



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

Sweden

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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;

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.

'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;

'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
Swedish law regulates detention of aliens		The framework for detention of aliens is found in the Swedish Aliens Act 2005:716 [Utlänningslag (2005:716)]. This framework is also reflected in the Act concerning Special Controls in respect of Aliens 1991:572 [Lag (1991:572) om särskild utlänningskontroll]. For further information see answer to question 3 below.

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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

[see](#) below.

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

You find the Aliens Act, unfortunately only with amendments done until 2009, in English at the Government homepage <http://www.government.se/sb/d/5805/a/66122> . Any relevant untranslated amendments are therefore added in the answers below. Rules on detention and ATD are found mainly in Chapters 10 and 11. There is only an English translation of the un-amended version of the Act concerning Special Controls in respect to Aliens. Again, relevant amendments will be added in the answers below.

Title	Aliens Act (Utlänningslag)
Date	First issued in 2005-09-29 and entered into force 2006-03-31
Number	SFS 2005:716
Reference of publication in the official journal (if applicable)	Utlänningslag (2005:716)
Relevant link	http://www.notisum.se/rnp/sls/lag/20050716.htm http://www.government.se/sb/d/5805/a/66122

Title	Act concerning Special Controls in respect of Aliens (Lag om särskild utlänningskontroll)
Date	First issued in 1991-05-30 and entered into force 1991-07-01
Number	SFS 1991:572
Reference of publication in the official journal (if applicable)	Lag (1991:572) om särskild utlänningskontroll
Relevant link	http://www.notisum.se/rnp/sls/fakta/a9910572.htm http://www.refworld.org/docid/3f8a65914.html

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 (maybe)	An adult alien can be put in detention if the identity is unclear and his or her right to stay in Sweden otherwise cannot be examined (see the more exact wording in Chapter 10 Section 1 paragraph 1 of the Aliens Act [hereafter AA]). In practice "identity detention" is used foremost in cases when aliens arrive in Sweden and cannot show their identity (see Wikrén and Sandesjö, <i>Utlänningslagen med kommentarer [The Aliens Act with Comments]</i> , 9th ed., page. 480). Although the wording does not explicitly exempt asylum seekers, as far as I know, in practice, at least in the Malmö region, applying for asylum generally exempts the individual from detention for identity reasons and it must be highly unusual that asylum seekers are put in detention for that reason (see the practice questionnaire). Some decision makers at the Migration board also explicitly claim that asylum seekers may not be put in detention for identity reasons because they have a legal right to stay in Sweden during the asylum procedure and thus it must be concluded that their right to stay in Sweden during the asylum procedure can be examined without necessitating detention (see <i>Förvoarsutredningen</i>



		<p>SOU 2011: 17 page 84 [official government investigation concerning the detention of aliens rules], where this lenient practice however is claimed not to have any concrete basis in the Aliens Act (AA) nor the <i>travaux préparatoires</i>; the Swedish text of the final report from <i>Förvarsutredningen</i> can be found at the Government's homepage, http://www.regeringen.se/content/1/c6/16/10/16/16e52d73.pdf).</p> <p>In order to divert individuals from applying for asylum when they do not have asylum grounds the police and Migration Board officials may inform the aliens that a manifestly unfounded asylum application could lead to a decision to prohibit re-entering in Sweden in the refusal-of-entry or expulsion decision according to 8:23 AA and immediate execution of deportation according to 8:19 AA</p> <p>No asylum seeker in a Dublin procedure is detained on this ground as their application is not assessed on the merits in Sweden.</p>
<p>Protection of public order or national security</p>	<p>No</p>	<p>There is a special law governing the expulsion of aliens, including asylum seekers, who are suspected of being terrorists or being of concern to national security, <i>Lag (1991:572) om särskild utlänningskontroll</i> (Act concerning the Special Control in respect of Aliens/hereafter ASCA). An unofficial English translation of an un-amended version can be found in refworld if you follow the link http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=type&docid=3f8a65914&skip=0&type=LEGISLATION&querysi=sweden&searchin=title&sort=date (available on 2014-03-31)</p> <p>Security grounds are however not enough for detention. The grounds for detention in ASCA mirror the detention grounds in the Aliens Act. The rules on detention are found in sections 8-9d ASCA (in the amended version), where it is stated that detention may follow if a decision of expulsion has been made according to the ASCA or if such a decision is probable, <i>and if</i> there are reasons to believe that the alien otherwise would abscond or commit a crime or the identity is unclear. Minors may only be detained if there are exceptional reasons.</p>



“Special control” is treated as an administrative procedure and the aliens in this procedure are not charged with a crime, which would have been subject to the scrutiny of the general courts. The main difference between “special control” and “normal control” is that the Swedish Security Service replaces the ordinary police and the Swedish Government (the Department of Justice) replaces the Migration Courts in the “special procedure” and that those kept in detention are primarily held in the facilities of the penal authorities. The Supreme Migration Court is always given the opportunity to give a statement in the case. If the court finds that there are grounds to inhibit deportation, the inhibition is binding on the Government.

