



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

Co-financed by the European Commission

European Refugee Fund

Completed Practices Questionnaire for the project MADE REAL

Sweden

Alexandra Segenstedt

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MADE-REAL: Practices Questionnaire

Member State	Sweden
Name of researcher & organisation	Alexandra Segenstedt, Swedish Red Cross
Email address	alexandra.segenstedt@redcross.se

The aim of this questionnaire is to collect data on practices in your national context with regards to alternatives to detention. It will be completed by the national NGO project partner. 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 person 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.

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‘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.

‘Returnee’: Third country national subject to a return decision

✚ 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’.

Immigration detention in Sweden is the responsibility of the Swedish Migration Board. The principal legislation governing Swedish detention policy is the Aliens Act (Law 2005:716). Authorities that can issue detention orders are the Migration Board, the Migration Courts, the Migration Court of Appeal and the Swedish police authorities. These 21 independent regional authorities are independent. There is no overall body or control mechanism, which makes it difficult to give an overall picture. From 2015, these regional authorities will merge into one single national police authority. There is no regular follow-up/monitoring body and no standardised procedure for example the alternative to detentions.

Although administrative detention is to take place in specialised units run by the Migration Board, the board may place non-citizens in prisons or police facilities, either when they are being expelled because of criminal offences or when such forms of detention are considered necessary for the safety of other detainees and staff.

The Aliens Act stipulates the conditions under which a foreign national may be placed in administrative detention. This is possible when the authorities consider detention necessary to establish the identity of a foreign national, to investigate whether the person is entitled to remain in Sweden, when it is likely that the person will be refused entry, or when a person is awaiting the enforcement of an expulsion or refusal of entry order. Detention for the purpose of enforcing an expulsion or refusal of entry order is permissible when there is reason to suspect that the person will either commit a criminal act or go into hiding to avoid expulsion. The legal framework for detaining non-citizens can also enable the detention of asylum seekers in cases where the identity of the person is unclear or the likelihood of their being rejected asylum is high.

The Aliens Act also provides alternative control measures for persons who might otherwise be subject to detention. Both adults and children may be placed under “supervision,” which entails an obligation to report to the police or to the Swedish Migration Board regularly. A foreign national’s passport may also be confiscated for the duration of the supervision period.

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The legal limits on the length of detention vary according to the grounds for detention. Detention for the purposes of investigating the identity of a foreign national cannot be longer 48 hours. For all other investigations concerning the right of a foreign national to enter and / or stay in Sweden, detention is limited to two weeks, “unless there are exceptional grounds for a longer period.” Persons awaiting the fulfilment of a refusal of entry or expulsion order may be detained for two months, also barring “exceptional grounds”. Children may be detained for 72 hours, subject to renewal of another 72 hours in exceptional circumstances. Detention orders are reviewed at regular intervals – two weeks or two months from the beginning of the order depending on the grounds for detention. Supervision orders are re-examined every six months.

The Swedish Migration Board operate nine detention centres in five locations. Detained persons are entitled to public services during their stay at Swedish detention units. The Aliens Act guarantees that healthcare be made available to detainees and entitles detained persons to the same daily allowance as asylum seekers.

Statistics 2013 (information from the Migration Board)

54 259 persons applied for asylum in Sweden, mainly stateless persons and persons from Syria, Afghanistan, Somalia, Eritrea, Serbia and Iraq.

Detention 2013: Total (both Migration Board and police authorities) number of decisions 5017, whereof 4546 was decisions on detention. (Note: number of decisions taken – one person can have more than one detention decision, i.e. prolonged etc).

General information (from Migrationsverket/Migration Board, årsredovisning, 2013)

- In total, 2864 persons were detained in 2013. Of these 2864 persons, 46 were children.

Migration Board:

- 2333 decisions in total, whereof 1998 decision on detention and **273 decisions on supervision** (the alternative to detention).
- 1986 (out of the 2333) decisions on detention was on the ground expulsion/in a return procedure/failed asylum seekers.
- The decisions on supervision are just categorised as „others“ (i.e. no statistical ground).
- The average length of detention has decreased in 2013, from 11 days in 2012 to 8 days in 2013.

Police authorities:

- 2662 decision in total, whereof 2543 decisions on detention and **115 decision on supervision** (the alternative to detention).
- 2409 (out of the 2662) decisions on detention was on the ground of expulsion/in a return procedure.

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- 52 (out of the 2662) decisions was on the ground of identification.
- The decisions on supervision are just categorised as „others“ (i.e. no statistical ground)

(Information from the Police). During 2012-2013 was the overall average length of detention 21 days per person. In average 219 persons were detained per month.

