

# THE UNCOUNTED:

*Detention of Migrants  
and Asylum Seekers in Europe*



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### ABOUT ACCESS INFO EUROPE

Access Info Europe is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally. Access Info's mission is to advance democracy by making the right to information work in practice as a tool for defending civil liberties, for facilitating public participation in decision-making, and for holding governments accountable.

Access Info Europe's Access for Rights project takes this mission forward by using access to information laws to obtain information about a range of human right issues, which include freedom of expression and media freedom, freedom of assembly, and immigration and the detention of migrants.

### ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of immigration-related detention as a response to global migration.

Its objectives are to provide policy-makers, civil society actors, and human rights institutions with a source of accurate information and analysis about detention and other immigration control regimes, with a particular focus on the impact these policies have on the health, human rights, and wellbeing of undocumented migrants, asylum seekers, and refugees. The Global Detention Project works to improve accountability and transparency in the treatment of detainees.

### ABOUT THIS REPORT

This report was researched, written and edited by members of the Access Info Europe team; the Global Detention Project provided data analysis as well as research and editorial assistance.

Particular thanks are due to Michael Flynn, Mariette Grange, and Izabella Majcher of the Global Detention Project.

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### OPEN DATA POLICY:

The information provided in this report, collected from access to information requests on the detention of migrants in 33 countries and territories and complemented with data independently developed by the Global Detention Project, is available for other civil society organisations to use in research and advocacy.

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## THE UNCOUNTED: DETENTION OF MIGRANTS AND ASYLUM SEEKERS IN EUROPE

### Executive Summary

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Thousands of people die on their way to Europe to escape poverty, war, violence, or persecution, and to find a better future for themselves and their families. Similar movements are occurring in the Middle East, Asia, and the Americas.

These migration trends are spurring a growing public backlash, particularly in Europe, as the continent struggles to find a humane response to the large-scale arrival of asylum seekers fleeing violence and persecution in Syria and other nearby countries.

For many of those people who do succeed in arriving on foreign shores, what awaits them are jail cells as they are targeted as part of immigration control measures aimed at preventing people from entering countries or finding passage to other safe havens. The incarceration of these people is part of a burgeoning global phenomenon known as immigration detention, which the Global Detention Project defines as “the deprivation of liberty of non-citizens for reasons related to their immigration status.”

The public availability of up-to-date and comparable immigration detention statistics is essential to permit national oversight bodies, human rights groups, and the media to monitor how migrants and asylum seekers are being treated and for there to be informed public debate on migration-related issues.

In spite of this, research by Access Info Europe and the Global Detention Project in 33 countries across Europe and North America has revealed that it is impossible to obtain a true picture of the number of migrants and asylum seekers being held in detention because the information is often not

available, and when it is, it is not complete or comparable (though not the focus of this study, Canada and the United States were included in the survey for comparative perspective).

The research found huge variance in the definitions of detention being used and in the levels of detail in which it is compiled, which leads to the lack of comparability between countries. In Europe in particular, it is often not clear how governments themselves are arriving at migration detention policy given the paucity of the data collected, which is concerning as there appears to be no fact-based means to assess implementation of the EU’s legal framework concerning the treatment of migrants and asylum seekers. In effect, Europe’s detained migrants are going uncounted and hence unaccounted for.

In the recommendations arising from this two-year study, Access Info Europe

and the Global Detention Project call on the European Union, Council of Europe and national governments to take urgent steps to ensure that detailed and comprehensive information about the detention of migrants and asylum seekers, including both adults and children, is collected and made available to the public.

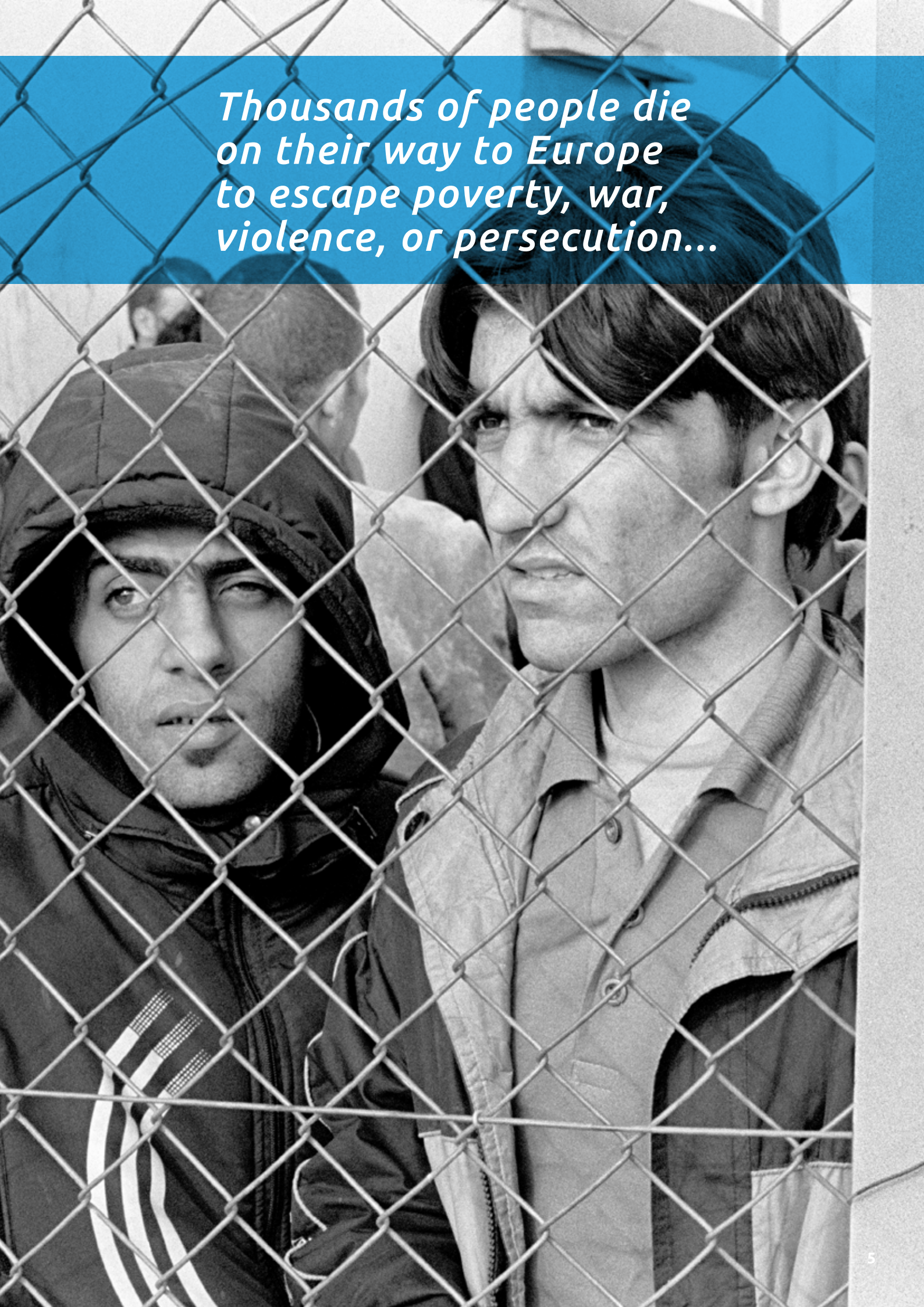



## DATA DETAINED

Access to information requests regarding statistics on the detention of migrants and asylum seekers were sent to 33 countries – 31 European countries plus the United States and Canada. The results:

- » Over half of the countries monitored (19/33) did not disclose the locations of where migrants are detained;
- » 12 countries did not provide statistics on the total number of migrants detained;
- » 17 countries did not disclose information on the number of detained asylum seekers;
- » 19 countries failed to provide a breakdown of the numbers of unaccompanied and accompanied minors in detention.

