



Detention and Alternatives to detention in international protection and return procedures

Common Template for EMN Study 2020

Fina Version, 4 January 2020

1 BACKGROUND AND RATIONALE FOR THE STUDY

In the context of migration, detention is a *non-punitive administrative measure applied by the state to restrict the movement through the confinement of an individual for another immigration procedure to be implemented*.¹ EU legislation regulates in detail the detention of migrants within the context of international protection and return procedures, setting the grounds on which an individual can be deprived of liberty and the relevant principles governing the matter. At both European and International levels, legal sources agree on the fact that detention should be used as a "last resort" and encourages the use of alternatives to detention, as an application of the principles of necessity and proportionality in order to avoid arbitrary deprivation of liberty.²

Although there is no common legal definition of alternatives to detention, they can be defined as *non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory*.³ These measures, having an impact on the person's rights,⁴ are subject to human rights standards and

¹ EMN Glossary

² Articles 6, 52(3) and 53 of the EU Charter. Articles 8 and 11 of the Reception Directive (recast). Recital 16 and Article 8(1) Return Directive.

³ EMN Glossary

⁴ These rights include: the right to family life (Article 2 ECHR; Article 9 CFREU; Article 12(2) 1951 Refugee Convention), the right to privacy (Article 8 ECHR), prohibition of torture (Article 3 ECHR) the prohibition on inhuman or degrading treatment (Article 3 ECHR).

have to be imposed, on a case-by-case basis, by taking into consideration individual factors. Examples of such alternative measures include the obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.⁵ Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.⁶ As a general principle, it is essential to clarify that the consideration of alternatives is only relevant and legal when there are legitimate grounds to detain.

Both international and EU law guarantee and protect the **right to liberty and security** as a core component of an individual's fundamental rights. The European Convention of Human Rights (ECHR) in its Article 5(1) states the principle that "Everyone has the right to liberty" while Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that: "[...] Everyone has the right to liberty and security of person. No one shall be subjected to **arbitrary** arrest or detention. No one shall be deprived of his liberty except on such grounds and following such procedure as are established by law". In summary, all the measures that might have an impact on the person's human rights should be imposed on a **case-by-case basis**.

The principles of **necessity** and **proportionality** should be observed as a core part of the decision to detain a third-country national under EU law. Nevertheless, it should be noted that the principle of necessity, while applying in EU law in relation to the grounds for detention that must be justified, is not taken into consideration by the ECHR. Also, the principles of **non-arbitrariness** and legality provide that detention should be based on grounds for detention established by law.⁷ Moreover, as the European Court of Human Rights has underscored in several judgments (see section 5 below), in practice, domestic authorities shall **effectively verify** and provide with **evidence** whether an alternative measure less coercive than detention is possible.⁸ In this sense, the administrative detention of individuals can take place only in those cases where there are no alternatives.

Despite the legal obligation to consider the use of alternatives to detention, in practice, the widespread use of alternatives is hampered by the scarce availability of tools and for alternatives to detention that could achieve the same goal of detention especially in the context of return procedures – notably to ensure compliance with the migration procedures and prevent absconding. Alternatives to detention are considered to bring **effective advantages compared to detention**, specifically considering their reduced costs as compared to detention, the reduced interference with fundamental rights, and the fact that they can significantly relieve the pressure on national detention systems. Nevertheless, among Member States alternatives to detention remain often unused, and the findings of different actors in the field -

⁵ Article 8(4) of the Reception conditions directive (recast)

⁶ Detention of applicants for international protection in the context of the Common European Asylum System, EASO 2019

⁷ The use of detention and alternatives to detention in the context of immigration policies, EMN 2014.

The principles of non-arbitrariness and legality are laid down in the following international law instruments: Art. 9 Universal Declaration of Human Rights (1948), Art. 9 (1) International Covenant on Civil and Political Rights (1966), Art 16(4) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990), Council of Europe (PACE), Resolution 1707(2010), 10 Guiding Principles on detention of asylum seekers and irregular migrants, §9.1.5.

⁸ A.B. and Others v. France, No. 11593/12, 12 July 2016, § 124

the Council of Europe,⁹ the UN¹⁰ and the EU¹¹ – while confirming this trend, identified different reasons for this.

The lack of **empirical research** on the practical applicability of alternative measures and which takes into account all related costs, has been identified as one of the main challenges for their implementation. In addition, there are several alternative measures, and some information is available on which measures work better than others. However, there is lack of clear evidence-based information on the effectiveness of these measures in achieving compliance with migration procedures and in particular to prevent **absconding**. In this sense, improving the overall quality of the assessment procedures, while boosting a greater legal clarity and objectivity in terms of criteria for assessing such risks could be crucial to ensure the most accurate decision on an appropriate alternative. Another issue identified is linked to the availability of alternatives that correctly match the individual circumstances because they are limited in scale or because the individual concerned cannot meet the requirements, for instance, this is the case of using bail where the lack of financial resources constitutes a limit in applying this scheme.

2 STUDY AIMS AND OBJECTIVES

The 2020 EMN study on detention and alternatives aims to identify similarities, differences, practical challenges and best practices concerning the use of detention and alternatives used by Member States and Norway in the framework of international protection and return procedures.

It follows the publication in 2014 of the EMN study on "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies" and aims to:

- Provide a comparative overview of the scale of detention and available alternatives to detention in each Member State in the context of international protection and return procedures and challenges Member States face to implement the alternatives to detention in practice;
- Give a comparative overview of the process and criteria used by national authorities to assess whether placing a third-country national in detention or instead applying an alternative to detention, in the context of international protection and return procedures;
- Assess the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures. This impact is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.¹²

Categories of third-country nationals considered in the study will include international protection applicants and individuals who have been issued a return decision. The study will focus on detention for

⁹ Legal and practical aspects of effective alternatives to detention in the context of migration, *Analysis of the Steering Committee for Human Rights (CDDH)*, 7 December 2017; Commissioner for Human Rights, Human Rights Comment, High time for states to invest in alternatives to migrant detention, 31/01/2017; Parliamentary Assembly, Resolution 2020 (2014), § 8.

¹⁰ Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, § 48.

¹¹ European Commission, Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, Brussels, 28.3.2014, p. 15.

¹² Effective Alternatives to the Detention of Migrants, International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 2019. Cost-effectiveness is intended as the financial costs of alternatives to detention as compared with the costs of detention, taking into consideration their outcomes (effects). For instance, reducing the length of time a migrant is detained is a factor that might reduce the costs associated with detention.

Detention and alternatives to detention in international protection and return procedures

asylum/return purposes only and will not include in its scope detention of third-country nationals who have committed a criminal offence. The study will give special attention to the possibility of detaining and/or providing alternatives to detention to vulnerable persons such as minors, families with children, pregnant women and persons with special needs.

The study will consider legal and practical approaches related to provision of detention and alternatives **available during the reporting period January 2015- December 2020.**

MAIN RESEARCH QUESTIONS

The study seeks to address two primary questions:

- *To what extent are different options for alternatives to detention available and used across Member States and Norway?*
 - What type of alternatives are currently available and in use across Member States and Norway?
 - What are the challenges and advantages in the use and implementation of alternatives to detention?
 - What processes and criteria are used to assess the opportunity to use an alternative instead of detention (provided that grounds for detention exist)?
- *What evidence exists about the impact of different types of coercive measures on the effectiveness of return policies and international protection procedures?*
 - What are the different impacts of detention and alternatives, when considering:
 - Compliance with relevant migration procedures
 - Respect for fundamental rights
 - The cost-effectiveness *ratio*?
 - Which factors (e.g. personal characteristics such as gender, origin or age; design of the ATD) are found to increase the impact of detention or alternatives to detention?

