

# Detention - Netherlands | DIP EUAA

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## Overview

### Relevant EU legislation

The Netherlands is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the [Aliens Act 2000 \(Vreemdelingenwet, 2000\)](#).

### National legislation

8 July 2015: The Netherlands transposed the recast Reception Conditions Directive and the recast Asylum Procedure Directive by [Law No 293 of 8 July 2015](#), amending the [Aliens Act 2000 \(Vreemdelingenwet, 2000\)](#). This law provides for detention of applicants for international protection, including for carrying out Dublin transfers.

Other relevant national legislation include:

23 November 2000: Aliens Decree 2000 | Vreemdelingenbesluit 2000, Vb 2000, [BWBR0011825](#).

2 March 2001: Aliens Circular 2000 (A) | Vreemdelingencirculaire 2000 (A), Vc, [BWBR0012287](#).

2 March 2001: Aliens Circular 2000 (B) | Vreemdelingencirculaire 2000 (B), Vc, [BWBR0012289](#).

2 March 2001: Aliens Circular 2000 (C) | Vreemdelingencirculaire 2000 (C), Vc, [BWBR0012288](#).

14 January 1993: Regulation on the border accommodation regime | Reglement regime grenslogies, [BWBR0005848](#).

## Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
<b>Detention decision</b>	Royal Netherlands Marechaussee   Koninklijke Marechaussee (KMar)  Aliens Police, Identification and Human Trafficking Department   Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM)  The Immigration and Naturalisation Service   Immigratie- en Naturalisatiedienst  The Repatriation and Departure Service   De Dienst Terugkeer en Vertrek (DT&V)	

<b>Area</b>	<b>National authority/ stakeholder</b>	<b>Assistance to competent authority</b>
<b>Administration and management of detention facilities</b>	<a href="#">Custodial Institutions Agency</a>   <a href="#">Dienst Justitiële Inrichtingen, DJI</a>	
<b>Information provision in detention</b>	<a href="#">Custodial Institutions Agency</a>   <a href="#">Dienst Justitiële Inrichtingen, DJI</a>	<a href="#">Dutch Council for Refugees</a>   VluchtelingenWerk Nederland (VWN)
<b>Interpretation services in detention</b>	<a href="#">Custodial Institutions Agency</a>   <a href="#">Dienst Justitiële Inrichtingen, DJI</a> arranges for interpretation via telephone for matters related to detention. For other procedures, either the Immigration and Naturalisation Service or the Repatriation and Departure Service will cover the costs of the interpretation service.	
<b>Access to the procedure and provision of asylum information in detention</b>	Royal Netherlands Marechaussee   Koninklijke Marechaussee (KMar)  The Immigration and Naturalisation Service   Immigratie- en Naturalisatiedienst  Dutch Council for Refugees   VluchtelingenWerk Nederland (VWN)	

<b>Area</b>	<b>National authority/ stakeholder</b>	<b>Assistance to competent authority</b>
<b>Detention for the Dublin procedure</b>	<p>Royal Netherlands Marechaussee   Koninklijke Marechaussee (KMar)</p> <p>Aliens Police, Identification and Human Trafficking Department   Afdeling Vreemdelingenpolitie Identificatie en Mensenhandel (AVIM)</p> <p>The Repatriation and Departure Service   De Dienst Terugkeer en Vertrek (DT&amp;V)</p>	
<b>Processing of asylum applications of applicants who are in detention</b>	<p>The Immigration and Naturalisation Service   Immigratie- en Naturalisatiedienst</p>	
<b>Legal assistance and representation in detention</b>	<p>Legal Aid Board   Raad voor Rechtsbijstand</p>	
<b>Review of detention</b>	<p>Court of the Hague   Rechtbank Den Haag</p>	

## **Grounds for detention during the asylum procedure**

## **Grounds for detention in national law**

## **Detention in the context of identification or verification of identity**

Article 59b (1a) of the Aliens Act 2000 foresees the detention of asylum seekers when it is necessary to identify the foreigner's identity or nationality, in particular when there is a risk of absconding.

## **Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding**

Article 59b(1b) of the Aliens Act 2000 foresees the detention of asylum seekers when it is necessary to determine the required elements for an asylum application and there is a risk of absconding.

The criteria to assess if there is a risk of absconding are listed under Article 5.1b(3) and (4) of the Aliens Decree. Asylum seekers can only be detained if at least two of these grounds are applicable to their specific situation. In the framework of Dublin transfers, at least one of the grounds should be based on the list of rebuttable presumptions under Article 5.1b(3).