*Thousands of people die  
on their way to Europe  
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violence, or persecution...*





To achieve this, there should be a common definition of what constitutes immigration-related detention, taking into account the entire range of non-citizens who can be subject to enforcement measures as well as the variety of facilities – including prisons, detention centres, immigration and border patrol offices, reception centres, and/or police stations – where migrants are held against their will. <sup>1</sup> Only in this way can there be real accountability for the treatment of migrants and asylum seekers and all efforts be made to ensure the protection of their human rights.

## **LACK OF EU DATA ON DETENTION OF MIGRANTS**

There is no requirement within the European Union for Member States to gather data on the number of migrants detained nor for EU bodies such as Eurostat to gather such data.

While there is a 2007 Regulation concerning “Community statistics on migration and international protection” that requires Member States to gather and provide data on the number of third-country nationals found to be illegally present on their territory, this regulation does not specify collection of detention data. <sup>2</sup>

Similarly, the 2008 EU Directive on common standards and procedures for returning illegally staying third-country nationals sets out detailed rules governing detention and requires that Member States report every three years on the implementation of the directive. However, it does not require the compilation and reporting of statistics. <sup>3</sup>

As noted in Section 2.3 of this report, Eurostat informed researchers working on this report that it does not collect data on the numbers of migrants and asylum seekers in detention.

This lack of a central data source on detention of migrants is a major shortcoming and a bar to public debate, proper oversight, and effective policy making. This problem is particularly acute given that, as this report shows, obtaining detention data from the Member States and other governments is often a major challenge.

## **RIGHT TO INFORMATION FINDINGS**

A subsidiary finding of this study is the very poor treatment of the access to information requests that were presented to the 33 countries included in the research.

Only six countries – Hungary, Lithuania, Luxembourg, Poland, Slovakia, and Sweden provided all the information we asked for in our five questions.

Whilst no country refused to answer the request, the Czech Republic did refuse to accept our request on grounds of not providing an ID document and

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<sup>1</sup> Article 2(h) of the Recast Reception Conditions Directive provides a definition of “detention,” however it is narrowly focused on the issue of asylum applicants and this fails to account for all people subject to immigration-related detention.

<sup>2</sup> Regulation (EC) no 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, Article 7.

<sup>3</sup> 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.

Malta insisted on a copy of a passport to submit the request and then failed to answer it.

A full six of the 33 countries in this survey did not respond at all to the requests for information, in spite of follow up requests made by staff at both Access Info Europe and the Global Detention Project. These countries were Cyprus, Iceland, Italy, Malta, Norway, and Portugal.

In very few cases did we find that the information requested had already been published proactively. One such case was the UK, which provided all the requested data online in a reasonably accessible form. Greece pointed us to a website that had plentiful data but which did not provide a full picture or directly answer our questions. The Netherlands and France provided links to voluminous reports that had been published online, in each national language respectively, but it was hard to find the answers to the questions in them, and the French text included only partial information.

There were mixed responses from the other countries. An important finding was the number of “information not held” responses. A full nine countries told us that they did not hold the information we sought in one or more of our questions: Austria, Denmark, Finland, Germany, Ireland, Netherlands, Slovenia, Switzerland, and United Kingdom.

Aside from the glaring concerns with respect to transparency, this also raises questions about how states formulate policy on this issue.

This problem was particularly notable in federal states that were included in the survey. For example, Swiss federal authorities stated that they did not have the requested information, saying that it had to be sought at the cantonal level. When researchers raised questions about this, the Swiss authorities maintained that this was sufficient for the national government to produce policy if needed.

Similarly, officials at the federal level in Germany informed us they did not have the information requested as this issue is dealt with at the Länder level. What is remarkable about these cases is that federal authorities are the ones who must represent their countries in international fora, including the UN human rights mechanisms, and report data to relevant supranational entities such as the European Commission.

In addition to the recommendations on the need for better data collection, this report contains recommendations as to how information requests for data about detention of migrants should be better handled by the countries involved in this study.



The findings of this investigation, which has revealed a stark lack of comparable and accessible information on the detention of migrants and asylum seekers, point to a series of recommendations for respective government and inter-governmental bodies.

The overarching recommendation from Access Info Europe and the Global Detention Project is that government bodies should urgently take steps to ensure that detailed and comprehensive information about the detention of migrants and asylum seekers, including both adults and children, is made available to the public.

Only in this way can there be real accountability for the treatment of migrants, efforts made to ensure the protection of their human rights, and fact-based debate on migration policy.

In addition, this report enumerates a series of specific recommendations based on the findings that are set out in each section. These recommendations are summarised, below:


## TO EUROPEAN STATES, THE EUROPEAN UNION, AND THE COUNCIL OF EUROPE:

- » **Jointly develop a harmonised definition for what constitutes “immigration-related detention.”** This definition should be comprehensive, encompassing all types of non-citizens as well as all forms of incarceration, confinement, housing, “reception centres” or any other accommodation where a person is physically prevented from leaving. Application of this definition in the collection of statistics would ensure that all people deprived of their liberty in any type of facility for reasons related to their immigration status are accounted for.
- » **Jointly develop a set of minimum data points that should be compiled and made public on a regular basis. These should include:**
  - Names and addresses of detention centres, along with a description of the type of facility;
  - In countries where detention facilities associated with the criminal justice system are used for detention of migrants, information stipulating whether immigration detainees are separate from other categories of detainees;
  - Number of migrants and asylum seekers held in each detention facility, including annual (and, if possibly, daily) population counts;
  - Total number of detained minors, including annual (and, if possibly, daily) population counts, with disaggregated data on accompanied and unaccompanied minors;
  - Data disaggregated by grounds for detention at the country level and for each detention centre, with particular emphasis on grounds for detention of asylum seekers and minors;
  - Data disaggregated by gender;
  - Data disaggregated by nationality wherever possible;

- Data on range and averages of length of detention for each facility and nationally.
- » **Request Member States to compile and make public detailed and comprehensive statistics on immigration-related detention** employing the harmonised definition and including the minimum data points. Request that this data be updated and made public from a central source on a quarterly basis.
- » **Require EU data collection and research institutions, including Eurostat and the European Migration Network, to collect and publish detailed and updated immigration-detention data**, bearing in mind their respective mandates and applying harmonised definition for what constitutes immigration-related detention.