3 OVERVIEW OF THE EU ACQUIS

Detention and alternatives to detention in the context of international protection procedures

The Reception Conditions Directive (recast)¹³ requires Member States to consider alternatives to detention before subjecting asylum seekers to detention. Recital 15 provides that "applicants [for international protection] may be detained only under very **clearly defined exceptional circumstances** laid down in the Directive and subject to the principles of **necessity** and **proportionality** concerning both to the manner and the purpose of such detention". Under this Directive, Member States may detain an applicant only if other less coercive alternative measures cannot be effectively applied based on a case-by-case evaluation.¹⁴

The Reception Conditions Directive foresees a list of six grounds that may **justify the detention** of asylum seekers:

¹³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

¹⁴ Article 8(2) of the Reception conditions directive (recast)

Detention and alternatives to detention in international protection and return procedures

1. To determine the identity or nationality of the person;
2. To determine the elements of the asylum application that could not be obtained in the absence of detention (in particular, if there is a risk of absconding);
3. To decide, in the context of a procedure, on the asylum seeker's right to enter the territory;
4. In the framework of a return procedure when the Member State concerned can substantiate on the basis of objective criteria that there are reasonable grounds to believe that the person tries to delay or frustrate it by introducing an asylum application;
5. For the protection of national security or public order;
6. In the framework of a procedure for the determination of the Member State responsible for the asylum application.

Moreover, according to Article 18 of the Asylum Procedures Directive,¹⁵ it is not lawful to detain a person solely for the reason that s/he has lodged an asylum application.

To guarantee the **non-arbitrariness** of detention and the respect of fundamental rights of applicants for international protection, the the list above is exhaustive. (Article 8). Several procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further, the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10). Furthermore, according to the Dublin Regulation (Article 28),¹⁶ "when there is a significant risk of absconding, Member States may detain the person concerned to secure transfer procedures following this Regulation, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively."

Detention and alternatives to detention in the context of return proceedings

The Return Directive¹⁷ allows Member States to detain a migrant only to **prepare his/her return** and/or carry out the **removal process** if the application of less coercive measures is not sufficient. Article 15(4) specifies that detention is only justified as long as there is a **reasonable prospect for removal**. Furthermore, according to Article 15(5), each Member State shall set a limited period of detention, which may not exceed **six months**. Article 15(6) also allows Member States to **extend detention** for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third country.

Recital 16 of the Return Directive states that: "detention for the purpose of removal should be limited and subject to the principle of proportionality concerning the means used and objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient".¹⁸

¹⁵ COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and its recast Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

¹⁶ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

¹⁷ 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.

¹⁸ C-61/11 relates to the interpretation of Articles 15 and 16 of Directive 2008/115. The court specifically concluded that such Articles must be interpreted as precluding a Member State's legislation which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

However, the Return Directive does not impose explicitly Member States to establish national rules concerning alternative schemes, nor does it provide a list of examples of such alternative measures. Nevertheless, Article 7, within the context of voluntary return, lists specific measures that could be imposed on a third-country national benefiting from a period of voluntary departure to avoid the **risk of absconding**, such as regular reporting to the authorities, a deposit of a financial guarantee, submission of documents or the obligation to stay at a specific place. However, these measures cannot be considered alternatives to detention as there is no ground for detention within the context of voluntary return.

4 RELEVANT CASE LAW FROM THE COURT OF JUSTICE OF THE EU AND ECHR

Obligation to consider alternatives to detention

Given the fact that the detention is an exceptional measure of last resort, States have to examine first alternative measures and resort to detention only if such alternatives are considered as not adequate to achieve the result pursued. The legal obligation to consider alternatives to detention has also been reaffirmed by the Court of Justice of the European Union (CJEU). Specifically, in the case of *El Dridi* the Court stated that removal should be carried out using a gradation of measures which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility. Only if, in the light of an assessment of each specific situation, the enforcement of the return decision risks being compromised by the conduct of the person concerned, Member States may deprive that person of his/her liberty and detain him/her.

Risk of absconding

Case C-528/15 *Al Chodor* relates to the interpretation of Article 28 of the Dublin III Regulation on the conditions of the detention of asylum seekers pending a transfer to another Member State. The Court affirmed that, some of the provisions of this Regulation necessitate the adoption of measures by national authorities for their implementation. In that sense, Article 2(n) of the Dublin III Regulation requires the criteria to establish a 'risk of absconding' to be 'defined by law'. The CJEU concluded that Article 2(n) and Article 28(2) of the Dublin III Regulation must be interpreted as requiring Member States to establish, in a binding provision of general application, **objective criteria** underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond. In the absence of that, Article 28(2) is inapplicable, and detention on this ground is unlawful. The Court also noted that the meaning of Article 6 of the Charter of Fundamental Rights should be defined in light of the established case-law of the ECtHR, which requires any measure on deprivation of liberty to be accessible, precise and foreseeable.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and Ad-hoc Queries

- EMN synthesis report of the EMN study "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies", 2014
- EMN synthesis report on the EMN study "The effectiveness of Return in EU Member States", 2017
- EMN Ad-Hoc Query on Asylum Proceedings and Detention, Requested by HU EMN NCP on 31 July 2012
- EMN Ad-Hoc Query on detention of asylum seekers, Requested by HU EMN NCP on 30 January 2013.
- EMN Ad-Hoc Query on detention and removal of minors Compilation produced on 19 January 2015

Detention and alternatives to detention in international protection and return procedures

- EMN Ad-Hoc Query on detention and material detention conditions Requested by FR EMN NCP on 21 February 2018
- The AHQ 2020.59 on detention of minors requested by BE EMN NCP on 26 August 2020

Other relevant sources

- British Institute of International and Comparative Law, "Immigration Detention and the Rule of Law: Safeguarding Principles", 2013
- Council of Europe, Twenty Guidelines on Forced Return, 2005
- Council of Europe, "Legal and practical aspects of effective alternatives to detention in the context of migration", 2017
- Council of Europe, "Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results", 2019
- Council of Europe, European Commission and the European Migration Network, conclusion from the Conference "Effective Alternatives to the Detention of Migrants", April 2019
- European Asylum Support Office (EASO), Detention of applicants for international protection in the context of the Common European Asylum System, 2019
- European Commission, Return Handbook, C(2017) 6505, 2017
- European Law Institute, Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards, 2017.
- European Union Agency for Fundamental Rights, Detention of third-country nationals in return procedures, 2013
- European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, 2015
- Odysseus Academic Network, Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, 2015.
- UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, 2011.
- UNHCR, Option Paper no 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015.
- UNHCR, Compilation of International Human Rights Law and Standards on Immigration Detention, 2018
- UNHCR, Beyond Detention - A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2019

6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v6.0¹⁹ unless specified otherwise in footnotes.

