of all plausible alternatives. In reality, however, at least 26 out of 38 European states make use of the practice.**

---

Should these changes remain in the final text, they would be contrary to a growing body of evidence detailing the harm posed to children by placing them in detention. It would further encourage member states to maintain detention provisions in their national systems and deprioritise the use of alternatives. This would ultimately move the EU and its member states away from the international standards and consensus developed on the issue.

However, the EU has not yet lost its chance to align itself with these standards. With the Council of the EU having adopted a position on the recast Return Directive and negotiations ongoing in the European Parliament, the time is now for the EU to set the right course. The new Directive should include a clear prohibition of the practice. At the same time, it should mandate the use of case management and non-custodial, community-based alternatives.

## The plain truth: Detention is inherently harmful to children

In recent years, an accumulating body of scientific literature has consistently found immigration detention to be inherently harmful to children.<sup>3</sup> Young detainees, on account of their vulnerability in the migration context, have been shown as likely to experience the adverse effects of detention more acutely than adults.<sup>4</sup> Much of the research conducted thus far has focused on the impact of detention on the mental health of minors. Studies across several continents have identified pervasive levels of psychological distress among young detainees, often high enough to resemble the results of clinical trials.<sup>5</sup> Where studies have compared the well-being of children held in detention versus those in community-based care, the former has consistently scored worse.<sup>6</sup> Often accompanied by somatic complaints, tangible manifestations of the distress range from difficulties eating and sleeping, to emotional and behavioural outbursts, to the infliction of self-

harm and suicidal ideation.<sup>7</sup> Depression, anxiety and post-traumatic stress disorder (PTSD) are commonly observed, particularly among older children, with developmental concerns and regression evident among younger ones.<sup>8</sup> The conditions of the detention facilities are also a relevant consideration in this regard. For example, restrictions on movement and limited access to safe, recreational, and outside spaces have been shown to heighten feelings of isolation, hopelessness, and alienation.<sup>9</sup> Where such restrictive conditions are combined with longer periods of detention, the European Court of Human Rights (ECtHR) has found a violation of Article 3 ECHR.<sup>10</sup>

Although unaccompanied minors are more vulnerable in this regard, the strain placed on familial relationships and on parents' ability to care for their children when detained together can constitute an additional burden on

minors' well-being.<sup>11</sup> Not only are parents susceptible to the harmful effects of detention in their own right, but the detention environment risks aggravating harms by removing both their autonomy and authority over their children.<sup>12</sup> This exacerbates the feeling of helplessness, and in the long run, has been linked to an increased risk of neglect<sup>13</sup> or harsh parenting.<sup>14</sup> In turn, this can negatively impact the development of children's social skills and their "ability to learn rules of behaviour."<sup>15</sup>

---

**Studies across several continents have identified pervasive levels of psychological distress among young detainees, often high enough to resemble the results of clinical trials.**

---

## A new norm? Detention not even as a measure of last resort

Against this background, several international and non-governmental organisations have concluded that the detention of minors should be banned, even as a measure of last resort. On the basis of the inherent harm posed, the Council of Europe's Committee of Ministers, Parliamentary Assembly and Commissioner for Human Rights have each called for such a ban.<sup>22</sup> This stance has also been adopted by various UN bodies, including the World Health Organisation (WHO), the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR) and the Committee on the Rights of the Child.<sup>23</sup> At the same time, several prominent NGOs have added their voice to the chorus, including the International Detention Coalition (IDC), the European Council for Refugees and Exiles (ECRE) and the Platform for International Cooperation on Undocumented Migrants (PICUM).<sup>24</sup>

Similarly, Juan Méndez called for an end to the practice during his mandate as the UN Special Rapporteur on torture, and other cruel, inhuman and degrading treatment or punishment.<sup>25</sup> In doing so, he noted that where detention causes pain and suffering that

