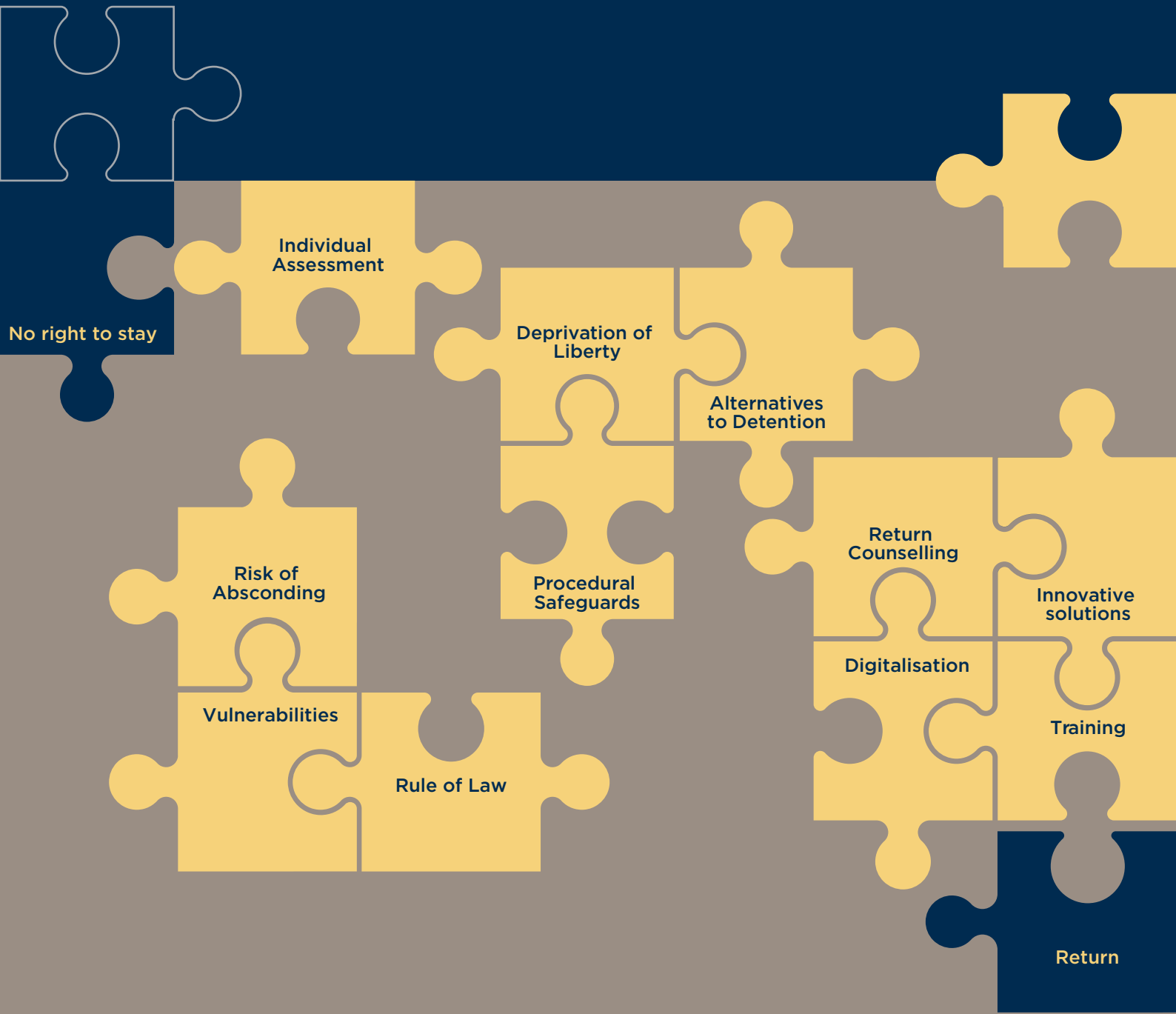


# Good Practices on Alternatives to Detention in return procedures



European Border and Coast Guard Agency – Frontex, 2024  
Plac Europejski 6 • 00-844 Warsaw • Poland  
frontex@frontex.europa.eu • www.frontex.europa.eu  
©European Border and Coast Guard Agency (Frontex), 2024, FPI-24.0465  
Warsaw, October 2024

#### **Disclaimer**

This document has no binding or legal effect. All the practices and the experiences shared in this document are not binding. The types and number of alternatives to detention made available, the decision process regarding its use and which alternative – if any – to adopt, as well as the timing of its application, remain at the discretion of the national authorities. Reproduction is authorised provided the source is acknowledged.

No part of this document may be reproduced in whole or in part, without the written permission of Frontex

**Good Practices on  
Alternatives to Detention  
in return procedures**



# Table of Contents

<b>List of abbreviations</b>	<b>5</b>
<b>1. Introduction</b>	<b>6</b>
<b>2. Detention</b>	<b>8</b>
2.1 Legal framework	8
2.1.1 Detention within the ECHR	8
2.1.2 Detention within the EU law framework	10
2.2 Practices	13
2.2.1 Detention procedure	13
2.2.2 Risk of absconding	14
2.2.3 Detention facilities	15
2.2.4 Complaint mechanisms and independent monitoring	16
2.2.5 Detention services	16
<b>3. Good Practices on alternatives to detention</b>	<b>18</b>
3.1 Legal framework	18
3.1.1 Alternatives to detention within the ECHR	18
3.1.2 Alternatives to detention within the EU law framework	19
3.2 Practices	20
3.2.1 Existing alternatives	20
3.2.1.1 Reporting to authorities at regular interval	21
3.2.1.2 Requirement to reside at a designated place or within a geographical area	21
3.2.1.3 Obligation to surrender a passport, travel, or identity document	22
3.2.1.4 Obligation to communicate an address	22
3.2.1.5 Release on bail, deposit or financial guarantee (with or without sureties); sponsorship	22
3.2.1.6 Case management programmes	23
3.2.1.7 Return counselling	25
3.2.1.8 Electronic reporting/monitoring	25
3.2.2 Assessment procedure and criteria	26
3.2.2.1 The gradient of measures	27
3.2.2.2 Conditions and criteria	28
3.2.2.3 Proportionality and vulnerability	28
3.2.2.4 The vulnerability assessment	29
3.2.3 Procedural safeguards and support	30
<b>4. Effectiveness of alternatives to detention</b>	<b>31</b>
4.1 Compliance with migration procedures	31
4.2 Cost effectiveness	32
4.3 Reducing negative impact on human rights	33
<b>5. Identified challenges and possible way forward</b>	<b>34</b>
<b>Annex I – The use of alternatives to detention</b>	<b>36</b>
<b>Annex II – Advantages and challenges of alternatives to detention</b>	<b>37</b>
<b>Annex III – The ICAM coaching process (Belgium)</b>	<b>38</b>

## List of abbreviations

---

<b>A2D</b>	Alternatives to Detention
<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>CMW</b>	UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>CFR</b>	Charter of Fundamental Rights of the European Union
<b>ECHR</b>	European Convention of Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>RET</b>	Return Division
<b>EMN</b>	European Migration Network
<b>EU</b>	European Union
<b>EUAA</b>	European Union Agency for Asylum
<b>Frontex</b>	European Border & Coast Guard Agency
<b>IOM</b>	International Organisation for Migration
<b>MS<sup>1</sup></b>	European Union Member States and Schengen Associated Countries
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PRAN</b>	Pre Return Activities Network
<b>RS</b>	Return Specialist
<b>TC</b>	Third Country
<b>TCN</b>	Third-Country National
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

---

<sup>1</sup> For the purpose of this document, the term 'Member States' includes also the States participating in the relevant development of the Schengen *acquis* within the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union.

# 1. Introduction

A comprehensive, coordinated and harmonised approach on returns is critical to ensure the efficiency and credibility of the EU migration policy and to compensate for the absence of internal borders within the Schengen area<sup>2</sup>.

The return of people irregularly staying in the territory of an European Union Member State (MS), to whom a return decision has been issued, constitutes a vital element of the migration system as a whole. In order to effectively return those who do not or no longer hold the right to remain in the territory of the MS - and unless other sufficient but less coercive measures can be applied effectively in a specific case -, it may become necessary to deprive a Third-Country National (TCN) from the right to liberty for the purpose of preparing return and/or carrying out the removal process, either due to the risk of absconding or to ensure TCN' engagement with the removal process, provided that removal arrangements are in progress and executed with due diligence. A decision to detain and keep TCN in detention shall always be taken as a last resort, and will always take into consideration several parameters, including ensuring compliance with fundamental rights<sup>3</sup> and the MS' legal obligation to issue and enforce a return decision<sup>4</sup>.

It is in that context that measures alternative to detention may, whenever applicable, offer solutions aimed at

ensuring the use of less coercive measures, while still preventing absconding and making return possible<sup>5</sup>. While there is no legal definition of alternatives to detention in relevant EU or international instruments [the Return Directive<sup>6</sup> solely mentions "certain obligations aimed at avoiding the risk of absconding" in its article 7(3) and "less coercive measures" in its article 15(1)], they have been understood in light of international human rights standards as "*all community care measures or non-custodial accommodation solutions that are less restrictive than detention*"; and are referred to by European Migration Network (EMN) as "*non-custodial measures used to monitor and/or limit the movement of TCN in order to ensure compliance with international protection and return procedures*"<sup>8</sup>.

Frontex is mandated to provide assistance to MS experiencing challenges with regard to their return systems, including the provision of advice on and assistance in relation to alternatives to detention<sup>9</sup>. These "Good Practices" are to facilitate and share MS' experiences in adopting different types of alternative measures to detention, as to ensure the overall efficiency of the MS' return systems by avoiding absconding while ensuring administrative immigration detention is applied as a last resort measure and in full respect of returnees' fundamental rights. In addition, while becoming a valuable

<sup>2</sup> European Commission, [Towards an operational strategy for more effective returns of 24.1.2023 - Policy document](#), 24 January 2023, COM (2023) 45 final, Annex, p. 2.

<sup>3</sup> [Charter of Fundamental Rights of the European Union](#) (CFR) 26 October 2012, OJ C 326, 26.10.2012, p. 391-407. Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (ECHR), as amended by Protocols Nos 11 and 14, 4 November 1950, ETS 5. All MS are part of the Convention.

<sup>4</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

<sup>5</sup> European Commission, [Commission Recommendation \(EU\) 2023/682 of 16.3.2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council](#), 16 March 2023, OJ L 86, 24.3.2023, p. 58-64 (p. 63).

<sup>6</sup> Return Directive - [Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals](#) (OJ L 348, 24.12.2008, p. 98).

<sup>7</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), [General Comment No. 5 \(2020\) on migrants' rights to liberty and freedom from arbitrary detention](#), 14 August 2020, paragraph 58. According to the Committee, "the ideal alternatives to detention are those that respect the right to personal freedom and therefore do not create any related restrictions or conditions, but rather generate other legitimate mechanisms and measures that are in line with human rights standards".

<sup>8</sup> The [proposed definition is derived by EMN](#) from art 8 (4) of Recast Reception Conditions Directive: European Commission, [Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\)](#), 26 June 2013, OJ L 180, 29.6.2013, p. 96-116, which is to be meanwhile repealed, with effect from 12 June 2026, by [Directive 2024/1346/EU of the European Parliament and of the Council of 14 May 2024, laying down standards for the reception of applicants for international protection \(recast\)](#), OJ L series, 22.5.2024, p. 1-35.

<sup>9</sup> According to article 48 (2)(d), of the European Border and Coast Guard Regulation - [Regulation \(EU\) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations \(EU\) No 1052/2013 and \(EU\) 2016/1624 \(EBCG Regulation\)](#), OJ L 295, 14.11.2019, p. 1-131.

guiding reference and an effective working tool for return practitioners within the Schengen Area, it enhances the cooperation on alternatives to detention field among Frontex and MS.

The document has been drafted based on desk research, input from the MS through the consultations held in the yearly bilateral meetings on return between Frontex and MS, PRAN Meetings, the questionnaire presented to

MS by the French Presidency of the Council of the EU, as well as from the first Frontex organised Workshop on Detention and Alternatives to Detention (January 2024) and its follow-up. The workshop counted on the participation of several MS and Canada, who had also contributed to a workshop on alternatives to detention organised by the EMN, by providing a comprehensive data collection and by proposing innovative solutions in the field of alternatives to detention. For the desk research, the EMN report published in 2021<sup>10</sup> and the analysis document published by the Council of Europe (CoE)<sup>11</sup> have been primarily used.

---

<sup>10</sup> EMN, [Detention and alternatives to detention in international protection and return procedures](#), 15 December 2021 (in short, EMN 2021 report) and EMN, [Detention and alternatives to detention in international protection and return procedures \(country national reports\)](#), 15 December 2021. The study was lastly updated in April 2021.

<sup>11</sup> Council of Europe - CDDH, [Legal and practical aspects of effective alternatives to detention in the context of migration](#), 7 December 2017.

## 2. Detention

Detention in the context of migration procedures linked to return and for the purpose of this document is meant as a non-punitive administrative confinement of a TCN who is subject to return procedures by a MS within a

particular place, where the person is deprived of his or her freedom of movement<sup>12</sup>. It encompasses all situations falling within the scope of Article 5 (1) (f) ECHR<sup>13</sup>.

### 2.1 Legal framework

#### 2.1.1 Detention within the ECHR

Article 5(1) ECHR proclaims that everyone has the right to liberty and security of person. No one shall be deprived of their liberty aside from the six grounds described in article 5(1)(a-f). The exception related to returns allows detention to prevent unauthorised entry of a person into the country or of a person against whom action is being taken with a view to their deportation (*sub-paragraph f*).

**Detention must be carried out according to a procedure prescribed by law.** States must lay down procedural aspects and safeguards in national law. The ECtHR assesses the compatibility of the detention with procedural and substantive national law and then evaluates the conformity of the national law with the ECHR, also assessing the “quality” of the law. Namely, the national law must be “**sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness**”, following the rule of law<sup>14</sup>.

According to the ECtHR, within the detention for return purposes, the deprivation of liberty in return procedures is justified only if the following conditions are met: if action is being taken with due diligence to enforce the return process<sup>15</sup>; for as long as return proceedings are in progress<sup>16</sup>; if there is a realistic prospect for return<sup>17</sup>; and if, after evaluation, detention continues to be justified on this ground<sup>18</sup>.