¹⁹ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf

'Absconding' refers to action by which a person seeks to avoid administrative measures and/or legal proceedings by not remaining available to the relevant authorities or to the court.

'Alternatives to detention' refers to non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of forced return or deciding on the individual's right to remain in the Member State, such as regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring. In the EU context, pursuant Art. 2(h) of Directive 2013/33/EU (Recast Reception Conditions Directive) and Art. 26 of Directive 2013/32/EU (Recast Asylum Procedures Directive), detention is defined as confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty.

'Applicant for international protection' is defined as third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

'Application for international protection' is defined as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU (Recast Qualification Directive), that can be applied for separately.

'Asylum procedure': see definition for 'Procedure for international protection'.

'Beneficiary of international protection' is defined as a person who has been granted refugee status or subsidiary protection status.

'Country of origin' is the country or countries of nationality or, for stateless persons, of former habitual residence.

'Degrading treatment or punishment' refers to treatment that humiliates or debases an individual, showing a lack of respect for, or diminishing, their human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.

'Detention' is defined as a non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented (Source: EMN Glossary 3.0).²⁰

'Detention facility' is defined as a specialised facility used for the detention of third-country nationals in accordance with national law.

'Dublin procedure' is defined as the process for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. (Source: Article 1 of the Regulation 604/2013).

'Examination of an asylum application': see definition for 'Examination of an application for international protection'.

'Examination of an application for international protection': Any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU (Recast Asylum Procedures Directive) and Directive 2011/95/EU (Recast

²⁰ For the purpose of this study, the criminal detention, which is the deprivation of liberty which applies to a citizen or non-citizen due to criminal charges or convictions, is excluded. The administrative detention which is here considered is an administrative or civil decision taken by (usually) immigration authorities that operates separately to the powers given to the police and criminal courts.

Detention and alternatives to detention in international protection and return procedures

Qualification Directive) except for procedures for determining the EU Member State responsible in accordance with Regulation (EU) No 604/2013 (Dublin III Regulation).

'Forced return' in the global context refers to compulsory return of an individual to the country of origin, transit or third country (i.e. country of return), based on an administrative or judicial act. In the EU context, refers to the process of going back – whether in voluntary or enforced compliance with an obligation to return to: one's country of origin; or a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

'Fundamental rights' are universal legal guarantees without which individuals and groups cannot secure their fundamental freedoms and human dignity and which apply equally to every human being regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status as per the legal system of a country without any conditions.

'International protection' is defined in the global context as "the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries" and in the EU context as "protection that encompasses refugee status and subsidiary protection status".

'Irregular migrant' in the global context, refers to a person who, owing to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU context, a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code), or other conditions for entry.

'Procedure for international protection': Set of measures described in the Directive 2013/32/EU (Recast Asylum Procedures Directive) which encompasses all necessary steps for granting and withdrawing international protection starting with making an application for international protection to the final decision in appeals procedures.

'Return' is the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.

'Return decision' is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

'Voluntary return' is the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

7 ADVISORY GROUP

An 'Advisory Group' (AG) has been established within the context of this Study for the purpose of (i) developing the (common) specifications for the study, (ii) providing support to EMN NCPs during the development of the national contributions to the Study, as well as (iii) providing support to the drafting of the Synthesis Report. In addition to COM (DG HOME) and the EMN Service Provider (ICF-Odysseus), the members of the AG for the Study include EMN NCPs from BE, DE, FR, EE, LU, LT, LV, PL, SE, SI.

Advisory Group

- COM (Alexander Smits, DG HOME)
- COM (Ioana Pellin, DG HOME)

Detention and alternatives to detention in international protection and return procedures

- COM (Martina Belmonte, DG JRC)
- COM (Simon McMahon, DG JRC)
- FRA (Julia Behrens)
- BE NCP (Isabelle Raes)
- DE NCP (Friederike Haberstroh, and Janne Grote)
- FR NCP(Anne-Cécile Jarasse, and Christelle Caporali-Petit)
- EE NCP
- LU NCP (Adolfo Sommaribas)
- LT NCP
- LV NCP
- PL NCP (Joanna Sosnowska)
- SE NCP – AG lead (Marie Bengtsson)
- SI NCP (Luka Žigante)
- Odysseus network expert (Lilian Tsourdi, Philippe DE BRUYCKER)
- IC/ EMN Service Provider (Sara Bagnato, Roberta Vasile, Martina Griffo)

8 TIMETABLE

The following timetable is proposed for the next steps of the Study:

Date	Action
Study specifications	
27 February	First AG meeting
20 April	Circulation of the first draft to the AG
w/c 5 October	Circulation of the second draft to the AG (one-week deadline for review)
12 October 2020	Second AG meeting
w/c 22 October	Circulation of the third draft to NCPs (two weeks deadline for review)
w/c 4 January 2021	Launch of the study
Synthesis report	
5 April 2021	<u>Submission of national reports</u> by EMN NCPs
7 May 2021	First synthesis report (SR) to COM & AG members (1 week to provide comments)
14 May	Deadline for comments (1 week to address comment and finalise)
28 May	Circulation of the first SR to all NCPs (2 weeks to comment)
14 June	Deadline for comments

Detention and alternatives to detention in international protection and return procedures

Date	Action
28 June	Circulation of the second draft to all NCPs (2 weeks to comment)
12 July	Deadline for comments
26 July	Circulation of the third (final) draft to all NCPs (2 weeks to comment)
9 August (tbc, depending on holidays period)	Deadline for comments
4 September	Finalisation of the synthesis report, publication and dissemination

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs and Norway to this Study. The indicative number of pages to be covered by each section is provided in the guidance note. For national reports, the total number of pages should ideally not exceed **50 pages** (excluding the Annex). A limit of **25 pages** (excluding the Annex) will also apply to the synthesis report, in order to ensure that it remains concise and accessible.

Common Template of EMN Study 2020

National Contribution from Sweden

Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.

Top-line factsheet [max. 2 pages]

The top-line factsheet will serve as an overview of the **national reports** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers.

Please provide a concise summary of the main findings of Sections 1-4:

In Sweden the alternatives to the detention that are used in the migration process are the following:

- Reporting obligations
- Obligation to surrender a passport, travel document or identity document
- Requirement to communicate the address to authorities
- Case management based programme
- The possibility to reduce daily allowances or to fully withdraw the right to daily allowances and housing.

The alternatives to detention are used in different extent and parts of the process. depending on which alternative. For instance; all persons in the asylum procedure and in the return procedure will participate in a case management-based programme and all persons, no matter which process, will be obliged to state their addresses to the authorities. On the other hand reporting obligations/supervision will be less commonly used in the asylum process and can almost be considered as an exception. The decision to put someone under reporting obligations, is done on a case by case basis and is generally related to the risk of absconding. Another example is that the right to fully withdraw the right to daily allowances and housing can only be used in the return process and only if there is no time for voluntary departure/the time for voluntary departure has ended.

The case management programme is according to the Swedish experience a good practice since it both works as a support to the asylum applicant (who will be “guided” through the process by a dedicated case worker that also can answer questions regarding the process/practical issues) and as a possibility for the Swedish Migration Agency to stay in contact with the applicant in a good way.

