



MADE REAL – Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning

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Completed Legal Questionnaire for the project MADE REAL

Belgium

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- ✚ The aim of this questionnaire is to collect data on the legal framework in your national context with regards to alternatives to detention. It will be completed by the national member of the Odysseus network. The references in the questions to the Reception Conditions Directive concern the version of 2003 (Directive 2003/9/EC) unless your Member State has already transposed the recast Reception Conditions Directive (Directive 2013/33/EU)

Definitions¹:

'Applicant': (term used by the directive) or **asylum seeker (A/S)** (term employed by us but which we understand as synonymous): means a third-country national or a stateless person² who has made an application for international protection in respect of which a final decision has not yet been taken;

'Detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

'Final decision': means a decision on whether the third- country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

'Minor': means a third-country national or stateless person below the age of 18 years;

'Third-country national': means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

¹ The definitions used are taken by the recast reception conditions directive (Directive 2013/33/EU) and the returns directive (Directive 2008/115/EC). As we know that the first is not yet in force and both of these instruments not applicable in all Member States examined, if national law differs at any point from these definitions please specify it in your answers.

² We are aware of the incompatibility of this definition with the 1951 Refugee Convention but we decided to use the definitions as agreed in the EU legal instruments.

'Unaccompanied minor' (UAM): means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

✚ Concerning alternatives to detention, regardless of the definition that we will adopt later, this research should cover all schemes that are understood by governments as 'alternatives to detention', even if through our analysis we might conclude that some of them in fact do not satisfy our understanding of what can be considered an 'alternative to detention'.

A. National Legal Framework on detention and alternatives to detention

General

1. Is detention of asylum seekers regulated by law? (Please comment on the nature and level of the different norms employed: legislative, regulatory, administrative-like instructions/circulars etc.)

YES	NO	Comment
x		<p>Detention is mainly regulated by law and royal decrees. (Law of 15 December 1980; Royal Decree of 2 August 2002; Royal Decree of 14 May 2009; Ministerial Circular of 7 March 2013)</p> <p>There are also internal rules for each closed center.</p>

2. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).
 - a. Send us as an annex an electronic version (or link) to the text of the measure(s) in question
 - b. For MS other than the UK and Belgium: Please provide access to any translation of the above into English, if they are available (even if it concerns

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unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Title	Law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens
Date	15 December 1980
Number	1980121550
Reference of publication in the official journal (if applicable)	Moniteur belge of the 31 December 1980, as last amended on the 26 September 2013, <i>M.B.</i> , 22 November 2013, p. 14584
Relevant link	http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi
Title	Royal Decree of 2 August 2002 laying down the regime and the functioning measures applicable to the places situated on the Belgian territory, administered by the Immigration Service, where an alien is put in confinement, made available to the Government or detained in conformity with the Act of 15 December 1980 on access to the territory, residence, establishment and removal of aliens
Date	2 August 2002
Number	2002000655
Reference of publication in the official journal (if applicable)	Moniteur belge of the 12 September 2002, p. 40460
Relevant link	http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002080275&table_name=loi
Title	Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of aliens
Date	8 October 1981
Number	1981001949
Reference of publication in the	Moniteur belge of the 27 October 1981, p. 13740

official journal (if applicable)	
Relevant link	http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1981100831&table_name=loi

3. Based on which grounds could an asylum seeker be detained during the asylum procedure? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes	Administrative detention for 24 hours for identity check (art. 74/6, 10° and 11°, 74/7 law of 15 December 1980) Detention for maximum 5 months of asylum seekers because false documents have been used (Art. 74/6, 1 bis, 10°, Law of 15 December 1980)
Detention of asylum seeker at the border	yes	Asylum seekers at the border are detained in a “particular place at the border” during the process of their asylum claim, with a maximum of 5 months. (74/5, § 1, 2°, Law 15 December 1980 and RD 2 august 2002)
Protection of public order or national security	Yes	Art. 52/4 and 54, § 2, Law of 15 December 1980
Public health	No	
Risk of absconding	No	The criterion is only used for detention during the return procedure (art. 1,