To prevent arbitrariness of the detention, both the order to detain and the execution of the detention must genuinely conform with the purpose of the deprivation of freedom permitted.

**Detention procedure and safeguards.** Under the ECHR, MS are required to provide promptly specific information to the individual or their representative about the reasons on which detention is based. The grounds shall be communicated in a simple, non-technical language that detainees can understand, providing the essential legal and factual grounds for the arrest.

Article 5(4) ECHR grants everyone deprived of their liberty the right to a speedy judicial review of the decision and to be released if the detention is not lawful, following the proceedings which need to be conducted as quickly as possible.

**Persons with vulnerabilities and children.** The ECtHR deemed that, in the case of applicants for international protection that remain under detention, an individual assessment is needed to detect whether the persons concerned present a particular vulnerability which could preclude detention, and to consider whether a less drastic alternative measure is possible<sup>19</sup>. Taking into account that such reasoning may be applied to return-related detention cases, some definitions are useful to bear in mind:

<sup>12</sup> Adapted from the Reception Conditions Directive – Articles 2(9) and 10 of the [Directive \(EU\) 2024/1346 of the EP and of the Council of 14 of May](#) and Article 2(h) of the [Directive 2013/33/EU of the EP and of the Council of 26 of June](#). The Return Directive does not define it, but according to the CJEU the definition applies also to returns.

<sup>13</sup> For the purposes of this document, criminal-related detention is excluded.

<sup>14</sup> ECtHR, [Longa Yonkeu v. Latvia](#), 15 November 2011, 57229/09, par. 120, and ECtHR, [Del Rió Prada v. Spain](#), 21 October 2013, No. 42750/09, par. 125.

<sup>15</sup> ECtHR, [Saadi v. the United Kingdom](#) [GC], 29 January 2008, 13229/03, par. 72.

<sup>16</sup> ECtHR, [Al Husin v. Bosnia and Herzegovina](#) (No. 2), 25 June 2019, 10112/16, par. 97.

<sup>17</sup> ECtHR, [Al Husin v. Bosnia and Herzegovina](#) (No. 2), 25 June 2019, 10112/16, par. 98.

<sup>18</sup> ECtHR, [Al Husin v. Bosnia and Herzegovina](#) (No. 2), 25 June 2019, 10112/16, par. 98; ECtHR, [Amie and Others v. Bulgaria](#), 12 February 2013, 58149/08, par. 77.

<sup>19</sup> ECtHR, [Thimotheawes v. Belgium](#), 4 April 2017, 39061/11, par. 73.

1. **Vulnerable persons**<sup>20</sup> refer to TCN found to have special needs after an individual evaluation of their situation, who are entitled to call on a State's obligation to provide special protection and assistance in the context of migration and asylum<sup>21</sup>.
  2. **Minor or child** means "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"<sup>22</sup>. In most cases, 'minor' is equivalent to 'child'. The issue of terminology relates to the legal acts in which these two terms appear. If there is any doubt regarding age, the presumption of childhood shall prevail and thus, a child-friendly treatment, based on a best interests of the child assessment, should always be ensured<sup>23</sup>;
  3. **Accompanied children** mean children who are accompanied by at least one of their parents or by their legal/customary primary caregiver;
  4. **Unaccompanied children** mean children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so<sup>24</sup>;
  5. **Best interests of the child** refers to a child's human rights principle<sup>25</sup> which should always be a primary consideration. It includes:
    - a. Child's views and aspirations;
    - b. Identity of the child, including age and gender, personal history and background;
    - c. Care, protection and safety of the child;
    - d. Child's well-being;
    - e. Family environment, family relations and contact;
    - f. Social contacts of the child with peers and adults;
  - g. Situation of vulnerability, i.e. the risk that the child is facing and the sources of protection, resiliency and empowerment;
  - h. Child's skills and evolving capacities;
  - i. Rights and needs with regard to health and education;
  - j. Development of the child and its gradual transition into adulthood and an independent life considering all options, to find a durable solution in line with the child's best interests;
  - k. Any other specific needs of the child;
6. **Right to family life** means the protection of the person against the intervention or interference of the public authorities in the private sphere. Such interference is tolerated, as is the case for the other limits placed on the liberties of the person, only as long as it is lawful and necessary in a democratic society<sup>26</sup>.

The European Court of Human Rights has, in several cases, found child immigration detention contrary to the ECHR, arguing that the vulnerability of children and the best interests of the child principle must prevail<sup>27</sup>. The Court stated that "the child's best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life"<sup>28</sup>. Instead, they may be provided with accommodation in specific locations such as open residencies or open or semi-open centres, where only other families with children or individuals considered to belong to vulnerable groups could be lodged<sup>29</sup>.

<sup>20</sup> As a side note, in the Recast of the Return Directive (still under discussion) it is proposed, in its Article 3(1)(9), to substitute the term vulnerable persons by "persons in a vulnerable situation". According to such definition, persons in a vulnerable situation are all those "facing a diminished capacity to resist, cope with, or recover from violence, exploitation, abuse or violations of their rights due to the presence of factors and circumstances at the individual, community, household, structural and/or situational level that increase the risk of, and exposure to, such violence, exploitation, abuse, or rights violations or due to the absence of factors that protect against such violence, exploitation, abuse and rights violations."

<sup>21</sup> Council of Europe, [Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe \(2021-2025\)](#), 2021.

<sup>22</sup> Article 1 of the Convention on the Rights of the Child. UN General Assembly, [Convention on the Rights of the Child](#) (CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>23</sup> Frontex, [VEGA Handbook: Children at airport](#), 2015.

<sup>24</sup> UN Committee on the Rights of the Child, [General Comment No.6 \(2005\) - Treatment of unaccompanied and separated children outside their country of origin](#), CRC/GC/2005/6, 1 September 2005, par. 7-8.

<sup>25</sup> Article 3 of the [Convention on the Rights of the Child](#).

<sup>26</sup> Article 7, 9 and 33 of the CFR and article 8 of the ECHR.

<sup>27</sup> Among others: ECtHR, [Popov v. France](#), 19 January 2012, 39472/07 and 39474/07, par. 147; ECtHR, [Muskhadzhiyeva and Others v. Belgium](#), 19 January 2010, 41442/07; ECtHR, [Kanagaratnam and Others v. Belgium](#), 13 December 2011, 15297/09.

<sup>28</sup> Ibid. ECtHR, [Popov v. France](#), cit., par. 147.

<sup>29</sup> Council of Europe - Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), 11 December 2023; UN Committee on the Rights of the Child, [Report of the 2012 day of general discussion](#), op. cit., par. 79.

## 2.1.2 Detention within the EU law framework

The CFR recognises to everyone the “right to liberty and security of person”<sup>30</sup>. In accordance with Article 52(1) of CFR, any limitations on the exercise of this right must be provided for by law and respect its essence and are subject to the principle of proportionality<sup>31</sup>.

Detention, in order to prepare the return and/or carry out the removal process, is recognised as a last-resort measure. In fact, according to the Return Directive, the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Furthermore, TCN in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law<sup>32</sup>.

The Return Directive lists two particular grounds on which detention is allowed<sup>33</sup>, namely when:

1. There is a risk of absconding or
2. The TCN concerned avoids or hampers the preparation of return or the removal process.

The Return Directive sets some detention-related safeguards:

1. **Length:** detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence, and for a period of time up to six months<sup>34</sup>; it can be extended for further 12 months in cases where, regardless of all their reasonable efforts, the removal operation is likely to last longer owing to (a) a lack of cooperation by the TCN concerned, or (b) delays in obtaining the necessary documentation from third countries;
2. **Review of decision:** apart from the initial judicial review in those cases in which detention is determined by administrative authorities, the detention has to be subsequently reviewed by judicial<sup>35</sup> or administrative<sup>36</sup> authorities at reasonable intervals of time either on application by the TCN concerned or by authority’s initiative; in the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority; in case of emergency situations the periods for the review can be longer;
3. **Place of detention:** detention should take place in specialised detention facilities; only as an exception can it take place in an ordinary prison, whereby detained perspective returnees should be separated

<sup>30</sup> Article 6 CFR.

<sup>31</sup> In so far as the current document includes legal aspects of CFR, ECHR and other EU law, Article 52(3) of the CFR clarifies the relationships between the mentioned legal instruments: “In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.”

<sup>32</sup> Recitals 16 and 17 of the Return Directive.

<sup>33</sup> Article 15(1) of the Return Directive. Recital 16 of the Return Directive states “The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued”.

<sup>34</sup> Article 15(5) of the Return Directive. In practice, the length of detention varies from MS to MS, but always in respect for the maximum periods of detention set by the Return Directive.

<sup>35</sup> AUT, BEL, CYP, CZE, DEU, EST, ESP, FIN, FRA, HRV, HUN, IRL, ITA, LTU, POL, PRT, SWE, SVN, SVK (EMN 2021 report, p. 27).

<sup>36</sup> GRC, LUX, NLD (EMN 2021 report, p. 27).

from regular prisoners<sup>37</sup>; a derogation from this requirement is only allowed in emergency situations;

4. **Vulnerable persons**<sup>38</sup>: authorities have to provide emergency health care and essential treatment of illness<sup>39</sup>. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time<sup>40</sup>. Detained families shall be provided with separate accommodation guaranteeing adequate privacy<sup>41</sup>; a derogation from this requirement is only allowed in emergency situations;
5. **Minors in detention (both accompanied and unaccompanied)**: they should have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education<sup>42</sup>;
6. **Unaccompanied minors**: they should be provided with accommodation in institutions with personnel and facilities which take into account the needs of persons of their age<sup>43</sup>.

In line with the provisions laid down in the Return Directive, and despite what has been stated in the last paragraph of point 2.1.1., the detention of children or of families with children can occur in exceptional situations. In this context, it is important to stress that such decisions should be strictly used as a measure of last resort and for the shortest appropriate period of time, after establishing

that no suitable alternative measures could be made available<sup>44</sup>. In any case, where a child is deprived of liberty, States should ensure a child-friendly environment, separate accommodation from adults who are not the child's parents or legal guardians while applying every possible protection safeguards stemming from their specific needs and particular vulnerable condition<sup>45</sup>.

Some MS, due to vulnerability reasons, forbid the detention of unaccompanied minors, accompanied minors and families with children, pregnant women, or victims of trafficking in human beings<sup>46</sup> and torture<sup>47</sup>, while others allow it only in exceptional circumstances<sup>48</sup>.

Breaking down the requisites of Article 15 of the Return Directive, the steps towards the issuance of a detention decision could be considered in the following order<sup>49</sup>:

1. The TCN is subject to a return procedure;
2. *Necessity test* – Detention is only applicable, in the scope of return procedures, in order to prepare the return and/or carry out the removal process if – in particular – the following indicators exist:
  - a. There is risk of absconding; or
  - b. The TCN hampers the preparation of return or the removal process;

<sup>37</sup> Article 16(1) Return Directive. The CJEU strictly interpreted these requirements, stating that the lack of specialized detention facilities in one federate state of Germany does not allow authorities to detain returnees in ordinary prisons, as detained returnees can be accommodated in other states' specialized detention facilities. See CJEU, [Adala Bero v Regierungspräsidium Kassel and Ettayebi Bouzalmate v Kreisverwaltung Kleve](#) [Grand Chamber], 17 July 2014, joined cases C-473/13 and C-514/13, par. 30.

<sup>38</sup> Should be noted, though, that in the Recast of the Return Directive, in its article 3, paragraph 1, point 9, the term vulnerable persons is replaced by the notion of "persons in a vulnerable situation" which are defined as all those "facing a diminished capacity to resist, cope with, or recover from violence, exploitation, abuse or violations of their rights due to the presence of factors and circumstances at the individual, community, household, structural and/or situational level that increase the risk of, and exposure to, such violence, exploitation, abuse, or rights violations or due to the absence of factors that protect against such violence, exploitation, abuse and rights violations."

<sup>39</sup> Article 16(3) of the Return Directive.

<sup>40</sup> Article 17(1) of the Return Directive.

<sup>41</sup> Article 17(2) of the Return Directive.

<sup>42</sup> Article 17(3) of the Return Directive.

<sup>43</sup> Article 17(4) of the Return Directive.

<sup>44</sup> Article 17(1) of the Return Directive.

<sup>45</sup> UN Committee on the Rights of the Child, [Report of the 2012 day of general discussion](#), op. cit., par. 79 (second part) and 80.

<sup>46</sup> In this remit, a revised "Anti-Trafficking Directive", [Directive \(EU\) 2024/1712 of the European Parliament and of the Council of 13 June 2024](#) (which is yet to come into force), amending Directive 2011/36/EU, establishes, in its article 8, that MS' national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings.

<sup>47</sup> BEL, CYP, CZE, FRA, LTU (unaccompanied minors), IRL (children), POL, PRT, (unaccompanied minors, victims of torture and ill-treatment), SVK (unaccompanied minors, victims of trafficking) (EMN 2021 report, p. 26).

<sup>48</sup> CZE (detention is prohibited in all cases but allowed in exceptional cases during return procedure to ensure adequate reception conditions), DEU, EST, GRC, FIN, FRA (other categories), LTU, LUX, NLD, SVK (other categories) (EMN 2021 report, p. 26).