The fact that there is not enough statistics or evidence based material to lean on when it comes to the possibilities to analyse the effectiveness of the alternatives in relation to detention creates a challenge in the Swedish context. If the aim is to establish procedures which migrants comply with and a process where the risk of absconding is minimized at the same time as there is an increased cost-effectiveness, there is a need for more research and for structured follow ups and analysis of what factors that are crucial in order to strike a balance between detention and its alternatives. Detention is more expensive, compared to the alternatives, but it is more effective. In this perspective also the possibilities to have better and more extensive statistics is crucial. The lack of

Detention and alternatives to detention in international protection and return procedures

evidence based material and statistics creates a risk that the authorities takes wrong steps/measures, which leads to a system that is less cost effective and adequate compared to a situation that is the other way around.

The Swedish Migration Agency does not make any difference between the different procedures (international protection procedures/return procedures) when it comes to grounds for detention/alternatives to detention.

Section 1: National policy and legal framework: development since 2015²¹

This section aims at providing an update about the legal and policy framework on detention and the use of alternatives to detention since 2015 and until December 2020. Questions from 1 to 4 relate to both migration procedures, namely asylum and return procedures. As such, it gives an overview of the main legal and policy changes since 2015 and until Decemberr 2020, as well as an overview of the categories of third-country nationals that can be placed in detention in Member States and Norway according to national law and practice.

Q1. Please report any changes on the legal and policy framework on detention concerning both international protection and return procedures since 2015.

Please provide a short description of national provisions, grounds for detention or different typologies of detention, from 2015 onwards and the rationale for any changes introduced. Please elaborate on any type of detention available to specific groups e.g. women or families.

The national provisions to detain someone are found in the Swedish Aliens Act, chapter 10. Basically there are the following grounds to detain an alien who has attained the age of 18:

- 1 If the alien's identity is unclear on arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot establish the probability that the identity he or she has stated is correct and the right of the alien to enter or stay in Sweden cannot be assessed anyway.
 - 2 If it is necessary to enable an investigation to be conducted on the right of the alien to remain in Sweden,
 - 3 If it is probable that the alien will be refused entry or expelled or if the purpose is to enforce a refusal-of-entry or expulsion order.
- A detention order under points 2 and 3 may only be issued if there is reason on account of the alien's personal situation or the other circumstances to assume that the alien may otherwise go into hiding or pursue criminal activities in Sweden.
- A child (under 18) may be detained on the following grounds:
- 1 If it is probable that the child will be refused entry with immediate enforcement, or the purpose is to enforce a refusal-of-entry order with immediate enforcement, if there is an obvious risk that the child will otherwise go into hiding and thereby jeopardise an

²¹ The latest EMN study on detention and alternatives to detention was published in 2014, therefore the study will cover the period between 2015-2020. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf

Detention and alternatives to detention in international protection and return procedures

enforcement that should not be delayed and if it is not sufficient for the child to be placed under supervision.

2 A child may also be detained if the purpose is to enforce a refusal-of-entry order in other cases than those in the first paragraph or an expulsion order on a previous attempt to enforce the order it has not proved sufficient to place the child under supervision.

There has been no major changes in the Swedish legislation concerning detention/the grounds for detention since 2015.

The most common scenario in the Swedish context is that a an adult who is detained, will be detained according to the grounds under chapter 10, section 1, points 2 and 3. In other words detention is mainly used in the return phase of the process.

There has been smaller changes related to detention; such as a possibility for the Swedish Police to take an alien in Police custody for 24+24 hours if it is necessary in order to prepare or carry out a return decision. Another example is that there has been a change when it comes to the logistical responsibility on transporting detainees, where the Swedish Migration Agency now has a bigger responsibility to transport detainees compared to the earlier situation, where the Police and the Prison and Probation Service had a bigger responsibility to handle transports of detainees.²²

Q3. Please report on any **legal and policy changes regarding the use of alternatives to detention** concerning both international protection and return procedures since the last EMN study on detention and alternatives to detention (2014)

There has been no changes.

Q4. Please complete the table below with regard to the **categories of third-country nationals that can be detained** in your (Member) State. You can refer to the same information reported in the 2014 EMN study on Detention and Alternatives. Please highlight any changes since then.

Note: Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q5) after the table.

Table 1. Categories of third-country nationals that can be detained

Categories of third-country nationals	Can third-country nationals under this category be detained? Yes/No	If yes, what is the legal basis for detention? <i>List the ground for detention</i>	Which alternatives to detention are available for this category? <i>List in bullet point the alternatives to detention available for each category. Further details on each measure will be collected in section 2.</i>	What are the (judicial and non-judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?
---------------------------------------	--	--	--	---

²² See Swedish Aliens Act (2017:123) and (2017:906).

Detention and alternatives to detention in international protection and return procedures

International Protection	Applicants for international protection in ordinary procedures	Yes	See section 1 Q1	<ul style="list-style-type: none"> - Reporting obligations - Obligation to surrender a passport, travel document or identity document - Requirement to communicate the address to authorities - Case management based programme - The possibility to reduce daily allowances or to fully withdraw the right to daily allowances and housing. 	Swedish Migration Agency
	Applicants for international protection in border procedures	n/a	There is no border procedure in Sweden.		
Return procedures	Irregular migrants detected in the territory	Yes	See section 1 Q1	<ul style="list-style-type: none"> - Reporting obligations - Obligation to surrender a passport, travel document or identity document - Requirement to communicate the address to authorities - Case management based programme 	Swedish Migration Agency, Swedish Police
	Persons who have been issued a return decision	Yes	See section 1 Q1	<ul style="list-style-type: none"> - Reporting obligations - Obligation to surrender a passport, travel document or identity document - Requirement to communicate the address to authorities - Case management based programme 	Swedish Migration Agency, Swedish Police

Detention and alternatives to detention in international protection and return procedures

				- The possibility to reduce daily allowances or to fully withdraw the right to daily allowances and housing.	
<i>Irregular migrants detected at the border</i>	Yes	See section 1 Q1		- Reporting obligations - Obligation to surrender a passport, travel document or identity document - Requirement to communicate the address to authorities	Swedish Migration Agency, Swedish Police

Q5. Is it possible, within the national legal framework of your (Member) State, to detain (or to impose an alternative to detention to) persons belonging to **vulnerable groups**, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Yes

If yes, under which conditions can vulnerable persons be detained?

The Swedish legislation does not, when it comes to the grounds of detention, make any difference between persons depending on which group a person could be considered belonging to; if there is a ground for detention any third-country citizen can be detained. It is all done according to a case-by-case basis. But this also means that the Swedish Migration Agency/the Police for instance most likely would not detain a woman who is far advanced in her pregnancy or elderly people. When it comes to families with children and unaccompanied minors, the time periods in detention are quite limited, 72 + 72 hours (if there are particular reasons). Additionally there is a higher threshold when it comes to the legal requirements before a child is detained. Alternative to detention (reporting obligation/supervision) is provided for and can be used in all cases.

The Swedish Migration Agency does not make any difference between the different procedures (international protection procedures/return procedures).