		11°, Law 15 December 1980).
Dublin cases (art. 51/5)	yes	Art. 51/5 Law 15 December 1980. In the 'determination of transfer phase' detention is allowed, for one month, if the 'take charge or take back' request is based on (if the request is particularly complex, detention may be extended for one more month): i) A visa of the requested State in the applicant's passport; ii) The applicant's declaration that he/she stayed in the requested State; iii) A EURODAC hit
An applicant who was removed from the Belgian territory less than 10 years earlier and the measure has not been suspended neither cancelled	yes	Art. 74/6, 1 bis, 1°, Law of 15 December 1980
An applicant who, prior to entering Belgium, resided for more than 3 months in another safe country	yes	Art. 74/6, 1 bis, 2° and 3°, Law of 15 December 1980
An applicant who is in the possession of a valid travel document to another country	yes	Art. 74/6, 1 bis, 4°, Law of 15 December 1980
An applicant who files his application later than 8 days after entering the country and has no explanation for	yes	Art. 74/6, 1 bis, 5°, Law of 15 December 1980



this		
An applicant who has avoided a procedure started at the border	yes	Art. 74/6, 1 bis, 6°, Law of 15 December 1980. i.e. when the asylum seeker escaped from the closed centre.
An applicant who has not respected a duty to report at a certain reception centre	yes	Art. 74/6, 1 bis, 7°, Law of 15 December 1980. In the normal procedure of every reception centre, asylum seekers have a duty to report.
An applicant who has not introduced his asylum claim at the border without any justification	yes	Art. 74/6, 1 bis, 8°, Law of 15 December 1980
An applicant who conceals an earlier application	yes	Art. 74/6, 1 bis, 9°, Law of 15 December 1980
An applicant who has refused to communicate his nationality/identity or has given false information or travel/identity documents	yes	Art. 74/6, 1 bis, 10°, Law of 15 December 1980
An applicant who got rid of identity or travel documents where those could have helped establishing his identity or nationality	yes	Art. 74/6, 1 bis, 11°, Law of 15 December 1980
An applicant who has introduced an asylum claim to delay/compromise a return decision	yes	Art. 74/6, §1bis, 12°, Law of 15 December 1980
An applicant who has refused to give his finger prints	yes	Art. 74/6, §1bis, 13°, Law of 15 December 1980

An applicant who has not mentioned a previous asylum application in another country	Yes	Art. 74/6, 1 bis, 14°, Law of 15 December 1980
An applicant who has refused to answer questions related to his asylum motives/circumstances	yes	Art. 74/6, 1 bis, 15°, Law of 15 December 1980

4. Is detention foreseen for asylum seekers in specific situations under the national legal framework? Are alternatives to detention foreseen in law for asylum seekers under those special circumstances?

Type of group	Detention foreseen?	Alternatives foreseen?	Comment ³
A/S in border procedures	yes (Art. 74/5, § 1, 2°, Law of 15 December 1980)	Yes (art. 74/9 Law of 15 December 1980 and 1, 3°, RD 14 May 2009)	Alternatives are return houses for families with minors
A/S in accelerated procedures	Yes, for detained asylum seekers (74/6, §1bis Law 15 December 1980)	Yes (art. 74/9 Law of 15 December 1980 and art. 1, 3°, RD 14 May 2009)	The accelerated procedure, for detained asylum seekers, concerns appeals of the CGRA decisions. The delay for the appeal is 15 days, in place of 30 days. The case must be submitted to the alien litigation council within 3 working days. The audience takes place within 5 working days. After that, the Council must decide within

³ Please specify in your comments if alternatives to detention are foreseen only for a specific group, for example unaccompanied minors or families with minor children.

			<p>five working days of the completion of the hearing.</p> <p>Alternatives are return houses for families with minors</p>
A/S subject to a Dublin transfer⁴	Yes (51/5, § 1er, alinéa 2, Law 15 December 1980)	Yes (art. 74/9 Law of 15 December 1980 and art. 1, 3°, RD 14 May 2009)	<p>Detention is applied for the preliminary AND the transfer. Detention is allowed if the 'take charge or take back' request is based on :</p> <p>i) A visa of the requested State in the applicant's passport; ii) The applicant's declaration that he/she stayed in the requested State; iii) A EURODAC hit</p> <p>No risk of absconding is required.</p> <p>Alternatives are return houses for families with minors.</p>
Other			

Vulnerable applicants

5. Is there a mechanism/process in place to identify vulnerable applicants foreseen in the law?

⁴ Please specify in your comments whether the law allows for detention during a preliminary stage in order to examine whether the provisions of the Dublin regulation are applicable or in order to carry out the transfer or both? Please also comment whether the law requires a significant risk of absconding in order to justify the measure of detention in that case.