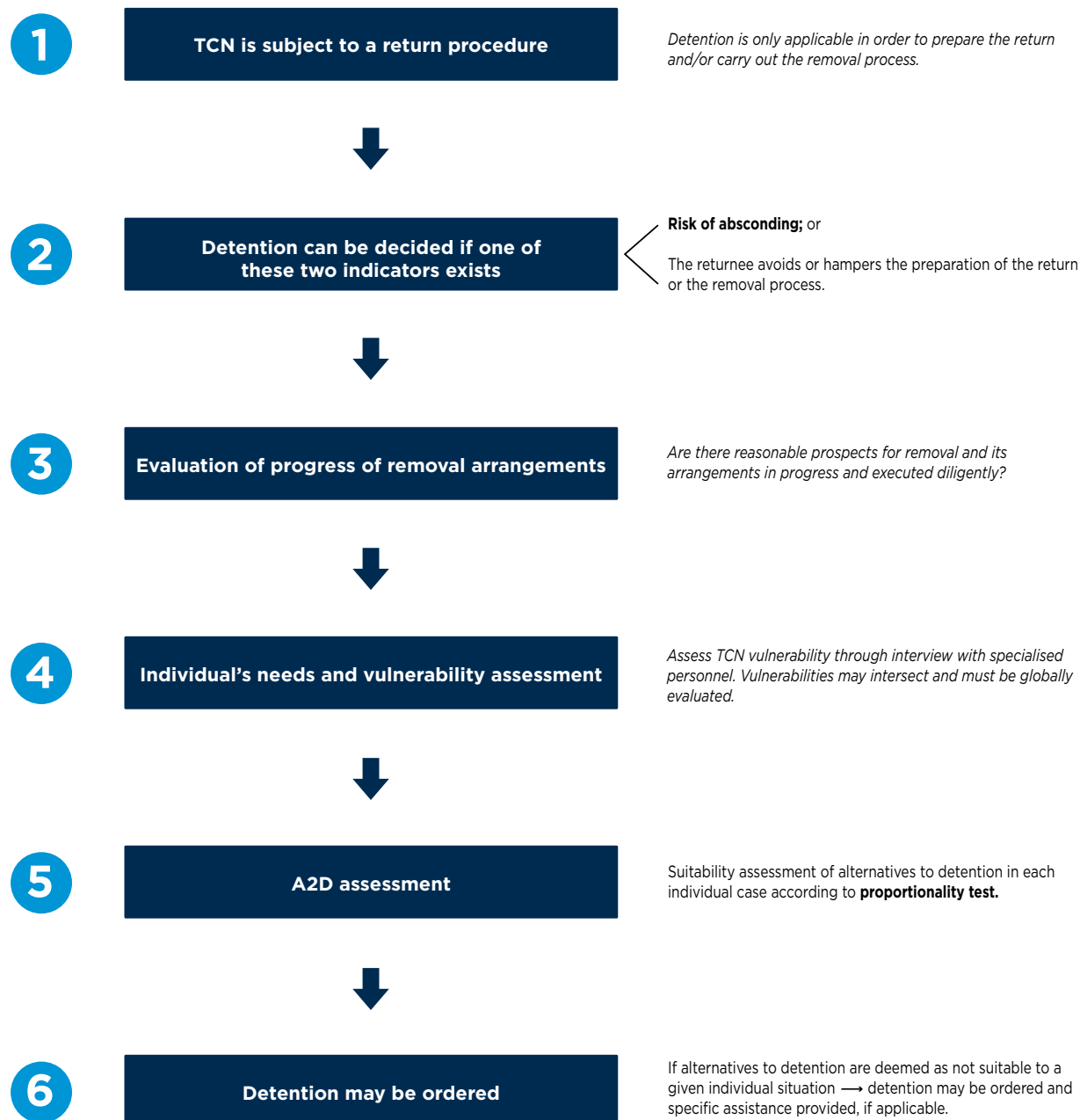
<sup>49</sup> Although all these factors are presented under a linear/sequential perspective for explanatory purposes, they all constitute a part of the same integrated process, which is taking a decision on whether detention is applicable or not in a given individual situation.

## Detention

3. Evaluation if removal arrangements are in progress and executed with due diligence, and if they can be carried out with reasonable perspective;
4. Individual's needs and vulnerability assessment;
5. *Proportionality test* - Assessment on if alternatives to detention are suitable to the individual's case, and

evaluation on whether they can be effectively applied to the individual's situation;

6. If none of the alternatives fit the individual situation, then detention or release may be decided, as well as the specific assistance needed (if any).



## 2.2 Practices

### 2.2.1 Detention procedure

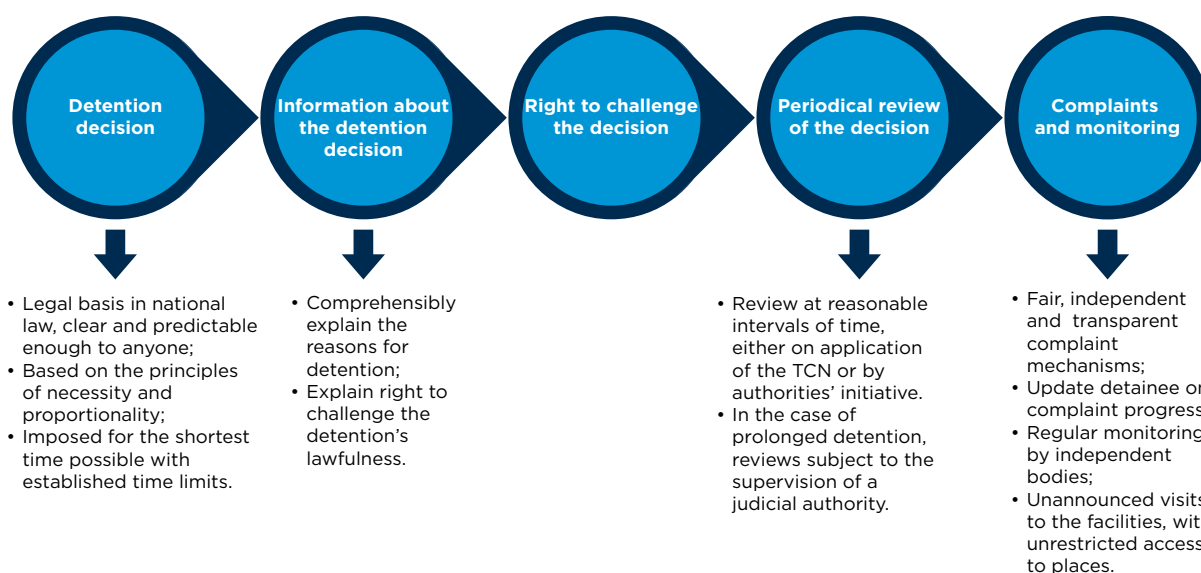
Deprivation of liberty in the return context should not be understood as detention or imprisonment in criminal cases and should not be punitive. It can only be used as an **administrative measure** in order to prepare return and/or carry out removal, and should be imposed solely as a measure of last resort. Furthermore, it must guarantee respect for fundamental rights<sup>50</sup>. The following paragraph is based on CoE 2023 report<sup>51</sup>.

According to the CoE, the national competent authorities should comply with the following aspects when detaining TCN due to their irregular status in a given MS:

- a. The detention decision must have a legal basis in national law and be clear and predictable enough to anyone;
- b. The detention decision must be taken by a competent authority, under national law;
- c. The detention must respect the principles of necessity and proportionality regarding the aim pursued;
- d. Detention should be imposed for the shortest time possible and under no circumstance should

immigration detention be for an unlimited period of time;

- e. Perform a vulnerability assessment;<sup>52</sup>
- f. Consider if the existing alternatives to detention could be more suitable and applicable to the individual situation;
- g. Explain, to the returnee, the legal basis and the reasons underlying the detention decision in a manner and language they may understand;
- h. Inform the returnee of the possible duration of the detention measure;
- i. Inform the returnee on their rights and obligations, namely the right to challenge the detention decision and make sure they have access to the means to effectively exercise such legal remedies to its full extent;
- j. Detention shall be reviewed at reasonable intervals of time either on application of the TCN concerned or by authorities' initiative. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority. Safeguards also include the availability of legal advice and of judicial review.



<sup>50</sup> Recital 17 of the Return Directive.

<sup>51</sup> Council of Europe - Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), op. cit. Other relevant sources on detention are UN General Assembly, [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), resolution 43/173, 9 December 1988; Council of Europe - European Committee for the Prevention of Torture, [2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991](#), 13 April 1992; Council of Europe, [Twenty Guidelines on Forced Return](#), September 2005.

<sup>52</sup> Such vulnerability assessment aims not only to detect whether the persons concerned present a particular vulnerability which could preclude detention, and, therefore, to consider whether an alternative measure could be applicable instead, but also to assess if they could be in the presence of a child, circumstance under which an age assessment should be conducted in line with appropriate standards and the child's best interests and during which the individual claiming to be a minor should be treated as such until proven otherwise.

### 2.2.2 Risk of absconding

Risk of absconding<sup>53</sup>, as a ground for detention, means the existence of reasons, in an individual case, which are based on criteria defined by national law, to believe that a TCN who is the subject of return procedures may abscond<sup>54</sup>, making his/her whereabouts, therefore, unknown to the competent authorities. Accordingly, the Return Directive, by not defining the grounds to establish it, provides to MS the full discretion to define the criteria for determining the risk of absconding.

The existence of a risk of absconding shall be determined on the basis of an **overall assessment of the specific circumstances of the individual case**, which can take into account the following objective criteria intended as a guiding reference. MS may adopt other objective criteria deemed adequate to achieve this same goal.

Set of possible criteria for determining the risk of absconding:

Objective criteria	Behavioural indicators
Lack of documentation proving identity	Explicit expression of intent of non-compliance with return-related measures applied
Lack of residence, fixed or reliable address	Non-compliance with a return decision, including with an obligation to return within the period for voluntary departure
Being subject to a return decision issued by another MS	Refusal to provide fingerprints as required by EU or national law
Existence of conviction for one or several criminal offences in any of the MS (to which an abstract period of deprivation of liberty equal or superior to 2 years is foreseen by law in the current MS regarding the crime(s) for which he/she has been convicted, even though the conviction may have been suspended in its execution)	Refusal to provide the identity or providing a false one
Ongoing criminal investigation and proceedings, for which an abstract period of imprisonment of at least two years is foreseen in current MS, regarding the crime or sum of crimes for which they are being investigated	Refusal to cooperate in contacting the country-of-origin competent authorities with regards to the determination of their identity and issuance of travel documents
Use of false or forged identity and travel documents, destruction or disposal of existing documents	Opposing violently or fraudulently the return procedure
Filing in manifestly unfounded or fraudulent applications for legal stay	
Refusal to comply with an existing entry ban imposed by any of the MS	
Non-compliance with previously imposed alternatives to detention	
Having previously absconded in the scope of the current return procedure or past ones, including in other Member States	

<sup>53</sup> Absconding, in the assertion of Article 2(12) of the Reception Conditions Directive [Directive (EU) 2024/1346 of the EP and of the Council of 14 May 2024] “means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without permission from the competent authorities, for reasons which are not beyond the applicant’s control.”

<sup>54</sup> Article 3(7) of the Return Directive.

The above listed criteria should be counterweighed with special circumstances that may lead to waiving the decision to detain a TCN and should, therefore, always be considered in the scope of the decision-making process of whether to detain or not a TCN for the purpose of return proceedings. Amongst them are:

1. The principle of *non-refoulement*<sup>55</sup>;
2. Belonging to a vulnerable group, including children;
3. The prospects to successfully remove the concerned TCN;
4. The state of health of the TCN concerned<sup>56</sup>;
5. Family life.

### 2.2.3 Detention facilities

Detainees under administrative detention must not, under any circumstance, be subject to torture and inhuman or degrading treatment or punishment and must have their physical and mental well-being protected. MS' competent authorities should ensure that conditions of detention meet minimum standards and comply with the obligations according to the ECHR, CFR and the Return Directive.

A detention facility is a specialised facility used for the detention of TCN in accordance with national law relating to migration and asylum, different from ordinary criminal prisons<sup>57</sup>. Such facilities include detention centres, reception centres, airport international zones and transit zones' holding facilities, etc.

To ensure the suitability of the detention premises, the following should be observed<sup>58</sup>:

1. **Avoidance of a carceral or prison-like** structural design;
2. Adoption of an **open regime** with avoidance of restrictions on movement unless order and/or security concerns would arise and advise otherwise;
3. Respect the **hosting capacity** of the premises to prevent overcrowding;
4. During the night, ability to **turn off artificial light and/or to block the natural one**, as to keep a healthy sleeping hygiene;
5. **Accommodate men and women separately** to guarantee their privacy;
6. Respect the **principle of family unity** unless it is deemed by the competent authorities such principle is not in their best interest or if they do not consent; in the cases of families with children, the child's best interests should be primarily considered. Families with children, as well as unaccompanied children, whenever possible and as a standard, should be provided with facilities separated from the other detainees;
7. Ability to receive and store **private documents and correspondence**, without limiting private life;
8. Adequate **furnishing**, lighting, temperature control and circulation of fresh air;
9. **Sanitised living spaces** in a state of good repair;
10. Adequate and **sufficient number of facilities for rest** and needs of nature;
11. Available **facilities to exercise**, including outdoors.
12. **Guarantee 24/7 security services** in a way to **protect and promote the safety and security** of all **detained persons and staff**.

<sup>55</sup> As an overarching legal obligation derived from international refugee and human rights law, the principle of non-refoulement precludes States from initiating return procedures for individuals to countries or territories where it is assessed that they would face a real risk of persecution, torture, inhuman or degrading treatment or any other human rights violation (adapted from EMN's definition: EMN Asylum and Migration Glossary, [Non-refoulement](#)).

<sup>56</sup> According to BEL, the state of health of a TCN does not mandatorily obstructs return. Such persons can be referred to the special needs program.

<sup>57</sup> EMN Asylum and Migration Glossary, [Detention facility](#).

<sup>58</sup> Council of Europe - Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), op. cit., p. 35-36 and 73.

## 2.2.4 Complaint mechanisms and independent monitoring

Every person must hold the right to complain about any abuse they may face in detention and to have such complaints effectively investigated without unreasonable delay<sup>59</sup>. To ensure this right:

1. **Fair, independent and transparent complaint mechanisms** and monitoring processes must be in place. They should be confidential and freely accessible to all detainees;
2. **Detainees should be informed** of their right to file a complaint and the associated procedure;
3. The detained person should be **kept up to date** concerning the progress of the complaint;
4. A fair, independent and transparent **review system** should be in place to allow to challenge any decision taken in the scope of the complaint filed in.

To promote and guarantee that detention conditions meet international minimum standards, all detention facilities should be subject to **regular monitoring** conducted by independent, internal or external<sup>60</sup>, monitoring bodies and trained personnel, which<sup>61</sup>:

5. Should be permitted to make regular unannounced and unsupervised visits to the detention facilities, with the freedom to inspect any site or document and to speak to any detained person in confidence;
6. Should have full and unrestricted access to all places and facilities as well as to all detained persons and personnel in the premises;
7. Should be founded on principles of independence from the authorities, integrity, objectivity, visibility, impartiality and transparency.

Such monitoring bodies' activities should encompass the detention centres personnel's compliance with internal and national legal framework, regulations and policies governing detention conditions; the treatment conferred to all detained persons according to the highest international human rights' standards; and report to the competent authorities on any concerns they identify, while implementing follow-up procedures to monitor the progress of any remedial actions recommended or required.