International protection procedures	Return procedures
<i>Please indicate if the persons belonging to these vulnerable groups can be detained and under</i>	<i>Please indicate here if the persons belonging to these vulnerable groups can be detained and under which</i>

Detention and alternatives to detention in international protection and return procedures

	<i>which circumstances. Please also indicate whether alternatives to detention are provided</i>	<i>circumstances. Please also indicate whether alternatives to detention are provided</i>
Unaccompanied Minors	Yes	Yes
Disabled people	Yes	Yes
Elderly people	Yes	Yes
Families with children and single parents with minor	Yes	Yes
Persons with serious illnesses and persons with mental disorders	Yes	Yes
victims of human trafficking	Yes	Yes
Pregnant women	Yes	Yes
Other vulnerable persons	Yes	Yes

Detention and alternatives to detention in international protection and return procedures

Section 2: Availability and practical organisation of alternatives to detention

This section explores the availability of different types of alternatives to detention for different categories of third-country nationals. For each, it explores the practical organisation of the alternative, including information on the authorities/organisations responsible for managing the implementation of the alternatives; the conditions that must be met by the third-country national to benefit from an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions.

EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.

Q6. Please indicate whether any **alternatives to detention for third-country nationals are available in your (Member) State** and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 2. 1 Available alternatives to detention for third-country nationals

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals) <i>Please provide information on how often and to which authority persons subject to this measure should report</i>	Yes
A2	Obligation to surrender a passport, travel document or identity document	Yes
A3	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	Yes
A4	Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.	No
A5	Release on bail (with or without sureties) <i>Please provide information on how the amount is determined; whether this can be paid by a third person/entity r (e.g. family member, NGO or community group); and at what point the money is returned</i>	No
A6	Electronic monitoring (e.g. tagging)	No
A7	<i>Release to a guardian/guarantor</i> <i>Please provide information on who could be appointed as a guarantor/guardian (e.g. family member, NGO or community group)</i>	No
A8	Release to care worker or under a care plan	No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	Yes

Detention and alternatives to detention in international protection and return procedures

A10		
	Other alternative measure available in your (Member) State. Please specify.	Yes
	The possibility to reduce daily allowances or to fully withdraw the right to daily allowances and housing.	

Q6.1 Amongst the alternatives above indicated, please could you indicate which ones (amongst those defined by law) are the **most used and why**? Please indicate as relevant the specific time frame

The alternatives defined by law are A1, A2 and A10. They are all rather common. A2 is mainly used when a person is applying for asylum. A1 and A10 are mainly used in the return process. The purpose is to try to make people comply with the decisions that are made and to keep them available.

Q6.2 Please briefly describe each of the alternatives indicated above. Copy paste the table below as many times as necessary.

Table 2.2 Description of available alternatives to detention for third-country nationals

Name of alternatives (as reported in table 2 above) <u>A1, A2, A9 and A10</u>	
<i>In what it consists, and maximum duration</i>	<p>A1 reporting to the Swedish Migration Agency/the Police The interval of when to report differs based on the individual circumstances in the case. A supervision order is valid for 6 months and can be prolonged.</p> <p>A2 Handing in identity documents to the Swedish Migration Agency, maximum duration until departing from Sweden or, if the person will be entitled to stay in Sweden, when the asylum process is completed.</p> <p>A9 Normally an asylum applicant will be provided housing in an ordinary apartment block, or stay with family or friends who already resides in Sweden. The case management program in Sweden, means that the applicant will have his/her dedicated case management the asylum process, a person who they can contact if they have questions regarding their claims, and a case manager who is responsible for the reception related issues and who can answer questions on allowances, housing, school etcetera.</p> <p>A10 If someone does not comply with the return decisions the option of reducing allowances can be used. The maximum duration could be till the point of time when the return is carried out.</p>

Detention and alternatives to detention in international protection and return procedures

<i>Legal basis (law, soft law, other guidance). Please provide reference to the original sources</i>	A1, A2 and A10 are all regulated in law, in the Swedish Aliens Act and in the Law on reception of asylum applicants. A9 is related on the structure of the work at the Swedish Migration Agency. All the asylum applicants gets a dedicated case manager, both in the reception process and in the asylum process. This is the concept of the internal process at the Swedish Migration Agency.
<i>Is it used in practice? Please provide any available data for the period 2016-2020</i>	They are all used in practice.
<i>National authorities responsible to administer the alternative</i>	The Swedish Migration Agency and the Swedish Police
<i>Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)</i>	No
<i>Obligations attached to the granting of the alternative (if relevant)</i>	n/a
<i>Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)</i>	Consequences of non compliance is determined on a case-by-case basis, except for A9, since the case management system applies to all applicants.
<i>Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant)</i>	n/a
<i>Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.</i>	n/a
<i>Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed</i>	There has only been one evaluation concerning A1. The aspects that were assessed was whether supervision could be used to facilitate return and if it was an efficient tool to prevent people from absconding. The evaluation showed that this ATD had little/no impact on the willingness to return, but that the group evaluated didn't abscond. ²³

²³ 1.3.4-2020-14867 – Alternativ till förvar – en analys av genomförd försöksverksamhet över hur uppsikt som alternativ till förvar kan effektiviseras (Alternatives to detention – an analysis of a pilot on how obligation to report as an alternative to detention can be more effective).

Detention and alternatives to detention in international protection and return procedures

Q7. Please identify any **practical challenges associated with the implementation of each alternative** to detention available in your (Member) State, based on existing studies or evaluations or information received from competent authorities, specifically in relation to (add more column as needed). Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q8.

Challenge	Alternative 1(reporting)	Alternative 2(surrender documents)	Alternative 3(case management)	Alternative 4(financial support/housing)
Availability of facilities related to accommodation (i.e. beds)	n/a	n/a	n/a	n/a
Availability of staffing and supervision	Requires resources		Requires resources	
Administrative costs	Staff/travel cost for the persons subject to supervision		Staff	
Mechanisms to control movements of the person				
Legislative obstacles		Can not be done throughout the whole process, only at certain stages.		
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)				When persons no longer are entitled housing there is a risk of them absconding. ²⁴
Other challenges	Risk of absconding	Risk of absconding	Risk of absconding	Risk of absconding

Q8. Please identify any **practical advantage associated with the implementation of each alternative** to detention available in your (Member) State in comparison with detention, based on existing studies or evaluations or information received from competent authorities specifically in relation to (add more

²⁴ According to Swedish legislation (Law (1994:37) on reception of asylum applicants) an adult alien without children loses the right to daily allowances and housing either when the time for voluntary departure has ended, or when the return decision enters in to legal force if there is no time for voluntary departure.

Detention and alternatives to detention in international protection and return procedures

column as needed). Please elaborate your answer by providing a short description. Please cover here the same alternatives reported in Q7:

Advantage	Alternative 1(reporting)	Alternative 2(surrender documents)	Alternative 3(case management)	Alternative 4(financial support/housing)
Availability of facilities related to accommodation (i.e. beds)	n/a	n/a	n/a	n/a
Availability of staffing and supervision				
Administrative costs				
Mechanisms to control movements of the person				
Legislative obstacles				
Aspects related to the situation of third country nationals (e.g. limited financial resources, no stable address or community support)				
Other advantages	No unnecessary restriction of movement and less expensive compared to detention	No unnecessary restriction of movement and less expensive compared to detention	No unnecessary restriction of movement and less expensive compared to detention	No unnecessary restriction of movement and less expensive compared to detention

Section 3: Assessment procedures and criteria used for the placement of third-country nationals in detention or alternatives to detention

This section examines the assessment procedures and criteria/benchmarks that are used by Member States and Norway in order to decide whether placing the third country national in detention or to instead use an alternative. The section will also explore how authorities decide which alternative to detention is most suitable to an individual case.