Article 5.1b(3) lists the rebuttable presumptions:

- The foreigner entered or attempted to enter the Netherlands illegally;
- The foreigner did not fulfil and did not respond to the duty to report to the authorities;
- The foreigner received an earlier notification to leave the country or should have been aware of the limited time allowed to stay in the country but had not responded to the order to leave the territory;
- The foreigner did not cooperate to establish their identity or nationality;
- The foreigner provided false or contradictory information on their identity, nationality or travel route;
- The foreigner destroyed their travel or identity documents without a valid reason;
- The foreigner used falsified documents;
- The foreigner is declared to be an undesired person or is subjected to an entry ban;

- The foreigner indicated that he/she does not fulfil the obligation to return to his/her country of origin;
- The foreigner's asylum application is dismissed at the border as manifestly unfounded or inadmissible;
- The foreigner received a Dublin transfer decision but did not cooperate with the authorities which carry out the transfer;
- The foreigner received a Dublin transfer decision, requested on own initiative a deadline to voluntarily travel to the Member State responsible for the asylum application but had not left within the respective deadline;
- The foreigner received a Dublin transfer decision and an immediate transfer is required in order to carry out the transfer to the Member State responsible within the required 6-month deadline.

Article 5.1b(4) lists indications of the risk of absconding, which need further individualised clarification.

### **Detention in the context of a procedure to decide on the applicant's right to enter the territory**

Articles 6 and 6a of the Aliens Act form the legal basis for border detention. Asylum applicants can be detained based on Article 6(3) and their claim is assessed within the framework of the border procedure. During the border procedure, a decision on entry to the Schengen area is postponed. Registration and identification typically take place at the airport or in harbour areas, after which applicants are transferred to the Justitieel Complex Schiphol for the time of the border procedure.

The border guard of the Royal Dutch Constabulary orders the applicants' detention based on Article 6(3) of the Aliens Act. The guard must assess if there are compelling reasons not to order a detention decision based on the applicant's obvious circumstances or submitted information.

If the claim is dismissed as manifestly unfounded or inadmissible, the foreigner is refused to enter the Schengen area and the detention continues based on Article 6(1) and (2).

A third form of detention aims to impose or uphold detention for the purposes of a Dublin transfer (Article 6a). If a decision on an asylum application being inadmissible or manifestly unfounded is not taken within 4 weeks, the applicant will be granted access to the Netherlands.

### **Detention in the context of a return procedure**

Article 59 of the Aliens Act provides the legal basis for the territorial detention of people without a legal right to stay in the Netherlands, with the objective of carrying out the person's removal. Article 5.1a of the Aliens Decree specifies that detention may be imposed only when there is a risk of absconding or when the person tries to frustrate or delay the removal procedure. If the person applies for a residence permit (other than the asylum residence permit), the decision must be made within 4 weeks, during which time the detention can continue. Otherwise, the time limit for detention is 6 months, which can be exceptionally extended with an additional 12 months when the person does not cooperate with the authorities or when the authorities await documents from a third country which are necessary for the removal.

In the framework of border detention, once the application is rejected and a decision refusing entry to the Schengen area has been taken, the detention continues based on Article 6(1) and (2) of the Aliens Act. The time limits follow the same scheme, as for territorial detention which is 6 months and can be exceptionally extended by 12 months, when the person does not cooperate with the authorities or when the authorities await documents from a third country which are necessary for the removal.

### **Detention in the context of national security and public order**

Article 59b(1d) of the Aliens Act 2000 foresees the territorial detention if the asylum seeker is a threat to national security or public order. The detention order can be issued by the Royal Netherlands Marechaussee, the Aliens Police, Identification and Human Trafficking Department or the Repatriation and Departure Service.

Article 6.3/Ad of the Aliens Circular A lists the circumstances to be taken into consideration when applying this ground for detention, including:

- It may be possible to apply for a temporary asylum residence permit rejected on the basis of Article 1F of the Geneva Convention;
- There is an individual designation as referred to in Article 48(2) of the Aliens Act, from which it appears that the foreign national is a danger to national security or public order;
- There is an (individual) official report from the AIVD; or
- Suspicion or conviction in connection with a crime.

### **Detention for the purpose of a Dublin transfer**

Detention for the purpose of carrying out a Dublin transfer may be imposed in accordance with Article 6(a) of the Aliens Act 2000. A detention order can be issued by the Royal Netherlands Marechaussee, the Aliens Police, Identification and Human Trafficking Department or the Repatriation and Departure Service. Aliens Act 59a states that detention can be imposed in order to carry out a Dublin transfer, when it is assessed that the person can be transferred to another EU+ country and there is a significant risk of absconding.