Having a mixture of both national and international bodies as **external independent bodies** is considered to be a good practice<sup>62</sup>.

## 2.2.5 Detention services

When it comes to services that should ideally be made available in the detention centres, the following are to be considered<sup>63</sup>:

1. **Multidisciplinary teams** composed of psychologists, doctors, psychiatrists, nurses, socio-cultural mediators, educators and security staff working together in the detention centres, preferably **inhouse**, minimising the security risks related to the transfer of detainees to other facilities;
2. **Return and reintegration counselling** - specialised staff in advising and informing TCNs on the prospects of pending and/or future proceedings, including but not limited to the following: possible legal avenues to remain in the MS; obligation to leave the country in the scope of the return procedure, and the consequences of not leaving; existing return support schemes; information on the situation in the country of origin and the potential prospects for the TCN for a new start in the country of return.
3. Availability and access to **legal assistance and interpretation services**;
4. **Entitlement** to receive **visits**, namely, but not limited to, of family members, friends, lawyers, representatives from international bodies/organisations and NGO;
5. **Availability of assistance**, namely health services including, but not limited to, emergency healthcare, mental health and psychosocial support, either

<sup>59</sup> Article 3 ECHR, and Council of Europe – Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), op. cit., p. 79.

<sup>60</sup> The members of an external independent board shall be appointed by a competent public authority, separate from those responsible for the maintenance and operation of the detention facility.

<sup>61</sup> Council of Europe – Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), op. cit., p. 79-83.

<sup>62</sup> Council of Europe – Committee on Legal Co-operation, [Guide for practitioners on the administrative detention of migrants and asylum seekers](#), op. cit., p. 82.

<sup>63</sup> Practices and experiences shared by MS in the scope of EMN's 4th Workshop of Representatives of Detention Centres in the EU, 27-28 September 2022, Luxembourg.

full-time or on call, depending on the type of assistance needed;

6. **Availability of activities, including for children** - such as physical activities, videogames, library, English and other language lessons, guitar lessons, etc. - so as to contribute to individuals' mental health and wellbeing as well as preventing potential conflicts and violence;
7. **Outdoor common areas** available so detainees will not feel imprisoned all the time;
8. **Access to internet/intranet and phone** (with potentially limited access to social media apps and email inbox, for security reasons, if deemed necessary and decided on an individual basis);
9. **Rooms for conducting religious rites.**

Additionally, the **digitalisation of services** in detention centres could be further developed and expanded:

1. Having one **common database for all the detainees** in a given MS, independently of the detention centre in which the migrant is placed<sup>64</sup>;
2. **Centralized data repository at MS local level**, containing information about detainees: picture, fingerprints, family members, past and current behaviour, criminal background, spoken language(s), list of personal belongings, record of visits received, etc<sup>65</sup>;
3. **Virtual Interview Rooms** to interact with psychologists, doctors, lawyers, asylum officers, return specialists (RS) and engage in online court hearings/sessions;
4. **Digital visits;**
5. Introduction of a **self-service portal** for detainees to schedule visits, choose the meals and purchase items within the established weekly or monthly ceiling<sup>66</sup>.

<sup>64</sup> In line with the requirements for alternatives to detention described in the RECAMAS model.

<sup>65</sup> Ibid. In full compliance to applicable EU law on data management and protection, and guarantees for the data subjects.

<sup>66</sup> A similar service was tested in one of the BEL detention centres (programme also used in prisons) but ended not being used by the detainees, which would only use the internet for other purposes.

## 3. Good Practices on alternatives to detention

### 3.1 Legal framework

#### 3.1.1 Alternatives to detention within the ECHR

There is no universally agreed-upon definition of alternatives to detention and neither the ECHR provides for a legal definition of such alternatives.

Notwithstanding, the consideration of alternatives to detention is linked to and derives from the right to liberty and security of person which is enshrined in all core international and regional human rights instruments,<sup>67</sup> including in Article 5 of the ECHR.

Therefore, the consideration of such alternatives in the context of migration, as a positive obligation stemming from the provisions laid down by Article 5(1) (f) of the ECHR, must adhere to the general criteria developed in the ECtHR's case law.

Despite the lack of a legal definition of alternatives to detention in international human rights standards, alternatives to detention are understood as "all community care measures or non-custodial accommodation solutions that are less restrictive than detention"<sup>68</sup>.

Accordingly, alternatives to detention shall respect the right to personal freedom and shall not, as a principle, entail a deprivation of liberty. However, in particular situations, it may prove difficult to distinguish between detention and some alternatives to detention, considering the thin line distinguishing deprivation from restriction of freedom of movement under Article 2 of Protocol 4 ECHR,<sup>69</sup> which may ultimately lead to the application of alternative forms of detention instead of proper alternatives to detention. In fact, according to the ECtHR, the difference between deprivation of liberty and restriction of liberty of movement is one of degree or intensity, and not one of nature or substance. The Court considers the following factors as relevant<sup>70</sup>:

1. **Applicants' individual situation** and their choices;
2. Applicable **legal regime of the respective country** and its purpose;
3. **Relevant duration**, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events;
4. **Nature and degree of actual restrictions** imposed on or experienced by the applicants.

<sup>67</sup> Adapted from: Council of Europe – Steering Committee for Human Rights (CDDH), [Legal and Practical aspects of effective alternatives to detention in the context of migration](#), par. 23.

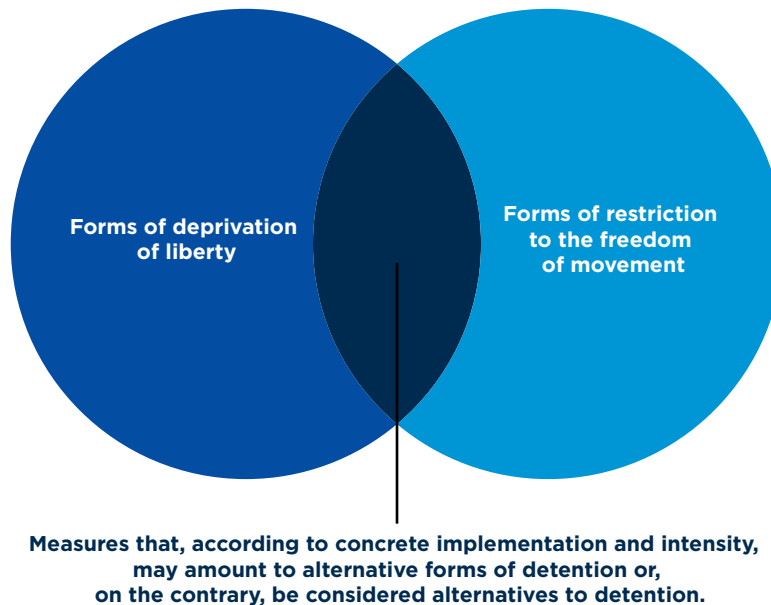
<sup>68</sup> See UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), [General Comment No. 5 \(2020\) on migrants' rights to liberty and freedom from arbitrary detention](#), op. cit. par. 58. See also UN Working Group on Arbitrary Detention, [Revised Deliberation No. 5 on deprivation of liberty of migrants](#), 7 February 2018.

<sup>69</sup> Greece and Switzerland, being signatories of the Schengen acquis, have neither signed nor ratified this protocol.

<sup>70</sup> ECtHR, [R.R. and others v. Hungary](#), 2 March 2022, 36037/17, par. 74.

To better exemplify what has just been said, the Court considers house arrest or custody falling within 'deprivation of liberty'<sup>71</sup>. The same is considered when a certain number and combination of highly restrictive measures is applied to an individual. The type and severity of such measures, combined, may result in a factual

deprivation of liberty. On the other hand, such measures, individually considered, or similar measures downgraded in its severity, even if combined, may result in being considered merely a restriction of movement/liberty and, therefore, an alternative to detention.



### 3.1.2 Alternatives to detention within the EU law framework

The Return Directive does not define alternatives to detention, nor requires establishing a definition in national law. It does not provide a list of them either. However, Article 7(3) of the Return Directive, in relation to voluntary departure, states that MS may apply certain obligations to prevent absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place, which may be imposed for the duration of the period for voluntary departure<sup>72</sup>.

Article 15(1) of the Return Directive, although not defining nor providing a list of alternatives to detention, states the proceeding authority may only keep a TCN in detention unless other sufficient but less coercive measures can be applied effectively. Such legal embedment implies a positive obligation on the MS's side, as to include in their national legislation the necessary provisions to make alternatives to detention available in the the scope of a

return procedure, thus allowing for the adoption of the least coercive measure deemed necessary and effective to enforce the removal of the concerned TCN.

In practice, it implies carrying out an individual assessment of each specific situation, aiming at applying the least restrictive but still effective measure on an individual's liberty, whenever grounds for detention have been established but the same result may be achieved by resorting to less coercive measures. Such individual assessment should balance the risk of absconding or avoiding or hampering the preparation of return or the removal process with the negative impact of such deprivation or restriction of liberty on people, especially in the presence of identified or potential vulnerabilities for each TCN.

In the absence of an EU law framework definition, EMN, based on Article 8(4) of the Directive 2013/33/EU

<sup>71</sup> ECtHR, [Buzadji v. the Republic of Moldova](#) [GC], 5 July 2016, 23755/07, par. 104.

<sup>72</sup> Article 8(4) of the Reception Conditions Directive lists the same measures as alternatives to detention.

(Reception Conditions Directive)<sup>73</sup>, referred to alternatives to detention as non-custodial measures used to monitor

and/or limit the movement of TCN to ensure compliance with international protection and return procedures.

## 3.2 Practices

In relation to alternatives to detention, Council of Europe (CoE), United Nations High Commissioner for Refugees (UNHCR), Office of the United Nations High Commissioner for Human Rights (OHCHR), and the UN Special Rapporteur on Human Rights of Migrants, recommend that alternatives to detention:

1. Are **considered before imposing detention**;
2. Must **respect human dignity**;
3. Must be **necessary and proportionate**, and based on the principle of minimum intervention when it comes to its imposition: the least intrusive and restrictive measure possible in the individual case should be applied;
4. Be subject to a **scaling system**, established by law, with the imposition of the least intrusive measure on

the individual case, and analysing proportionality and necessity of each measure;

5. Are precisely **regulated by law**, to avoid arbitrary restriction on the freedom of movement, as well as criteria for their application and the authority responsible for their implementation. Policy implementation guidelines for all measures may be needed as well;
6. Are subject to an **initial** and a **periodic automatic review** by a judicial or other independent authority, for periods established in law;
7. When issued, should be accompanied by an **explanation of the reasons**, and of the conditions in the event of failure to comply;
8. If a combination of measures is imposed, they should be **cumulatively assessed**, as they may amount to alternative forms of detention;
9. Are subject to **independent monitoring and evaluation**.

### 3.2.1 Existing alternatives

The following alternatives to detention classification is based on reports from EMN<sup>74</sup>, CoE<sup>75</sup> and UNHCR<sup>76</sup>, providing specific information on each measure. The majority of MS have already established some

alternatives to detention in their national legislation or at the administrative level, which are often also applied in practice. Alternatives to detention may be combined to increase their effectiveness<sup>77</sup>.

<sup>73</sup> Directive 2013/33/EU is to be meanwhile repealed, with effect from 12 June 2026, by [Directive 2024/1346/EU of the European Parliament and of the Council of 14 May 2024, laying down standards for the reception of applicants for international protection \(recast\)](#), OJ L series, 22.5.2024, p. 1-35.

<sup>74</sup> EMN, [Detention and alternatives to detention in international protection and return procedures](#), op. cit., (in short, EMN 2021 report) and EMN, [Detention and alternatives to detention in international protection and return procedures \(Country national reports\)](#), op. cit.

<sup>75</sup> Council of Europe - CDDH, [Legal and practical aspects of effective alternatives to detention in the context of migration](#), op. cit., par. 180; Council of Europe - CDDH, [Alternatives to Immigration Detention: Fostering Effective Results - Practical Guide](#), 18 June 2019; Council of Europe, [Alternatives to Immigration Detention: Fostering Effective Results PRACTICAL GUIDE](#), 18-21 June 2019.

<sup>76</sup> UNHCR, [Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#), April 2011; UNHCR, [Options Paper 1: Options for governments on care arrangements and alternatives to detention for children and families](#), 2015; UNHCR, [Options Paper 2: Options for governments on open reception and alternatives to detention](#), 2015. See also UN Migration Network Working Group on Alternatives to Detention, co-led by UNHCR: UN Migration Network Working Group on Alternatives to Detention, [Alternatives to Detention](#).

<sup>77</sup> Other relevant sources on alternatives to detention are; UNHCR, [Detention Guidelines. Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention](#), 2012; UN Special Rapporteur on the human rights of migrants, [Report of the Special Rapporteur on the human rights of migrants](#), A/HRC/20/24, 2 April 2012, par. 55; EU Fundamental Rights Agency, [Alternatives to detention for asylum seekers and people in return procedures](#), 2015. Interesting inputs may come from documents related to non-custodial measure in the criminal realm: UN General Assembly, [United Nations Standard Minimum Rules for Non-custodial Measures \(The Tokyo Rules\)](#), resolution 45/110, 14 December 1990, and European Commission, [Commission Recommendation \(EU\) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions](#), OJ L 86, 24.3.2023, p. 44-57.

[Annex I](#) lists the available alternatives in MS. [Annex II](#) provides a table with advantages and challenges of the different alternatives to detention.



### 3.2.1.1 Reporting to authorities at regular interval

Reporting obligations means the obligation imposed to a TCN to periodically report the presence to migration or police authorities; the reporting interval may vary from 24 hours up to five weeks. In some MS it is determined on a case-by-case basis by the authority imposing the measure.

or even the immediate accompaniment to the border in cases where an enforceable return decision has been taken and no obstacles remain to the return of the TCN to the country of origin. Such non-compliance may also prevent the TCN to access alternatives to detention in a future return proceeding.

During the return proceedings, TCN should be duly informed and made aware of the possible consequences in the event of failing to comply with this alternative measure. Such consequences may range from a fine to the imposition of a harsher alternative to detention itself,

This alternative may also be implemented by telephone, or via specific mobile phone applications, electronic surveillance devices<sup>78</sup>, and an email with the possibility to identify the sender<sup>79</sup>.