### TO ALL 33 STATES COVERED IN THE REPORT:

- » **Compile and regularly publish detailed and updated information on immigration-related detention** including the names and addresses of detention centres and the number of migrants and asylum seekers held in each detention facility as per the recommended harmonised definition and minimum set of data points set out above.
- » **Data by type of facility:** In states where prisons or other facilities (such as police stations) associated with the criminal justice system are used for this type of detention, information on these facilities must also be included, stipulating whether immigration detainees are separated from other categories of detainees at each facility.
- » **Accurate data:** To the best of their ability, all countries should endeavour to collect accurate data which captures the actual numbers of individuals who are placed in detention in any reporting period, as well as the frequency and length of such detention for each individual.
- » **Data on asylum seekers:** Governments should ensure the collection and disclosure of disaggregated immigration detention data on the numbers of people placed in immigration-related detention who are asylum seekers.
- » **Data on minors:** Given the legal requirements on the specific protection needs of minors, governments should collect and make public disaggregated data on the numbers of accompanied and unaccompanied minors in detention for immigration-related reasons and the places where they are held
- » **Centrally collected data:** In federal states and other countries with decentralised immigration authorities compile information at the central government level to ensure transparency and the availability of comprehensive information and make it publicly available, both in order to ensure evidence-based policy making and to permit reporting to international institutions.
- » **Proactive Publication:** Proactively publish detention data and information online using open, machine-readable formats, which provide for easy download and use of the data. Online information should be easy to locate and there should be no limitations with respect to the use of the data.
- » **Training on transparency:** Review and improve the training of relevant officials on their obligations under national access to information legislation to respond to requests for information and statistics on immigration-related detention.

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- » **Best Practices:** All the countries covered in this survey are encouraged to use this report to help identify and apply best practices concerning openness concerning information about the detention of migrants and asylum seekers.

## TO SPECIFIC GOVERNMENTS

- » The **Czech Republic** and **Malta** should reform their laws and practices so that freedom of information requests are never refused and/or delayed over questions relating to the identity of the requester.
- » **Cyprus** and **Luxembourg** should review the draft access to information laws that are currently being considered by their parliaments, should amend to bring them into line with the highest international standards, and should ensure their rapid adoption and implementation.
- » **Germany** and **Switzerland** should compile comprehensive information at the federal level to ensure transparency and the availability of comprehensive information on this issue.

# 1. THE RESEARCH

## 5 QUESTIONS TO 33 COUNTRIES

Access Info Europe and the Global Detention Project sent access to information requests containing a total of five questions to 33 Countries –30 European countries as well as Canada and the United States– inquiring about the location of detention centres and the numbers and types of people detained at them.

At the time the research was conducted (2013-2014), 29 of the 33 countries had access to information laws in force; those that did not were Cyprus, Luxembourg, and Spain (Spain now has a law, which came into force on 10 December 2014).

The requests were translated into the national languages in some cases (Austria, Belgium, France, Germany, Greece, Italy, Poland, and Spain), in most others they were sent in English. Copies of all the requests and responses can be found on the Access Info Europe website in the special Access for Rights section.

### THE QUESTIONS WERE

***Please provide a complete list of the names and locations of all the facilities that currently are in use for the purpose of confining non-citizens in administrative detention for periods exceeding three days because of immigration-related reasons.***<sup>4</sup>

***Please provide the total number of people detained for immigration-related reasons during the years 2010, 2011, and 2012.***<sup>5</sup>

***Please provide the total number of asylum seekers who were placed in detention during the years 2010, 2011, and 2012.***<sup>6</sup>

***Please indicate how many minors (anyone under the age of 18) were placed in any form of immigration-related detention (including specialised detention centres, secure shelters, secure reception centres, juvenile offender facilities) during the years 2010, 2011, and 2012.***

***Of the total number of minors placed in immigration-related detention during 2010, 2011, and 2012, how many were accompanied minors and how many were unaccompanied minors?***

The Access Info Europe and Global Detention Project teams tracked the requests and responses, following up with countries that didn't provide an answer in the timeframe established by national law. Where responses were not clear, in many cases we sent follow up messages, asked for clarifications, and sought to obtain information that actually answered our questions.

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<sup>4</sup> The list should include any facility where an individual is prevented from freely leaving the facility at his or her will. In addition to long-term detention facilities used for the purposes of facilitating deportation (including both criminal prisons and specially designed immigration detention centers), this list should include any "reception centers" that prevent asylum seekers from freely exiting the premises; any shelters or juvenile centers that deprive minors, including both accompanied and unaccompanied minors, of their liberty; as well as any transit facilities or border guard stations located in airports or other ports of entry into the country that can hold people for more than three days to prevent entry into the country.

<sup>5</sup> Please briefly explain who is included in these totals (for example, do they include unaccompanied minors, asylum seekers waiting for decisions on their claims, unauthorized immigrants in deportation proceedings, and/or non-citizens who have been placed in deportation proceedings after a criminal conviction?).

<sup>6</sup> Please indicate if this list includes both people who have been detained after filing an asylum request either upon entry as well as those who filed a claim after being apprehended. Also, please indicate if this list includes asylum seekers who have been placed in secure reception centers for periods exceeding three days. If it does not, can you provide separate statistics indicating the numbers of asylum seekers placed in secure reception centers for periods exceeding three days for the years 2010, 2011, and 2012?



## 2. DATA DEFICIENCIES

Of the numerous findings that emerged from this research endeavour two in particular stand out: (a) the large number of countries (26) that failed to fully respond to all of these questions; and (b) the significant variations in the nature and quality of the data that we received from countries that did answer all or some of our questions.

We found that data varied in the format of presentation, in the level of detail, and even in the definitions of detention that were used, many of which were at variance with the definition that we gave in our requests. In some instances we were presented with a logical challenge as we tried to understand the meaning of some answers that did not precisely answer the questions.

In some cases, when responding to a clearly framed question on the number of migrants held in “any facility where an individual is prevented from freely leaving the facility at his or her will” (which was accompanied by a comprehensive explanation of what this should include), officials often provided data only on detainees held in certain types of facilities while failing to report on other facilities where migrants or asylum seekers are known to be confined.

In other cases, there was confusion on the part of officials with respect to the terminology they used. Bulgaria, for example, gave us the locations of two types of facilities, those for the “accommodation of illegally staying third-country nationals who have been imposed compulsory administrative measures” and “Reception centers for the accommodation of illegally staying persons”. However, the data they provided on the numbers of migrants then referred to “Homes for Temporary Placement of Foreigners that accommodate illegally staying persons”.