### **Less coercive measures (alternatives to detention)**

The obligation to consider alternatives to detention in the context of territorial detention is established in Article 59c of the Aliens Act 2000. These include:

- Reporting requirements (Article 54(1f) Aliens Act 2000);
- Financial deposit (Article 54(1h) Aliens Act 2000);
- Surrendering documents (Article 52(1) Aliens Act 2000);
- Freedom-restricting measures (Article 56 Aliens Act 2000, Article 6(1) Aliens Act 2000).

### **Application for international protection and processing while in detention/impact on the asylum procedure**

Asylum applications at the border are taken by the Royal Netherlands Marechaussee (Koninklijke Marechaussee, KMar). KMar postpones the decision on entry to the Schengen area. The asylum application is processed in a border procedure (in accordance with the EU Asylum Procedures Directive) by the IND, during which the asylum seeker is detained near Schiphol Airport. Applicants must register their application at the closed Application Centre (AC) at Schiphol airport.

Track 2 can be applied in the border procedure which entails that there is no rest period and the applicant has only one interview. The applicant is informed by the Dutch Council for Refugees (VWN) about the procedure before the interview and has the opportunity to prepare for it with a lawyer.

After the first hearing, the IND can decide that the application cannot be handled in the border procedure and redirects the applicant into the regular procedure, if the identity, nationality and origin of the applicant have been sufficiently established and:

1. the asylum seeker is likely to fall under a temporary “suspension of decisions on asylum applications and reception conditions for rejected asylum seekers” (*besluit en vertrekmoratorium*);
2. the asylum seeker originates from an area where an exceptional situation as referred to in Article 15(c) of the recast Qualification Directive is applicable;
3. there are other reasons to grant an asylum permit.

If the examination takes longer than 4 weeks, detention is lifted and the applicant is allowed on the territory and channeled into the regular procedure.

In the border procedure, the IND can reject the asylum claim as a Dublin case, inadmissible or manifestly unfounded. An asylum seeker is allowed onto the territory and channelled into the regular procedure as soon as the IND decides that the application cannot be rejected on these grounds.

The maximum time limit for the IND to issue a decision in the border procedure is 4 weeks, and there is no possibility of an extension. If the 4 weeks lapse without a decision being taken, then the applicant will automatically gain access onto Dutch

territory.

If detention is lifted and the application is transferred to Ter Apel and channeled into the regular procedure, the applicant will receive a Foreign Nationals Identity Document type W. This document is not a resident permit but is a proof of lawful residence in the Netherlands for applicants during their asylum procedure.

An appeal against a negative asylum decision in detention may be submitted within a week before a Regional Court.

The IND decides whether to apply any exceptions to the application of the border procedure. The following groups are exempted from the border procedure: unaccompanied minors, families with children (where there are no counter-indications such as a criminal record or family ties not found real or credible) who are transferred to an open Application Centre, persons for whom, due to individual circumstances, border detention is disproportionately burdensome, persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured, and persons holding a residence permit or a long-stay visa issued by a Schengen Member State. Applicants belonging to an exempted group are granted access onto Dutch territory and will be referred to Ter Apel where they can submit an asylum application.

Detention conditions at the border are monitored by a Supervisory Committee.

## **Procedural safeguards**

### **Access to information and interpretation**

According to Article 5.3 of the Aliens Decree, the detention order stating the grounds for detention is communicated in writing in a language which the detainee is reasonably expected to understand. The detention order contains the legal grounds for detention, the procedure to challenge the detention order, and information on

free legal assistance and representation. Interpretation assistance is often provided by phone. A detention order can be issued by the Royal Netherlands Marechaussee, Aliens Police, Identification and Human Trafficking Department, the IND and the Repatriation and Departure Service.

General information on detention is also available in written and available in more than 40 languages on the DT&V website:

- Information sheets on detention under the Aliens Act, Article 59 available [here](#);
- Information leaflet on deprivation of liberty measures after (rejection of) asylum application at the border available [here](#).

## **Legal assistance and representation**

The Legal Aid Board has been using a border [detention schedule](#) for legal assistance to asylum applicants who enter the country through Schiphol Airport and are taken into custody pursuant to Article 6 of the Aliens Act.

As in the regular procedure, a lawyer is automatically appointed to applicants in detention (border procedure) from the start of the asylum procedure to provide legal aid related to their asylum case and for the review of detention (Article 97 Aliens Act).

For a judicial review of the detention measure, the Aliens Act provides under Articles 95 and 96 for the assistance of a counsel during the proceedings. When the assigned counsel cannot attend the hearing or other procedure related to the judicial review of the detention, another counsel shall replace and assist the applicant (Article 98 Aliens Act).