The alien may be put under the alternative to detention scheme of supervision (*uppsikt*) if that is deemed sufficient. According to Section 9 ASCA, the Swedish Security Service may detain the individual or put her/him under supervision even before a request for expulsion has been delivered to the Migration Board. In that case the decision has to be subjected to an examination by the Migration Board as soon as possible. The rules on detention thus roughly mirror those in the Aliens Act (AA). The Swedish text can be found at

<http://www.notisum.se/rnp/sls/lag/19910572.HTM>

Each year the Government reports the cases in which this law has been applied to the Parliament. In 2013 the law was applied once. The Swedish text can be found at the Parliament’s Homepage at the following link

http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/2013-ars-redogorelse-for-tilla_H10363/?text=true

(Regeringens skrivelse 2013/14:63 2013 års redogörelse för tillämpningen av lagen om särskild utlänningskontroll [The Government’s Report 2013/14:63, The 2013 Report over the Application of the Act concerning the Special Control in respect of Aliens], available at www.riksdagen.se on 2014-03-31)

According to the report, in the period 2012-07-01 – 2013-06-



		30 the law was applied once. The report does not mention anything about detention.
Public health	No	<p>There are no special rules concerning detention of asylum seekers or aliens in general for public health reasons. This does however not mean that the authorities do not show concerns over how asylum seekers' arrivals may affect public health. Since January 1st 2012 the Migration Board has been cooperating with the Public Health Agency [Folkhälsomyndigheten] to increase the amount of asylum seekers that voluntarily go through a health inspection upon arrival (see Folkhälsomyndigheten, Migration och Prevention, available at http://folkhalsomyndigheten.se/amnesomraden/smittskydd-och-sjukdomar/migration-och-prevention/ (2014-03-30).</p> <p>There are also rules that regulate restrictions of liberty for public health reasons in general. Swedish rules for the protection of public health in situations of spread of disease are found in <i>Smittskyddslag (2004:168)</i>[Communicable Disease Control Act], see Swedish text http://www.notisum.se/rnp/sls/lag/20040168.HTM</p> <p>According to Chapter 3 Section 8 of the Communicable Disease Control Act anyone arriving in Sweden may be put through a health inspection if there are suspicions that the person is carrying a disease which is hazardous to public health. According to Sections 9 and 10 such a person may be placed in quarantine or the place of disease may be closed off until the investigation into the source of disease is finished.</p> <p>According to Chapter 5 of the same Act, any person may be put in isolation if they carry a disease which is hazardous to public health and where the risk for others is substantial and 1) the person is unwilling or unable to voluntarily subject themselves to the measures required to prevent or minimize spread of disease or 2) there are reasons to believe that the person will not follow posited instructions.</p> <p>There is also an Act (1970:375) on extradition to Denmark,</p>



		<p>Finland, Iceland, or Norway in order to execute decisions concerning health care or treatment. According to Section 8 of that act the decision making authority may decide to prohibit the individual to leave the assigned place or apprehend the individual if there is risk for absconding.</p> <p>The government is also empowered in 23:2 AA to provide with routines for sending those aliens who are not refugees and who have been put under psychiatric treatment or taken into juvenile care home.</p>
Risk of absconding	Yes	<p>Risk of absconding is not in itself enough to put an alien in detention. It is however a condition for detaining aliens who probably will be refused entry or expelled or who are in the process of deportation. Risk of absconding is thus a ground for detention for the purpose of enforcement (e.g. of failed asylum seekers). This is spelled out in Chapter 10 Section 1 paragraph 2 and 3 of the AA (10:1(2) and (3) AA) and in sections 8-9d ASCA (in the amended version).</p> <p>In 2012 an amendment was made to the Aliens Act (Chapter 1 Section 15 AA) in which eight criteria for determining if there is a risk for absconding are defined. Risk for absconding could be found based on the criterion that an alien, including A/S, :</p> <ol style="list-style-type: none"> 1) has already absconded before, 2) has stated that s/he will not return voluntarily, 3) has at some point acted under a false identity, 4) has not aided the authorities in establishing her/his identity, 5) has given false information or withheld significant information, 6) has previously violated a prohibition of re-entering Sweden, 7) has been convicted of a crime, or 8) has been expelled by a court due to criminal activity.
Other (please specify)		<p>There are four grounds for detaining an alien who has attained the age of 18:</p> <ol style="list-style-type: none"> 1. Identity reasons (see above) 2. Investigative reasons (i.e. if necessary for the



		<p>investigation to be conducted on the right of the alien to remain in Sweden),</p> <ol style="list-style-type: none"> 3. it is probable that the alien will be refused entry or expelled or 4. the purpose is to enforce a refusal-of-entry or expulsion order. <p>A detention order based on grounds 3 and 4 may only be issued if there are reasons on account of the alien's personal situation or other circumstances to assume that the alien may otherwise abscond or pursue criminal activities in Sweden.</p>
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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?

The same rules apply for all aliens, including asylum seekers. The different grounds for detention are however linked to different stages of the procedure, see below.

Type of group	Detention foreseen?	Alternatives foreseen?	Comment ³
A/S in border procedures	Yes (maybe)	Yes (maybe)	Detention is not specifically directed towards A/S. However the setup of the "identity detention" makes it likely to be applied in border procedures. According to the wording of 10:6-7 AA supervision is an alternative to all types of detention including "identity detention". Conceptually, however, supervision is more associated with return procedures, see the Swedish Red Cross report Maite

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>Zamacona Aguirre, <i>Förvar under lupp: En studie av rättsäkerheten för asylsökande i förvar</i>, Stockholm, 2012, p. 18, with further references to <i>travaux préparatoires</i> prop. 1988/89:86, p. 178 and Förvarsutredningen SOU 2011:17, p. 99.</p>
A/S in accelerated procedures	yes	Yes	<p>Again, the Swedish Aliens Act does not target A/S specifically. An A/S with a manifestly unfounded claim can however fall into an accelerated procedure in which appeals are non-suspensive. According to 8:6 AA "The Swedish Migration Board may direct that the Board's order to refuse entry [...] may be enforced even if it has not become final and non-appealable (refusal of entry with immediate enforcement), if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds." This makes it possible to detain the individual.</p> <p>However, it is also possible to detain individuals if it is probable that they will be refused entry or expelled. Supervision is also a possible alternative in both cases (10:6-7 AA).</p> <p>The ATD rules are run parallel to detention – ATD can always be applied if</p>