The section starts from the assumption that the grounds for detention exists and does not specifically analyse how the existence of such grounds are assessed.

The section begins with an overview of the steps taken to decide to use an alternative instead of placing the individual in detention. Questions then explore the timing of this assessment, whether an individual assessment is conducted, which authorities are involved in the assessment procedure and which criteria are used to determine whether to use detention or an alternative.

Detention and alternatives to detention in international protection and return procedures

The session will assess how vulnerability factors are assessed when taking a decision for detention and when making an assessment to opt for detention or an alternative.

Q9. Please provide an **overview of when and how the decision** about placing a person in an alternative instead of in detention is made. Please respond considering the following elements

- i. Is the assessment between detention or alternatives to detention made at the same time as when the grounds for detention are considered or at a different time?
- ii. In what circumstances are the grounds for detention rejected in favour of an alternative to detention?
- iii. Does the procedure vary depending on the categories of third country nationals or their country of origin (e.g. because of the specific situation in the country)?
- iv. Which authorities are involved in the procedure, please specify the respective role (i.e. consultative, decision maker)?

International protection procedure

The Swedish Migration Agency – decision making authority

Return procedure

The Swedish Migration Agency and the Swedish Police – both decision making authorities

Other (if indicated on Table I)

Q11. Is the possibility to provide alternatives to detention **systematically considered** in your (Member) State when assessing whether to place a person in detention? Please respond separately for international protection and return procedures.

International protection procedures:

Yes

Details: All decisions are taken on a case by case basis (except for case management, which is provided to all persons in the asylum procedure)

Return procedures:

Yes

Details: All decisions are taken on a case by case basis (except for case management, which is provided to all persons in the return procedure)

Q12. When there are grounds for authorising detention, which **considerations or criteria** are used to decide whether to place the third-country national concerned in detention or instead provide an alternative?

Detention and alternatives to detention in international protection and return procedures

Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	Yes Depending on the case, this could be a criteria that is considered.	Yes Depending on the case, this could be a criteria that is considered.
Cost-effectiveness	No	No
Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)	Yes If there is a knowledge that the person is from a country to which it will be difficult to carry out the return, that would be a criteria that could lead to the use of an alternative to detention instead of detention.	Yes If there is a knowledge that the person is from a country to which it will be difficult to carry out the return, that would be a criteria that talks in favour of an alternative to detention instead.
Level of the risk of absconding	Yes The Swedish Migration Agency considers the history of the person (absconded in earlier/other processes, what did he/she say in interviews etc)	Yes The Swedish Migration Agency/the Police considers the history of the person (absconded in earlier/other processes, what did he/she say in interviews etc)
Vulnerability	Yes Depending on the case, this could be a criteria that is considered.	Yes Depending on the case, this could be a criteria that is considered.
Less-invasive legal measures impacting on human rights	Yes We are obliged to always consider the alternative that is as little invasive as possible for the individual	Yes We are obliged to always consider the alternative that is as little invasive as possible for the individual
Other	Yes	Yes

Detention and alternatives to detention in international protection and return procedures

Criteria	International protection procedures	Return procedures
	<i>Details:</i> Depending on which stage the applicant is in the process detention or alternatives to detention are less/more likely. For instance; if you are in the final stages of the return process, detention might be more plausible compared to if you are in the early stages of the asylum process.	<i>Details:</i> Depending on which stage the returnee is in the process detention or alternatives to detention are less/more presumable. For instance; if you are in the final stages of the return process, detention might be more plausible compared to if you are in the early stages of the asylum process.

- Q.12.1. If **vulnerability** is one of the criteria used to assess whether placing the person under an alternative instead of detention, please **describe how the vulnerability assessment is made** (e.g., the responsible authority and the procedures followed). Please respond separately for international protection and return procedures.

Elements of vulnerability considered (unaccompanied minors, families with children, pregnant women and persons with special needs, victims of violence etc)

- Are vulnerability assessments conducted on a case-by-case basis, or is the assessment based on pre-defined categories/groups?
- Authorities / organisation conduct the assessment?
- Procedures followed

International protection procedures

There is no specific procedure as such; the assessment is done on a case-by-case basis, in which all criterias are considered. Vulnerability might be one of the criterias assessed when to decide which measure to apply (or if not to apply any measure at all).

The Swedish Migration Agency or the Police, depending on which authority that is responsible for the procedure, will conduct the assessment.

Return procedures

There is no specific procedure as such; the assessment is done on a case by case basis. All the relevant criterias in the case is considered. When doing so, vulnerability might be one of the criterias that is assessed when deciding which way to go – detention or alternatives to detention, or even no measures at all.

The Swedish Migration Agency or the Police, depending on which authority that is responsible for the procedure, will conduct the assessment.

Detention and alternatives to detention in international protection and return procedures

Q14. Which **legal remedies** are available to the third-country national against a decision to opt for detention /instead of an alternative to detention? Please describe. Please respond separately for international protection and return procedures.

International protection procedures: A decision to detain a person is appealable to the Migration court and to the Migration court of Appeal

Return procedures: A decision to detain a person is appealable to the Migration court and to the Migration court of Appeal

Q15. What **support (legal, social, psychological)** is available for migrants during the period when a decision is made about placing the individual in detention or to use an alternative to detention?

International protection procedures: There is no “built in” support in the process when it comes to social or psychological support. The applicants are only entitled to medical/dental care that can’t be postponed/emergency care. The healthcare professionals determine the need of healthcare. This also means that psychological support is limited when an applicant is placed in detention or when ATD is used. The Swedish Migration Agency, on the other hand, decides which support is needed in accordance with the Act (1934:137) on Reception of Asylum Seekers and Others. The Swedish Migration Agency appoints a public counsel. Most asylum applicants have access to legal aid, this is also the case if there is a decision of detention.

Return procedures: There is no “built in” support in the process when it comes to social or psychological support. The returnees are only entitled to medical care that can’t be postponed/emergency care. Once the migrants are in the return process there will, generally, be no free legal support. The migrants will have to pay for legal counsel by themselves. However, if the migrant is detained, there will generally be a public counsel appointed by the competent authority and this will be free of charge. According to the Aliens Act (chapter 18, section 1) there is a presumption that the returnee shall be appointed a public counsel.

Section 4: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

This section aims at comparing the different impact of detention and alternatives to detention on the effectiveness of international protection and return procedures.

The impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these aspects of effectiveness, it is recognised that the type of individuals placed in detention and in

Detention and alternatives to detention in international protection and return procedures

alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.

Ensuring compliance with migration procedures

Note: If it is possible please provide separately data related to international protection (Q16, Q17) and for return (Q18, Q19) procedures. If this is not possible, please clarify and respond to Q16 and Q17 covering both procedures.

Q16. Please provide **statistics** available in your country for the latest available year on the **number of asylum seekers** that were placed in detention and in alternatives to detention during the international protection procedures **who absconded**.

If possible, distinguish between the different types of alternatives to detention that are available in your country (add more rows as needed).