Yes. In reception centers, the applicant is examined by a social worker within 30 days of the arrival in order to detect signs of vulnerability. (RD 25 April 2007⁵ and Art. 22, § 1-2, Law of 12 January 2007⁶)

In closed centers, social workers and doctors are supposed to help detainees, both psychologically and socially. But there is no specific mechanism in the law. (art. 3, 2° and 6, RD 2 August 2002).

It is also the task of the CGRA officer to take into account the asylum seeker's vulnerability during the hearing (art. 4, § 1, RD 11 July 2003⁷).

In return houses, each family member is examined by a doctor within two days (art. 15 RD 14 May 2009). The family has the right to psychological and social assistance (art. 41 RD 14 May 2009).

Regarding minors, every authority has the responsibility to inform the tutor services about the presence of a UAM at the border or on the territory (art. 6 law of 24 December 2002⁸).

6. Does the system allow for identification of vulnerabilities also at a later stage in the procedure?

In reception centers, the evaluation by social workers of the asylum claimers' vulnerability lasts during the whole stay in the facilities (art. 22, § 2, Law of 12 January 2007⁹).

The obligation for authorities to report the presence of UAM is permanent. (art. 6 law of 24 December 2002¹⁰)

In closed centers, the social and psychological support lasts during the whole detention (art. 3, 2° and 6, RD 2 August 2002). If someone is identified as vulnerable, the doctor of the closed centre gives him the necessary treatment or, if it is necessary, orders the end of the detention (art. 61 RD 2 August 2002).

7. Are specific categories of asylum seekers generally exempt from detention as a principle according to the legal framework? If so which? Please comment where necessary.

Categories	Exemption (yes/no)	Comment
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⁵ www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007042548&table_name=loi

⁶ www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi

⁷ http://www.cgra.be/fr/binaries/3.%20AR%20proc%C3%A9dure%20dvt%20CGRA%20%2B%20fct%2011%20juil%202003%20A5_tcm126-236662.pdf

⁸ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002122445&table_name=loi

⁹ www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011252&table_name=loi

¹⁰ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002122445&table_name=loi

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Unaccompanied Minors	Yes, almost completely.	Art. 74/19 Law 15 December 1980. They can only be detained for 6 days in order to assess their age. (art. 41, § 2, Law 12 January 2007)
Families with minor children	Yes	Art. 74/9 Law 15 December 1980. Detention is only authorized as a last resort, if alternatives have failed, in appropriate closed centers. Alternatives are considered to have failed when the family leaves the return house.
Single mothers	Yes	Art. 74/9 Law 15 December 1980. Detention is only authorized as a last resort, if alternatives have failed, in appropriate closed centers. Alternatives are considered to have failed when the single mother leaves the return house.
Other		Doctors in closed centers can end the detention if they consider that it seriously compromises the physical or mental health of the detainee (art. 61 RD 2 August 2002)

8. Are there any special provisions in place regarding the detention of specific groups of asylum seekers? Please elaborate on the content of such provisions as well as specify which particular group of asylum seekers they concern.

Special provisions	Type of group	Comment
Time limits to detention	1. UAMs	1. They can only be detained for 6 days in order to assess their



	2. Foreigners (asylum seekers or not) without identity papers	age. (art. 41, § 2, Law 12 January 2007) 2. They can be detained for 24 hours by the police in order to wait for a decision of the Administration. (art. 74/7 Law 15 December 1980)
Detention only permitted in exceptional circumstances	Families with children Asylum seekers on the territory (not a the border)	It is only authorized as a last resort, if alternatives have failed (like return houses), and in adapted closed centers. (art. 84 RD 2 August 2002 and art. 78/4 Law 15 December 1980) There is a long list of circumstances in art. 74/6, § 1bis Law 15 December 1980
Other		

Necessity and Proportionality Test and Individual Examination

9. Is there an explicit obligation to detain asylum seekers only:

Question	Answer	Comment
Only if a particular ground for detention exists?	Yes, except in border cases (art. 74/5, 74/6, § 1 bis and 51/5 Law 15 December 1980)	Cfr supra question 3.
After an individualized examination?	Yes, except for asylum seekers at the border who are systematically detained (art. 74/5, 74/6,	Various legal bases can justify a detention measure. Only an individual hearing can



	§ 1bis and 51/5 Law 15 December 1980)	determine the right one.
As a last resort if other less coercive measures are not applicable?	No.	For the return of irregular migrants, but not for asylum seekers (except families with minors).