			deemed sufficient.
A/S subject to a Dublin transfer ⁴	yes	yes	<p>Although the rules on detention and ATD do not mention Dublin transfers explicitly, it is however possible to detain individuals if it is probable that they will be refused entry or expelled or in order to secure the execution of such a decision and decisions according to the Dublin regulation are equated with refusal-of-entry/expulsion (see 1:9 AA).</p> <p>Supervision is a possible alternative (10:6-7AA). The Acting Director of Legal Affairs at the Swedish Migration Board, has posited some guidelines to the Swedish Migration Board officials concerning the adaptation of detention practices in Dublin transfer cases to the Dublin (III) Regulation (EU) No 604/2013 (see Migrationsverket, <i>Rättsligt ställningstagande angående förvar i ärenden där Dublinförordningen ska tillämpas</i> [legal position on detention in cases where the Dublin regulation is to be applied], 2014-01-14, RCI 05/2014). No significant change of practice is however foreseen by the Director of</p>

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.

			Legal Affairs.
Other			

Vulnerable applicants

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

There are frameworks in place for determining the age of unaccompanied minors, see http://www.socialstyrelsen.se/publikationer2012/2012-6-54/Documents/New_recommendations_on_Medical_Age_Assessment.pdf (Socialstyrelsen, *New Recommendations on Medical Age Assessment*, 2012, available at www.socialstyrelsen.se on 2014-03-30). The purpose of the examinations is however primarily to establish identity, as age in Sweden is considered to be part of a person's identity (see Migrationsverket, Rättsligt ställningstagande angående åldersbedömning [*Legal position on age examination*], 2012-07-05, RCI 19/2012, p. 3, with further reference to case MIG 2011:11, which in turn has a reference to government initiative on citizenship and identity, prop. 1997/98:178 p. 15).

If the authorities question whether the applicant is a minor s/he can be asked to ("voluntarily") submit to an "age examination" (åldersbedömning), see Migrationsverket, Rättsligt ställningstagande angående åldersbedömning [*Legal position on age examination*], 2012-07-05, RCI 19/2012. Formally, "age examination" is considered to be an identity issue and the applicant has the burden of proof to establish identity. Although not explicit anywhere, in practice it is considered as a sign of non-cooperation to deny age examination (see the practice questionnaire).

The rules on detention and supervision do not explicitly refer to other types of vulnerabilities than minors and unaccompanied minors. However, rationally vulnerabilities may affect "the necessity test" according to Chapter 1 Section 8 of the Aliens Act [1:8 AA] (although this is not explicitly argued anywhere). The conditions during detention explicitly have to be humane and respectful of the person's dignity (11: 1 AA). According to Chapter 2 Section 1 of the Social Service Act [2:1 Socialtjänstlagen (2001:453)] every individual should get the support and help that they need. If their needs extend beyond the responsibilities of other authorities (e.g. the Migration Board) each municipality has the ultimate responsibility to ensure that all individuals who are staying there get the support and help that they

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need (2a:1 Social Service Act (2001:453)]. The internal Migration Board handbook on migration cases (not a legally binding document!), available at the Migration Board Homepage, identifies seven categories of vulnerable persons who once detected should go through a closer social inquiry [*social utredning*] to identify their specific needs:

- Minors
- Persons with disabilities
- Persons with physical or psychological illnesses
- Persons risking discrimination due to sexual orientation
- Elderly persons
- Persons with alcohol or drug addiction
- Victims of torture

The social inquiry consists of a series of questions that are supposed to be asked by the officials according to the handbook.

There are no special provisions for pregnant women, but these issues are discussed and dealt with as part of the professional and organizational development of the Migration Board. An ERF financed project investigating the situation of women in detention in the Migration Board's facilities in Märsta suggested the need to develop a better sensitivity to the vulnerabilities of women, see an article at the Migration Board Homepage <http://www.migrationsverket.se/Andra-aktorer/Starta-projekt/EU-fonder/Flyktingfonden/Pagaende-och-genomforda-projekt/Kvinnor-i-forvar.html> Apparently, this has not yet lead to that women with special needs have been put on the list of vulnerable persons in the Handbook on Migration Cases.

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

The responsibilities according to Social Services Act relate to the need of the individual as such and not particular timeframes. There is always a first social inquiry soon after the application is made the purpose of which is to identify vulnerabilities and special needs. If vulnerabilities are detected there is a closer inquiry made after the initial one. Identification of vulnerabilities is meant to lead to better understanding of the needs of the applicants and thus to more humane and respectful treatment.

There is no explicit time frame during which age must be established, but it is likely that age/identity is questioned at an early stage of the procedure as age often works like a threshold in the procedure for more beneficial treatment in the procedure itself.

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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
Unaccompanied Minors	No	Not exempt, but severely restricted. See 10:3 AA: “[...] A child that does not have a custodian in Sweden [i.e. unaccompanied minors] may only be detained if there are exceptional grounds.” It has been left to the migration authorities/courts to assess in each individual case whether deportation cannot be secured without detention or if detention actually is more humane. Exceptional means that it ought to be very rare. There are approximately a handful unaccompanied minors detained each year in the whole country. The detention periods are very short so there are no guiding cases from the Supreme Migration Court (they don’t stay in detention long enough to make appeals). See also the practice questionnaire.
Families with minor	No	Minors in general (and if



children		<p>applicable, at least one custodian [i.e. the authorities may separate the family]) may only be put in detention if supervision is deemed insufficient or if supervision has failed (10:2 AA).</p> <p>It can also be noted that in 2012 a second paragraph was added to 11:3 AA, stating that a family kept in detention must be offered their own housing (OBS! This paragraph has not yet been added into the English translation of the AA on the Government's Homepage.) It seems in practice to mean just that the family is kept together in a specially arranged part of the detention facility.</p>
Single mothers	No	See above.
Vulnerable individuals	No	
Other	No	

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	Minors & at least one accompanying custodian (if any	10:5 AA: "A child may not be detained for more

	custodian accompanying child)	is the	than 72 hours or, if there are exceptional grounds, for a further 72 hours.” At least one of the accompanying parents must follow the child, see 10:3 AA: “A child may not be separated from both its custodians by detaining the child or its custodian. [...]”
Detention only permitted in exceptional circumstances	Unaccompanied minors		See 10:3 AA, and the answer concerning unaccompanied minors above.
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	See 10:1-2 AA
After an individualized examination?	Yes	According to 1:8 AA an individual's freedom may not be more limited than what is necessary in each individual case.