### 3.2.1.2 Requirement to reside at a designated place or within a geographical area

The measure refers to the obligation imposed to a TCN to remain at a designated place/address or within a certain area, municipality, etc., as appointed by the authorities.

The subsidiary obligations set out along with the measure determine how the measure affects the individual's liberty:

The designated place may be:

1. An open or semi-open facility (either state-run or state-funded);
  - a. **Open centre** means a facility where TCN may be required to reside, without restriction on the freedom of movement, and, e.g., to report their presence every few days;
  - b. **Semi-open centre** means a facility where TCN are required to stay for certain periods during the day, while not being obliged to abide by such limitation for the remaining time of the day, or with prior authorisation needed for overnight absences;
2. A hotel/hostel;
3. A private address, which TCN are free to determine before the measure is imposed;
4. A wider and defined geographical area (i.e. a municipality or a region).

1. Obligation not to leave the place during night;
2. Prohibition to go to some places or to visit/contact specific individuals;
3. Limited perimeter or area of movement.

**Families and unaccompanied children** should be accommodated in special facilities to address their special needs:

- **Families** should be offered accommodation to maintain **private family life**;
- **Accompanied children**: child-friendly accommodation adapted to children's needs and age, separated from non-related adults. Children should be entitled to free and unrestricted access to age-appropriate activities;
- **Unaccompanied children**, whenever involved in a return procedure, should be provided with **family-based care**, allowing them to create significant relationships with significant adults and to live in stable and caring environment. Unaccompanied children's best interests is at the center of all relevant actors (health, education, welfare, social services, police, immigration, civil society, family and community), who cooperate and work in a comprehensive manner. Special needs are to be specifically addressed. Host families are selected and trained before hosting children<sup>80</sup>.

Although these options are overall less restrictive than detention, house custody is an alternative form of detention whereby the same limits and safeguards apply.

<sup>78</sup> Data protection issues are addressed under paragraph 3.2.1.8 Electronic reporting/monitoring.

<sup>79</sup> LTU (EMN 2021 report, p. 18).

<sup>80</sup> For detailed guidelines, see Council of Europe, [Guide on family-based care for unaccompanied and separated children](#), 10 December 2021. See also UN General Assembly, [Guidelines for the Alternative Care of Children](#), 24 February 2010, A/RES/64/142.



### 3.2.1.3 Obligation to surrender a passport, travel, or identity document

This alternative measure refers to the obligation of TCN to surrender their passport, identity or travel documents to the authorities, provided they are holding such a valid document.

This measure aims at preventing the TCN to leave the country, as they would not carry any document required for further travel.

However, MS should ensure that TCN is provided with an alternative identity document to allow their identification in other daily life needs<sup>81</sup>. Under international human rights standards, the right to identity is central to the enjoyment of all other rights<sup>82</sup>.



### 3.2.1.4 Obligation to communicate an address

Obligation to communicate an address to the authorities relies on the requirement that TCN are able to provide the authorities with a stable address in the concerned MS. Such requirement usually includes requesting permission for absences and address changes.

This entails a higher level of liberty. The TCN is required to communicate their residence address to migration,

border, or police authorities, and to report any change or absence within 24 hours<sup>83</sup>.

In some MS<sup>84</sup>, this obligation is not an alternative, as it is a general procedural obligation or a prerequisite for the international protection application.



### 3.2.1.5 Release on bail, deposit or financial guarantee (with or without sureties); sponsorship

The returnee is released against a payment of a sum to guarantee their appearance in the return procedure. Bail differs from deposit, as **bail** presupposes that the person was initially detained and released after payment of the sum, whereas it is referred as **deposit** when the person has not previously been detained. This may happen through a third party's **surety**. **Sponsorship** means a person, holding residence in or nationality of the MS, or organisation that pays for or guarantees compliance with return procedures.

The amount requested typically depends on the individual circumstances of the TCN and is decided on a case-by-case basis, as setting a fixed amount may lead to discrimination. Some MS have a predetermined range or minimum amount for bail. The imposed sum should be reasonable, without putting an excessive burden on the individual. The sum might be paid by the TCN or by other individuals or organisations.

Failure to comply with complementary alternative measures (e.g. reporting obligations) may result in the transfer of ownership of the deposited sum to the national authorities.



In **Slovenia** and **Lithuania**, sponsors have to provide accommodation and cover the daily economic expenses of the TCN. In addition, in Slovenia sponsorship includes medical expenses and return procedure expenses<sup>85</sup>.



In **Estonia**, sponsors have to guarantee the TCN' accommodation, costs of their stay at the detention centre, and departure. If the TCN are unable to bear the costs, the sponsor has to compensate for a sum up to 32.000 EUR, for which a precept will be issued by the competent administrative authority.

<sup>81</sup> UN Special Rapporteur on the human rights of migrants, [Report of the Special Rapporteur on the human rights of migrants](#), op. cit., par. 15.

<sup>82</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), [General Comment No. 5 \(2020\) on migrants' rights to liberty and freedom from arbitrary detention](#), op. cit., par. 95.

<sup>83</sup> CYP, CZE, EST require reporting absence from place of residence for a period longer than three days (EMN 2021 report, p. 19).

<sup>84</sup> HUN, LUX, NLD, POL, SVK (EMN 2021 report, p. 20).

<sup>85</sup> Bloomfield, A., Tsourdi, E., Pétin, J., & De Bruycker, P., [Alternatives to immigration and asylum detention in the EU. Time for implementation](#), Odysseus Network, January 2015, p. 93.



### 3.2.1.6 Case management programmes

Case management, also referred as case workers' programme, is a measure where TCN, assisted by case workers<sup>86</sup>, live independently in the community, in dedicated facilities or in private houses. Case workers assist the individual during the return procedure: share updated information about the proceedings, provide psychological and social support, counselling and planning, refer the individual to lawyers and help them with logistical issues. The overall aim is to develop a one-to-one trust-based relation with the TCN.

The case worker should be a different person from the one taking decisions related to the immigration status

and from the one tasked with checking compliance of reporting measures, so as to build trust and cooperation in the process and to foster information sharing<sup>87</sup>.

In these cases, accommodation may consist of private apartments or family units, in open facilities or living independently in the community (i.e. community management). Depending on the accommodation facility, the TCN might be required not to leave the premises during night or in a set range of time; this condition, under certain circumstances, may amount to an alternative form of detention or interfere with other rights<sup>88</sup>.



**Belgium - Individual Case Management (ICAM) programme.** Within the Alternatives to Detention Department, the ICAM programme has been established, aiming at providing coaching to potential returnees who are not in detention<sup>89</sup>. This involves families with minors, irregularly staying migrants with a known address, TCN without a known address that are intercepted by the police and minors staying at a relative's address. This coaching is offered in residential settings as well as in separate regional counters where individuals are invited by a coach<sup>90</sup>.

In 2023, 7651 invitations were sent for the initiation of an ICAM trajectory; invitations may be addressed to people or families. Out of those, 3994 people showed up for a meeting with an ICAM coach (52.2%). Among the remaining people who did not show up for a meeting (47.2%), 973 home visits were conducted by ICAM coaches.

**Results in 2023.** In 2023, ICAM was able to find a sustainable future perspective for 612 people, resulting in residence or return. Of these, 398 people returned to their country of origin or to the responsible member state for processing their request for international protection. For 214 people, residence on the Belgian territory was obtained.

The ICAM trajectory is situated between the issuance of a Return Decision and compliance with it. Not complying with an ICAM invitation does not automatically result in a presumption that such person is absconding.

Inviting and conducting a coaching trajectory with migrants in irregular stay is seen as a preliminary and preventive step to avoid absconding and to work with the migrant to find solutions for their irregular stay, whether this is in the country of origin or on Belgian territory. This step aims to inform migrants about their irregular status, rights and obligations, and the possible consequences and risks of irregular stay. For more details on the procedure, see [Annex III](#).

In May 2024, Belgium enacted the "Proactive Return Policy" law. This legislation, among other provisions, imposes a **cooperation obligation** on migrants to cooperate in the organisation of their return when they are issued with a return decision. Non-compliance with this obligation, such as failing to respond to an ICAM invitation, may be considered as an element to evaluate the "risk of absconding".

<sup>86</sup> Case worker may be a civil servant or a civil society representative coming from the community or NGO, or within jointly-run programmes.

<sup>87</sup> UNHCR, [Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#), op. cit., p. 87.

<sup>88</sup> Council of Europe - CDDH, [Legal and practical aspects of effective alternatives to detention in the context of migration](#), op. cit., par. 223.

<sup>89</sup> For more information see IBZ, [Alternatives to Detention](#) and IBZ, [ICAM](#).

<sup>90</sup> Information collected during a bilateral meeting.



**Denmark – Danish Outreach Programme.** Denmark established a separate Outreach Unit within the Danish Return Agency in 2021, notably to address returnees who have remained in Denmark for a long time post their final return decision due to circumstances that prevent a forced return operation (“long-term-stayers”).

In Denmark, TCN who do not comply with the return procedure after receiving their final return decision have to live in an open return centre until their eventual return. The local presence of 20 employees from Outreach Unit in “open return centres” allows for regular interviews and return counselling, and close cooperation with the individuals during the actual planning of a return operation, maintaining close collaboration with civil society organisations and other authorities.

The Unit also offers open walk-in counselling sessions several days per week, where the returnees can ask questions, especially concerning their return process<sup>91</sup>.

At the open return centres, the returnees are to continuously observe and uphold a number of duties, including a “duty to reside”, a “duty to notify” and a “duty to report”, to help the authorities keep track of the returnees’ whereabouts. If a returnee does not show up for a regular scheduled interview, a locally present caseworker from the Outreach Unit has the opportunity to seek and reach out to the returnee at the open return centre. Experience shows that local presence, easy-to-reach caseworkers, access to financial reintegration support, trust-based relationship building, and the inclusion of the returnee in the planning of their own return operation are among the key elements to encourage long-term-stayers to comply with their return process and pave the way for sustainable return operations.



Since 2020, **Poland** has developed the *institutional assistance programme*, for TCNs with vulnerabilities. The programme is granted to foreigners whose stay in a detention centre may constitute a threat to life or health, or whose psychophysical condition may raise the suspicion that they have been subjected to violence, and whose return procedure is ongoing or removal is pending.

The basis and scope of the assistance is defined in a *decision on granting social assistance, medical and psychological care*. A contractor selected by the return authority (Border Guard) provides the service of organising the benefits in question, including accommodation, meals, purchase of cleaning products, clothes, shoes, travel by public transport, medical consultations, hospital stay, psychological consultations and psychotherapy. The TCN is obliged to reside at a designated place indicated in the decision; other alternative measures may also be jointly applied, such as reporting at regular intervals or surrendering the travel document.

A social care worker is assigned to each TCN. The TCN is also constantly in contact with the return authority,

which is competent for granting and coordinating actions in the area of institutional assistance.

There are currently 139 accommodation places available for TCN (50 places in a separate building and 89 in flats in various locations).

The duration of the financing of social assistance is limited to 6 months; in cases justified by the TCN’s health, this period may be extended.

Return counsellors (Return Specialists and IOM representatives) work with persons benefiting from institutional assistance and conduct counselling sessions. These TCN can benefit from voluntary return and reintegration assistance.



In **United Kingdom**, the **Refugee and Migrant Advice Service (RMAS)** pilot<sup>92</sup>, organised with UNHCR collaboration, intended to provide a community-based, engagement-focused and information-based approach. Specifically, it aimed at helping people to make informed decisions about their immigration options and move towards resolving their cases, without the need for detention; at providing personal stability for individuals while they make those decisions; at promoting voluntary returns and support individuals to take up this option.

Between June 2020 and June 2022, 84 individuals participated in the project, for about 318 days each.

They were offered support by caseworkers in health and mental wellbeing, financial issues (e.g., open a bank

<sup>91</sup> This service has proven to be very popular amongst the returnees, with approximately 1220 personal inquiries in 2023.

<sup>92</sup> UNHCR, [Evaluation of the Refugee and Migrant Advice Service’s Alternative to detention pilot](#), 23 August 2023, p. 58.

account), practicalities, social inclusion, medical, legal, education and training, thinking about future after the end of the project.

Identified lessons learnt from the pilot, as indicated in the abovementioned study<sup>93</sup>, included:

1. The importance of cooperation of government with small civil society organisations;
2. The holistic nature of the support provided;
3. The skills, experience and professionalism of the team of caseworkers;
4. Addressing the need for information about options to be provided as early on as possible.



### 3.2.1.7 Return counselling

Return counselling is not commonly considered as an alternative to detention *per se*, although it has been used as such by a few MS. It is intended to be a process, which may be implemented either as voluntary or mandatory. In most MS, return counselling is considered a complementary measure in place within the return procedure, which may be combined with other alternatives to detention. Return counselling may also be seen as an element of case management programmes.

Through return counselling TCN are counselled and provided with information regarding:

1. The best available options for each individual case including information on return and reintegration assistance;
2. The consequences of not leaving the country which may imply a forced return procedure and reduced reintegration assistance.

Return counselling needs to take into due account implications of return and reintegration for migrants' human rights and be tailored to the addressed TCN, especially if families and/or children are involved, taking advantage of the [Frontex booklets for children and for parents/guardians in return](#). Based on this, the form and approach of counselling will be adapted.



### 3.2.1.8 Electronic reporting/monitoring

Few MS developed technology-based alternatives, such as mobile applications or ankle/wrist bracelets to monitor compliance with reporting obligations or residing at a designated residence or within a geographical area. Electronic monitoring may take the forms of proximity sensor or satellite tracking.

The latter is considered the most intrusive and coercive alternative<sup>94</sup>, that could encompass some kind of stigma, as well as interference with their personal freedom and negative psychological effects (as also outlined in [Annex II](#))<sup>95</sup>. These consequences of such monitoring should be thoroughly weighted against its intended benefits to

avoid disproportion in its application. Nevertheless, it should be taken into account that this measure is still less intrusive and restrictive than detention itself and, therefore, would be preferable than being deprived of liberty.

Depending on their implementation, these measures may, however, amount to alternative forms of detention, if, e.g., combined with custodial measures such as house custody. As such, fundamental rights safeguards shall strictly regulate their design and deployment, including to ensure proportionality of monitoring frequency.



**Lithuania** has developed electronically based reporting systems (e.g., mobile phone applications, electronic devices and requests to send an email from an address in a manner that makes the sender identifiable). Failing in complying with this measure would result in court referral under motion to detention.