10. Does the national legal framework take into account the principles of necessity and proportionality, and if so, how?

There is no such test for the detention of asylum seekers. Except the cases where doctors in closed centers can end the detention if they consider that it seriously compromises the physical or mental health of the detainee (art. 61 RD 2 August 2002)

Another exception: if families do not respect the internal rules of the house units, they can be detained only if less coercive measures cannot be applied effectively (art. 74/9, § 3, al. 4, Law 15 December 1980)

11. Is there an obligation established in law to inform detained asylum seekers about the existence of alternatives to detention? What are the possible consequences if they are not informed?

No obligation, no consequences.

Alternatives in national law

12. Alternatives to detention for asylum seekers:

- a) Is there an explicit obligation to establish alternatives to detention under the national legal framework?
- b) Is it an exhaustive or an indicative list?

[Please do not describe here the legal framework on the functioning of alternatives to detention; a detailed section will follow. Please comment where necessary.]

Question	Answer	Comment
Explicit obligation?	No.	Except for families with children who cannot, in principle, be detained in closed centers unless they have tried return



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		houses/personal houses and have failed to respect the related obligations (art. 74/9 Law 15 December 1980). Alternatives to detention are the logical consequence.
Alternatives already laid down?	Yes	
If yes, which alternatives are mentioned?	Return houses for families with children (art. 74/9)	Given that detention of UAMs is forbidden (art. 74/19), orientation centers for UAMs are not considered as an alternative to detention.
Is it an indicative or exhaustive list?	Exhaustive	

13. Are alternatives to detention foreseen for specific groups of asylum seekers?

Group	Answer	Comment
A/S subject to a Dublin procedure	No.	
Unaccompanied minors?	No	Observation and orientation centers are provided for UAMs. (Art. 40 Law 12 January 2007). But strictly speaking, it is not an "alternative to detention" because UAMs cannot be detained (art. 74/19).
Vulnerable A/S other than UAMs?	Yes. Families with children.	
Other?	No.	

14. Alternatives to detention for other categories of migrants:

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- a) Are alternatives to detention provided for in legislation for other categories of migrants? (yes/no)
- b) If so for which groups?

Please comment when necessary.

Group	Alternatives provided in law?	Comment
Individuals subject to a return procedure	Yes and no.	Theoretically, alternatives to detention are an obligation. For example, returnees can normally receive a house arrest in place of being detained (art. 7 Law 15 December 1980). In practice, it is never applied. The only alternative applied are return houses for families.
Exclusively for failed asylum seekers	No.	
Particular vulnerable group: children, families, persons with disabilities, persons with health issues, victims of torture, or other	Yes. Families with children subjected to a return procedure have access to return houses (art. 74/9).	
Other (please specify)		

15. Legislative amendments/developments:

- a) Have any changes already been made to the national legal framework concerning alternatives to detention?

Return houses have existed since May 2009. Since October 2009, families with children who were not removable within 48 hours after arriving at the border were brought to return houses.

Since 20 July 2011, families with children should also be allowed to stay in their own house. But it is not yet applied in practice.

b) Were they made in view of the transposition of Directive 2013/33/EU?

No.

c) If not, are you aware of any legislative proposals that are pending, either in view of the transposition of the recast Directive or independently of the transposition, and could you briefly comment as regards their content as they relate to alternatives to detention?

No.

B. National Legal Framework on the functioning of existing alternatives to detention

General

16. What types of alternatives to detention are implemented in your Member State? Which categories of third country nationals do they concern? (i.e. asylum seekers, UAMs etc.)