		According to 1:10 AA decisions concerning minors must take the best interests of the child into consideration.
As a last resort if other less coercive measures are not applicable?	Yes	According to 1:8 AA an individual's freedom may not be more limited than what is necessary in each individual case. In addition to the general necessity requirement, according to 10:2 AA, minors may only be put in detention if it is not sufficient to put them under supervision.

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

Necessity is according to 1:8 AA an explicit requirement for migration authorities' interventions into an alien's freedom. While this general principle is underlined in the case of minors for whom it is explicitly stated that the authorities first must assess whether supervision is sufficient before placing a minor in detention, the *travaux préparatoires* states that an equivalent condition concerning adults would be too restrictive and that the general principle of necessity in 1:8 AA taken together with the possibility to appeal the decision and the regulated follow ups are enough to secure the rule of law and respect for the personal integrity of the individual (see prop. 1988/89:86 p. 97-98, also referenced in Förvarsutredningen SOU 2011:17 p. 82). It is difficult to understand why the necessity test is not considered to imply that one first must consider the less restrictive measure. A possible explanation is however that if we imagine "the necessity test" as the balancing of interests it is in the case of minors tipped against detention already from the start (i.e. there is a presumption against detention). While the starting point of the assessment concerning adults is neutral from the perspective of the legislator. This is however not explicitly elaborated anywhere.

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?

There is no obligation to explicitly inform asylum seekers of alternatives to detention. The Migration Board's Handbook on Migration Cases states that it is paramount that the applicant is informed that their behaviour (i.e. implicitly, non-cooperation concerning identity determination, criminal activity or absconding) can result in detention and that this information-giving should be documented in the case file, but states nothing about informing about the possibility of supervision. However, one could argue that once in detention, the requirement that the authorities inform the individual of her/his rights and obligations in detention also includes information about appeal and the possibility to argue for being put under supervision rather than in detention (see 11:1 para 1 AA).

The decision whether to choose ATD instead of detention is made *ex officio* after an investigation into the case. However, according to the Swedish Administrative Act the investigation must be adequate to the case at hand. This means that information necessary to make the choice must be gathered and may require hearing the alien. The alien can also ask that the investigation is carried out orally (13:1 AA). The decision can also be appealed, separately and at any point in time, see 14:9 AA. According to 18:1 AA, legal assistance must be appointed by the Migration Board to any detained minor and to an adult alien if s/he risks a negative decision (except for Dublin cases) or by the police if s/he has been held in detention for more than three days. Presumably, at least counsel will have an interest in explicitly informing about ATD.

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?

An ATD-scheme has been in use in Sweden for decades.

- b) Are some examples of alternatives to detention already laid down in national legislation and if so, which?

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Sweden has an ATD-scheme which goes under the name “supervision” (*uppsikt*).

c) Is it an exhaustive or an indicative list?

It is exhaustive in the sense that any measure of control taken instead of putting the individual in detention is called supervision. Until 2006 the description was open ended, allowing the executive authorities to pose restrictions unspecified in the law. Currently, the law exhaustively lists which measures may be taken. These measures are defined in 10:8 AA which states that supervision means that an alien has a duty to report to the local police or to the Migration Board and this decision may also contain a duty to surrender one’s documents. (See also Förvarsutredningen SOU 2011:17 p. 95f with further references to prop. 2004/05:170 p. 259–260 and 293)

[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?	Yes	1:8 AA: “The Act is to be applied so as not to limit the freedom of aliens more than is necessary in each individual case.”
Alternatives already laid down?	Yes	
If yes, which alternatives are mentioned?	Supervision (<i>uppsikt</i>)	10:6 AA: “Subject to the conditions set out in Section 1, an alien who has attained the age of 18 may be placed under supervision instead of being detained.” (10:7 AA states that minors may be put under supervision as well)

Is it an indicative or exhaustive list?	exhaustive list	See 10:8 AA: "Supervision means that the alien is obliged to report to the police authority in the locality or to the Swedish Migration Board at certain times. A supervision order may also require the alien to surrender his or her passport or other identity document."
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13. Are alternatives to detention foreseen for specific groups of asylum seekers?
Yes, although ATDs apply for all aliens, minors are special in the sense that for minors supervision must explicitly be considered before detention is considered.

Group	Answer	Comment
A/S subject to a Dublin procedure	yes	
Unaccompanied minors?	yes	The law requires that supervision is considered before detention is considered, for both UAM and minors in general - and thus also for at least one of the custodians.
Vulnerable A/S other than UAMs?	yes	Minors in general, see above.
Other?		

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
- b) If so for which groups? The same rules apply for all aliens

Please comment when necessary.