<sup>93</sup> It should be noted, though, that the reduced sample involved in the study does not allow for a statistically significant reading of its outcomes. Moreover, when looking at the detailed results, it is possible to ascertain that from the overall 84 individuals involved in the study to whom case management was made available, only 6 had some kind of case resolution, which implied an authorization to remain in the country. No voluntary returns or other forms of return was registered.

<sup>94</sup> Bloomfield, A., Tsourdi, E., Pétin, J., & De Bruycker, P., [Alternatives to immigration and asylum detention in the EU. Time for implementation](#), op. cit., p. 103-104.

<sup>95</sup> UN Special Rapporteur on the human rights of migrants, [Report of the Special Rapporteur on the human rights of migrants](#), op. cit., par. 63.



Since 2018, the **Canada Border Services Agency** has implemented and expanded its Alternatives to Detention Program. A different data protection regulatory framework applies in Canada.

1. The former national Voice Reporting program, meanwhile decommissioned in March 2024, enabled TCN to comply with reporting conditions by using voice biometrics to report to the Canada Border Services Agency at a prescribed interval (this system has been substituted by a biometrics client reporting system, called ReportIn in order to tackle several technical limitations identified in the voice reporting system);
2. Officially launched in November 2024, ReportIn is a smartphone application that allows individuals to report to the CBSA through a mobile/smartphone device. The application is available in 16 languages and it uses facial biometrics instead of voice to confirm identity and provides accessibility features not possible in the decommissioned VRS (i.e. persons with hearing impairment or speech difficulties, etc). This application allows for expansion of remote reporting through improved technology, and is intended for individuals that require low to medium levels of risk management and intervention. As of 11 December 2024, 60 clients across the regions have been enrolled and the numbers are growing daily;
3. The Electronic monitoring program uses GPS, cellular and radio frequency to monitor TCN' whereabouts in the community, adopted after a five-year pilot project. Electronic monitoring is an intrusive form of supervision and, as such, its use is limited to individuals that require higher levels of risk management and intervention<sup>96</sup>;
4. The expansion of the alternatives to detention program has led to a decrease of about 39% of TCN in detention when comparing the periods 2017-2018 and 2022-2023;
5. The former Voice Reporting program displayed a high compliance rate of around 95 and 91%, respectively in 2022 and 2023<sup>97</sup>.

Fundamental rights considerations should always overcome any economic consideration. However, considering costs, keeping a TCN in detention in Canada costs between \$400.00 and \$500.00 Canadian dollars per day, by far more expensive than the technology-based alternatives to detention portrayed in the table below.

Technology	Count <sup>98</sup>	Average daily tech cost per person (\$/day) <sup>99</sup>
Former Voice Reporting program (decommissioned)	3 525	5.00
Remote Reporting ( <i>ReportIn app</i> )	60	28.00
Electronic Monitoring	40	50.00
Total	3 625	

### 3.2.2 Assessment procedure and criteria

MS' legislation considers alternatives to detention as the preferred option<sup>100</sup>, rather than detention itself. Alternatives to detention are systematically considered in most MS as part of both their return and international protection procedures, with some exceptions.

Following Article 15 of the Return Directive, once grounds for detention have been considered and before a detention decision is made, **alternatives should be assessed in first instance.**

<sup>96</sup> It is also important to acknowledge electronic monitoring does not directly manage TCN risk, rather supports monitoring compliance of other imposed conditions including curfews and mandatory residency. Moreover, pairing electronic monitoring with a Bondsperson or High Intensity Community Case Management and Supervision is a mandatory requirement of the program. Besides, electronic monitoring-engaged TCN need to be co-operative.

<sup>97</sup> According to CBSA publicly available data for years 2022 and 2023, respectively - [Annual detention statistics: 2012 to 2024](#).

<sup>98</sup> Number of persons on electronic reporting and electronic monitoring in 2022 - 2022 CBSA publicly available data - [Annual detention statistics: 2012 to 2024](#).

<sup>99</sup> It does not include the costs with the staff necessary to oversee the program on a 24/7 setting.

<sup>100</sup> AUT, BEL, BGR, CYP, CZE, DEU, EST, GRC, FIN, FRA, HRV, HUN, IRL, ITA, LTU, LUX, LVA, MLT, NLD, POL, PRT, SWE, SVK (EMN 2021 report, p. 23).

MS carrying out the assessment of the existence of grounds for detention and for alternatives to detention in the same decision<sup>101</sup>, and both procedures being by the same authority, is considered to be a good practice.

The **application of alternatives to detention** is based on the **evaluation of TCN’s updated personal circumstances**, globally considered, to determine the most suitable measure<sup>102</sup>, according to the criteria described below. The **individual vulnerability assessment** should be based on broadly accepted guidelines and carried out by specialised and trained staff. Staff may avail of tools to help finding and addressing hidden vulnerabilities, but still conducting an overall assessment of the individual situation.

Before imposing a specific alternative to detention or detention, the **whole gradient of measures should be considered**, from the least impacting to the most, and the decision needs to explain why the less impacting ones are not fitting the individual specificities. In all MS, alternatives to detention are examined and decided on a **case-by-case basis** and shall always be the primary intention.

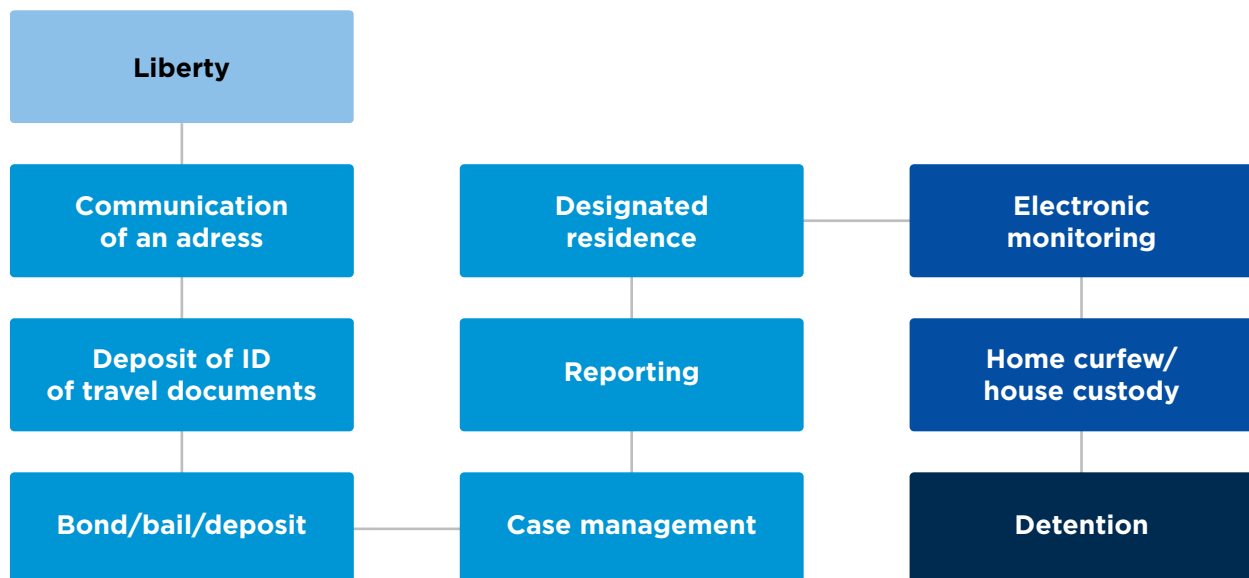
Detention of vulnerable individuals should be avoided to the maximum possible extent.

### 3.2.2.1 The gradient of measures

Before imposing a measure, the whole gradient of measures should be considered, i.e., from the least affecting the right to enjoy freedom of movement to the most, and reasons why less impacting alternatives are not suitable for the individual should be given and explained.

This gradient of measures constitutes a proposal regarding the severity of its impact on the individuals to whom they are to be applied, not a mandatory checklist for the MS authorities to go through thoroughly, also

because most of the MS may not even have at their disposal the full array of alternatives to detention (or even using others not included in the diagram), and the latter may be more or less “severe” depending on how they are implemented. Their position in the list is merely indicative and does not intend to create an additional burden on MS authorities. Without prejudice to that, and acknowledging the same alternative may encompass not only diverse degrees of severity itself, but can also reflect differently in each individual according to one’s specific circumstances, a possible gradient is the following<sup>103,104</sup>:



<sup>101</sup> AUT, BEL, BGR, DEU, CYP, CZE, EST, ESP, FIN, FRA, HRV, HUN, ITA, LTU, LUX, LVA (return procedures only), MLT, NLD, PRT, SVK, SWE (EMN 2021 report, p. 23).

<sup>102</sup> According to the EMN 2021 report, p. 25, IRL is the only exception.

<sup>103</sup> Adapted from UNHCR, [Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#), op. cit., p. 53.

<sup>104</sup> In this chart, return counselling is not represented as most MS consider it as a complementary measure in place within the return procedure and not as a standalone alternative. Impact of case management on the individual highly depends on its implementation conditions. Electronic monitoring and home curfew/house custody may amount to alternative forms of detention on their own or through combination with other restrictions.

### 3.2.2.2 Conditions and criteria

Conditions and criteria based on which the assessment is made should be set out in national law or in regulations, with defined guidelines for the deciding authority or judges. The following assessment criteria based on MS practices may be considered<sup>105</sup>:

**Individual human rights** impact<sup>106</sup>;

- Principles of necessity and proportionality**; the latter also includes TCN's vulnerability and whether the measure would be feasible, sufficient, and the less coercive on the TCN's movement in achieving the aim pursued;

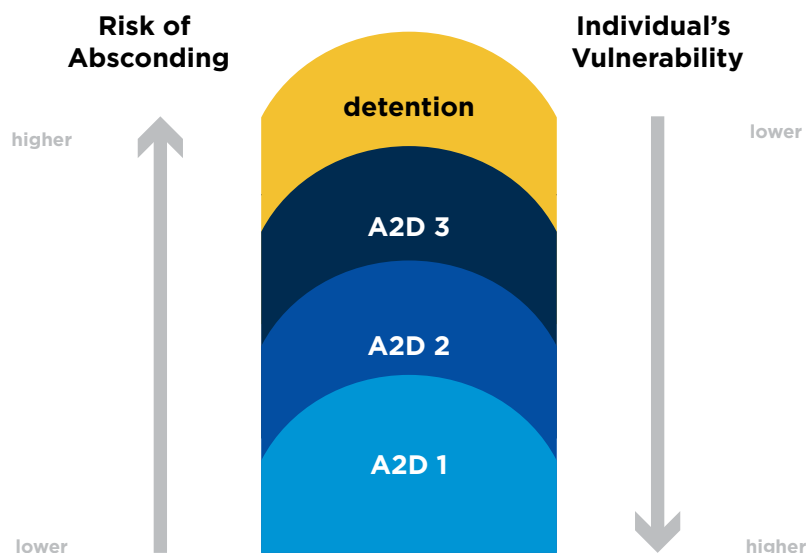
- Likelihood of compliance** with the **measure** and likelihood of **absconding**;
- Suitability** of the **alternative** to the needs of the individual case;
- Other relevant individual circumstances and practical considerations**, such as availability of the particular scheme, social and family ties, possession of travel documents, accommodation, financial means, etc. Cost-effectiveness is used in some MS<sup>107</sup> and combines the likelihood that the return will take place, the spots available in detention<sup>108</sup> and the cost of detention<sup>109</sup>.

### 3.2.2.3 Proportionality and vulnerability

Detention is a last resort measure that may be imposed only after other less coercive alternative measures have been found not suitable to the individual case, thus carrying out a proportionality evaluation. According to researchers, and as reiterated by the CoE, an adequate proportionality assessment is beneficial to achieve a good quality decision-making process. This includes a vulnerability assessment of the TCN, as to an increased level of vulnerability may correspond a lower suitability of applying a detention measure.

All MS take into account vulnerability considerations when deciding whether or not to apply detention or alternative measures<sup>110</sup>.

Provided that risk of absconding and TCN vulnerability assessment should be carried out independently, and one shall not depend on the degree of the other, the overall proportionality assessment may be represented as follows:



<sup>105</sup> Council of Europe – CDDH, [Legal and practical aspects of effective alternatives to detention in the context of migration](#), op. cit., par. 245-246.

<sup>106</sup> 21 MS apply the criteria of the least human rights' affecting measure: AUT, BEL, BGR, CYP, CZE, DEU, EST, GRC, ESP, FIN, FRA, HRV, HUN, ITA, LTU, LUX, MLT, NLD, PRT, SWE, SVN, SVK (EMN 2021 report, p. 24-25).

<sup>107</sup> BEL, ESP, ITA (EMN 2021 report, p. 25).

<sup>108</sup> BEL (EMN 2021 report, p. 25).

<sup>109</sup> ESP (EMN 2021 report, p. 25).

<sup>110</sup> AUT, BEL, BGR, CYP, CZE, DEU, EST, GRC, ESP, FIN, FRA, HRV, HUN, ITA, LTU, LUX, LVA, MLT, NLD, POL, PRT, SWE, SVN, SVK (EMN 2021 report, p. 24, 26)a.

### 3.2.2.4 The vulnerability assessment

Regarding the vulnerability assessment in return procedure<sup>111</sup>, when deciding **to apply an alternative to detention**, MS usually consider the following vulnerability elements<sup>112</sup>:

1. Children and unaccompanied children;
2. Families with children;
3. Single parents with children;
4. Persons with special needs;
5. Persons with disabilities;
6. Persons with any medical condition;
7. Pregnant or nursing women;
8. Elderly people;
9. Persons with mental health conditions or in need of psychological support;
10. Victims of trafficking of human beings;
11. Victims of torture or victims of other forms of psychological, physical, or sexual violence.

However, a broader definition of “person in a vulnerable situation” has been proposed both at the international level and at the European Parliament level in the Return Directive recast Committee Draft Report<sup>113</sup>.

According to Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>114</sup> and International Organisation for Migration (IOM)<sup>115</sup> migrants in vulnerable situations are those who are exposed to “violence, exploitation, abuse, and violation(s) of their rights”<sup>116</sup>. This diminishes their ability to enjoy their human rights<sup>117</sup>. Additionally, vulnerabilities may intersect due to multiple forms related to circumstances migrants encountered in their countries of origin and during their journey or upon arrival to the new destination, as well as experiences of discrimination to their personal identity or individual factors. Accordingly, situations of vulnerability may evolve over time and across different contexts.