Statistics on supervision;

- Among those **4 546 decisions on detention** that was decided by various authorities in 2013 (see above) – **249 persons** (note that this is persons – that might not correspond to the previous numbers since there can be a number of different decisions that concerns the same person, taken by different authorities, courts, etc.) were released from detention and subsequently subject to supervision.
- **405 decisions on supervision in total** were taken during 2013, although the duration of some of them extended into 2014. Of those 405 – 249 was put under supervision after they were released from detention (see above). They are generally valid for six months, after which a new decision has to be made. Of those 93 were registered as absconded in March 2014.

Detention		Thereafter supervision
Swedish Migration Board	1 998	110
Swedish Police	2 543	138
Other authorities*	5	1
Total	4 546	249

Subject to decision of detention (during 2013), and thereafter released under supervision (during 2013 or after).

Supervision		Thereafter absconded
Swedish Migration Board	273	82
Swedish Police	115	7
Other authorities*	17	4
Total	405	93

Subject to decision of supervision (during 2013), and thereafter registered as absconded (during 2013 or after).

*Other authorities means in practice administrative courts of law of the first or second order.

(Source: The Swedish Migration Board)

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Please note that these statistics also relates to all foreigners and not just asylum seekers.

Regarding detention of asylum seekers statistics cannot be find. The reason for this is that the statistics relates to the grounds for detention - not distinguishing between categories such as asylum seekers, failed asylum seekers, irregular migrants etc. The law regulates grounds for detention for aliens/foreigners as such. The only statistical ground is detention before Dublin transfers, i e asylum seekers according to RCD.

However - it is rather rare that asylum seekers are detained whilst in the asylum procedure. Statistics show that the vast majority of detainees are before a return and/or Dublin transfer.

According to the Migration Board, asylum seekers under the RCD are a minority and the aim from the authorities is to only when the Board considers it possible to return mentioned persons. There are however no available statistics.

A. GENERAL

1. Are A/S detained in practice in your country? YES/NO
Yes, but very rarely. The vast majority are foreigners in a return procedure or are failed asylum seekers.
2. Is detention foreseen for A/S in specific situations? YES - but it is not used on a regular basis. It is mainly used for above mentioned categories.

If so, please specify:

SITUATIONS	Comment
In border procedure	According to the Swedish Aliens Act: An alien who has attained the age of 18 may be detained if <ul style="list-style-type: none">- 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.- When it is necessary to enable an investigation to be conducted on the right of the alien to remain in Sweden, is necessary to enable an investigation to be

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	<p>conducted on the right of the alien to remain in Sweden, (aliens comprise of all foreign nationals – but once applied for asylum you’re released).</p> <p>In practice – the vast majority are not detained upon arrival. However, there are cases where the police detain them on grounds of e.g. false documents. The maximum period of detention is two weeks for this kind of detention. They are often released after applying for asylum and referred to the Migration Board.</p>
Subject to a Dublin transfer	<p>In those cases, when there is an assessment that there is a significant risk of absconding. Detention shall be for as short a period as possible and for no longer than a month after the transfer request has been sent to another Member State.</p>
Subject to an accelerated procedure	<p>Accelerated procedures are carried out at the borders or at the Migration Board – once applied for asylum.</p> <p>For accelerated procedures, the rules concerning detention are the same, i.e. they are in practice detained only in a return procedure or once their application/appeal has been rejected.</p>
Other (please specify)	<p>In general a foreigner (or asylum seeker) can be detained on grounds related to unclear identity, investigation (investigation of legal reasons for be in the territory – maximum 48 hrs) and execution of deportation orders.</p> <p>(For details on legislation we refer to the legal questionnaire mapping).</p>

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3. Are specific categories of A/S² generally exempt from detention?

Yes. There are restrictive regulations regarding children, e.g. UAM are detained only on exceptional cases, in Dublin procedures prior to transfer.

Children and their parents/legal guardians must not be separated as a consequence of detention. When there are two parents present, one of the parents might be detained (instead of the entire family – most often the father).

4. 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	Maximum period of 2 weeks, with possibility of extension – but not generally used.
Protection of public order or national security	NO	Not under the Swedish Aliens Act
Public health	No	Other national legislations may be applicable, such as Communicable Disease Control Act and Compulsory Care (please see the legislative questionnaire)
Risk of absconding	Yes	After terminated asylum procedure and a removal decision. Not as sole reason, only in connection with other reasons.
Other (please specify)	Yes	If it is probable that the alien will be refused entry or expelled, or the purpose is to enforce a refusal-of-entry or expulsion order. In these cases of

² In particular, please specify whether there are exemptions for particular vulnerable groups : unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.

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		detention, an alien may only be detained if there are reasons to believe the alien may abscond, that he/she will engage in criminal activities or that he/she will in any other way will hinder the effectuation of the expulsion order.
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5. How are these grounds assessed in practice? What screening / assessment method is used?