Furthermore, observing their parents endure these struggles has been identified as an additional source of anxiety among children.<sup>16</sup> As aptly noted in the literature, "children suffer through what they witness."<sup>17</sup> Although longer periods of detention are likely to cause greater harm, even short stints have been shown to be detrimental. For example, negative effects have been observed in children detained between 43 to 56 days, as in children detained between 16 and 20 months.<sup>18</sup> Furthermore, these effects are liable to persist sometimes years after detention ends, although more research exists for adults than children in this regard.<sup>19</sup> Given the above, researchers have described the practice as "pathogenic"<sup>20</sup> and have concluded that "immigration detention produces, exacerbates and/or maintains psychological disorders."<sup>21</sup>

surpasses a minimum threshold of severity, it can amount to cruel, inhumane or degrading treatment or punishment. This could be the case even in the absence of intention, where the harm is instead caused by omission and negligent care. Over and above the potential harm, scholars and NGOs have furthermore pointed to the high cost of detention,<sup>26</sup> as well as to the social rifts it can cause both between migrant and state,<sup>27</sup> and between migrants and their host communities.<sup>28</sup>

---

**Where detention causes pain and suffering that surpasses a minimum threshold of severity, it can amount to cruel, inhumane or degrading treatment or punishment.**

---

## Alternatives to detention as the clear substitute

At the same time, calls to ban the practice are almost always accompanied by recommendations to implement alternatives to detention. These measures can be broadly interpreted as laws, policies or practices that are non-

custodial and that allow migrants to reside within a given community.<sup>29</sup> They may restrict a person's freedom of movement, but they cannot amount to a deprivation of liberty. If they do, the measure cannot be considered

an alternative to detention but is to be regarded as an alternative form of detention.<sup>30</sup> While the difference between the two can be a matter of degree along a continuum of coerciveness, the distinction remains an important consideration. In this regard, it is not only about guaranteeing that detention is banned, but also about avoiding the expansion of overly coercive measures used in its place (the so called ‘net-widening effect’).<sup>31</sup>

---

**It is not only about guaranteeing that detention is banned, but also about avoiding the expansion of overly coercive measures used in its place.**

---

Along the continuum, several plausible alternatives are available to member states which allow them to maintain a degree of control while simultaneously upholding the right to liberty, although not all measures are equally suitable for minors. Examples include reporting obligations, communicating an address to authorities, residing at a designated location, or surrendering an identity document.<sup>32</sup> For children specifically, because community and case management based alternatives are kinder on their mental health and well-being, both are often put forward as the most suitable options.<sup>33</sup>

Community-based alternatives rely on national governments or civil society actors to support the placement and management of persons within a given community.<sup>34</sup> The International Organization for Migration (IOM), UNHCR and UNICEF have identified several best practices in this regard (although not limited to the return context). These include supported

independent living (where support is provided in a home or in shared accommodation), foster and family-based care (including placement into a “domestic environment”), and supervision and case management.<sup>35</sup> Case management could be implemented alone as an alternative, or in combination with others, and encompasses a “structured social work approach”<sup>36</sup> to providing “comprehensive and systematic” support to a child.<sup>37</sup> This would entail support from a case manager at a minimum, but could also include the provision of housing and access to social welfare and healthcare.<sup>38</sup>

---

**Return procedures do not necessarily have to be a zero-sum game. Case management and community-based alternatives can offer a child the chance to work through the return process in a non-custodial setting and with the necessary support, while still allowing the state a necessary degree of control.**

---

According to the IDC, the alternatives that are most impactful in working toward the resolution of a given case, which can include departure to a person’s country of origin, use case management at all stages of a procedure.<sup>39</sup> In this way, return procedures do not necessarily have to be a zero-sum game. Case management and community-based alternatives can offer a child the chance to work through the return process in a non-custodial setting and with the necessary support, while still allowing the state a necessary degree of control.<sup>40</sup>

## The EU a step behind the times? The Return Directive and its recast

In EU law and in the context of return procedures, detention as a measure of last resort remains the preferred option. This is the case, however, subject to several safeguards. The Return Directive requires return proceedings to be ongoing, and that less coercive means are insufficient to enforce the return.<sup>41</sup> Regarding minors specifically, detention must be a measure of last resort,<sup>42</sup> the aim of which cannot be satisfied rather by limiting a child’s movement.<sup>43</sup> According to the European Commission’s 2017 Return Handbook, member states must therefore provide alternatives to detention that can “achieve the same objectives of detention, [...] while using means that are less intrusive on the right to liberty.”<sup>44</sup>