Having multiple types of detention centres was a common finding in our research. When responding to the requests about minors in detention, the Czech Republic provided data on detention centres and reception centres, broken down by type of facility and by year. We sought a definition from the Czechs of the difference between these types of centres and were told by email that “the fence in a detention center is higher than in a reception center.”

Similarly, the response from Poland provided us with a clarification of their definition of detention, in this case meaning, “persons detained by decision of the court both within expulsion or asylum procedure”. They then added that the definition “does not include temporary detention imposed by Border Guard or Police for up to 72 hours”, in spite of the inclusion of this type of facility in our request for data, again casting some doubts on the utility and comparability of the data provided with that of other countries. In this case, we gave the Polish data the benefit of the doubt and classified their responses as “information received” ([see the chart on page 30](#)).

The answer from Denmark typifies the problems that we found with responses as it identified two types of locations where non-citizens can be held for immigration-related reasons; local prisons and remand prisons. However they provided data on the numbers of people in the remand prisons only. Yet when answering the question on the detention of asylum seekers, the Danish authorities named two prisons without making clear that asylum seekers are not held elsewhere (again, we classified the response as “information received”, giving the benefit of the doubt).

These examples highlight the fact that there is not a standardised definition of what constitutes detention of migrants across the European Union or Council of Europe. The lack of harmonized rules on the definition and collection of immigration detention statistics makes it difficult to have clarity on what is happening inside individual countries and makes it nearly impossible to compare the practice of immigration detention between countries.

## Recommendations



- » There is a clear need for a harmonised definition of what constitutes immigration-related detention. This definition should be comprehensive, including all forms of incarceration, confinement, housing, “reception centres” or any other accommodation where a person is physically prevented from leaving. Application of this definition in the collection of statistics would ensure that all people confined in any type of detention facility are accounted for.
- » All governments should compile data disaggregated by, at a minimum, the following data points:
  - Names and addresses of detention centres, along with a description of the type of facility;
  - In states where detention facilities associated with the criminal justice system are used for detention of migrants, information stipulating whether immigration detainees are separated from other categories of detainees;
  - Number of migrants and asylum seekers held in each detention facility;
  - Number of detained minors, with discrete data on both accompanied and unaccompanied minors;
  - Data disaggregated by grounds for detention for each detention centre, with specific detail on grounds for detention of asylum seekers and minors;
  - Data disaggregated by gender;
  - Data disaggregated by nationality wherever possible;
  - Data on range and averages of length of detention for each facility.

## 2.1 Invisible Detention Centres

The lack of reliability of the data provided was further highlighted when we looked at the lists of facilities where migrants are detained.

In spite of having provided a comprehensive definition of what we were looking for, we were often given details on the location of facilities that did not match the lists already obtained by civil society.

For example, the list of detention facilities provided by Russia failed to mention Moscow’s massive Golyanovo detention camp, which became notorious in 2013 (the year Russia provided the project with data) when it was used to house several hundred undocumented immigrants picked up during police raids around Moscow. Human rights groups reported that sanitary conditions, food, and medical facilities were seriously substandard and police reportedly





banned entry by lawyers, interpreters, and human rights organisations. Similarly, when responding to our request for the number of asylum seekers detained in Russia, the letter stated that the detention of asylum seekers is not permitted by law. However, there have been numerous reports in recent years about asylum seekers being held in jails and not given access to adequate legal procedures.<sup>7</sup>

In some cases, we discovered that the data received did not correspond with data released by various civil society organisations. For example, the data received from some countries concerning the number of detention facilities states far fewer detention facilities than published in investigations elsewhere. Malta, though they failed to answer our questions, nevertheless has in the past published statistics that have been far lower than the estimates provided by NGOs which work with detainees. Similarly, Russia, as noted above, provided information that failed to note all the detention centres they were using.

We found that eight countries provided incomplete information on the locations of migrant detention centres: Bulgaria, Canada, Estonia, Greece, Ireland, Latvia, Russia, and the USA.

Greece for example, did not mention the many police stations where migrants are known to be detained, whilst neither the USA nor Canada provided the addresses of detention facilities (they only gave the names), thus making it difficult to identify and confirm accurately the locations of facilities they refer to in the lists, as multiple facilities have similar names.

Estonia told us that they operate only one dedicated immigration detention facility (the Harku Expulsion Centre). However, according to information received by the Global Detention Project, irregular immigrants awaiting deportation can also be held in 15 “police detention houses” for up to thirty days instead of an expulsion centre. Estonia did not provide any details about these 15 detention houses.

Latvia told us it operates one dedicated immigration detention facility only, although in the past the Global Detention Project has found the use of police stations for this purpose as well.

## Recommendations



- » When collecting data on immigration-related detention all countries should use a definition that is comprehensive and that includes all forms of incarceration, confinement, housing, “reception centres” or any other accommodation where a person is physically prevented from leaving. Application of this definition in the collection of statistics would ensure that all people confined in any type of detention facility are accounted for.
- » In states where prisons or other facilities (such as police stations) associated with the criminal justice system are used for this type of detention, information on these facilities must also be provided, stipulating whether immigration detainees are separated from other categories of detainees at each facility.

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<sup>7</sup> Human Rights Watch, “Russia: Mass Detention of Migrants – Racial Profiling, Arbitrary Detention, Harsh Detention Conditions,” 8 August 2013. Available at: <https://www.hrw.org/news/2013/08/08/russia-mass-detention-migrants>





## 2.2 Numbers vs. People

In addition to some of the concerns with the data that we have noted above, even where we have received what appears to be complete data and even where we have recorded the response as “information received” ([see the chart on page 30](#)), the data that we received may be inaccurate or out-of-date for a number of reasons.

One such problem is the double counting of migrants as they move from one detention centre to another. This concern came up in the case of Canada, which provided data on the number of migrant detainees by detention centre. Whilst this could give a snapshot of the total number of detainees in Canada per year, it might also be that there has been a failure to clean out from the data any duplicates caused by migrants being relocated amongst the facilities.

Similarly, we note that a recent European Migration Network (EMN) report on Hungary provided significantly higher statistics than those we received.<sup>8</sup> One possible explanation for the difference, as noted by EMN in its report, is that some people placed in detention may have been counted twice if they were held by different authorities. It could be that the Hungarian government cleaned out the duplications from the data they provided to us, or there could be another reason that we are not aware of for the data totals being different.

A somewhat related problem is the phenomenon of re-detention of those who have previously been released, which is a potentially widespread human rights concern in numerous countries in Europe and elsewhere.<sup>9</sup> This problem typically involves non-citizens who cannot get identity documents including many unauthorized migrants and stateless persons—but who cannot be deported and thus remain vulnerable to detention. This means that data may record the number of detention incidents rather than the number of individual migrants who have been subject to detention. Among the countries where this problem has been reported are Belgium, Cyprus, Ukraine, and Spain.