(Please note once again - this refers mainly to failed asylum seekers)

It is evident that the assessment of risk of absconding has been a key element in determining whether there are grounds for detention. Our experience is that a comprehensive assessment of the various criteria (enumerated in the law itself) involved in the risk of absconding is often lacking. Individuals, who through their behaviour, clearly show that they do not intend to comply with the enforcement of a refusal-of-entry or expulsion order, are detained. Many detained failed asylum seekers do not understand the reason for detention – saying that they often expressed an unwillingness to return in the asylum procedure and/or when they have been notified about the negative asylum decision but not demonstrated unwillingness in any other way).

Unclear identity – after several requests the foreigner does not comply with the authorities request to provide identity documents. Still – more often used in a return procedure.

6. Does the responsible authority conduct a risk assessment or use certain indicators in the assessment? If so please describe indicators and tools used.

See above. According to our experience, there is no overall in-depth assessment of the various criteria that should be taken into account when conducting a risk assessment.

7. Is there a mechanism in place to identify vulnerable applicants? If so, it is used in the decision to place an applicant in detention or in an alternative to detention?

Apart from UAM and families with children – where the law stipulates that detention should be used as a last resort and be used very restrictively - we have no evidence that there are particular mechanisms to identify vulnerable applicants. To our knowledge, there are no such guide-lines. In

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general, it is not obvious, from detention orders, that the vulnerability of an individual has been assessed.

8. Do the authorities examine alternatives to detention in each individual case before resorting to detention measures? Specify if necessary.
- Systematically
- In most cases** (The decisions from the Migration Board always include a note on assessment of use of an alternative to detention. However they lack some arguments and/or motivations on why this is not considered sufficient. In the decisions from the Police authorities they not often consider the alternative).
- Rarely
- Never
9. Which alternatives to detention are currently used for asylum seekers in your country?

Types of alternative scheme applied	YES/NO	Please specify if it is applied only to a particular vulnerable group: unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.
Obligation to surrender passport and documents	YES	Applies to all asylum seekers – part of the regular reporting – not a separate criteria. As a rule, all asylum seeker's ID-documents are surrendered to the Migration Board. They are returned to the alien once he/she receives a residence permit, or in the return process. The condition of surrounding documents in the supervision scheme is therefore usually not applied.
Regular reporting to the authorities	YES	Supervision, applies to all. That also can entail obligation to surrender documents.
Deposit of adequate financial guarantee	NO	
Community release/supervision	NO	
Designated residence	NO	
Electronic monitoring	NO	
Other (please specify)	NO	

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10. For each alternative scheme, please specify whether it is applied in practice to certain situations or to a specific group of A/S:

SITUATION	YES/NO	Please specify if it is applied only to a particular vulnerable group (see above)
Subject to a border procedure	YES	Applies to all.
Subject to a Dublin transfer	YES	Applies to all.
Subject to an accelerated procedure	YES	Applies to all.
Other (please specify)		

11. Alternatives to detention for other categories of migrants:

a. Are alternatives to detention applied for other categories of migrants? (yes/no)

YES

b. If so for which groups?

Please comment when necessary.

Group	Alternatives applied in practice?	Please specify if it is applied only to a particular vulnerable group
Individuals subject to a return procedure	YES	Applies to all (see answer to question 9)
Exclusively for failed asylum seekers ³	YES	Not exclusively.
Other (please specify)		

³ The first two categories may overlap as failed/ finally rejected asylum seekers are likely in a return procedure.

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c. Are they put in the same schemes as A/S?

YES

B. Functioning of the alternatives to detention

12. For each alternative to detention, please provide a description of the basic characteristics/nature of the scheme. Please specify what obligations they have to comply to.

The only alternative to detention in Sweden (regulated in the legislation) is to regularly report to the authorities/supervision. As described above, that can entail an obligation to surrender passport or other ID-document (if that has not already been done). It is not a standardized procedure but it often consists of a regularly reporting to the police authorities or Migration Board, i.e. every week or every second week.

Many asylum seekers provide housing for themselves (both during the asylum procedure as well as the period pending deportation). However, if they are staying within the housing provided by the Migration Board during the asylum procedure they are usually not excluded after their negative decision.

In 2013, 34 663 persons (whereof 186 in detention) are placed within the facilities provided by the Migration Board (mainly rented apartments etc). 16 350 persons have provided housing on their own.

The freedom of movement is not restricted as such, besides the obligation to regularly report to a certain authority.

In practice, the authorities often decide to only detain one of the parents instead of entire family (to avoid detaining children). One can argue that this could be perceived as an alternative to detention. The law stipulates however that children is not allowed to be separated from both of their care-holders because of detention.