With its proposal to recast the Directive, however, one of the Commission’s stated aims is to use detention more effectively to “support the enforcement of returns.”<sup>45</sup> As it stands, the Directive includes two possible grounds for detention: first, where there is a risk of absconding, and second, where the person concerned “avoids or hampers” the return process.<sup>46</sup> The Commission proposed the addition of a third instance, however, namely where a person poses a risk to public order.<sup>47</sup> This amendment in particular has drawn sharp criticism, as it directly conflicts with the Commission’s previous position that detention on such a basis would be akin to “light imprisonment.”<sup>48</sup> Commentators have further

highlighted that the amendments appear to make the instances justifying detention in the recast non-exhaustive, and therefore, too broad.<sup>49</sup> At the same time, the proposal adds nothing further to mandate, or even encourage, the use of alternatives to detention. This indicates a clear focus on increasing return rates, and on using detention as the means of doing so.<sup>50</sup> The provision concerning the detention of minors and families similarly remains unchanged, even though increasing the instances in which adults may be detained could mean the same for their children, and should, therefore, have prompted further legislative safeguards.<sup>51</sup>

In its partial general approach on the proposal, the Council of the EU adopted the same position as the Commission.<sup>52</sup> In the European Parliament, a final position on the file - and therefore a negotiating mandate to enter into interinstitutional negotiations with the Commission and Council - are yet to be adopted. In the context of the Parliament's ongoing

negotiations, however, the approach taken by Greens' rapporteur Tineke Strik in preparing the draft report for the Civil Liberties, Justice and Home Affairs (LIBE) Committee stands in stark contrast to the Commission and Council's positions. Referring to the growing international consensus against detention and in favour of case management and community-based alternatives, the report underlines that detention is never in a child's best interest and should be prohibited. This includes that the detention of families should be banned, as family unity can never be used to justify detention (on the contrary, in fact, it justifies keeping the family unit out of detention).<sup>53</sup> Although the rapporteur's position and that of her party are clearly in favour of a ban, the EPP's shadow rapporteurs have indicated a strong preference for retaining the possibility of detention as a measure of last resort. On the other hand, MEPs from the Left, Renew and S&D are likewise in support of a ban and have aligned themselves with the growing international consensus.<sup>54</sup>

## Reflections on the extent (and merit) of detention versus alternatives in the EU

Should the possibility of child immigration detention remain in the recast Return Directive, this would position the EU behind international standards for years to come. This is problematic, not least because of how widespread the practice of child immigration detention already is in the EU. Although difficult to ascertain exactly how prolific the practice of pre-removal detention is specifically, due to a lack of data on immigration detention generally, the practice is permitted and implemented in at least 26 out of 38 European states.<sup>55</sup> According to the Global Detention Project, at least 20 out of 27 EU member states have held children in immigration detention during the last 5 years.<sup>56</sup> ECRE maintains that detention is applied as a "structural method at EU borders."<sup>57</sup> UNICEF, pointedly, has stated that the last resort principle is rarely observed. In fact, unless states "have large scale, credible alternatives to detention in operation, [...] they cannot claim that any deprivation of liberty is a 'measure of last resort.'"<sup>58</sup>

---

**Should the possibility of child immigration detention remain in the recast Return Directive, this would position the EU behind international standards for years to come.**

---

Similarly, and staying with the question of alternatives, the European Migration Network (EMN) has reported that most member states have made changes to their detention regimes, with a view to introducing or using alternatives.<sup>59</sup> However, in practice, alternatives generally remain underused.<sup>60</sup> While alternatives such as reporting obligations, the requirement to reside at a designated place, and surrendering an identity document are used most often by member states, fewer countries implement alternatives that would be most impactful to children on a systematic basis.<sup>61</sup>