It is difficult to get statistics on this phenomenon, precisely because countries are failing to record it. The evidence that we have tends to come from detainees who report this having happened to them. Nevertheless, unless a country specifically has provisions preventing re-detention, then detainees remain vulnerable. Most countries do not appear to have such protections in place and hence human rights groups are concerned that the problem is more widespread than acknowledged.

As a result of these problems, our research once again highlights serious challenges faced by civil society groups, international human rights mechanisms, and policymakers when trying to accurately assess the scope of detention activities. Without accurate and comparable data, it is difficult to measure state adherence to human rights norms or to propose effective policy.

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<sup>8</sup> European Migration Network (EMN). 2014. The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014.

[http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_study\\_detention\\_alternatives\\_to\\_detention\\_synthesis\\_report\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf).

<sup>9</sup> For more in this issue, see “Point of No Return: The Futile Detention of Unreturnable Migrants,” ECRE et al, 2014. <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/567-point-of-no-return-the-futile-detention-of-unreturnable-migrants.html>.

## Recommendations



- » To the best of their ability, all countries should endeavour to collect accurate data which captures the actual numbers of individuals who are placed in detention in any reporting period, as well as the frequency and length of such detention for each individual.
- » The European Migration Network should work with national governments to ensure that data they collect is accurate, complete and comprehensive, and that it is comparable with the data being collected in other countries.

## 2.3 Eurostat Doesn't Know

Another important finding from this research project is the lack of concrete information about immigration detention at the European Union level, particularly at Eurostat, which is the EU statistical office located in Luxembourg tasked with providing Member States with statistics “that enable comparisons between countries and regions.”

The importance of this lacuna in EU data was underscored during our investigation when Bulgaria responded to our questionnaire stating that they did not need to answer our questions because they had already provided all the requested information to Eurostat. When researchers at the Global Detention Project read this response they were deeply surprised as they had in the past contacted Eurostat for such statistics and been told that they were not collected. When the GDP wrote to Eurostat concerning Bulgaria's claim, Eurostat again confirmed that they do not keep such statistics. We reported this response to Bulgaria and repeated our information request, to which they eventually provided partial responses ([see the chart on page 30](#)).

Immigration detention has become a core aspect of EU immigration policymaking in Brussels, and the issue has relevance in many EU directives and regulations, including most notably the Returns Directive, the Reception Conditions Directive, and the Dublin III Regulation. Thus, it should be regarded as unacceptable that carefully constructed and comprehensive statistics about this policy are not being maintained at the EU level, with Eurostat being the logical institution tasked with collecting these statistics.

## Recommendations



- » Eurostat should collect from all EU Member States on immigration-detention data and make this public in one database.
- » Eurostat should ensure that Member States deliver data on time and that the data is consistent with a harmonised definition and comprehensive.





### 3. WHEN GOVERNMENTS DON'T KNOW

One particularly disconcerting finding of this research project was the number of “information not held” responses to our requests, in which governments explicitly stated that they do not hold – and hence that they are not gathering even the basic data on the numbers of migrants in detention.

This means that governments are not collecting basic data needed to develop coherent migration-related policies or to monitor the way migrants are treated and to protect their fundamental rights. In order to have a fact-based policy debate on this issue, it is important that policymakers, civil society watchdogs, and the general public have access to statistical information on the numbers of minors held in detention.

In total nine countries told us that they did not hold the information we sought in one or more of our questions: Austria, Denmark, Finland, Germany, Ireland, Netherlands, Slovenia, Switzerland, and United Kingdom.

Data that proved most challenging to obtain from governments concerned asylum seekers and minors.

#### 3.1 Asylum Seekers and Children

International law provides that the detention of asylum seekers only be a measure of last resort. Additionally, numerous international and regional human rights mechanisms have repeatedly insisted that minors not be detained for immigration-related reasons. However, our investigation revealed that asylum seekers and child migrants are routinely detained in many countries. What is more, a significant number of these countries were unable or otherwise failed to respond adequately to our questions concerning these two groups.

In total, five countries responded that they did not hold information on the numbers of asylum seekers held in detention: Finland, Germany, Ireland, Netherlands, and Switzerland.

An example was Ireland where asylum seekers are held in normal prisons rather than detention centres. We were informed that the Irish Prison Service does not keep statistics on the specific immigration or residency status of prisoners, so it was unable to provide details of the total number of asylum seekers who were placed in detention during each of the years 2010, 2011 and 2012.

Finland, on the other hand, informed us that more than 90% of detainees are asylum seekers. The government explained that exact numbers could not be calculated as these detainees could be at different points along the asylum process, ranging from those whose requests were still being processed to those who had been detained after being refused asylum. This frank response on the challenges facing public officials is useful for informing the policy debate. It also calls into question the accuracy of data from other countries who provided numbers without giving any details about the stages of the applications for asylum seekers.

We also found that five countries (Austria, Denmark, Germany, Switzerland, and United Kingdom) did not hold information on the numbers of unaccompanied minors (i.e. migrants under 18 years old without a parent or guardian) that were held in detention.

Austria informed us that “such statistics are not collected”, Denmark said that it was “not possible to separate children brought along by parents”, and the UK, while being able to provide the number of minors detained in port holding rooms for over 12 hours, does not have information on whether these minors were unaccompanied or part of a family.

The detention of minors is a particularly controversial issue as a growing cohort of international rights agencies and activist groups (see for example, the [Global Campaign to End Immigration Detention of Children](#)) challenge governments on the practice of detaining minors for immigration related reasons. Detaining children, especially those who are unaccompanied whilst in detention, can have disproportionately detrimental effects on their physical and mental wellbeing.

It is particularly troubling to find the lack of disaggregated data concerning the most vulnerable groups in immigration detention. Without adequate information concerning where and in what conditions minors and asylum seekers are detained, governments cannot ensure that these populations are adequately cared for or that they are abiding by fundamental human rights norms.

## Recommendations



- » Governments should ensure the collection and disclosure of disaggregated immigration detention data on the numbers of people placed in immigration-related detention who are asylum seekers.
- » Given the legal requirements on the specific protection needs of minors, governments should collect and make public disaggregated data on the numbers of accompanied and unaccompanied minors in detention for immigration-related reasons and the places where they are held.





## 3.2 The Challenges of Data Collection in Federal States

Several countries included in this study are federal states, two of which, Switzerland and Germany, have decentralized migration authorities and informed us that they could not fully answer the questions. Their responses confirmed the results of previous investigations of these two countries undertaken by the Global Detention Project, which found that information about detention policies and practices were not available at the national level.

<sup>11</sup>

Germany informed us they held none of the information requested as this issue <sup>11</sup> is dealt with at the Länder level. What is remarkable about this is that it is the central German authorities which represent the country in international fora, including the UN human rights mechanisms, and which should be reporting data to the European Commission.

Similarly, the Swiss told us that some information we asked for was held at the canton level, but that this was sufficient for the national government to produce policy if needed. It seems odd that national policies can be developed when all the information is held in a dispersed manner.