13. Are the needs of particular vulnerable groups taken into account in the implementation of these measures? Please specify what adaptations are made at a reception level.

Regarding reception centres - the vast majority of asylum seekers (no statistics) are never detained during the asylum procedure.

The legislation does not provide any guidance regarding vulnerable groups (besides children). Regarding UAM - according to legislation alternative to detention should always be considered first and foremost.

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Regarding other groups (women) the authorities considers separate detention facilities once put in detention but lack guidance when it comes to the alternatives.

But according to the Migration Board (see reference in the end of the document) there are no specific routines or guidelines in place to identify specific groups. An individual assessment is carried out in each specific case. The legal base is solely the risk of absconding.

Regarding children and/or parents a so called “child consequence analysis” is carried out when determining the necessity of the measure. A “child consequence analysis” should be carried out in each and every decision concerning children. The task is then to make an overall assessment relating to the best interest of the child. But there still can be decision on detention or placement in other facilities. As an example – concerning a person that has a child outside the detention centre and where there is a reason to place the person (because of security reasons) in another facility ran by the Police authorities the best of interest of the child is always considered (I e makes it more difficult to visit the parent in a police facility than in the detention centre) but most likely the reasoning for placement (security for other detainees and staff) will be considered more important than the negative effects for the child. As mentioned above, very few children are detained on a yearly basis.

The Migration Board, however, claims that they consider the needs of each individual and their specific vulnerabilities once detained – but no regulation against detaining any specific vulnerable group (except children).

14. What happens in practice when A/S does not comply with the obligations they have in the framework of the alternative to detention? Please explain the procedure.

The majority of detention decisions are not taken on the basis of the lack of compliance with the supervision decision (according to the study we carried out).

Regarding alternatives - if an individual fails to report to the authorities, a new investigation will take place and if there is a risk of absconding, a decision for detention will probably be taken.

There are possibilities to notify the authorities in advance if there is a valid reason for not reporting to authorities on time, etc. – and this should be taken into account. This will be decided by the individual authority and depending on the case.

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It is difficult to make generalizations to answer this question as there are no standardized procedures and not much case law (the legal questionnaire will highlight this). These decisions are carried out and decided by 21 different police authorities + the Migration Board and four migration courts. There is no overall scheme.

15. For each alternative to detention, please specify whether they apply to a certain category of A/S. If so how is this justified by the authorities?

N/A since there is only one alternative to detention; regularly reporting to authorities, and that applies to all A/S.

16. Which is the institution in charge of deciding which individuals should be submitted to these alternatives?

The Swedish Migration Board (for asylum seekers and failed asylum seekers still in a voluntary/mandatory return procedure), the Migration Courts (mainly for appeals) and the 21 Swedish Police Authorities (for forced return procedures, for irregular migrants and other foreigners). For asylum seekers there is mainly the Migration Board (because once applied for asylum they are referred to the Migration Board – but the Police can decide on detention for example before Dublin transfers. Etc.).

17. Which organization/entity/actor is responsible for implementing/running this scheme?

The Swedish Migration Board and/or the Police Authorities (see above).

18. If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?

Ministry of Justice is the Government body entrusted with the supervision of detention and alternatives.

There is also The Parliamentary Ombudsmen.

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

NO

20. Are NGOs/private companies in charge of implementing some of these alternatives? If so, how is that implemented in practice?

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NO

C. ACCESS TO RIGHTS

21. Do asylum seekers who are subject to an alternative to detention have access to the full range of rights as foreseen in the RCD and namely: Since the vast majority of persons in detention and/or subject to alternative to detention are failed asylum seekers and/or persons in a return procedure the RCD is not applicable. For the small percentage that is in the asylum procedure the same range of rights as for asylum seekers in general are applicable (meaning right to health care, labor market, education etc). The following answers will therefor refer to failed asylum seekers.

Concerning asylum seekers – same answers as below for health care and for education. Asylum seekers could also access the labour market without any time limits if they can prove their identity and/or helps the authorities in clarifying their identity. All asylum seekers are also entitled to a daily allowance.

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

Persons subjected to alternative to detention have the same range of rights (reduced) as individuals whose asylum applications have been rejected.

If not please describe the gaps.

Right	Yes/No	Comment on the gaps
Healthcare	Yes	Restricted to health care that cannot be deferred (not solely emergency care but care that cannot be postponed).
Education	Yes	Only children under 18 and if a child attending secondary school turns 18; he/she is allowed to finish their education
Access to the labour market	No (for rejected AS) Yes (for AS – if identity is clarified)	
In kind/financial assistance	Yes	Reduced monthly allowance (for rejected AS)

Daily allowance (for AS living in Migration Board facilities where food is included):

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- 24 SEK/day for single adults (app 2,50 EURO)
- 19 SEK/day per adult sharing household)
- 12 SEK/day for children (three children or more the allowance are cut in half)

Daily allowance when food is not included;

- 71 SEK/day for single adults (app 7,50 EURO)
- 61 SEK/day for adult sharing household
- 37 SEK/day for children up to the age of 3 yrs
- 43 SEK/day for children 4-10 yrs old
- 50 SEK/day for children 11-17 yrs old

1 EURO= 9,40 SEK

22. a. Do A/S subject to an alternative to detention have access to social and psychological assistance?