Although different sources seem to suggest that at least 12 member states make use of case management and community-based alternatives at some stage during a child's migration journey, only a handful do so during return procedures.<sup>62</sup> This is due, in part, to the lack of "empirical research on [their] practical applicability," as well as "on their effectiveness in achieving compliance with migration procedures."<sup>63</sup> Furthermore, what information the EMN has been able to gather indicates that the risk of absconding is higher when making use of alternatives.<sup>64</sup> However, ensuring compliance with migration procedures is not the only factor used to gauge the impact and effectiveness of detention on international protection and return procedures. Upholding fundamental rights and improving the cost-effectiveness of migration management are also to be taken into consideration.<sup>65</sup>

When it comes to ensuring compliance with migration procedures, the European Parliament's substitute impact assessment on the recast Return Directive found

that there is in fact “no clear evidence” to suggest that increasing detention would actually result in greater compliance with return procedures and therefore more “effective returns.”<sup>66</sup> On the contrary, the effective implementation of alternatives that contribute to stabilising a person’s environment and engender trust between migrants and the state have, in fact, been shown to improve compliance with migration procedures.<sup>67</sup>

On upholding fundamental rights and improving the cost-effectiveness of migration management, alternatives to detention are again the top achievers.<sup>68</sup> As mentioned above, studies suggest that children’s health and well-being fare far better when in community-based care settings than in detention.<sup>69</sup> Furthermore, maintaining detention facilities is

expensive, whereas alternatives can be cheaper. This holds true even for those alternatives that are more labour intensive, like case management.<sup>70</sup> It is important, however, that case management and community-based alternatives are not implemented in parallel to continued detention. This would risk the development of two parallel policy responses and would be doubly as expensive. To fully reap the benefits of switching to a detention-free regime, alternatives need to be implemented fully “in lieu” of detention.<sup>71</sup> These findings are evident on a global scale, with the IDC having found alternatives across the world to be more cost-effective, enhance respect for human rights, improve health and well-being, and improve case compliance.<sup>72</sup>

## Recommendations on the way forward

Given the increasing evidence of the harm posed by detention, the ongoing preference for the practice in national policies and the slow rate of implementing meaningful alternatives during return procedures, the focus of the conversation at interinstitutional level needs to shift. Instead of loosening the obligations imposed on member states to prioritise alternatives, they must be made more robust. In view of the progress already made on the file in the Council, the time to act on the above and conclude negotiations in the Parliament (and thereafter at interinstitutional level) is opportune. With the need for progress likewise acknowledged by the Parliament and rotating presidencies of the Council in their Joint Roadmap on reform of the CEAS and on the New Pact on migration and asylum,<sup>73</sup> specific recommendations for the co-legislators include:

- ▶ An outright ban on the use of child immigration detention, even as a last resort.
- ▶ Mandate the use of alternatives to detention in the first instance:<sup>74</sup>
  - Mandate case management in all return procedures concerning minors and establish EU-wide procedures to be followed to determine the most appropriate (set of) alternatives to be applied, if any, in addition to case management;
  - Give preference to and expand the use of community-based alternatives, also taking the opinion of the child into consideration where they are of an appropriate age;
  - Explicitly list all plausible, suitable alternatives, clearly defining each and ensuring a clear differentiation between a measure that limits freedom of movement and one which fully

deprives someone of their liberty (the latter of which would amount to an alternative form of detention, instead of an alternative to detention – both terms likewise to be defined).

- ▶ Mandate the collection of data on the number of children subject to each alternative measure, including monitoring health and well-being, impact on other fundamental rights, cost-effectiveness and compliance with return procedures (to establish the effectiveness of the respective measures).

---

**The focus of the conversation at interinstitutional level needs to shift. Instead of loosening the obligations imposed on member states to prioritise alternatives, they must be made more robust.**

---

Should these recommendations be reflected in the recast, it would better align the EU with the growing international consensus against the continued use of child immigration detention. More importantly, however, the changes would take heed of – and stand to limit – the harm posed to children in migration in the EU, while still respecting the state’s right to exercise control over persons in its territory. In this way, an appropriate balance would be possible between a child’s best interests and those of the state, and return procedures would not necessarily have to be a zero-sum game.