Types of alternatives	Implementation in practice? (without description)	Group concerned
Obligation to surrender passport and documents	No	These are foreseen by the law, but not as an alternative to detention but as a restraint during the voluntary departure period (art. 74/14, § 2, al. 2 et 3, Law 15 December 1980)
Regular reporting to the authorities?	No	These are foreseen by the law, but not as an alternative to detention but as a restraint during the voluntary departure period (art. 74/14, § 2, al. 2 et 3, Law 15 December 1980)
Deposit of adequate financial guarantee	No	These are foreseen by the law, but not as an alternative to detention but as an alternative to voluntary departure. (art. 74/14, § 2, al. 2 et 3, Law 15 December 1980)

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Community release/supervision	No	
Designated residence	No	It is only for families with children in a return procedure (art. 74/9).
Electronic monitoring	No	
Return houses	Yes	Families with children

17. How is the functioning of (the) existing particular scheme(s) of alternatives to detention regulated? (Please comment on the nature and level of the different norms employed: legislative, regulatory, administrative-like instructions/circulars etc.)

It is regulated by law (art. 74/9), Royal Decree (14 May 2009)¹¹, and internal rules. The main aspects of the return houses are regulated in the Law and the Royal Decree. The internal rules concern practical aspects. These are discussed between the coach and the families.

18. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).

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Relevant link	http://www.ejustice.just.fgov.be/cgi_loi/cha

¹¹http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2009051406&table_name=loi

	nge_lg.pl?language=fr&la=F&cn=1980121530&table_name=loi
Title	Royal Decree of 14 May 2009 establishing the regime and the operating rules applicable to the housing units as referred to in Article 74/8, § 2 of the Act of 15 December 1980 on access to the territory, residence, establishment and removal of aliens
Date	14 May 2009
Number	
Reference of publication in the official journal (if applicable)	Moniteur belge, 27 May 2009, p. 38857
Relevant link	http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2009051406&table_name=loi

Analysis of each alternative to detention

19. Please provide the following information, as it is stated in the law/implementing circulars etc., for **each of the alternatives to detention** that is implemented:

- a) Summarize the basic characteristics/nature of the scheme as they are described in law/circulars etc. (namely does it consist of reporting obligations, financial guarantee etc.)

Each house is furnished with a bathroom, a toilet, a living room, a kitchen and a sleeping room. (art. 3 RD 14 May 2009) The families are formally “detained”. In practice, they are free to go with some minors restrictions. (art. 1, 3°, al. 2, RD 14 May 2009) Since these return houses are open, the families can indeed leave the houses under specific rules. (art. 19, RD 14 May 2009)

Visits in the family units are allowed. (art. 26, RD 14 May 2009)

Supporting officers (coaches) are appointed by the Immigration Office to accompany the families during their stay. (art. 1, 4°, RD 14 May 2009) These coaches inform the families about the legal procedures (asylum, appeals, ...) and assist them in their preparation of the return to their country in case their asylum request is rejected. (art. 7 RD 14 May 2009)

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The family has a weekly budget for logistical and nutritional costs, and medical costs are only reimbursed if the physician has been contacted by the coach. (art. 33 and 38 RD 14 May 2009) Every family can apply for a pro bono lawyer. (art. 42 RD 14 May 2009)

The fact that they are formally detained has various consequences: they can appeal their detention, they are in an “accelerated procedure” for their asylum claim (15 days in place of 30 to appeal the CGRS decisions, quick decision of the alien litigation council, etc.) and they do not benefit from the reception law.

- b) Which is the institution in charge of deciding which individuals should be submitted to these alternatives?

The Immigration office (art. 74/9)

- c) Can it act ex officio or only after the application of the concerned individual?

Ex officio.

- d) Which organization/entity/actor is responsible for implementing/running this scheme?

The Immigration office. A coach is appointed by the director of the Immigration office.

- e) If it is a governmental actor do they work in collaboration with other actors? If so who (civil society, local authorities, institutions etc.) and how?

Families can accept the visit of NGOs, but the Immigration Office works alone.

- f) If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?

The supervision is internal to the Immigration Office.

- g) Is the alternative to detention of general application or does it relate only to certain categories of asylum seekers (such as families with children, unaccompanied minors etc.)?

Only families with children.