## Recommendations



- » Federal states and other countries with decentralized immigration authorities should compile detailed information at the central government level to ensure transparency and the availability of comprehensive information and make it publicly available, both in order to ensure evidence-based policy making and to permit reporting to international institutions.
- » Germany and Switzerland should compile comprehensive information at the federal level to ensure transparency and the availability of comprehensive information on this issue.

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<sup>11</sup> [http://www.globaldetentionproject.org/fileadmin/docs/Germany\\_reportv2.pdf](http://www.globaldetentionproject.org/fileadmin/docs/Germany_reportv2.pdf)  
<http://www.globaldetentionproject.org/countries/europe/switzerland/introduction.html>



## 4. THE NEED FOR PROACTIVE PUBLICATION

The very fact that the Global Detention Project and Access Info Europe had to carry out this research points to a serious problem with the way that governments are treating migrant-related data: it is not easily available on accessible online sources.

It was only in rare cases that relevant government bodies answering our requests were able to point to websites from which the data could be downloaded and where we found that it was reasonably complete and responded to our particular questions.

The response from the UK was a good example, containing as it did links to government websites where the data on detention of migrants is publicly available. The government website itself was easy to use and find further information, as well as download statistical data that is further broken down for analytical use.

The Netherlands and France responded to our request for information by providing reports. The Dutch response provided a link to a chunky report in Dutch, which fortunately held the information we were looking for, although it was not easy to find or search.

The French authorities on the other hand, provided a link to a 237-page report that is required by law to be presented to parliament every year; this report answered only one of the questions we asked, which points to a flaw in the way data is being organised and structured from a human rights perspective.

The relevance and accuracy of the data was made evident also in the case of Greece. The reply from Greece to our questions on the detention of migrants included links to a website which reflects an effort to put into the public domain data on the huge migration challenge that the country faces. The fact that the data that the Greek government has compiled and put online is structured in a way that does not match with the definitions used by other governments and by civil society (the difference between arrests and detention for example) points to this broader problem across Europe of the lack of clear standards on how states should monitor the detention of migrants.



An important finding of this research is therefore the need to require governments both to compile and to make available proactively specific information related to the number of people held in immigration-related detention.

Having such data publically available means civil society is able to assess the data and use it effectively to guard against violations of the rights of vulnerable groups.

## Recommendations



- » Regularly publish updated information on immigration-related detention, ensuring that the proactive publication of information contains the scope and level of detail recommended in this report.
- » Proactively publish detention data and information online using open, machine-readable formats, which provide for easy download and use of the data. Online information should be easy to locate and there should be no limitations with respect to the use of the data.

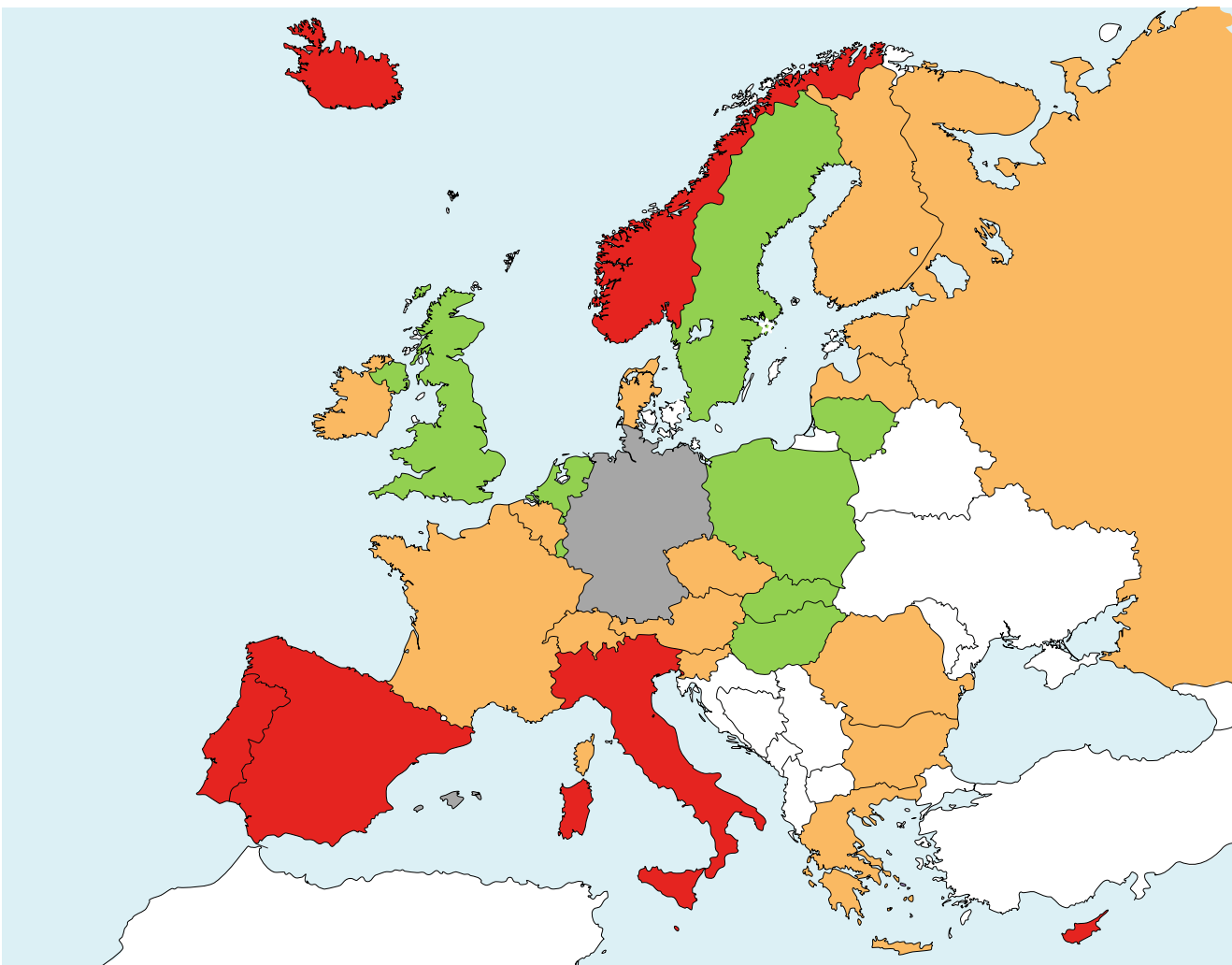


## DATA OBTAINED ON DETENTION OF MIGRANTS AND MINORS <sup>12</sup>

Country	Q2 Number of Detained Migrants	Q4 Number of Detained Minors
Austria	4566	78
Belgium	6797	Invalid Answer
Bulgaria	2016	Invalid Answer
Canada	10419	294
Czech Republic	Refusal to Accept	126
Cyprus	Administrative Silence	Administrative Silence
Denmark	127	119
Estonia	93	1
Finland	410	26
France	24544	Invalid Answer
Germany	Information Not Held	Information Not Held
Greece	76878	Invalid Answer
Hungary	1389	2 families with minors
Iceland	Administrative Silence	Administrative Silence
Ireland	385	0
Italy	Administrative Silence	Administrative Silence
Latvia	207	Administrative Silence
Lithuania	325	3
Luxembourg	5420	56
Malta	Administrative Silence	Administrative Silence
Netherlands	5420	402
Norway	Administrative Silence	Administrative Silence
Poland	4834	177
Portugal	Administrative Silence	Administrative Silence
Romania	671	Administrative Silence
Russia	14,504	Incomplete
Slovakia	99	0
Slovenia	Information Not Held	9
Spain	Administrative Silence	Administrative Silence
Sweden	3205	61
Switzerland	6806	177
United Kingdom	28909	222
USA	Incomplete	Administrative Silence