No social financial assistance. However, if social intervention is called for, e.g. in the best interest of a child, action is taken by Social Authorities. Restricted to health care that cannot be deferred, this could include psychiatric treatment but it is not clearly defined and it depends on the discretion of the caregiver.

- b. Is it provided systematically and is it adequate?

It is not provided systematically and due to the fact that it is restricted (to a full range of health care but health care that cannot be deferred) it is perceived as insufficient.

23. Are A/S subject to an alternative to detention provided with adequate material support, accommodation and other reception conditions, or access to means of self-sufficiency during their asylum procedure?

Individuals subjected to alternative to detention have the same allowance as individuals whose asylum applications have been rejected:

- reduced daily allowance
- accommodation (if needed) or housing allowance
- special allowance if there is an urgent need, such as winter clothes, glasses.

For those A/S still in the asylum procedure – they have the same rights as asylum seekers in general.

24. a. Do these asylum seekers have access to information about the procedure with regards to the alternatives to detention they are subject to? In particular, are they informed about the reason why they were submitted to these alternatives in the first place?

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It is a written decision in Swedish. The decision is normally delivered through oral notification by the authorities. If the person is not available (i.e. in detention) he/she receives a summons for notification of a decision. An interpreter is used and follow-up questions are provided in order to make sure that the individual has understood the decision.

The decision explains the grounds for alternative/supervision-decision. The decision is however usually very short and not that well motivated.

- b. If so, do you consider it adequate and sufficient?

Our experience is that many individuals feel that they have not understood the meaning of decisions. Difficulties related to the bureaucratic language, the legal references and the context of the situation the person finds himself in, which can be very stressful. Also, interpretation may have flaws. Another flaw is the understanding of the decision since the argumentation/motivation often is very brief and lacks details.

- c. At what stage is it provided?

After the decision has been taken.

25. a. Do asylum seekers subject to these measures have access to information about the asylum procedure?

Yes, when seeking asylum information is given about the procedure.

- b. If so, do you consider it understood (language and content) and sufficient?

See 24b

- c. At what stage is it provided?

At the initial stage of the asylum procedure.

D. REMEDIES

26. In practice, what is the maximum period in which an A/S can be submitted to these measures?

There is no maximum period for supervision (obligation to support regularly/surrender passport or ID-documents). A supervision order is valid for six months, then the competent authority has to take a new position. There is no maximum level of amounts of decisions that can be taken, or a maximum time in total.

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b. Does it correspond to the maximum period of detention?

No, the maximum period of detention is twelve months (with the exception of persons who gets an expulsion order due to a committed crime, we have no time limits in cases with committed criminals).

d. Please clarify if the initial period can be extended and if so what are the grounds for extension

Yes, as mentioned above, it can be extended due to particular reasons in the case. Particular reasons are most often related to the risk of absconding.

27. Is there, in practice, a right to appeal the decision to apply an alternative to detention? If so, how does it function in practice? More particularly, is it accessible?

There is a right to appeal decisions regarding supervision. However there is no available statistics on this.

In most **detention cases**, a lawyer is appointed and will assist with the appeal. Regulations on the appeal's procedure are enclosed to the decision. Without a lawyer, it can be difficult for a person to appeal, without knowledge of the legal context.

28. Do they have access to legal counselling?

For detention, if certain criteria is fulfilled. The criteria are that the Migration Board or Police Authority finds that the individual are in need of legal aid. Then a lawyer is appointed free of charge. The same criteria for alternatives to detention are applied.

In practice - many that are not provided with counselling are in detention for a short period of time.

There is no statistics on how many those have legal aid that is under the supervision scheme. But, according to Niclas Axelsson at the Migration Board, he would guess that there probably is not many that have legal aid in the supervision decision. There is rather few decisions on supervision (app 400/year) and those decision are rather late in the process and during the return procedure when legal aid is not a considered necessary except in detention cases.

b. Is it free of charge for the A/S or at his/her own expense?

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If granted legal aid (see above) - yes. Otherwise; no.

- c. Is free legal assistance provided in most cases?

According to the Migration Board there is no statistics (they will check again). But the general rule is that legal aid is provided.

- d. Is it provided ex officio or should they apply for it?

Ex officio.

29. 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)?