Therefore, it is a good practice to systematically assess vulnerabilities of each individual<sup>118</sup> through an interview with **specialised personnel**<sup>119</sup>. For example, if medical conditions are detected specific attention is necessary<sup>120</sup>.

In the context of international protection, European Union Agency for Asylum (EUAA) developed the **Tool for Identification of Persons with Special Needs**<sup>121</sup>, which, although referring to different aims and field, may be

useful towards the identification of categories of people with special needs also in the return procedure. This vulnerability assessment tool could be used, with the necessary adaptations, in the return process<sup>122</sup>.

<sup>111</sup> In the international protection procedure persons with diverse sexual orientation, gender identity and expression, and sex characteristics are also considered as vulnerable. Although international protection and return procedures have different scopes, this category could be considered in the field of return, as specific psychological support may be needed. See EUAA, [Asylum knowledge - Vulnerability](#).

<sup>112</sup> Adapted from article 3(9) Return Directive, which contains a non-exhaustive list of people in vulnerable situations and from Article 23 of Reception Conditions Directive.

<sup>113</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, [Draft Report on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\)](#), 21 February 2023, p. 41.

<sup>114</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), [Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#), 2016, p. 37-39.

<sup>115</sup> IOM, [Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations](#), 31 December 2017, p. 3.

<sup>116</sup> IOM, [Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations](#), op. cit., p. 4.

<sup>117</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), [Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations](#), op. cit., p. 5-6.

<sup>118</sup> AUT, IRL, LUX, SVN (EMN 2021 report, p. 26).

<sup>119</sup> BGR, CYP, HUN, ITA (EMN 2021 report, p. 26).

<sup>120</sup> EST, LVA, LUX, MLT (EMN 2021 report, p. 26).

<sup>121</sup> EUAA, [Asylum knowledge - Vulnerability](#); EUAA, [Tool For Identification Of Persons With Special Needs](#).

<sup>122</sup> For further reference: the International Detention Coalition (IDC), UNHCR and IDC (2016), [Vulnerability Screening Tool - Identifying and addressing vulnerability: a tool for asylum and migration systems](#), UN High Commissioner for Refugees (UNHCR), 2016, [UNHCR and IDC \(2016\). Vulnerability Screening Tool - Identifying and addressing vulnerability: a tool for asylum and migration systems | Refworld](#).



In **Malta**, the Vulnerability Assessment Team has been established intending to move persons in vulnerable situations from a closed detention centre to an open one. The team uses the Special Needs Vulnerability Assessment Tool including:

1. Initial observations;
2. A review of the person's background information, such as medical/health, psychological and journey-related issues (e.g. torture, violence due to armed conflict, chronic health problems);
3. A level of urgency scale from 1 to 4 given at the end of the assessment, where *Urgent 1* refers to high risk of harm for the individual or others.

### 3.2.3 Procedural safeguards and support

Procedural safeguards and support for returnees include:

1. Decision imposing alternatives to detention must be **linked to returnees' personal circumstances** and should not be based on stereotypical decision-making, preventing arbitrariness in the process<sup>123</sup>;
2. Should have the right to be **heard in the procedure**, i.e. having access to court hearings and the possibility to present arguments and objections before the decision on detention and alternatives to detention (in some circumstances TCN may be heard only after such decision is taken). This is ensured through the possibility to communicate with external services, including authorities, NGO, international human rights' bodies and legal services;
3. When alternatives to detention are applied, returnees should **receive clear and concise information about their rights and duties** in relation to the **measures** in place, and on the consequences of non-compliance;
4. **Timeframe to appeal** the decision may vary from 24 hours<sup>124</sup> to 75 days<sup>125</sup>, while in some countries there is no time limitation<sup>126</sup>;
5. Returnees must be provided with the **possibility to appeal detention** and alternative to detention decisions<sup>127</sup>, and should be able to apply for a change on the alternative to detention measure;
6. Every person must hold the right to complain and to have such complaints effectively investigated without unreasonable delay;
  - a. A fair, independent and transparent complaint mechanisms and monitoring processes must be in place. They should be confidential and freely accessible;
  - b. Returnees should be informed of their right to file a complaint and about the associated procedure.

The **UN Special Rapporteur on the human rights of migrants recommends regular and automatic review**<sup>128</sup>. Canada sets a good practice in asylum detention through regular automatic administrative reviews, initially at 48 hours, then seven days and then every 30 days.

MS provide different forms of support to TCN during the process of deciding whether to apply detention or an alternative measure:

1. Basic healthcare;
2. Legal aid free of charge (depending on TCN income) and information about the availability of those services;
3. Social and/or psychological support;
4. Interpretation/translation support;
5. Information services;
6. Counselling.

<sup>123</sup> Council of Europe – CDDH, [Legal and practical aspects of effective alternatives to detention in the context of migration](#), op. cit., par.246.

<sup>124</sup> BEL, in a special procedure which may subject to further appeal (EMN 2021 report, p. 27).

<sup>125</sup> CYP; in LUX is one month (EMN 2021 report, p. 27).

<sup>126</sup> PRT and SWE (EMN 2021 report, p. 27).

<sup>127</sup> Article 47 CFR.

<sup>128</sup> UN Special Rapporteur on the human rights of migrants, [Report of the Special Rapporteur on the human rights of migrants](#), op. cit., par. 72(c).

## 4. Effectiveness of alternatives to detention

Effectiveness of detention and alternatives to detention, rather than focusing merely on the return rate, entails, according to Commission, EMN and CoE, three aspects: **compliance with migration procedures** (swift and fair case resolution while facilitating voluntary and forced returns, and reducing absconding), **cost effectiveness** for the MS and **human rights impact**.

COMPLIANCE WITH MIGRATION PROCEDURES

COST EFFECTIVENESS

HUMAN RIGHTS IMPACT

### 4.1 Compliance with migration procedures

There is limited data available on the effectiveness of alternatives to detention in relation to the risk of absconding<sup>129</sup> and therefore it is not possible to establish a direct cause-effect link, as many untracked factors are involved.

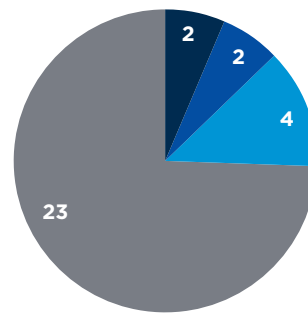
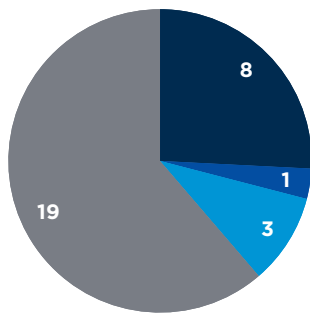
However, inquiries made to the MS during 2023 Return Division (RET)-MS bilateral meetings gave a partial glimpse on the phenomena of absconding involving TCN on alternatives to detention (2022 data). This was the reported data:

**8 MS** reported high rates of absconding of TCN on alternatives to detention – between 65% and 100%<sup>130</sup>;

- 1 MS** reported a medium rate of absconding – 25 to 30%;
- 3 MS** reported a low absconding rate – 6 to 16%<sup>131</sup>;
- 19 MS** reported not collecting such kind of data<sup>132</sup>.

The meetings established that it is possible to partially ascertain the effectiveness of alternatives to detention in keeping the returnees available for return purposes (2022 data):

- 2 MS** reported high rates of effectiveness for return purposes – between 90 and 94%<sup>133</sup>;
- 2 MS** reported medium rates of effectiveness – between 35 and 43%;
- 4 MS** reported low rates of effectiveness – between 0 and 11%;
- 23 MS** reported not having such data available<sup>134</sup>.



■ High rate ■ Medium rate ■ Low rate ■ No data

Source: 2023 RET Division - MS bilateral meetings

<sup>129</sup> EMN 2021 report, p. 29. This is especially true considering only the return field, as even when compliance rates are assessed, they are mixed with asylum seekers: see UNHCR, [Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#), op. cit., p. 82.

<sup>130</sup> In 4 MS, the data reported concerns asylum cases.


<sup>131</sup> In 1 MS the data is based upon solely 18 cases, which could hardly be considered statistically significant. In another MS the data concerns only asylum seekers.

<sup>132</sup> 1 MS reports high absconding rates despite not having backed up its claim with concrete data.

<sup>133</sup> In 1 MS the data is based upon solely 18 cases, which could hardly be considered statistically significant.

<sup>134</sup> From those 23 MS, 4 of them claimed low effectiveness rates despite not being able to provide concrete data. 1 MS claimed alternatives to detention seem to be working quite well, also without providing data to back it up.

## Effectiveness of alternatives to detention

 **Estonia** reports having a high compliance rate when it comes to TCN being returned while on alternatives to detention. Indeed, most returns are voluntary (above 90%). According to Estonian authorities, the overall high effective return rate may be due to the following:

1. There is only one organisation (the Police) dealing with the whole return process;
2. Close contact kept with the person;
3. Return counselling, resulting in a higher percentage of voluntary returns;
4. Relatively small size of the country and low migration pressure.

According to EMN, no data are available regarding the effectiveness of alternatives to detention on return procedures depending on the personal characteristics of the potential returnees. However, **the Netherlands** noted the following factors have a positive impact on return, independently of the fact that the person was detained or not:

1. Personal background (country of origin, family situation, gender, or age);
2. Treatment of the person during the procedure (return counselling, financial reintegration support);
3. Situation in the country of origin;
4. Country of origin itself (higher effectiveness with EU-candidate countries and cooperating countries of origin);
5. Type of procedure (higher effectiveness with Dublin claimants);
6. Duration of the detention (higher effectiveness with return in the first three months of detention).

## 4.2 Cost effectiveness

In terms of mere economic costs, there is very little data available and many factors need to be accounted for, i.e. duration of applied measure. Keeping in mind that it only refers to Third Countries (TC) and that the report

was written in 2011 (except for Canada and UK), the following table provides some insights into economic cost-effectiveness of alternatives to detention<sup>135</sup>.

	Country	Detention per person per day	Alternatives per person per day	Saving per person per day
2011	Australia	\$339 AUD <sup>136</sup> ; \$124 AUD for 'community detention'	\$7 AUD \$39 AUD	Between \$333 AUD to \$117 AUD
	United States	\$95 USD	\$22 USD	\$73 USD
2019-2020	Canada <sup>137</sup>	\$400-500 CAD	Between \$5 to \$280 CAD depending on the measure	Between \$120 to \$495 CAD
2020-2022	UK <sup>138</sup>	£97.54–107.23	£23.70	£73.84–83.53

<sup>135</sup> UNHCR, [Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants](#), op. cit., p. 85.

<sup>136</sup> To compare data, this the average exchange rate in 2023: 1 EUR = 1.1498 GBP = 0.9246 USD = 0.6850 CAD = 0.6143 AUD. See Bank of Canada, [Annual exchange rates](#).

<sup>137</sup> Refers to 2019/2020 values. Some of the alternatives to detention's cost do not reflect the additional expenditure with personnel (particularly when it comes to the meanwhile decommissioned electronic voice reporting system).

<sup>138</sup> UNHCR, [Evaluation of the Refugee and Migrant Advice Service's Alternative to detention pilot](#), op. cit., p. 58. The RMAS pilot, organized by UNHCR, shows that case/community management measures are less costly than detention, while warning on lack of data and hidden costs.

### 4.3 Reducing negative impact on human rights

The following factors are considered to reduce negative impact on human rights:

#### General measures

1. Respect principles of non discrimination, necessity and proportionality when applying detention and alternatives to detention;
2. Ensuring that returnees are treated humanely and respectfully during the return procedure, and during application of the measure; their fundamental rights should always be considered as a priority;
3. The least restrictive possible measure to be imposed according to each individual case assessment;
4. Alternatives to detention may be combined with different conditions, but the overall impact on the person should be assessed as not to amount to alternative forms of detention;
5. Carrying out an adequate and timely individual vulnerability assessment based on guidelines and by trained staff, before imposing (detention or) alternatives to detention;
6. Referring migrants to legal counselling and interpretation as early as possible;
7. Early and personalised counselling engagement;
8. Introducing the topic of return and considering it from the very beginning in the interactions maintained with the TCN;
9. Promote alternatives based on trust and respect, rather than focusing on enforcement-related alternatives.

#### Procedure and rights

1. Alternatives to detention measures are set in law, alongside with minimum safeguards;
2. Guidelines on criteria to impose alternatives to detention based on an individual assessment are set;
3. Ensuring the judicial or independent review of the alternatives imposed and the possibility to lodge complaints pending the measure;
4. Measures are periodically re-evaluated to ensure up-to-date assessment;
5. Monitoring mechanisms are established;
6. During execution of the measure, giving clear and concise information about their rights and duties, and the potential consequences in case of non-compliance with the measures;
7. Guaranteeing access to adequate material support, safe accommodation and the highest attainable standard of physical and mental health;
8. Possibility to issue identification documents, if missing or surrendered, to ensure right to identity;
9. In case of non-compliance, to consider if other measures could fit the purpose;
10. Support individuals through personalised case management;
11. Migration officers and case managers have clear responsibilities and communicate effectively the scope of their intervention.

#### Persons with vulnerabilities

1. Ensuring child-friendly procedures;
2. Ensuring respect for rights such as the primary consideration of the child's best interest, family unity and non-interference with family life;
3. Migration officers trained in identifying vulnerabilities and communicating with persons with vulnerabilities;
4. Address individuals' special needs.

## 5. Identified challenges and possible way forward

During the first Workshop on Detention and Alternatives to Detention organised by Frontex, MS identified several challenges and shortcomings when applying alternative to detention measures:

1. Absconding;
2. A variety in applied practices and legal frameworks in the MS;
3. Lack of reliable data, which leads to not having a clear view on the effectiveness of alternatives to detention for return purposes;
4. MS' limited resources, in terms of staff, training capabilities, finance and infrastructure;
5. Asylum requests filed in after a return process has been instated, and lengthy court appeals;
6. Lack of cooperation from some third countries.