<sup>12</sup> These statistics are for the most recent year provided by each country in the survey, which covered the period 2010 - 2012.

# DETENTION OF MIGRANTS: REQUEST RESPONSE OVERVIEW



- Information provided
- Some or little information provided
- Information not held
- Administrative silence



## 5. SIMPLY SILENCE

### 5.1 Administrative silence

Six of the 33 countries in this survey did not respond at all to the requests for information, in spite of follow up requests made by staff at both Access Info Europe and the Global Detention Project. These countries were Cyprus, Iceland, Italy, Malta, Norway, and Portugal.

A further six countries failed to answer one or more of the questions put to them. Latvia, Romania, Russia, and the United States did not answer any questions on the numbers of detained minors, nor the numbers of unaccompanied minors that are held in detention.

Bulgaria and the United States did not answer our question on the number of detained asylum seekers. Neither did Spain, which also failed to answer the questions on the location of the detention facilities nor the number of detained migrants.

Administrative silence in the face of access to information requests is unacceptable as access to information is a fundamental human right. When we submitted requests, in almost all the countries (except Cyprus, Luxembourg, and Spain – which now has a law) there was a national access to information law which was made clear in our requests and which obliged authorities to respond.

### 5.2 Refusing to Answer Requests

In this survey, no country refused to provide the information requested based on the exceptions in the access to information law. This is not a surprise given the clear public interest in having access to this information, but is nevertheless positive.

One country, the Czech Republic, however, refused to accept one of the requests for information (that containing the first three questions) because we did not provide formal identification for the person making the request and for the request to be in Czech language.

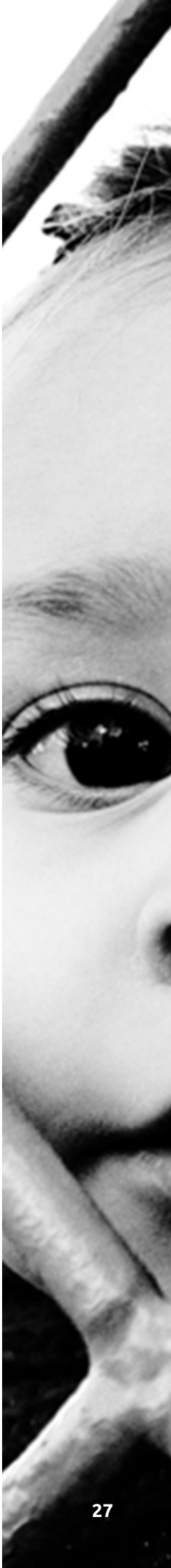
The Maltese government also insisted on the provision of a copy of the requester's passport in order to establish their identity as a European Union citizen before agreeing to process the request; Maltese law limits the right to ask to Maltese citizens and by extension under EU law to EU citizens. A copy of the passport was provided but in spite of this the request was eventually met with administrative silence.

Given that the right of access to information has been recognised by international human rights tribunals including the UN Human Rights Committee and the European Court of Human Rights and in many constitutions as a fundamental right, anyone should have a right to ask for information irrespective of who they are or what their nationality or residence is. It should be sufficient for the requester to state which information is being sought along with the contact the requester (such as an email address) that will enable the public authority to communicate with the requester and to deliver the response.

## Recommendations



- » Review and improve the training of relevant officials on their obligations under national access to information legislation to respond to requests for information and statistics on immigration-related detention.
- » The Czech Republic and Malta should reform their laws and practices so that freedom of information requests are never refused and/or delayed over questions relating to the identity of the requester.
- » Cyprus and Luxembourg should review the draft access to information laws that are currently being considered by their parliaments, should amend to bring them into line with the highest international standards, and should ensure their rapid adoption and implementation.





## 6. GOOD PRACTICE

Whilst this report raises concerns about lack of official data collection about detention of migrants and failures to provide that information in response to requests, it is also important to point to the good practices of a number of countries that were able to answer requests quickly, in full, and even providing useful information beyond what we asked for.

Six countries – Hungary, Lithuania, Luxembourg, Poland, Slovakia, and Sweden – provided all the information we asked for in our five questions.

Sweden provided clear, direct, and precise answers to our questions on the detention of migrants. Indeed, they even provided the directions of how to get to the detention centres they told us about.

In the Lithuanian response to our questions, the authorities included their legal definition of detention according to Lithuanian legislation: “According to the Law on the Legal Status of Aliens (Article 2), Alien’s detention means temporary accommodation of an alien in the Aliens Registration Centre, where the alien’s freedom of movement is restricted on the grounds and for the period specified by Law on the Legal Status of Aliens”, as well as specific details on the numbers of detainees and asylum-seekers, describing how they are differentiated for statistical purposes.

The Lithuanian authorities informed us that unaccompanied minors are accommodated in Refugees Reception Centers under the Ministry of Social Security and Labour of the Republic of Lithuania instead of the usual Foreign Registrations Center, the only dedicated detention facility in Lithuania.

Despite our reservations about the answer provided by Poland because it did not include information about those held in short-term detention by police and border guards, their response was a positive example compared to other countries as they explained to us the difference between long-term detention and detention for under 72 hours. According to Polish law, a person can remain detained for up to 72 hours, after which the foreigner must be either released or put into a guarded centre by decision of the court.

The Polish response provided the numbers of asylum seekers who were detained as well as those who submitted applications in guarded centres. Furthermore, Poland explained the grounds upon which asylum seekers can be detained: if there is a need to confirm their identity, if there is a threat that the asylum procedure will be abused, if there is a threat to life, safety or property of others or to national security, or if the foreigner crossed the border illegally.

The Polish authorities also informed us that asylum-seekers can be detained for a maximum of 60 days. We were told that unaccompanied minors, persons with disabilities or who have been subject to violence are not detained.

Providing explanations and additional information that is useful and complementary to the information requested is a sign of openness and good practice that other States could learn from, following the results of this study.