- <sup>1</sup> European Parliament and Council of the European Union (2008), [Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals](#), Brussels, OJ L348/98, Art.17.
- <sup>2</sup> *International Organization on Migration (IOM), UN Children's Fund (UNICEF), UN Refugee Agency (UNHCR)* (2022), "[Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe](#)" (accessed 24 August 2022), p. 7.
- <sup>3</sup> Zwi, Karen, Mares, Sarah, Nathanson, David, Kuowei Tay, Alvin, Silove, Derrick (2017), "The impact of detention on the social-emotional well-being of children seeking asylum: a comparison with community-based children," *European Child & Adolescent Psychiatry*, Volume 27, p. 411.
- <sup>4</sup> *International Detention Coalition (IDC)* (2012), "[Captured Childhood](#)" (accessed 3 October 2022), p. 48.
- <sup>5</sup> Mares, Sarah (2021), "Mental health consequences of detaining children and families who seek asylum: a scoping review," *European Child & Adolescent Psychiatry*, Volume 30, p. 1634.
- <sup>6</sup> Zwi et al. (2017), *op.cit.*, p. 19.
- <sup>7</sup> World Health Organization (WHO) (2022), "[Addressing the health challenges in immigration detention, and alternatives to detention. A country implementation guide](#)" (accessed 26 August 2022).
- <sup>8</sup> von Werthern, M, Robjant, K, Chui, Z, Schon, R, Ottisova, L, Mason, C and Katona, C (2018) "The impact of immigration detention on mental health: a systematic review," *BMC Psychiatry*, Volume 18, Number 382, pg. 13. See also Triggs, Gillian (2018) "The impact of detention on the health, wellbeing and development of children: findings from the second National Inquiry into Children in Immigration Detention", in Mary Crock and Lenni B. Bension (eds.), *Protection Migrant Children. In Search of Best Practice*, United Kingdom: Edward Elgar Publishing Limited, Chapter 20, pp. 407-410.
- <sup>9</sup> Triggs (2018), *ibid.*, p. 409. See also Dudley, Michael, Steel, Zachary, Mares, Sarah, Newman, Louise (2012) "Children and young people in immigration detention," *Current Opinion in Psychiatry*, Volume 25, Number 4, p. 228.
- <sup>10</sup> Smyth, Ciara M (2019) "Towards a complete prohibition on the immigration detention of children," *Human Rights Law Review*, Volume 19, p. 29. See also judgement of 21 July 2016, [AB and Others v France](#), application number 11593/12 and judgment of 12 July 2016, [RK and Others v France](#), application number 68264/14.
- <sup>11</sup> Mares (2021), *op.cit.*, p. 1616. IDC, *op.cit.*, p. 48.
- <sup>12</sup> Mares (2021), *op.cit.*, p. 1615.
- <sup>13</sup> Essex, Ryan, Govintharajah, Poonkulali (2017) "Mental health of children and adolescents in Australian alternate places of immigration detention," *Journal of Paediatrics and Child Health*, Volume 53, p. 526.
- <sup>14</sup> Mares (2021), *op.cit.*, p. 1616.
- <sup>15</sup> Triggs (2018), *op.cit.*, p. 409.
- <sup>16</sup> Dudley et al. (2012), *op.cit.*, p. 288.
- <sup>17</sup> *Ibid.*, p. 289.
- <sup>18</sup> Zwi et al. (2017), *op.cit.*, p. 412.
- <sup>19</sup> IDC (2012), *op.cit.*, p. 50. See also von Werthern et al. (2018), *op.cit.*, p. 11.
- <sup>20</sup> Mares (2021), *op.cit.*, p. 1635.
- <sup>21</sup> Dudley et al. (2012), *op.cit.*, p. 286.
- <sup>22</sup> Parliamentary Assembly of the Council of Europe (2014), "[Missing refugee and migrant children in Europe](#)", Strasbourg, Resolution 2324. See also Council of Europe (date?), "[UN Special Rapporteur on the human rights of migrants. Call for submission on "Ending immigration detention of children and seeking adequate reception and care for them"](#)".
- <sup>23</sup> WHO (2022), "[Immigration detention is harmful to health0 – alternatives to detention should be used](#)" (accessed 21 September 2021); UNICEF (2019), *op.cit.*; UNHCR (2017), "[UNHCR's position regarding the detention of refugee and migrant children in the migration context](#)" (accessed 21 September 2022); UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, UN Committee on the Rights of the Child (2017), "[Joint General Comment - No. 4 of the CMW and No. 23 of the CRC \(2017\) - on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#)" (accessed 26 August 2022).