Flow number of third-country nationals in detention or in alternatives to detention in the context of international protection procedures who absconded during the year. Data expressed in absolute figures. Reference years: 2017, 2018, 2019 (Please provide data for each year)		
	# People in international protection procedures (including Dublin)	# of applicants who absconded
Detention (Absolute figures)		
- Alternatives to detention 1 (Reporting obligations)		
Alternatives to detention 2 (Obligation to surrender a passport, travel document or identity document)	n/a	n/a
- Alternatives to detention 3 (Requirement to communicate the address to authorities)	n/a	n/a
- Alternatives to detention 4 (Community management programme)	n/a	n/a

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

The Swedish Migration Agency does not have any possibility to extract these kinds of data on an aggregated level. What can be provided is the number of absconded persons from the detention centres, but that is the statistics that is done by respective detention centre and it is not "official" in that sense. Further; we do not separate persons who are in the process of applying for asylum from persons who are in the return process, the numbers are generic.

Detention and alternatives to detention in international protection and return procedures

Q17. Please provide any statistics available in your country on **the average length of time needed to determine the status of applicants for international protection** who are held in detention or are in an alternative to detention. Please also indicate the share of decisions which were appealed and the share of those which overturned the initial decision. Those MS who do not place asylum applicants in detention, shall indicate this at the beginning of the question and skip to the next question.

If possible, distinguish between the different types of alternatives to detention that are available in your country (add more rows as needed)

Average length of time needed to determine the status of applicants for international protection who where detained or in alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)		
	Average length of time in determining the status of an applicant for international protection	Share of decisions which were appealed and of these, the share which overturned the initial decision
Detention (Absolute figures)	n/a	n/a
Alternatives to detention 1 (Reporting obligations)	n/a	n/a
Alternatives to detention 2 (Obligation to surrender a passport, travel document or identity document)	n/a	n/a
Alternatives to detention 3 (Requirement to communicate the address to authorities)	n/a	n/a
Alternatives to detention 4 (Community management programme)	n/a	n/a

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

The Swedish Migration Agency can not extract this type of data from our systems and there has not been any structured follow up on the above either.

Q18. Please provide any statistics that may be available in your (Member) State about the number of **irregular migrants** including failed asylum seekers placed in detention and in alternatives to detention during the return procedure, **who absconded**.

If possible, distinguish between the different types of alternatives to detention that are available in your (Member) State.

Detention and alternatives to detention in international protection and return procedures

Flow number of third-country nationals in detention or in alternatives in the context of return procedures who absconded. Data expressed in absolute figures per year. Data expressed in absolute figures. Reference years: 2017, 2018, 2019 (Please provide data for each year)		
	# of irregular migrants in return procedures (including pre-removal)	# who absconded before removal is implemented
Detention (Absolute figures)		
Alternatives to detention 1 (NAME)		
Alternatives to detention 2 (NAME)		
Alternatives to detention 3 (NAME)		
Alternatives to detention 4 (NAME)		

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

<p>The Swedish Migration Agency does not have any possibility to extract these kinds of data on an aggregated level and there has not been any structured follow up on the above either.</p> <p>What can be provided, is the number of absconded persons from the detention centres, but that is the statistics that is done by respective detention centre and it is not "official" in that sense. Further; the Swedish Migration Agency does not separate persons who are in the process of applying for asylum from persons who are in the return process, the numbers are generic. See table in Q16 for answer to the table above.</p>

Q19. Please provide any statistics that might be available in your country on

- (i) the proportion of voluntary returns and
- (ii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention.

If possible, distinguish between the different types of alternatives to detention that are available (add more rows as needed)

Average length of procedures to issue a return decision, and number of voluntary return among third country nationals placed in detention or alternatives. Reference years: 2017, 2018, 2019 (Please provide data for each year)				
	Average length of time from apprehending an irregular migrant to issuing a return decision	Average length of time from issuing a return decision to the execution of the return	Number of voluntary returns (persons who opted to return voluntarily) (absolute figures)	Number of effective forced departures (absolute figures)
Detention (Absolute figures)	n/a	n/a	n/a	n/a

Detention and alternatives to detention in international protection and return procedures

Alternatives to detention 1 (NAME)	n/a	n/a	n/a	n/a
Alternatives to detention 2 (NAME)	n/a	n/a	n/a	n/a
Alternatives to detention 3 (NAME)	n/a	n/a	n/a	n/a
Alternatives to detention 4 (NAME)	n/a	n/a	n/a	n/a

If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

The Swedish Migration Agency can not extract this type of data from our systems and there has not been any structured follow up on the above either.

Q20. Have any **evaluations or studies on the rate of absconding and degree of cooperation** of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details and if possible, distinguish between the international protection and return procedures.

International protection procedures

No

Key findings

Reference

Return procedures

Yes

Key findings

Reference

Q21. Is there any evidence, or empirical observation on **whether detention or alternatives to detention have a greater impact on migration procedures**, (e.g. whether they make return procedure more effective), **depending on certain characteristics of migrants** and specifically country of origin, nationality, family situation, gender, age.

Discuss separately for each available alternative to detention. If possible, provide examples and statistics.

Please discuss separately for international protection and return procedures

There has not been any study conducted, which deals with those matters in a more structured and analytic way, besides the pilote study mentioned under Q6 (see footnote 22). Probably there will be a great deal of empirical knowledge among the staff on what works, what does not and in which part

Detention and alternatives to detention in international protection and return procedures

of the process, but nothing that is structured in any report, or that can be considered to be of a more “academic” value.

<p><u>International protection</u></p> <p>Detention:</p> <p>Alternative 1:</p> <p>Alternative 2:</p> <p>Alternative 3:</p> <p>...</p> <p><u>Return procedures</u></p> <p>Detention:</p> <p>Alternative 1:</p> <p>Alternative 2:</p> <p>Alternative 3:</p> <p>.....</p>
--

Upholding fundamental rights

Q22. What **human rights safeguards** are available in detention and in alternatives to detention?

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
<p>Is access to legal aid ensured? If so, how? Please specify.</p>	<p>Details: It is not ensured that a migrant will have legal aid as a detainee. What is ensured is the right to apply for such aid (free of charge) and generally speaking a detainee has access to legal aid. Here it does not matter which process you are in.</p>	<p>Details: Only if you are in the process of applying for asylum.</p>	

Detention and alternatives to detention in international protection and return procedures

<p>Is the right to be heard ensured during detention/alternatives to detention? If so, how? Please specify.</p>	<p>Details: All the contacts between the detainees and the case managers are registred, particularly if a measure has to be taken or if a decision is needed.</p>	<p>Details: All the contacts between the detainees and the case officers are registred, particularly if a measure has to be taken or if a decision is needed.</p>	
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Details: Everybody has the right to medical care that can't be postponed and to emergency care. The care is provided by the county councils which are responsible for medical care. If a detainee needs health care, he/she will be put in contact with the nurse who decides on further action to be taken.</p>	<p>Details: Everybody has the right to medical care that can't be postponed and to emergency care. The care is provided by the county councils which are responsible for medical care. If a person needs health care, he/she will have to get in contact with the county council.</p>	
<p>Please add any additional safeguard</p>			

Q23. Have **evaluations or studies** been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention, of mental and physical health)?