Group	Alternatives provided in law?	Comment
Individuals subject to a return procedure		See answer under b)
Exclusively for failed asylum seekers		See answer under b)
Particular vulnerable group: children, families, persons with disabilities, persons with health issues, victims of torture, or other		See answer under b)
Other (please specify)		See answer under b)

15. Legislative amendments/developments:

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

The whole Aliens Act was remade in 2005 and entered into force in 2006. The change concerning ATD was mainly a restriction of which measures could be taken within the framework. As an example authorities can no longer require the alien to stay within the borders of a specific town (see Förvarsutredningen SOU 2011:17 p. 95f). An evaluation of the detention and ATD rules was made by Förvarsutredningen in SOU 2011:17 Förvar [Detention] and SOU 2009:60 Återvändandedirektivet och svensk rätt [The Return Directive and Swedish Law], *inter alia* in view of the transposition of the Return Directive 2008/115/EC, which suggested the need for some clarifications in the legislation. Out of those suggestions, the following measures concerning detention and ATD have been put into legislation:

- Detention on deportation/return grounds have been time limited to a maximum of 12 months (10:4 para 2 AA),

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- Both detention & ATD have to be reconsidered on regular intervals (10:9-11 AA),
- Both detention & ATD can be appealed on the merits to the migration courts and the appeals are not time limited (14:9 AA),
- Negative decision have as a main rule to contain a time frame for voluntary return (8:18a-b AA),
- Prohibition of re-entering Sweden is to be decided *inter alia* where there is risk for absconding or if the alien has already absconded or the decision is put into the accelerated procedure for manifestly unfounded claims (8:19a-20a AA), and
- In the rules concerning the treatment in detention (Chapter 11 AA) explicit references to humane treatment, respect for dignity, obligation to inform of rights and obligations that apply in detention, proportionality, need for physical activity, access to outside space, children's need to play and offering families' their own separate quarters have been introduced.

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, nothing concrete, yet.

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.)

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Types of alternatives	Implementation in practice? (without description)	Group concerned
Obligation to surrender passport and documents	Yes, combined with regular reporting to the authorities	All aliens
Regular reporting to the	Yes, often combined with obligation to surrender documents	All aliens
Deposit of adequate financial guarantee	No	
Community release/supervision	No	
Designated residence	No	However, in practice, to get supervision one must be able to provide an address on which one can reside. For asylum seekers this criterion is generally not a problem as they have right to housing if they cannot find a private dwelling.
Electronic monitoring	No	
Other (please specify)		

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.)

The measures of supervision are defined in 10:8 of the Aliens Act.

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

- Send us as an annex an electronic version (or link) to the text of the measure(s) in question
- 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 unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Title	Aliens Act (AA) [Utlänningslag 2005:716]
Date	Issued on September 29 th 2005 and entered into force on March 31 st 2006
Number	SFS 2005:716
Reference of publication in the official journal (if applicable)	Utlänningslag 2005:716
Relevant link	http://www.notisum.se/rnp/sls/lag/20050716.htm http://www.government.se/sb/d/5805/a/66122

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:

- 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.)

10:8 AA states:

“Supervision means that the alien is obliged to report to the police authority in the locality or to the Swedish Migration Board at certain times. There do not seem to be any formal criteria standardizing the frequency, except for the general necessity test which requires the authorities to be as less restrictive as

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possible. It could be from every two weeks to every day. A supervision order may also require the alien to surrender his or her passport or other identity document." Asylum seekers are generally asked to surrender their documents as a routine in the asylum procedure.

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

10:12 AA states:

"Decisions on detention or supervision are taken by the authority or court handling the case." The word "authority" refers to the Migration Board or the police. The determination of which authority or court is "the handling authority" is quite complex (and described in 10:13-17 AA) and I don't think that it is very illuminating for the purpose of this report go through these rules, as it could go back and forth between the executive and the judicial branch at different stages of the procedure

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

The decision making body can act *ex officio*, see 10:6-7, where it is stated that supervision can be decided instead of detention.

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

The scheme is run by the different local police authorities and the Migration board.

- 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?

Not as far as I know.

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

There is no other organization that has the explicit task to supervise the implementation of the ATD-scheme specifically. The decisions can however be appealed to the migration courts, see 14:9 AA. One of the Parliamentary ombudsmen also has a general supervisory function in relation to both the

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police authorities and the Migration Board and can publish critical opinions, see e.g. summary of the latest yearly report at <http://www.jo.se/en/About-JO/Annual-reports/The-ombudsmens-overview/Hans-Gunnar-Axberger---summary-201213/> For a specific opinion for the year 2011/12 about detention in more detail, see JO, *Justitieombudsmännens ämbetsberättelse* 2011/12:JO1, p. 314ff available in Swedish at

<http://www.jo.se/Global/%C3%84mbetsber%C3%A4ttelser/2011-12.pdf>

and the annexed English summary at

http://www.jo.se/Global/%C3%84mbetsber%C3%A4ttelser/2011-12_eng.pdf (see page 740ff)

- 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.)?

The ATD (supervision) is of general application to all aliens. As has been stated above, Supervision also has to be assessed specifically and found to be insufficient before detention can even be considered for minors and unaccompanied minors.

- 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)?

Rules on the reception of asylum seekers are found in the *Act (1994:137) on the reception of asylum seekers* [Lag (1994:137) om mottagande av asylsökande m.fl.] and *Ordinance (1994:361) on the reception of asylum seekers* [förordning (1994:361) om mottagande av asylsökande m.fl.]. Furthermore, the Migration Board has posited *Prescriptions concerning documentation that certifies asylum seeker status* [Migrationsverket, *Föreskrifter om Tillfälligt LMA-kort för utlänning i Sverige och dokument som intygar att innehavaren är asylsökande*, 2005-12-02, MIGRFS 07/2005].

The Swedish texts can be found at:

<http://www.notisum.se/rnp/sls/lag/19940137.htm> and

<http://www.notisum.se/rnp/sls/lag/19940361.HTM> and

<http://www.migrationsverket.se/download/18.5e83388f141c129ba63134a4/1381926436894/migrfs072005.pdf>

According to Section 2b of the *Ordinance (1994:361) on the reception of asylum seekers*, every asylum seeker, except for those in detention, are to receive documentation that certifies to their status as asylum seekers.