To enhance the use of alternatives to detention while reducing the identified shortcomings, the following possible action points may be explored in the future:

1. **New/innovative alternatives to detention**, including variations of already existing ones and tailored approaches, combination of different alternatives and possible IT solutions to enhance effectiveness:
  - a. **Negative incentives, together with the positive ones**, seem to increase return effectiveness, e.g. a fine or the loss of financial incentives;
  - b. Possibility to distribute a **money card** to TCN which would only work within a certain area; and/or rechargeable card on a weekly basis (or other periodical setting), which could only be renewed/recharged if they comply with the designated alternatives to detention;
  - c. **Apply case management and return counselling** throughout the whole return process and **combine them with other alternatives to detention**, such as residing in open or semi-open centres, aiming to foster trust-based relationships;
  - d. Development of forms of **electronic reporting** to substitute the in-person reporting to the authorities. Such possibility could allow not only to alleviate the authorities' administrative burden, i.e. monitoring TCN' compliance towards the obligation to report or to reside/remain at a specific address/area/municipality, but also to make TCN' life easier and facilitate their compliance towards the applied measure, namely by saving them from all the hassle associated with the obligation to report in-person to the authorities – e.g. loss of time, money and even the possible stigma of appearing regularly in a police station or immigration facilities;
  - e. Allow remote **video counselling sessions**, and send notifications about their migration status and return procedure;
  - f. **Electronic monitoring**, being more intrusive, could be aimed for specific high risk situations (e.g., public security). Principle of necessity, proportionality and non-discrimination should be guaranteed;
2. Provide support to MS by setting up common standards and identifying and sharing best practices, on detention and alternatives to detention, to emphasize the necessity of a common framework and to make a more efficient use of such measures given the limited resources of MS;
3. Promote digitalisation and interlinkage of MS' national IT return systems (for instance via the Frontex central platform for return - IRMA):
  - a. To share and have available information on TCN already detained or to whom alternatives to detention have already been applied in another MS in the past, so to have additional elements to assess whether the same or different measures should apply;
  - b. Contribute with **enhancement of the Return Data Collection** and of the national IT systems on return to get more reliable data on the effectiveness of measures alternative to detention to implement returns, reduce absconding, and establish a more accurate situational awareness based on a dedicated analysis on return, impacting future planning, decision-making and policy implementation definition;
4. Provide **training for MS** and organise technical meetings and visits for experts to share experiences and information. Return and Reintegration Counselling, in particular, should be further supported by Frontex and developed by the MS;
5. Keep supporting the MS by **deploying RS** to enhance their capacity and capabilities to upscale the number of (voluntary) returns. Nevertheless, this should not be seen as a substitution to MS' responsibilities, but a temporary assistance meant to help MS building and strengthening their own return and reintegration systems, namely by training and making available a higher number of counsellors;

6. Possibility to develop a non-binding **risk matrix** to support the relevant MS' authorities to decide on

which alternatives to detention, if any, could be more suitable to each individual case.

Additional good practices of alternatives to detention potentially applicable by MS could encompass the following:

1. Foster absconding risk assessment through enhanced **data-collection**;
2. Foster **early-stage vulnerability assessment** and periodic reviews of the individual situation, especially for those in detention, to identify no immediately visible symptoms of distress and individual needs, to support authorities with well-informed decision-making and to better assess the proportionality of the detention and of alternatives to detention;
3. **Avoid**, to the maximum possible extent, the **detention of persons in vulnerable situations, unaccompanied minors and families with children**, and offer them adequate support;
4. **Provide safeguards and support** to returnees in alternatives to detention similar to the ones ensured to those in detention (e.g., legal and basic healthcare assistance and psychological support);
5. Include **return counselling**, carried out by trained personnel, within the mandatory activity of the return process, to create a trust-based relationship between the parties, aiming to encourage voluntary departure<sup>139</sup>;
6. **Create awareness and understanding of civil society organisations** on the importance of return and reintegration assistance, implemented by Frontex or national actors, to ensure that the referrals of migrants towards the authorities competent for return and reintegration is increased;
7. **Establish or continue cooperation with civil society organisations** in the design and implementation of alternatives to detention, in particular in case management;
8. **Set up an independent monitoring mechanism** to ensure necessity and proportionality of measures and safeguard human right standards;
9. **Legislate a limited duration for alternatives to detention**, by setting an upper limit, and ensuring an initial and periodical review by a judicial or other independent authority.

<sup>139</sup> Belgium, ICAM programme.

# Annex I – The use of alternatives to detention

According to the outcome of 2023 bilateral meetings between RET and the MS and the EMN report released in 2021, the following alternatives to detention are foreseen by law and/or used in practice by the MS in the return procedure.

- measure legally available and actually used in the MS, according to the EMN 2021 report;
- measure legally available but not being used in the MS, according to the EMN 2021 report;
- measure currently used in the MS, according to information disclosed by the MS during 2023 bilateral meetings;
- measure rarely/least used in the MS, according to information disclosed by the MS during 2023 bilateral meetings;

	Reporting at regular interval	Reside at a designated place or territory	Surrender a travel or identity document	Communicate an address	Release on bail / deposit	Deposit or financial guarantee	Community management programmes	Return co-unselling	Others/ comments
AUT	●	●			●				
BEL	○	●					■	■	
BGR	○		●		○	●			
CHE	■	■	■			■			
CYP	●	○	●	●	○	●	●		
CZE	■	■		■	○	○	□		
DEU	●	●				●			
DNK	■	■	■						
EST	■	■	■	■				■	<sup>140</sup>
GRC	■	■	●	○	○	□			
ESP	■	○	■						Police apprehension up to 72H
FIN	■	○	■	●		●			
FRA	●	●	●	●					
HRV	■	■	■	●		■			
HUN	■	■	○	□		●			Money seizing
IRL	■	■	■	●	●		●	<sup>141</sup>	
ISL	■	□							
ITA	■	■	■	○					Combination of measures
LIE	■		■			■			
LTU	●	●							
LUX	○	■	○	○		■			Ankle bracelet
LVA	○		■						
MLT <sup>142</sup>	○	○	○	○					Prohibition to leave the country
NLD	■	■	■			■			
NOR	■	■	■	■					
POL	○	■	○		●	○	■		Combination of measures
PRT	■	■		■					House arrest <sup>143</sup>
ROU	■	■							
SWE	●		●	<sup>144</sup>			●		
SVN	■	●	■						
SVK	○				○	■			

<sup>140</sup> In EST two other alternative measures are possible: obligation to notify Police and Boarder Guard of changes in their marital status and providing any clarification deemed necessary (2023 bilateral meeting).

<sup>141</sup> In IRL, release to a case/care worker is applicable to children only.

<sup>142</sup> In MLT, alternatives are only applicable to asylum seekers or to TCN with no prospects for removal (2023's bilateral meeting).

<sup>143</sup> This alternative comprises the TCN obligation to remain confined at their own place of residence. Compliance with such obligation is monitored through electronic means. This alternative measure is rarely used.

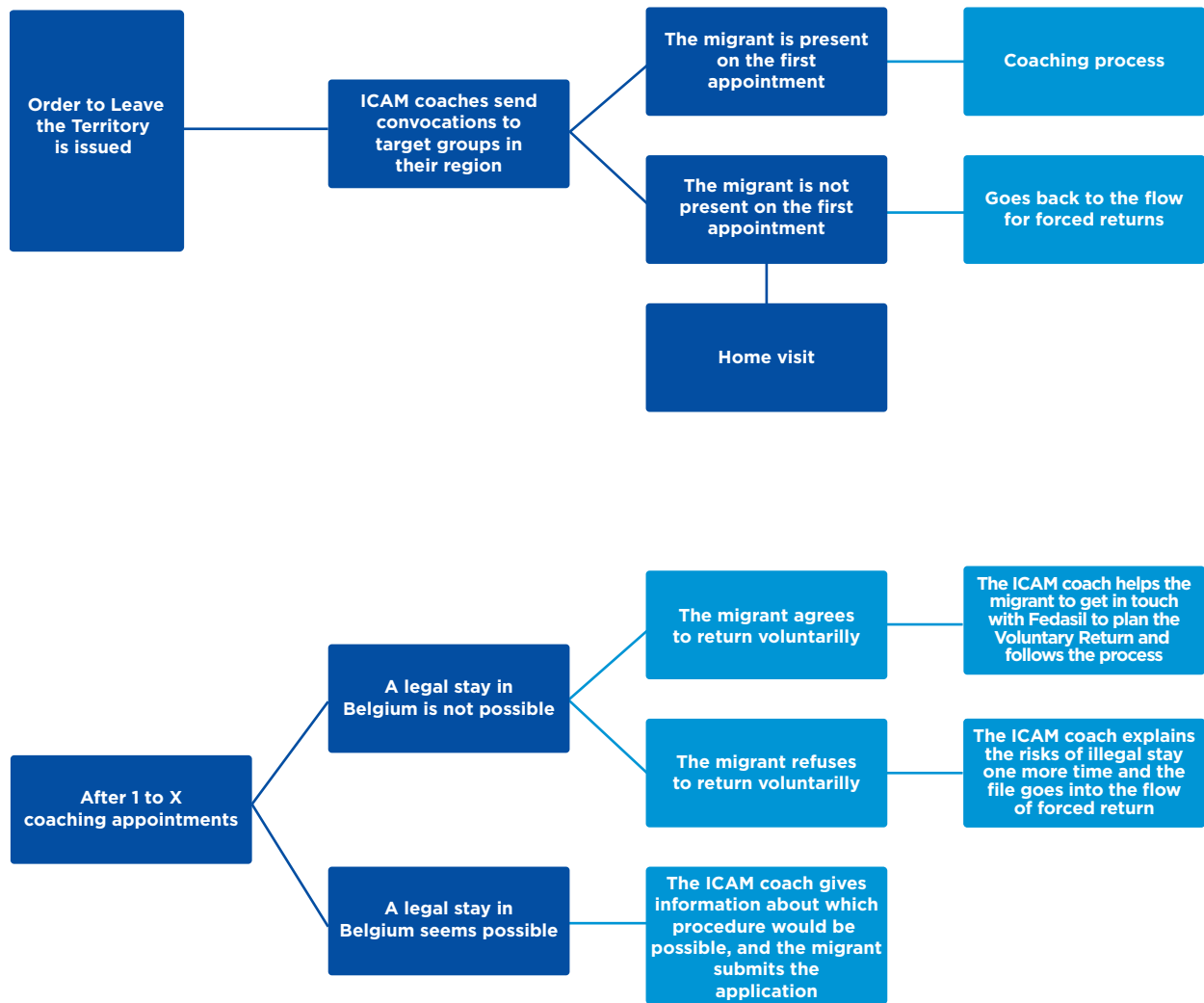
<sup>144</sup> In SWE, TCN are obliged to communicate an address but such requirement does not constitute an alternative to detention.

## Annex II – Advantages and challenges of alternatives to detention

Measures	Advantages	Challenges
<b>Reporting to authorities on a regular interval</b>	<p>Lower impact on fundamental rights</p> <p>Less resource consuming considering private accommodation of returnees</p> <p>Usage of regular offices for control</p>	<p>Bigger administrative burden and more administrative staff than other alternatives to detention measures</p> <p>TCN may face difficulties reaching reporting location (e.g. travelling costs, personal conditions)</p>
<b>Requirement to reside at a designated place or within a geographical area</b>	<p>Lower impact on fundamental rights</p> <p>Providing housing</p> <p>Less expensive than detention</p> <p>Deployment of fewer personnel</p> <p>Less supervision than detention facilities</p> <p>More suitable for children and families (in open facilities)</p> <p>Allows TCN to live with their family/community and take advantage of support network</p>	<p>Limited space availability in open and semi-open facilities</p> <p>Higher costs in constructing/expanding of open and semi-open centres (requirement of MS investment or agreement with private organisation)</p> <p>TCN' limited financial means to afford private and appropriate accommodation</p> <p>Limited staff from MS to verify TCN's compliance with the measure</p>
<b>Obligation to surrender a passport, travel, or identity document</b>	<p>Less administrative staff and supervision needed</p>	<p>Alone, is not effective to prevent TCN from travelling</p> <p>Limited number of returnees have identification/travel documents</p> <p>Returnees obtaining travel documents in country of origin's consular representation</p>
<b>Obligation to communicate an address</b>	<p>Lower administrative burden to carry out checks on the communicated address</p> <p>No need for MS to provide accommodation</p>	<p>TCN' limited financial means to afford private and fixed accommodation</p> <p>Change of TCN' accommodation makes monitoring more difficult</p>
<b>Release on bail (with or without sureties), upon deposit or financial guarantee; sponsorship</b>	<p>Less costly</p> <p>Lower impact on fundamental rights</p> <p>More efficient for TCN staying long-term (ties with community)</p>	<p>Authorities lack capabilities/means to assess individual income</p> <p>Returnees hold limited sum of money and risk of economic/social background discrimination</p> <p>Difficulties in issuing a refund</p>
<b>Case management programmes</b>	<p>Higher respect for human rights (e.g. family unit, support of children in return procedures)</p> <p>Promotion of trust, compliance and integration</p> <p>TCN is well informed of the procedure, allowing for a better decision-making process</p>	<p>Training of case workers</p> <p>Managing costs of open facilities</p> <p>Sensitivity of caseworker-returnee relation: trust-based</p> <p>Need of adequate interpretation</p>
<b>Return counselling</b>	<p>Returnees take informed decision (e.g. reintegration support offers)</p> <p>Promotion of voluntary returns</p>	<p>Not considered as alternative to detention <i>per se</i> in most MS</p> <p>Resource demanding</p> <p>Lack of trained staff</p>
<b>Electronic reporting/monitoring</b>	<p>Less impacting on fundamental rights than detention</p> <p>More cost-effective</p> <p>Lower administrative burden on MS</p>	<p>Technical issues with mobile applications; generation of anxiety of detention when compliance is not possible</p> <p>Needs careful consideration of fundamental rights, e.g. respect for private and family life</p> <p>Intrusiveness of tracking (privacy and data protection)</p> <p>Stigma of criminal conviction (psychological harm)</p>

## Annex III – The ICAM coaching process (Belgium)

The workflow of coaching process in Belgium, as presented during the first Frontex Workshop on Detention and Alternatives to detention.



# FRONTEX



EUROPEAN BORDER AND  
COAST GUARD AGENCY

European Border and Coast Guard Agency – Frontex, 2024

Plac Europejski 6 • 00-844 Warsaw • Poland

[frontex@frontex.europa.eu](mailto:frontex@frontex.europa.eu) • [www.frontex.europa.eu](http://www.frontex.europa.eu)

©European Border and Coast Guard Agency (Frontex), 2024, FPI-24.0465

Warsaw, October 2024