Yes

In 2016 Dr. Soorej Jose Puthooppambal made a doctoral thesis on how detention affected the persons being detained. His conclusions was that detainees experienced lack of control over their own lives due to lack of information in a language they can understand, inadequate responses from detention staff and restrictions within detention centers further limiting their liberty. Duration of detention was negatively associated with satisfaction of services provided in detention and the detainees' Quality of Life (QOL). Detainees had low QOL domain scores with the psychological domain having the lowest score (41.9/100). The most significant factor positively associated with the QOL of detainees was the support received from detention staff. A sense of fear was present among detainees and staff. Detainees' fear was due to their inadequate interaction with authorities, perceiving it as threatening, and due to their worry of facing

Detention and alternatives to detention in international protection and return procedures

repercussions of being involved in incidents caused by others. The potential for physical threat from detainees created a sense of fear among the staff.²⁵

Q24. Please provide any statistics available in your country on the **number of complaints regarding violations of human rights**²⁶ and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention (please quote the relevant case law/decision). Please provide the statistics for 2019 or the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your country.

International protection procedures

n/a

Return procedures

n/a

Improving the cost-effectiveness of migration management.

Q25. Have any evaluations or studies in your (Member) State considered the **cost-effectiveness of using detention or alternatives to detention as part of the asylum procedure** (e.g. length of time to determine an international protection status and executing decisions, costs of procedures, etc)?

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.

No

Key findings

Reference

Q26. **Have any evaluations or studies** in your (Member) State considered **cost-effectiveness of using detention and alternatives to detention as part of the the return procedures**. (e.g., the length of time that transpires from issuing a return decision to the execution of the removal, the share of voluntary returns out of the total number of returns, the total number of removals completed, costs of procedures,)?

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report

No

Key findings

Reference

²⁵ <https://uu.diva-portal.org/smash/get/diva2:898632/FULLTEXT01.pdf>

²⁶ Please consider appeals to a judge but also to a specific administrative commission or ombudsman

Conclusions

Please draft a short conclusion based on your responses to the template above, considering the following:

- i. To what extent are alternatives to detention applied in practice in your country?
- ii. What are the challenges in the implementation and use of alternatives to detention?
- iii. What are the concerns regarding the use of alternatives (if any) compared to detention in international protection and return procedures? In answering this question, please consider each aspect of effectiveness: 1) compliance with migration procedures including reduce the risk of absconding; 2) maximising cost-effectiveness; 3) ensuring respect for fundamental rights;
- iv. What does evidence suggest about main factors identified which contributed to greater or reduced cost-effectiveness (e.g. personal characteristics of the third-country nationals affected, type of alternative provided, etc.)

In Sweden the alternatives to the detention that is used in the migration process the following:

- Reporting obligations
- Obligation to surrender a passport, travel document or identity document
- Requirement to communicate the address to authorities
- Case management based programme
- The possibility to reduce daily allowances or to fully withdraw the right to daily allowances and housing.

Alternatives in SE are used in different extent depending on which alternative. For instance; all persons in the asylum procedure and in the return procedure will participate in a case management-based programme and all persons, no matter which procedure, will be obliged to state their addresses to the authorities. On the other hand reporting will be less commonly used and can almost be seen more as an exception.

There are several challenges. One major challenge, at least when it comes to the more repressive types of alternatives, such as reporting for instance, lies within the fact that the reason for the mere existence of detention and alternatives to detention is generally that a third-country national needs to be available for different reasons. Detention is the most efficient measure to ensure that a third-country national does not abscond. Migration authorities might for this reason be reluctant to use alternatives to detention.

Another challenge is the fact that it is really difficult to find general and simple solutions to a complex situation. The authorities have to deal with individuals and there within lies a major challenge; there is a big need for a great variety of tools to work with when it comes to facilitating the different processes in order to make sure that the persons who are in a process also complies with and respect the decision taken and do not abscond.

Furthermore, there is a challenge to take the right measure at the right time. First and foremost when it comes to this part; there is a fundamental obligation to make sure that the freedom of movement for the migrants is not limited more than necessary. Besides this there is also the act of balance where, on one hand, the authorities does not want to have a situation where too many persons are detained (an expensive measure and most likely a measure that would not go in line with the obligation to make sure that the freedom of movement is not restricted more than necessary), on the other hand the authorities does not want persons to abscond either.

Detention and alternatives to detention in international protection and return procedures

Lastly; the fact that there is not enough statistics or evidence to build on when it comes to possibilities to analyse the effectiveness of the alternatives in relation to detention creates a challenge in the Swedish context. If the aim is to establish procedures which migrants comply with and a process where the risk of absconding is minimized at the same time as there is an increased cost-effectiveness, there is a need for more research and for structured follow ups and analysis of what factors that are crucial in order to strike a balance between detention and its alternatives. Detention is more expensive, compared to the alternatives, but it is more effective. In this perspective also the possibilities to have better and more extensive statistics is crucial. In the end the lack of evidence based material and statistics creates a risk that the authorities takes wrong steps/measures, which leads to a system that is less cost effective and adequate compared to a situation that is the other way around.

Statistical annex

Statistics from EU-harmonised sources, such as Eurostat and the EMN Annual Policy Report, on inter alia the outcome of international protection applications and return, including voluntary return will be used in the Synthesis Report to contextualise the statistics provided in this annex.

Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category

Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year) or please use N/A if data is not available.

Please describe if you are counting persons or numbers of entries (if one person would be counted several times with multiple entries). We would prefer number of persons if both options are possible.

	2014	2015	2016	2017	2018	2019	Source / further information
Statistics on number of third-country nationals in detention per category							
Total number of third-country nationals in detention	3 198	3 959	3 714	4 286	3 713	4 189	
Number of applicants for international protection in ordinary procedures in detention (including Dublin)							
Number of persons detained to prevent illegal entry at borders							
Number of person detained during return procedures (including pre-removal)					3 120	3 529	
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							
Vulnerable persons specified - minors	84	56	99	69	10	4	
Vulnerable persons specified – unaccompanied minors	8	29	9	8	3	3	
Number of other third-country nationals placed in immigration detention							
Statistics on number of third-country nationals provided alternatives to detention							
Total number of third-country nationals in alternatives to detention	364	443	517	675	1138	1164	
Number of applicants for international protection in ordinary procedures in Alternatives to detention (including Dublin)							
Number of persons given alternatives to detention to prevent illegal entry at borders							

Detention and Alternatives to Detention

Number of person in alternatives to detention during return procedures (including pre-removal)							
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.)							
Vulnerable persons specified - minors	3	0		3	1		
Vulnerable persons specified – unaccompanied minors	20	32	14	17	92	118	

Table 2: Average length of time in detention

Please provide information on the methodology used to calculate the average length of time in detention, including whether the mean or the median was used to calculate the average.

Average length of time in detention	2014	2015	2016	2017	2018	2019	Source / further information
Average length of time in detention of all categories of third-country nationals in detention	20,5 days	20,7 days	26,6 days	32,0 days	41,3 days	42,1 days	
Average length of time in detention of applicants for international protection in ordinary procedures							
Average length of time in detention of persons detained to prevent illegal entry							
Average length of time in detention of persons during return procedures							
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category							