- h) Are A/S subject to this procedure provided with documentation certifying their status as an applicant for international protection or testifying that they are allowed to stay on the territory (in accordance with the Reception conditions directive)?

The return houses are not used for persons allowed to stay on the territory. They receive documentation related to their asylum claim if they are at the border. They receive a detention decision which is the same format than for detention. They receive a 26quater Annex for Dublin cases. For the rest, nothing is foreseen by the law.

- i) What are the obligations that asylum seekers must comply with in the framework of the alternative to detention?

There is a convention concluded between families and the Immigration Office. Families have to comply with their administrative procedure (art. 16 RD 14 May 2009). One adult family member must always stay inside the house, unless exception is granted (art. 19 RD 14 May 2009). The family cannot offer accommodation to visitors or sub-lease the house (art. 21-27 RD 14 May 2009). The family can receive visits from relatives or friends. Other visits must be allowed by the coach (art. 26 RD 14 May 2009). Visit of organizations or other individuals are only allowed if there is a proof of a legitimate interest. The coach has to be present during the visit (art. 29 RD 14 May 2009).

- j) Could asylum seekers be placed in detention if they do not comply with certain obligations stipulated? If yes, please provide a short description of these obligations and explanation on the procedure.

If families do not respect the internal rules of the house units, they can only be detained if less coercive measures could not be applied effectively (art. 74/9, § 3, al. 4, Law 15 December 1980)

Access to rights and compatibility with human rights law

20. Do asylum seekers who are subject to an alternative to detention have access to the full range of rights according to the implementing law and as foreseen in the RCD and namely:

- a) to healthcare;
- b) to education;
- c) access to the labor market;
- d) to accommodation and in general assistance provided in kind or to financial assistance
- e) to social and psychological assistance

If not please describe the gaps.

Right	Yes/No	Comment on the gaps
Healthcare	yes (art. 15, 36 and 37 RD 14 May 2009)	N/A
Education	Yes (art. 45 and motives RD 14 May 2009)	N/A
Access to the labor market	Given that the family is formally detained, no.	N/A

In kind/financial assistance	Yes (RD 14 May 2009)	N/A
Social/psychological assistance	Yes (art. 36 and al. RD 14 May 2009)	N/A

21. Is there an obligation to provide asylum seekers with information about the procedure with regards to the alternatives to detention they are subject to? Is there an obligation to inform them about the legal remedies to object the imposition of an alternative to detention?

Yes. It is the task of the coach to inform families about the procedure with regards to the alternatives to detention they are subject to (art. 7 RD 14 May 2009).

The information is also contained in the decision of detention that they received (NB: legally speaking, they are still detained).

22. a) Do they have access to legal assistance and representation for the purposes of their asylum application? Yes (art. 42 RD 14 May 2009)
 b) Is it free of charge for the AS or at his/her own expense? Free of charge (art. 42 RD 14 May 2009 and 508/1 to 508/23 judiciary code)
 c) Is it provided ex officio or should they apply for it? They have to apply for it, but it is an obligation for every lawyer to verify if his client enters into the condition of the judicial aid (art. 5.10 code of ethics of Lawyers¹²).

23. According to your evaluation as legal experts, does each national legal scheme, as it is established under national law, respect the obligations of your Member State under international and European human rights law (in particular the prohibition of inhuman, degrading treatment and arbitrary deprivation of liberty)? Please use references to case-law where available (national jurisprudence and/or case-law from the Human Rights Committee/ECHR) in order to support your opinion.

Belgium has been condemned 3 times by the ECHR for having violated Article 3 on account of having detained alien minors, whether or not accompanied, in a closed centre designed for adult illegal aliens, in conditions which were ill-suited to their extreme vulnerability as minors¹³. The return houses are the response to these arrests.

Return houses respect return directive and ECHR but it does not mean that detention of irregular migrants globally respects Belgian obligations under international and European human right law. What does respect international obligations is the mechanism of return

¹²http://www.avocats.be/files/docs/code_de_deonto/01.10.2013_Code_deontologie_version_francaise_en_vigueur_au_01.10.2013.pdf

¹³ ECHR, *Kanagaratnam and Others v. Belgium*, 13 December 2011, n°15297/09.

houses as such. I do not see any human right or European rules which would be violated there. And so do NGOs¹⁴.