A card certifying that an individual is A/S is issued, a so called LMA-card (Law on reception on asylum seekers-card).

E. COST EFFECTIVENESS AND EVALUATION MECHANISMS

30. How many asylum seekers are subjected to these alternatives to detention in a year or quarter (please specify if you are giving number of people OR number of cases – which counts a family as a unit)?

Approximately 400 individuals are subject to supervision orders on a yearly basis. (Information from the Migration Board – pls also see statistics in the beginning of the questionnaire).

31. What are the proportion of asylum seekers being subjected to these alternatives in relation to the number of A/S detained and the number of A/S in general?

Approximately 3500 persons are detained on a yearly basis and last year there were approximately 54 000 persons applied for asylum during 2013. (Information from the Migration Board – pls also see statistics in the beginning of the questionnaire).

32. If different alternative mechanisms are applied, which alternatives are used more commonly and why?

There are no other alternative than supervision in the legislation so all cases referred to above are “supervision”.

Types of alternative scheme applied	Specify if this alternative is frequently/rarely/never applied	Comment
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	<i>Please provide figures if possible</i>	
Obligation to surrender passport and documents		
Regular reporting to the authorities		
Deposit of adequate financial guarantee		
Community release/supervision		
Designated residence		
Electronic monitoring		
Other (please specify)		

33. What is the rate of disappearance among A/S submitted to one of these alternative measures? Please specify if you have figures per alternatives.

The authorities do not measure the rate of disappearance and there is no estimation or statistic available.

34. Have any other alternatives been operationalized in the past and have since been abandoned? If so please briefly describe the type of schemes operated and the reasons why they were discontinued.
Earlier, there was a possibility to limit the freedom of movement to a certain geographical location (a municipality or town). This meant that the person subject to such an order was not allowed to leave, for instance, the municipality in which he resided. However, this measure was not considered as effective and since the authorities already had the possibility to use supervision as ATD, this alternative was abandoned.

35. What are the main difficulties/obstacles observed in the implementation of these alternatives (e.g. costs, administrative burden, non-compliance)? Please describe.

In our experience, based on a study conducted in 2011-2012, alternative is not applied to the extent intended by the legislator. There are no individual assessments in favour of ATD. There is no argumentation or reasoning why ATD could be sufficient.

36. Why do you think alternatives to detention are not more widely applied by your government? Please provide any relevant feedback from government officials.

One of the main hindrances from our perspective is in the assessment of the ground for detention (and A2D). There is a lack of consideration of the proportionality principle in the Migration Board's decision. In the decision from the Police on the other hand there is almost no consideration at all of alternatives to detention in the assessment.

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The feedback on request from the Swedish Migration Board Official is that the main difficulty is that there is a belief that the alternative is not efficient and therefore it is not used to a larger extent. However, there is no statistical fact that shows that it is the case.

Also, as you can see in the legal questionnaire, the law stipulates the reason for detention first. And thereafter stipulates that if a foreigner fulfil the requirements for detention one can evaluate the alternatives – not the other way around – leading to a reasoning that detention is the main result (not the alternative) if fulfilling the criteria.

37. Please provide available data or an objectively based evaluation on how much does the implementation of such a scheme cost? If possible please give figures regarding the cost of these alternatives per individual (comparing it to the cost of detention if information on this point is available).

There is no data on this (we have been in contact with the Migration Board, the Police as well as the Ministry of Justice).

However, there is a general knowledge that detention is far more costly than the alternative – supervision. This is a rather complex issue (according to Niclas Axelsson at the Migration Board) that involves the entire asylum process – including the decision (or lack of decision) of detention when applying for asylum. The transparency as well as the treatment during the process also affects the costs and length and the need for detention and/or repressive measures.

38. Please provide any quantitative data available regarding the resources put into each of these schemes (Human Resources, Logistics, Financial).

See above.

39. a. Are these schemes evaluated regularly?
b. Who conducts these evaluations?
c. Is this information public? If so please provide source of information.
d. Please highlight some of the main conclusions of any publically available evaluations.

There are no regular assessments of the schemes and no overall body responsible for this. The Migration Board are running the detention centres and they are guided by the Government and their budget lines (that are official). However – persons can also be kept in facilities run by the police (if they are considered a threat to themselves or others) and decisions on detention and/or supervision can be decided by different authorities (as explained above). In conclusion – no overall regular assessment.

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Internal assessments and projects are likely to be conducted by the Swedish Migration Board and the Police Authorities themselves. E.g. the Swedish Migration Board conducted a project regarding Women in Detention. It was stated that women are not detained to the same extent as men and that Detention centres are adapted to men's needs. However, we are not aware of any major assessments regarding alternative to detention.