Asylum seekers under supervision are thus not exempt from the right to receive documentation.

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

They have to report to the authorities as prescribed in the decision and/or hand over their passport or other ID, in accordance with what the decision prescribes.

- 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.

It is not the case that a failure to report regularly or to hand over ones ID automatically makes one qualified for detention. However, 10:9 (4) AA states that a decision on detention or supervision shall immediately be revoked if the grounds no longer apply. The handling authority can make a new decision in the course of which they may find that the failure taken together with all the circumstances in the case shows that supervision is no longer a sufficient measure to satisfy the purpose of the restrictions. See case report MIG 2007:41 available in Swedish at

<http://www.notisum.se/rnp/domar/mg/MG007041.htm>

The case is summarized in the case report at the end of the questionnaire.

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;

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- d) to accommodation and in general assistance provided in kind or to financial assistance
- e) to social and psychological assistance

Most of the rules referenced below can be found in Swedish at the Migration Board Homepage <http://www.migrationsverket.se/Om-Migrationsverket/Vart-uppdrag/Lagar-och-regler/Lagtexter.html>

If not please describe the gaps.

Right	Yes/No	Comment on the gaps
Healthcare	Yes See <i>lag (2008:344) om hälso- och sjukvård åt asylsökande m.fl.</i> [Act on healthcare for asylum seekers and others]	A/S, and failed A/S who have not absconded, have the following rights: Minors shall receive the same care as if they were residents. Adults are eligible for health care which cannot be put off, maternity care, care relating to abortion, and advice concerning contraceptives. All A/S should also be given the opportunity to a medical examination after their application for asylum is lodged.
Education	Yes See 29:2-3 and 7:2-3 <i>Skollagen (2010:800)</i> [The School Act] available in Swedish at http://www.notisum.se/rnp/sls/lag/20100800.htm#K29P2S2 <u>and</u>	Asylum seekers and failed A/S have access to the education that is mandatory for resident children, i.e. elementary education in public school. There is also a right to upper secondary education if the education has been started before the person has turned the age of 18. The education is free of charge.
Access to the	Yes	Exception is made for

labor market	As a main rule asylum seekers do not need to apply for special work permits in order to have access to the labour market, see 5:4 Utlänningsförordningen (2006:97) [The Alien Ordinance] Swedish text available at http://www.notisum.se/rnp/sls/lag/20060097.htm	asylum seekers who do not have ID and do not cooperate in establishing their identity, asylum seekers who are likely to be transferred in accordance with the Dublin procedure and asylum seekers who are likely to receive refusal of entry with immediate enforcement [i.e. Manifestly unfounded cases]. They are not eligible to apply for a work permit from Sweden.
In kind/financial assistance	Yes See Section 8-19 <i>Lag (1994:137) om mottagande av asylsökande m.fl.</i> [Act on the reception of asylum seekers]	See question 21 of the practice questionnaire.
Social/psychological assistance	Yes	The <i>travaux préparatoires</i> stress that there is a need to assess each asylum seeker's need for social/psychological assistance and adapt the conditions to those needs, see e.g. prop. 1993/94:94 p. 35f. and SOU 1992:133 p. 155f. There is however no clear legal scheme in place for it. According to the Migration Board's own Handbook every individual should go through an initial social inquiry in connection to the registration as asylum seeker at a reception centre. The reason to do a social inquiry is to be able to adapt the reception conditions and



		<p>process to the individual's needs.</p> <p>However, the Migration board does not have the necessary competence and resources to provide with such aids themselves. They rely on e.g. the social services of the municipalities and the health care system. There is no established system for cooperation and the risk is that the assistance to vulnerable asylum seekers falls between the cracks. The challenge is probably greater still for those asylum seekers who do not stay at the reception facilities of the Migration Board. Problems of this kind are apparently solved on a contractual case by case basis, see Migrationsverket, <i>Handbok för migrationsärenden</i> [Handbook concerning migration cases], available at http://www.migrationsverket.se/download/18.5e83388f141c129ba63109a5/1390548250909/handbok_migrationsarenden.pdf</p> <p>OBS! The handbook is not a legally binding document.</p> <p>See also question 22 of the Practices Questionnaire</p>
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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

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there an obligation to inform them about the legal remedies to object the imposition of an alternative to detention?

There is no separate procedure with regards to the ATD-decision. The authority which handles the asylum case can make a decision concerning detention or supervision *ex officio* within its processing of the asylum case if it is deemed necessary on the earlier specified grounds. Before any decision is made the authority must however carry out an investigation which is adequate to the issue at hand, including hearing the applicant (Section 7 of the Administrative Act [Förvaltningslag (1986:223)] and Chapter 13 of the Aliens Act). The decision can also be appealed (14:9 Aliens Act) and such decisions must contain information to the applicant with instructions on how to appeal (Section 21 paragraph 2 of the Administrative Act).

22. a) Do they have access to legal assistance and representation for the purposes of their asylum application?

The rules on legal assistance are found in Chapter 18 of the Aliens Act (AA). Asylum seekers neither get legal assistance specifically for the issue of alternatives to detention, nor generally in all asylum cases. Legal assistance is however as a main rule (i.e. unless there are reasons to believe that there is no need for legal assistance) appointed by the Migration Board in general in cases where refusal-of-entry, expulsion or deportation is being considered (however, not in Dublin cases except if the asylum seeker has been detained for more than three days). There is also as a main rule a right to legal assistance specifically concerning detention after more than three days in detention when the grounds for detention have been the execution of deportation. Unaccompanied minors in detention are always supposed to be granted legal assistance.