However, it should be noted that there is no test of “last resort”, proportionality and necessity. With the new recast directive, that may become a problem. Another weakness is that it is limited to families.

C. Relevant legal remedies and national jurisprudence relating to alternatives to detention

Please provide us with the following information, as it is stated in the law/implementing circulars etc., **for each of the alternatives to detention** that is implemented:

Remedies/procedures

24. Remedies or procedures to object detention:

- a) Is there a specific procedure under national law allowing asylum seekers to appeal the fact that they are subject to detention or to challenge the detention conditions?

Yes. There are two procedures:

- An alien who is detained in a particular place may appeal against that measure by submitting an application to the Council Chamber of the Correctional Court of the place where he is held (Art. 71 Law 15 December 1980.)
- There is a permanent Commission in charge of the treatment of complaints regarding the application of the Royal Decree of 14 May 2009. However, it only makes non-binding recommendation (art. 130, al. 2, RD 2 August 2002)

- b) Please specify for each if it is a judicial or an administrative procedure.

The first one is a judicial procedure and the second one is administrative.

- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

Yes. The judicial procedure is identical to the rules applied to asylum procedure.

For the procedures of the Commission, free legal aid is available (Royal Decree 19 December 2003).

25. Remedies or procedures to object placement in detention instead of the imposition of an alternative to detention:

¹⁴ http://www.sdj.be/IMG/pdf/evaluationmaisonretour2012def_-_lay_out.pdf

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- a) Is there a specific procedure under national law allowing asylum seekers to object their detention on the basis that they should fall instead under the application of an alternative scheme?

It is not a specific procedure. They should appeal their detention to the Council Chamber. Council chambers can only qualify the detention as illegal and put an end to it. It cannot decide to send a family in a return house in place of a closed center. Only the foreign office can do that.

- b) Please specify if it is a judicial or an administrative procedure.

Judicial.

- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

Yes¹⁵.

26. Review of the imposition of detention:

- a) Is there a periodic and individual review of the placement in detention?

Pursuant to Article 71, first subparagraph, Law of 15 December 1980, an alien who is deprived of his liberty due to a measure of detention, can appeal against this measure by appealing to the Council Chamber of Correctional Court. The detention can be reviewed every month on application of the detainee. When the minister decides to extend the detention, he must seize the council chamber within five days to control the legality of his decision.

- a) Is this review made by a judge or a non-judicial independent body?

The detention is reviewed by a judge.

- b) At this stage can the judge or non-judicial body examine whether they should fall instead under the application of an alternative scheme?

No. It is only for irregular migrants detained in a return procedure that the judge has to verify if there is no other sufficient but less coercive measures that can be applied effectively in the case (art. 74/9, § 3, al. 4, Law 15 December 1980)

27. Remedies or procedures to object the imposition of an alternative to detention:

- a) Is there a specific procedure under national law allowing asylum seekers to object the fact that they are subject to an alternative to detention scheme?

Given that they are detained, legally speaking, the only procedure available is to look for a review decision of the detention by the procedure described here above.

¹⁵ Royal Decree, 18 December 2003, art. 1, § 2, 4° and 5°.

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- b) Is there a specific procedure under national law allowing asylum seekers to challenge the conditions/compatibility of such schemes with fundamental rights?

No specific procedure. But the revision of the “detention” includes such a challenge (art. 72 Law 15 December 1980)

- c) Please specify for each if it is a judicial or an administrative procedure.

Judicial.

- d) Is there a right to (free) legal assistance and representation in the framework of this procedure?

Yes (art. 42 RD 14 May 2009 and art. 508/1 à 508/23 judiciary code)

28. Review of the imposition of an alternative to detention:

- b) Is there a periodic and individual review of the placement under such an alternative to detention?

Yes. It is the same as detention because legally speaking, they are detained.

- c) Is this review made by a judge or a non-judicial independent body?

Judge. On the initiative of the detainee or of the minister if he decides to extend the detention period from two months to four months.

Jurisprudence

29. Are there any precedents of asylum seekers appealing their detention on the basis that they should fall under the application of an alternative instead? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

Yes, but it is often about illegally staying third country nationals and less coercive measure than detention. Almost always, the court does not consider it necessary to motivate why no less coercive measures could be apply in the case.