A Committee of Inquiry⁴ scrutinized regulations on detention in the Swedish Aliens Act in 2011. The Committee suggested that regulations should be clarified for example concerning supervision, meaning that a decision of supervision could mean that the individual is obliged to either regularly report to the authorities or hand over passports or other ID-documents – or be obliged to do both. This proposal came from the notion that supervision was not used as extensively as intended. The inquiry also pointed out that a decision on supervision should clearly define how often and when an individual needs to report to the specific authority, which authority are responsible and, in cases regarding documentation, which authority that shall collect the passport and/or ID-documents. However, alternatives to detention were not elaborated on further. The results and proposals of this inquiry has however not yet led to any changes in the legislation or further proposals.

Evaluations conducted by Swedish Authorities are normally public.

E. OTHER

40. What are your recommendations for a better application of these schemes
- with regards to:
 - Effectiveness:
 - Fairness:
 - Transparency:
 - Adequacy (link between objectives of policy and results):
- **Effectiveness:** Research carried out by UNHCR shows that there is a series of advantages, from pure financial benefits to a reduced risk of absconding, in placing a person under supervision instead of in detention.⁵

⁴ SOU 2011:17, page 96 (A Committee with the assignment to examine the rules on detention and propose changes and amendments in the regulations)

⁵ For an analysis of detention versus alternatives to detention cost-benefits see Edwards, A, *Back to Basics: The Right to Liberty and Security of Persons and 'Alternatives to Detention' of Refugees and Asylum-Seekers, Stateless Persons and Other Migrants* 2011, p. 85. See also International Detention Coalition, *There Are Alternatives- A handbook for preventing unnecessary immigration detention* 2011, JRS, *From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom* 2011, UNHCR, *Detention of Asylum Seekers and Refugees: The Framework, The Problem and Recommended Practise*, 1999, UNHCR, *Alternatives to Detention of Asylum*

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The legislator should also take account of research in the area in future revisions of the wording of the act. However, we have not statistical information to be able to confirm that supervision in Sweden is more cost-effective.

- **Fairness:** The lack of application of the **principle of proportionality** leads to the fact that the alternative method to detention enabled by Swedish legislation – **supervision** – is not used to the extent intended by the legislator. The findings in our study detention under scrutiny show that, in the absolute majority of the decisions, no individual assessment is made about whether the mildest measure for the individual, i.e. supervision, can be employed instead of detention. In light of fairness, an individual assessment of the case should always be carried out in order to consider whether the purpose of a potential detention could be achieved by placing the foreigner under supervision.

-**Transparency:** The legal and factual grounds for an authority to deprive a person of liberty should be carefully justified and clearly apparent in the decision. It thus does not suffice solely to state that e.g. there is reason to assume that there is a risk that the foreigner will abscond. It is crucial for the individual, for efficient review and ultimately for due process, that decisions and resolutions are justified and motivated as thoroughly as possible. Clearer and more detailed decisions and resolutions can contribute to higher transparency, predictability and greater uniformity in the application of the law. Therefore, a codification of the principle, which clearly sets forth that balancing interests must precede both a decision regarding a control or enforcement measure and its implementation, is desirable.

- **Adequacy** (link between objectives of policy and results):

The conclusions by the Swedish Red Cross study show that the law is not applied as the legislator intended and that the alternative method to detention available in the Aliens Act, i.e. supervision, has not had an impact in terms of practice as intended by the legislator. The prerequisite for detention is specified in article 15.1 of the Returns Directive, i.e. that other sufficient but less coercive measures cannot be applied effectively in a specific case. Although it is claimed that the prerequisite for detention of the Returns Directive is met by Swedish law, the findings of the study show that it is not applied as it should be. It can therefore be concluded that it has not been obvious to the decision-makers, in the absence of an explicit legal basis, that the principle of proportionality is to apply. This might be a reason why supervision is used to a lesser extent than detention.

The findings of the study support and recommend, therefore, the proposal of the Detention Enquiry regarding the introduction of an explicit proportionality rule in the Aliens Act. The question is whether this will suffice and lead to supervision being used to a greater extent than it has been to date. It may be worth considering whether further revisions to the

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wording of the act are needed to avoid interpretation problems. A provision similar to that in Chapter 10, section 2, first paragraph, point 3 of the Aliens Act for minors may be desirable. This would mean that it is explicitly stipulated that deciding authorities have an obligation to first of all consider if the purpose of a potential imposition of detention can be achieved by the alien being placed under supervision

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

The strength is that there is an alternative to detention in the legislation, even if it is not used extensively.

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

(See above.) No real assessment of the alternative and lack of argumentation/motivation for detention as such. Also need to be clarified in the legislation – that the alternative should be used as a main principle instead of detention and not the other way around.