- b) Is it free of charge for the AS or at his/her own expense?

If legal assistance is provided it is done so at the expense of the Migration Board in accordance with Section 4 of the Legal Aid Act [Lag (1996:1620) om offentlig biträde] available in Swedish at <http://www.notisum.se/Pub/Doc.aspx?url=/rnp/sls/lag/19961620.htm>

- c) Is it provided *ex officio* or should they apply for it?

Legal assistance is provided on request or *ex officio* if the legal criteria are fulfilled. See Section 3 of the Legal Assistance Act [Lag (1996:1620) om offentlig biträde] available in Swedish at <http://www.notisum.se/Pub/Doc.aspx?url=/rnp/sls/lag/19961620.htm>

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.

I would say that the general Swedish legislative framework is overall intended to keep within the framework of Sweden's human rights obligations. *Travaux préparatoires*, legal opinions by the Migration Board and Court judgments often refer to the ECHR and judgments by the ECtHR. The grounds for detention and for supervision are thus not only described in law (in Chapter 10 of the Aliens Act [AA]). The decision-making authorities are obliged to motivate their decisions and to inform each concerned individual of the decisions (Section 20-21 of the Administrative Act). The liberty of a person may only be restricted to the extent necessary (1:8 AA). The decisions can be appealed (14:9-10 of the Aliens Act). Detention is time restricted and authorities are obligated to make *ex officio* reviews of the legality both at certain intervals and at the time when the case is reviewed on the merits (chapter 10 of the Aliens Act). The time limits depend on which detention ground motivates ones detention. The limit is 48 hours for investigative detention, two weeks (unless there are exceptional reasons) for identity and probability of refusal-of-entry or expulsion reasons and a maximum of 12 months for deportation reasons. As stated before asylum seekers are very rarely detained According to 10:9(4) AA decisions concerning detention or supervision must be revoked as soon as the grounds are no longer applicable. Apart from the restriction of movement, conditions in detention are supposed to be humane and respectful and as much as possible equivalent to those in the Migration Board housing centers, which *inter alia* means access to health care, activities and visits (see Chapter 11 of the AA).

However, as the yearly report of the Parliamentary Ombudsmen 2011/12:JO1 shows, in practice there has been *inter alia* a tendency towards long detention periods and towards transfer of responsibility for the most psycho-sociologically vulnerable/suicidal persons to the penal authorities, which in individual cases may be hard to reconcile with Sweden's human rights obligations. The Migration Board has no resources or competence to deal with persons who are a danger to themselves or others. They have to rely on the willingness of primarily the health care system to take over the responsibility for detainees with socio-psychological problems. As I stated before, individuals may fall between the chairs and if the Migration Board

cannot handle them and no one else is willing or able to take over the responsibility for them (the health care system may for instance not put them into involuntary care unless they suffer from a serious mental illness) then they are transferred to the penal authorities.

And, a recent study under the auspices of the Swedish Red Cross shows that detention decisions do not have a motivation which clearly states why supervision is not sufficient and detention is necessary (Zamacona Aguirre, Maite, *Förvar under lupp: en studie av rättssäkerheten för asylsökande i förvar* [Detention Under Scrutiny: a study of the due process for detained asylum-seekers], The Swedish Red Cross, Stockholm, 2012).

The whole Aliens Act was re-written in 2005. The scheme of supervision got its current basic format at that time. Previously legislation had stated that the authorities could pose other special conditions in addition to the obligation to report to the authorities or surrender documents. An example of what these special conditions could be is restriction of movement to a geographically limited space such as a municipality. The travaux préparatoires (prop. 2004/05:170 p. 259f.) to the 2005 Aliens Act stated with reference to the *Guzzardi* case (*Guzzardi v. Italy*, Application no. 7367/76, Judgment of 6 November 1980, A39) that the discretion given to the authorities to pose conditions such as restriction of movement amounts to a discretion to pose restrictions of liberty and suggests that this is unnecessarily far reaching. The same government proposal also gives the only framework that can be found for supervision decisions. It states that decisions normally ought to require the alien to report once or twice per week, but decisions may also prescribe as frequent reporting as every day of the week if necessary to prevent the alien from absconding.

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:

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- 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, in Chapter 14 Section 9-10 of the Aliens Act (AA). There are no time limits, see 14:9 para 2 AA.

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

They are judicial procedures.

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

Free legal assistance is awarded to all aliens in a procedure which can result in refusal of entry, expulsion and return and in the process of deportation (see Chapter 18 AA). Legal assistance is not generally awarded in Dublin cases because they are not decided on the merits. However, legal assistance in Dublin cases can be awarded according to 18:1(1)4 AA if the alien has been kept in detention for more than three days, unless the migration board finds legal assistance unnecessary (see Supreme Migration Court Case report MIG 2010:9). According to 18:1(2) AA unaccompanied minors in detention must always be granted legal assistance.

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

- 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?

This can be done under the same procedure as above (question 24).

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

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

26. Review of the imposition of detention:

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

Yes, see 10:9 AA

The review is made ex officio

The periodicity depends on the grounds for detention:

Detention on other grounds than investigative grounds shall be re-examined within two weeks from the date on which enforcement of the order began

However, in cases where there is a refusal-of-entry or expulsion order, the detention order shall be re-examined within two months from the date on which enforcement of the order began.

A supervision order shall be re-examined within six months from the date of the order.

If the alien is retained in detention or is to remain under supervision, the order shall be re-examined regularly within the same intervals.

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

It is made by the handling authority, but the decision can then be appealed.

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

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?

Yes. The same rules as concerning detention apply. According to 14:9 AA a detention order or a supervision order made by a police authority or the Swedish Migration Board may be appealed to a migration court. A detention order or a supervision order may be appealed separately and without limitation to a certain period of time.