- <sup>24</sup> IDC (2012), *op.cit.*; *European Council on Refugees and Exiles (ECRE)* (2020), "Submission of the European Council on Refugees and Exiles to the United Nations Special Rapporteur for the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them" (accessed 21 September 2022); *Platform for International Cooperation on Undocumented Migrants (PICUM)* (2019), "[Non-detention of migrants: some facts and figures](#)"; (accessed 21 September 2022).
- <sup>25</sup> Juan E Méndez (2015), "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment," A/HRC/28/68, p. 17.
- <sup>26</sup> *International Detention Coalition (IDC)* (2015) "[There are alternatives: a handbook for preventing unnecessary immigration detention](#)", (accessed 26 August 2022).
- <sup>27</sup> De Bruycker, Philippe (eds), Bloomfield, Alice, Tsourdi, Evangelia, Pétin, Joanna (2015) "[Alternatives to immigration and asylum detention in the EU](#)", p. 25.
- <sup>28</sup> UNICEF (2019) "[UNICEF Working Paper Alternatives to immigration detention of children](#)," (accessed 3 October 2022), p. 3.
- <sup>29</sup> De Bruycker et al. (2015), *op.cit.*, p. 62. See also UNHCR (2012), "[Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention](#)", (accessed 5 October 2022).
- <sup>30</sup> *Council of Europe Steering Committee for Human Rights* (2017), "[Legal and practical aspects of effective alternatives to detention in the context of migration](#)" (accessed 3 October), p. 9.
- <sup>31</sup> *Advancing Alternative Migration Governance (ADMIGOV)* (2021) "[Alternatives to pre-removal detention in return procedures in the EU](#)" (accessed 26 August 2022), p.9.
- <sup>32</sup> *European Migration Network (EMN)* (2020), "[Detention and alternatives to detention in international protection and return procedures](#)" (accessed 28 August 2022).
- <sup>33</sup> Zwi et al. (2018), *op.cit.*, p. 19.
- <sup>34</sup> IDC (2015), *op.cit.*, p. 78.
- <sup>35</sup> *IOM, UNICEF, UNHCR, op.cit.*, p. 10-12.
- <sup>36</sup> PICUM (2020), "[Implementing Case Management Based Alternatives to Detention in Europe](#)" (accessed 1 October 2022), p. 2.
- <sup>37</sup> IDC (2015), *op.cit.*, p. 78.
- <sup>38</sup> ADMIGOV (2021), *op.cit.*, p. 31.
- <sup>39</sup> IDC (2015), *op.cit.*, p. VI.
- <sup>40</sup> PICUM, "[Supporting people through migration - solving cases in the community](#)", (accessed 5 October 2022).
- <sup>41</sup> European Parliament and European Council (2008), *op.cit.*, Art.15.
- <sup>42</sup> *Ibid.*, Art.17.
- <sup>43</sup> Judgement of 17 December 2020, [Case C-808/18](#), ECLI:EU:C:2020:1029, para. 175. See also judgement of 14 May 2020, [C924/19 PPU and C925/19 PPU](#), ECLI:EU:C:2020:367, paras. 221-224.
- <sup>44</sup> European Commission (2017), [Commission Recommendation \(EU\) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks](#), Brussels, OJ L 339/83.
- <sup>45</sup> European Commission (2018), [Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\)](#), COM(2018) 634 final, p. 2.
- <sup>46</sup> European Parliament and European Council (2008), *op.cit.*, Art.18.
- <sup>47</sup> European Commission (2018), *op.cit.*, Art 18(c).
- <sup>48</sup> European Commission (2017), *op.cit.*
- <sup>49</sup> Fundamental Rights Agency of the European Union (2019), "[The recast Return Directive and its fundamental rights implications](#)" (accessed 5 October), p. 44.
- <sup>50</sup> ADMIGOV (2021), *op.cit.*
- <sup>51</sup> European Commission (2018), Art.20.
- <sup>52</sup> Council of the European Union (2019), [Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\) – Partial general approach](#), Brussels, 10144/19.