43. Please present an example of good practice and explain why you consider it as such.

The Committee of inquiry has underlined the principle of proportionality when deciding on a measure such as detention or alternative to detention. However it remains to be seen whether this will have an impact on the law and practice in general.

The Swedish Migration Board has quite an ambitious training programme on various aspects of the asylum procedure for their staff, which we consider to be good practice. They are also keen on inviting and involving the civil society/NGOs in training programmes, evaluations and dialogues.

44. Please present an example of bad practice and explain why you consider it as such.

In our study conducted in 2011-2012, very few cases contained reasoning and arguments on detention and alternative to detention. In this study, we did analyse a total of 953 decisions and rulings regarding detention, supervision and placements by the Swedish Migration Board, the Swedish Police and the three migration courts as well as the Migration Court of Appeal. The key findings are;

- The lack of application of the **principle of proportionality** is a running theme throughout the findings of the study. This is expressed in the decisions regarding detention, in the assessments about whether there are particular grounds for extending the detention period, and in decisions

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regarding placement in a correctional institution, remand centre or police arrest facility. It is not possible to discern from the decisions and rulings whether the principle was in fact given individual consideration in each separate case. In any case, if interests were indeed balanced, this is not justified or documented in the decision or resolution – a factor which ought to be fundamental.

- The alternative method to detention enabled by Swedish legislation – **supervision** – is not used to the extent intended by the legislator. The findings show that, in the absolute majority of the decisions, no individual assessment is made about whether the mildest measure for the individual, i.e. supervision, can be employed instead of detention. In the decisions and resolutions of the Swedish Migration Board and the courts, there is seldom any discussion about why supervision is not deemed sufficient. Decisions of the Swedish Police do in most cases not even refer to the supervision legislation. Without an explicit legal basis for which measure should be considered initially, it does not seem obvious to the administering authorities to first of all consider whether the purpose of a potential imposition of detention could be achieved by placing the alien under supervision.
- The analysis shows that there is seldom an **overall assessment in decisions regarding detention pending enforcement of deportation decision**. This is particularly obvious when individuals have at some point expressed reluctance to return to their home countries. Notwithstanding other circumstances, this is often taken as a pretext to assume that the person will abscond from future enforcement, and can thus give rise to a detention order from the authority. This differs from individuals who have expressed that they will comply with any enforcement. Despite such statements, in certain such cases other, personal circumstances were taken into account which nevertheless gave rise to a detention order.
- The study shows that, in practice, **segregation** is not applied as intended by the legislator. The provision regarding segregation is not used independently, but only as a condition for a decision regarding placement in a correctional institution. The main reason for placing detained persons in a correctional institution, remand centre or police arrest facility for security reasons is that the Swedish Migration Board's premises and staff are not equipped to deal with individuals who display threatening behaviour, or with persons with self-harm behaviour. On many occasions, this leads to persons who demonstrate self-harm behaviour being placed in correctional institutions on the sole basis of them constituting a danger to themselves.

45. Do you think that these alternatives should/could be expanded to more AS - currently detained?

We believe that they should be expanded. Once we carried out the study we believed that we would encounter many decisions on detention that were so called “failed alternatives-to-detentions decision” (meaning that they had a previous decision on supervision but had not fulfilled or

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compiled with that decision so were not sent to detention). However, this was not the case.

46. 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.

47. 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).

Axberger, Hans-Gunnar, JO (2011), *Inspektion av Migrationsverkets förvar* (Initiativärende). Stockholm: Riksdagens ombudsman.

UNHCR och Migrationsverket (2011) *Kvalitet i svensk asylprövning*

Zamacona Aguirre, Maite, Swedish Red Cross (2012), *Förvar under lupp*

Migrationsverket (2012), *Att se och bemöta kvinnor i förvar*

48. 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 answer.

In the project "Women in detention" seminars and trainings were held on vulnerably and treatment for all detention staff. The ambition was to continue to develop the improvement of the detention work in general, and not only regarding women. This might be interesting to follow up in the future.

49. 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:

We have also received statistics from the Police authorities of the different grounds for detention and the use of alternatives – Karin Thormann – desk officer at the Swedish National Police Agency

Name of the organisation/institution	Swedish Migration Board
Name of individual contacted	Niclas Axelsson
Position/function of the individual	Expert Detention
Email address	niclas.axelsson@migrationsverket.se

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Name of the organisation/institution	Swedish Red Cross Society
Name of individual contacted	Maite Zamacona Aguirre
Position/function of the individual	Adviser gender
Email address	maite.zamacona@redcross.se



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The Project "MADE REAL" is coordinated by the Odysseus academic network

It is co-financed by the European Refugee Fund

The views expressed and information provided by the project and the partners involved do not necessarily reflect the point of view of the European Commission and in no way fall under the responsibility of the European Commission