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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, not the conditions of supervision, see 14:10 AA: Only a decision of the Swedish Migration Board to place an alien with the penal authorities may be appealed to a migration court concerning the treatment or placement in detention.

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

- d) Is there a right to (free) legal assistance and representation in the framework of this procedure? The rules concerning legal aid are found in Chapter 18 of the Aliens Act. There is no right to legal aid for the appeal of supervision as such. Nor do asylum seekers in general have a right to legal aid, unless they are in the refusal-of-entry, expulsion or deportation stage of the procedure (i.e. failed asylum seekers or asylum seekers with questionable claims have a right to legal aid and this aid would normally also cover any appeals concerning detention or supervision.

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, see 10:9(2). Every six months.

“A supervision order shall be re-examined within six months from the date of the order.

If the alien is retained in detention or is to remain under supervision, the order shall be re-examined regularly within the same intervals.”

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

It is made by the handling authority, but it can be appealed.

Jurisprudence

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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.

Jurisdiction	Date	Case Number	Brief summary
Supreme Migration Court	2010-06-29	MIG 2010:15 (UM 4947-10)	<p>The case concerns an alien who applied for asylum after having been apprehended by the police for petty theft. The application was denied with immediate execution and the applicant was put in detention on the grounds of enforcement of a refusal-of-entry or expulsion order and that there is reason on account of the alien's personal situation or the other circumstances to assume that the alien may otherwise go into hiding or pursue criminal activities in Sweden (10:1(2)3. AA). The applicant immediately tried to escape from the detention facility twice, during which he damaged the facilities. He had also changed his identity information twice and according to the authorities had not cooperated in establishing his identity. The alien appealed the detention decision and claimed that he should be freed or at least only be put under the alternative measure of supervision. When the detention question was put before the Supreme Migration Court the alien had already been freed from detention and instead put under supervision by the police as the maximum detention period of one year had been reached. The Supreme Migration Court found that although the alien could not be put in "deportation detention" there were still grounds to keep him under supervision.</p> <p>Swedish text available at</p> <p>http://lifos.migrationsverket.se/dokument?do</p>



			cumentSummaryId=23110

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 centre or financial assistance without any further obligation instead)? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

Jurisdiction	Date	Case Number	Brief summary
Supreme Migration Court	2007-06-12	MIG 2007:41 (UM1480-07)	<p>The alien A appealed a decision to put him under supervision although at that time these decisions were not subject for appeal. The Migration Court found that he had not been following his supervision scheme - he failed to report to the authorities several times - and revoked the supervision decision and decided to put A in detention instead. A then appealed the migration court's judgment and claimed that since the judgment was based on his appeal, the Migration Court ought not have given him a more sever restriction of liberty. The Supreme Migration Court came to the conclusion that:</p> <ul style="list-style-type: none"> a) With reference to ECHR (e.g. Article 5 and Art 13) and the case law of the ECtHR that there was a right to appeal notwithstanding the absence of such right in the Aliens Act at the time b) since the Migration Court had been the handling authority it

			<p>was responsible to make an evaluation if there were reasons to uphold the supervision decision and could revoke it according to 10:9(4) AA and replace it with detention if grounds for detention apply. The fact were not disputed by the applicant and the Supreme Migration Court made de same evaluation of the circumstances in A's case as the Migration Court had served him a detention order.</p>
Supreme Migration Court		MIG 2008:23 (UM1610-08)	<p>The police decided to put A in detention in order to be able to execute a deportation order. The motive for detention was that there were reasons to believe that A would abscond and that those reasons were based on the fact that A had declined to voluntarily cooperate in the execution of the expulsion order. A appealed the decision to the Migration Court which decided to reject the appeal. A then appealed to the Supreme Migration Court which concluded:</p> <p>It is not enough that an alien who is about to be refused entry or expelled states that he does not want to return voluntarily. That would basically mean that almost all failed asylum seekers could be put in detention without the need to make an individual assessment. In addition to the refusal-of-entry and expulsion decision there also needs to be some concrete circumstances which give reasons to believe</p>



			that the particular alien will abscond or commit a crime in Sweden. The police had not presented evidence for any such concrete reasons. There was therefore no grounds for detention.

D. Other

31. 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, which puts a minimum of restriction on the applicants.

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

It does not have a very operational design. There is only a description of two measures, but no common operational routines in place, as far as I can tell. It is unclear based on which criteria one can determine in any predictable way when supervision is sufficient and when detention is necessary. It is also unclear how the scheme is monitored and based on which criteria it is evaluated. The only framework that I have found is in the government proposal for the 2005 Aliens Act (prop. 2004/05:170 p. 259f.). It states that decisions normally ought to require the alien to report once or twice per week, but decisions may also prescribe as frequent reporting as every day of the week if necessary to prevent the alien from absconding.

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.

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).

LIST OF PUBLICATIONS

Travaux Préparatoires

Regeringens Proposition 2011/12:60 *Genomförande av återvändandedirektivet* [Government Proposal on the Transposition of the Return Directive]; available at

<http://www.regeringen.se/content/1/c6/18/52/36/43585f17.pdf> (2014-04-01)

Regeringens Proposition 2004/05:170 *Ny instans- och processordning i utlännings- och medborgarskapsärenden* [A New Order of Courts and Procedures concerning migration and citizenship]; available at

<http://www.regeringen.se/content/1/c6/04/55/68/018827d5.pdf> (2014-04-01)

Förvarsutredningen, *Förvar*, SOU 2011:17 (slutbetänkande)[Swedish Government Official Reports on Detention]; available at <http://www.regeringen.se/sb/d/14156/a/161016> (2014-04-01)

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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	
Name of individual contacted	
Position/function of the individual	
Email address	



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