- <sup>53</sup> European Parliament (2020), [DRAFT REPORT on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\)](#), Brussels, 2018/0329(COD), Amendment 23, 24 and 112.
- <sup>54</sup> European Parliament (2020), [Amendments 120-754](#), Brussels, 2018/0329(COD).
- <sup>55</sup> IOM, UNICEF, UNHCR (2021), *op.cit.*, p. 7.
- <sup>56</sup> Global Detention Project, [“European Union”](#) (accessed 5 October 2022).
- <sup>57</sup> ECRE (2021), [“Reception, detention and restriction of movement at EU external borders”](#) (accessed 28 August), p. 4.
- <sup>58</sup> UNICEF (2019), *op.cit.*, pg. 3.
- <sup>59</sup> EMN (2022), *op.cit.*, pg. 11.
- <sup>60</sup> *Ibid*, p. 15.
- <sup>61</sup> *Ibid*, p. 21.
- <sup>62</sup> *Ibid*, p. 21. See also IOM, UNICEF, UNHCR (2022), *op.cit.*, p. 10-13.
- <sup>63</sup> *Ibid*, p. 11.
- <sup>64</sup> *Ibid*, p. 33.
- <sup>65</sup> *Ibid*, pg. 28.
- <sup>66</sup> European Parliamentary Research Service (2019), [“The proposed Return Directive \(recast\): Substitute Impact Assessment”](#) (accessed 3 October 2022), p. 3.
- <sup>67</sup> Council of Europe Steering Committee for Human Rights (2017), *op.cit.*, p. 73 – 74. See also IDC (2015), *op.cit.*, p. 14.
- <sup>68</sup> EMN (2022), *op.cit.*, p. 33.
- <sup>69</sup> Zwi *et al.* (2017), *op.cit.*
- <sup>70</sup> IDC (2015), *op.cit.*
- <sup>71</sup> Council of Europe Steering Committee for Human Rights (2017), *op.cit.*, p. 75.
- <sup>72</sup> IDC (2015), *op.cit.*, p. 9.
- <sup>73</sup> European Parliament, [“Migration and Asylum: Roadmap on way forward agreed between European Parliament and rotating Presidencies”](#) (accessed 19 October 2022).
- <sup>74</sup> IDC (2015), *op.cit.*

**NOTES**

A series of 20 horizontal dotted lines spanning the width of the page, providing a template for handwritten notes.

The **European Policy Centre** is an independent, not-for-profit think tank dedicated to fostering European integration through analysis and debate, supporting and challenging European decision-makers at all levels to make informed decisions based on sound evidence and analysis, and providing a platform for engaging partners, stakeholders and citizens in EU policymaking and in the debate about the future of Europe.

The **European Migration and Diversity** programme provides independent expertise on European migration and asylum policies. The programme's analysis seeks to contribute to sustainable and responsible policy solutions and is aimed at promoting a positive and constructive dialogue on migration. The programme follows the policy debate taking a multidisciplinary approach, examining both the legal and political aspects shaping European migration policies. The analysts focus, amongst other topics, on the reform of the Common European Asylum System; the management of the EU's external borders; cooperation with countries of origin and transit; the integration of beneficiaries of international protection into host societies; the links between migration and populism; the development of resettlement and legal pathways; and the EU's free movement acquis. The team benefits from a strong network of academics, NGO representatives and policymakers, who contribute regularly to publications and policy events.

With the strategic  
support of