Another good practice can be seen in the data from Luxembourg, which provided statistics disaggregated by gender and age in a response drafted by the director of the sole detention centre, opened in 2011.

## Recommendations



- » All the countries covered in this survey are encouraged to use this report to help identify and apply best practices concerning openness concerning information about the detention of migrants and asylum seekers. These good practices should include collecting and making public detailed data on the detention of migrants and asylum seekers, with full information on the nature and location of detention facilities and the grounds for detention. As well as overall numbers, there should be disaggregated data about the detainees themselves, which should be broken down by age, gender, grounds for detention, and – wherever possible – by nationality as per the recommendations of this report.



## OVERALL CATEGORISATION OF RESULTS

Country	Q1 Location of Detention Facilities	Q2 Number of Detained Migrants	Q3 Number of Detained Asylum Seekers	Q4 Number of Detained Minors	Q5 Number of Minors (Un)accompanied
<b>Austria</b>	Information Received	Information Received	Information Received	Information Received	Information Not Held
<b>Belgium</b>	Information Received	Information Received	Information Received	Invalid Answer	Invalid Answer
<b>Bulgaria</b>	Incomplete	Information Received	Administrative Silence	Invalid Answer	Invalid Answer
<b>Canada</b>	Incomplete	Information Received	Information Received	Information Received	Information Received
<b>Czech Republic</b>	Refusal to Accept	Refusal to Accept	Refusal to Accept	Information Received	Information Received
<b>Cyprus</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Denmark</b>	Information Received	Incomplete	Information Received	Information Received	Information Not Held
<b>Estonia</b>	Incomplete	Information Received	Information Received	Information Received	Information Received
<b>Finland</b>	Information Received	Information Received	Information Not Held	Information Received	Information Received
<b>France</b>	Invalid Answer	Information Received	Invalid Answer	Invalid Answer	Invalid Answer
<b>Germany</b>	Information Not Held	Information Not Held	Information Not Held	Information Not Held	Information Not Held
<b>Greece</b>	Incomplete	Invalid Answer	Invalid Answer	Invalid Answer	Invalid Answer
<b>Hungary</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Iceland</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Ireland</b>	Incomplete	Information Received	Information Not Held	Information Received	Information Received
<b>Italy</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Latvia</b>	Incomplete	Information Received	Information Received	Administrative Silence	Administrative Silence
<b>Lithuania</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Luxembourg</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Malta</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Netherlands</b>	Information Received	Information Received	Information Not Held	Information Received	Information Received
<b>Norway</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Poland</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Portugal</b>	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence	Administrative Silence
<b>Romania</b>	Information Received	Information Received	Information Received	Administrative Silence	Administrative Silence
<b>Russia</b>	Incomplete	Information Received	Invalid Answer	Incomplete	Administrative Silence
<b>Slovakia</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Slovenia</b>	Information Not Held	Information Not Held	Information Received	Information Received	Information Received
<b>Spain</b>	Administrative Silence	Administrative Silence	Administrative Silence	Referral	Referral
<b>Sweden</b>	Information Received	Information Received	Information Received	Information Received	Information Received
<b>Switzerland</b>	Invalid Answer	Information Received	Information Not Held	Information Received	Information Not Held
<b>United Kingdom</b>	Information Received	Information Received	Information Received	Information Received	Information Not Held
<b>USA</b>	Incomplete	Incomplete	Administrative Silence	Administrative Silence	Administrative Silence

# FINDINGS QUESTION-BY-QUESTION

## Question 1:

### ON NAMES AND LOCATIONS OF DETENTION CENTRES

Less than half of all the countries in this study, 40% (13/33), answered this question and disclosed the names and locations of facilities used for the detention of migrants.

A quarter of the responses (8/33; from Bulgaria, Canada, Estonia, Greece, Ireland, Latvia, Russia, USA) however, disclosed incomplete information because their answer contained names and/or locations of only some of the detention centres, or missed out others completely.

The Ministries in Germany and Slovenia said they did not hold information on the names and locations of detention centres, whilst Switzerland and France provided an invalid answer; the Swiss did not address the question asked, and the French provided an report that did not contain the information.

On top of Cyprus, Iceland, Italy, Norway, and Portugal that did not answer any questions, we also received administrative silence from Spain.

## Question 2:

### ON NUMBER OF MIGRANTS DETAINED

We asked countries to provide the total number of people detained for immigration-related reasons during the years 2010, 2011, and 2012. In order to have an informed public debate about immigration based on facts rather than rumour, it is necessary that information held by public authorities on the number of detained migrants be made public.

Over 60% (20) countries provided us with information on the total number of people detained for immigration-related reasons. Two countries (6%, Denmark and USA) provided us with incomplete information, and Greece provided an invalid answer. As with the previous question, Germany and Slovenia said they did not hold the information.

In terms of administrative silence, Spain, Cyprus, Iceland, Italy, Norway, and Portugal did not to answer this question.

## Question 3:

### ON NUMBER OF ASYLUM SEEKERS DETAINED

In response to this question, under half (46%, 15/33) of the countries answered with full statistical information on the number of asylum seekers held. Of the 33 countries monitored, 15% (5) said they did not hold this information, and two countries provided invalid answers (Greece, Russia).

Cyprus, Bulgaria, France, Iceland, Italy, Malta, Norway, Portugal, Spain, and the USA (31%) did not answer this question on the number of asylum seekers that are in held in detention.

## Question 4:

### ON NUMBER OF MINORS DETAINED

Over half (53%, 17) of the countries monitored responded with a full answer to this question.

We received invalid answers from Belgium, Bulgaria, and Greece, who provided information that did not answer this question. Russia provided incomplete information regarding the detention of minors, and Germany said it did not hold this information as it had done with all our questions.

We received a response from Spain's State Secretary for Immigration and Emigration which referred us to the Interior Ministry and Regional Governments for more information. Since this referral came six months after our initial request, we were unable to follow up, and therefore classified the response as a referral.

Cyprus, France, Iceland, Italy, Latvia, Malta, Norway, Portugal, Romania, and USA (31%) did not answer this question on the detention of minors.

## Question 5:

### ON NUMBER OF ACCOMPANIED VS. UNACCOMPANIED MINORS DETAINED

Over a third (40%, 13) of countries to which we submitted requests replied to this question in full providing a breakdown of the numbers of unaccompanied and accompanied minors in detention. Five countries told us that they did not hold this information, three provided invalid answers, and one country, Spain, sent us a message with a referral six months after we sent the initial request.

Cyprus, France, Iceland, Italy, Latvia, Malta, Norway, Portugal, Romania, Russia, and USA (34%) did not provide a breakdown of the numbers of accompanied and unaccompanied minors held in detention.



**THE UNCOUNTED: Detention of Migrants and Asylum Seekers in Europe - 2015**

Access Info Europe: [www.access-info.org](http://www.access-info.org)

Global Detention Project: [www.globaldetentionproject.org](http://www.globaldetentionproject.org)