For remuneration of the counsel, Article 99 and 100 of the Aliens Act provide that an Order in Council establishes the modalities and whether remuneration and expenses are to be recovered from the property of the applicant.

Article 101 of the Aliens Act provides for the free access of the counsel to the premises where the applicant stays.

## **Length of detention**

Different timeframes apply to the different types of detention, depending on the legal basis for ordering the detention:

- Detention during the assessment of the asylum application in the border procedure (Article 6(3) Aliens Act): 28 days.
- Detention after a decision refusing entry concluding the border procedure (Article 6(1) and (2) Aliens Act): 6 months, which can be prolonged with an additional 12 months when the foreigner does not cooperate or when the authorities await documents from a third country which are necessary for the removal (Article 59(7) Aliens Act).
- Detention in the framework of a Dublin procedure (Article 6a Aliens Act): Article 28 of the Dublin III Regulation applies (Article 59a Aliens Act).
- Territorial detention of asylum seekers (Article 59b(2)-(5) Aliens Act):
  - Initially 4 weeks or 6 weeks when the IND issues an intention to reject (Article 39 Aliens Act). This can be further prolonged with an additional 3 months for appeals with a suspensive effect (automatic or ordered by a provisional measure).
  - Exceptionally 6 months when the applicant is a threat to national security or public order. This can be extended by 9 months when the application involves complex factual or legal circumstances or when the serious interest of national security or public order requires so.

## **Judicial review of detention**

The applicant can lodge an appeal against the decision order at any time during the detention period. Additionally, a judge automatically reviews the lawfulness of the grounds for or the continuation of detention. If the detainee has not (yet) lodged an

appeal, the authorities are obliged to notify the Regional Court within 28 days of the detention order. A hearing takes place within 14 days of the notification and the court has 7 days to decide.

The detention of an applicant pending the appeal procedure after the rejection of an application can be prolonged by 3 months after the IND issues an intention to reject for appeals with a suspensive effect.

## **Specific conditions relating to detention**

### **Conditions of detention**

Detainees have access to outdoor space, during the free time period typically between 8.00-12.00 and 13.00-22.00. The time allotted for detainees to be permitted to move around the common living areas of the detention centre differs by location.

Detainees are free to make phone calls during the free movement period. All centres have access to the Internet. They are allowed to meet external visitors, up to 2 hours a week. The so-called privileged contact persons can visit the detainee at any time. Spiritual guidance is accessible from representatives of all major religious beliefs.

Legal assistance/representation must be provided by law to all detainees. Lawyers are appointed and their fees are covered by the state.

Lawyers, NGOs, UNHCR, family members, members of the parliament and the National Ombudsperson can access detention centres.

According to Article 5 of the Regulation for the Border Accommodation Regime, the admission of visitors may be conditional on their willingness to be examined for the presence of goods or substances which pose a security threat. The regulation stipulates that a visitor can be refused access for security purposes.

Interpretation assistance is provided (often by phone).

Access to healthcare is guaranteed both in the territorial and border detention either through a doctor appointed by the centre or one chosen by the detainee. No specialised healthcare is provided (including for vulnerable categories) and the service is the same as that available to asylum seekers outside of detention. Access to psychological support and special care for asylum seekers with mental health issues is often provided in dedicated wings of the detention centre or psychiatric hospitals in prisons, where asylum seekers are accommodated separately from the rest of the detainees.

Leisure activities are organised.

In accordance with Article 4 of the Regulation for the Border Accommodation Regime, “The foreigner shall not be subject to any restrictions other than those which are absolutely necessary to ensure his stay in the border accommodation and to ensure the security and security of the to maintain order there”.

## **Detention of applicants with special needs**

### **Legislative overview**

The Aliens Act, Article 59c underlines that territorial detention can only be applied as a last resort, when no other, less coercive measures are available. The Aliens Circular, Article A5/2.4 specifically mentions unaccompanied minors and families with minor children.

Article 5.1a of the Aliens Decree specifies that border detention cannot be imposed when the individual circumstances would make border detention particularly burdensome for the person. Based on Article 3.108b, detention cannot take place when a person is found to be in need of special procedural guarantees that cannot be guaranteed within the framework of the border procedure.

Families with minor children cannot be detained at the border, as a main rule, based on Article A1/7.3 of the Aliens Circular. They are taken to the IND Application Centre in Ter Apel instead of keeping them at the border in Schiphol.

Unaccompanied minors can never be detained at the border. The Aliens Circular, Article A5/3.2 clarifies that the KMar official can only impose detention when there is doubt about the age of the person.

In 2016, a Secure Family Facility (GGV) opened in Zeist especially for families with minor children and unaccompanied minors.