Jurisdiction	Date	Case Number	Brief summary
Supreme Court (Cour de cassation)	20 November 2013	n°P.13.1735.F	The order to leave the territory is motivated by the fact that the migrant has been found with stolen identity papers; has been intercepted on illegal stay three times; has received 4 orders to leave the territory; has tried to make a marriage of convenience. Given that, it has been

			<p>considered that the migrant was unlikely to voluntarily obey to a new order to leave and could be detained.</p> <p>According to the supreme court, the subsidiarity principle has been respected even if there was no reference to any less coercive measure.</p>
Indictment chamber of Brussels	7 August 2013	N°2689	<p>The irregular migrant is detained for a removal. According to the Court, no illegality can be inferred from the mere fact that the administrative authority imposes a detention measure, while other less coercive measures could be taken. The circumstance that the family propose to pay a deposit does not make any difference.</p>
Indictment chamber of Brussels	18 October 2013	No3577	<p>The detention decision has been motivated as such:</p> <ul style="list-style-type: none"> - The foreigner has no valid travel documents; - He has not respected two orders to leave the territory; - A report has been drafted for forging of documents and use of false name; - He cannot be immediately removed and should consequently be detained; - He must be detained to allow his authorities to give him travel documents; - It is unlikely for him to voluntarily obey to any new order to leave the territory. <p>The Court has considered that it is not an obligation for the administration to explain why it did not opt for other less coercive measures such as house arrest, as far as it regularly motivates its detention decision, as it is the case here.</p>



Indictment chamber of Brussels	14 August 2012	No2772	No illegality can be inferred from the mere fact that the administrative authority imposes a detention measure, while other less coercive measures could be taken.
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30. Is there any precedent of asylum seekers appealing the fact that they are subject to an alternative to detention scheme (i.e. arguing that they should be offered reception conditions in an open center or financial assistance without any further obligation instead)? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

It is unusual and there is no difference between these decisions and decisions regarding detention measures.

Jurisdiction	Date	Case Number	Brief summary
Indictment chamber of Brussels	1 October 2013	N°3298	The motivation of the decision is very similar to the one regarding detention. The same systematic motivation is used. That is because return houses are, legally speaking, detention centers ¹⁶ .

D. Other

31. What are, in your view, the strengths of the system of alternatives to detention in your Member State?

No more detention of families with minors' children. Some children can attend school. The coaching is positive.

¹⁶ The judgment can be found here :

<https://alfresco.uclouvain.be/alfresco/d/d/workspace/SpacesStore/f0cb7a81-96e2-4681-92d4-17d2aa817190/Bruzelles%20%28mis.%20acc.%29%2c%20arr%C3%AAt%20no3298%2c%201%20octobre%202013.pdf>

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32. What are, in your view, the weaknesses of the system of alternatives to detention in your Member State?

Because they are not authorized to enter the territory, families cannot receive the help of the IOM for a possible voluntary return.

Sometimes, the father is placed in a closed center and the rest of the family in a return house. Families should not be separated. It is done in practice, but it is not foreseen as such by the law or Royal Decrees.

33. Please add here any other interesting element about alternatives to detention in your Member State/commentary which you did not have the occasion to mention in your previous answers.

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34. Please quote recent scientific books, articles, reports, substantive online commentaries that have been published about alternatives to detention in your Member State (answer even if this literature is only available in your national language and provide the complete title in your language (without translating it) with all references; indicate author, title, in case name of periodical, year and place of publication as well as publisher).

Various NGOs, *'Unités d'habitation ouverte 'coaches' pour les familles avec enfants mineurs, comme alternative à l'enfermement évaluation après quatre ans de fonctionnement*, 2012

VERBAUWHEDE, G., "Alternatives to detention for families with minor children – The Belgian Approach", *Discussion Paper for EU Asylum Conference 13 – 14 September 2010*

WIBAULT, T., *Frontières, asile, détention – Législation belge, normes européennes et internationales*, January 2012 ;

35. In case you have conducted interviews/consulted other experts/organisations in order to conclude this research please provide us with the following elements for each of them:

Name of the organisation/institution	N/A
Name of individual contacted	N/A
Position/function of the individual	N/A
Email address	N/A

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