



Secondary Movements Under the Asylum and Migration Management Regulation: Solidarity, Responsibility and Fundamental Rights in the New Pact on Migration and Asylum

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Francisca Vale, Giovana Farhat, Matilde Marques, Vera Pinto and Maryam Kazmi

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1 Introduction

In a globalized world, international mobility has become increasingly prevalent, allowing individuals to cross borders with greater frequency and urgency. Contemporary migratory flows are driven by various factors, including the pursuit of international protection in situations of armed conflicts, persecution, systemic human rights violations, and the pursuit of improved living conditions.

Migration and asylum policy constitutes one of the fundamental pillars of the European Union (“EU”), reflecting its commitment to the protection of human rights, the principle of solidarity, and the coordinated government of external borders. In response to the increasing migration flows toward the EU, the European Commission adopted, in 2024, the New Pact on Migration and Asylum, aiming to address the structural deficiencies affecting both Member States and individuals in need of protection.

Among the principal challenges in migration management is the phenomenon of secondary movements, namely the unauthorized onward movement of asylum applicants.¹ It concerns cases where migrants move from the Member State of initial entry, which is generally responsible for processing their application, to another. These movements are driven by a multiplicity of factors, including inadequate reception conditions, limited access to rights, search for better social-economic conditions or the existence of familial ties in another country.²

Within this framework, the Asylum and Migration Management Regulation, a central instrument of the New Pact, explicitly prohibits such irregular movements with the aim of ensuring an equitable distribution of responsibilities among Member States. In this regard, the EU sees such onward movements as one of the foremost challenges to its system. Failing to address properly this complex phenomenon risks perpetrating administrative burdens, legal uncertainty, effectiveness of the system and increased security concerns.³

Even though the detrimental effects caused by secondary movement cannot be denied, it is important to recognize that they don’t constitute an isolated problem, rather it represents a symptom of other challenges faced by the European asylum systems, such as disparity in reception conditions across Member States, legal uncertainty, and lack of proper solidarity mechanisms. As stated by the scholar Steve Peers: “the cause of these movements is not simply individual choice but a response to structural differences and inequalities in how asylum and reception are managed across the EU”.⁴

¹European Parliamentary Research Service, *Secondary Movements of Asylum-Seekers in the EU Asylum System* (European Parliament Think Tank 2024) 1-10. [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2024\)762326](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762326) Accessed 9 May 2025.

²Daniel Thym, 'Secondary Movements: Lack of Progress as the Flipside of Meagre Solidarity' (*EU Migration Law Blog*, 5 March 2024) <https://eumigrationlawblog.eu/secondary-movements-lack-of-progress-as-the-flipside-of-meagre-solidarity/> Accessed 9 May 2025.

³European Parliamentary Research Service, *Secondary Movements of Asylum-Seekers in the EU Asylum*. 1-10.

⁴Steve Peers, 'The New EU Asylum Laws: Taking Rights Half-Seriously' (2024) 43 *Yearbook of European Law*, 113-183.

<https://doi.org/10.1093/vel/veae003>

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According to Article 80° of the Treaty on the Functioning of the European Union (“TFEU”), migration policy shall be governed by the *principles of solidarity* and fair sharing of responsibility. Given that border states are disproportionately burdened by the initial arrival, the AMMR introduces a solidarity mechanism intended to promote a more balanced and legally coherent system of responsibility-sharing in migration.⁵ However, its regulatory approach raises significant concerns regarding compliance with the EU Charter of Fundamental Rights (“CFR”).

Portugal, as a Member State of the European Union, even though it is not a frontline or a transit country per se, it has experienced significant withdrawals of asylum applications as a result of secondary movements.⁶ In this sense, the report approaches the issue from a different perspective, which goes beyond geographical locations and the traditional burden-based discussion. Instead, it looks into broader motives and shifts the focus to the Member State that endures onward actions despite the fact that it complies with European norms and solidarity mechanisms.⁷ Hence, the country has extreme relevance when discussing secondary movements and their implications.

Additionally, it offers a valuable example of the impact of the AMMR's obligations and responsibilities on small border states, particularly in a Member State such as Portugal, which has been experiencing fragmentation in its migration and asylum governance since the transition from the Immigration and Borders Services (SEF) to the Agency for Integration, Migration and Asylum (AIMA).⁸ For that reason, the report will analyze its national capability, political landscape, and administrative condition for complying with the new legislation under the AMMR.

The report is structured into six parts: Section 1 introduces the relevance of secondary movements within the EU's asylum system. Section 2 provides an overview of the previous legislation responsible for regulating the asylum system, the Dublin III, offering an analysis of its flaws, and examining how the Union addressed it through the implementation of the new Asylum and Migration Management Regulation. Section 3 discusses the introduction of the solidarity mechanism and the “meaningful links” criteria, while assessing if its innovations are an effective solution.

In addition, Section 4 analyzes the impact of the AMMR and more precisely, the solidarity mechanism on the protection of fundamental rights, and its implications on family

⁵Peers, 'The New EU Asylum Laws: Taking Rights Half-Seriously'.

⁶OECD, *The Integration of Refugees in Portugal: Finding their Way* (OECD Publishing 2019). 13-50. https://www.oecd.org/en/publications/the-integration-of-refugees-in-portugal_d61fc5a7-en.html Accessed 9 May 2025.

⁷European Commission, *Applicants and Beneficiaries of International Protection in Portugal – 2023 Statistical Overview* (European Commission, Official Website 2023) https://migrant-integration.ec.europa.eu/library-document/applicants-and-beneficiaries-international-protection-portugal-2023-statistical_en Accessed 17 May 2025.

⁸The Portugal News, 'Concerns about AIMA consistency' (*The Portugal News*, 24 de fevereiro de 2025) <https://www.theportugalnews.com/news/2025-02-24/concerns-about-aima-consistency/95801> Accessed 18 May 2025. ; Visão, 'O fracasso da AIMA, a frustração dos imigrantes e a inércia do Governo' (*Visão*, 17 de maio de 2024) <https://visao.pt/exame/opiniao-exame/2024-05-17-o-fracasso-da-aima-a-frustracao-dos-imigrantes-e-a-inercia-do-governo/> Accessed 18 May 2025.

reunification and the rights of minors. Section 5 presents a case study on Portugal, highlighting its current migration and asylum landscape, its issues, and concludes with an evaluation of the potential risks and benefits posed by the implementation of the new regulation. Lastly, Section 6 offers conclusions on secondary movements and the solidarity mechanism, while also providing recommendations.

2 From Dublin to the AMMR: Objectives, Scope, and Innovations

From 1990 to 2020, the Dublin System was responsible for determining which Member State is in charge of processing an asylum application. To understand the need for the AMMR, it is essential to first examine the system that preceded it.

The system originated with the Dublin Convention of 1990, and its primary objective was to guarantee that only one state handles an application – which prevents multiple applications in different countries, also known as “asylum shopping”⁹. By giving the responsibility to one country, the risk of “orbiting”¹⁰ reduces significantly, providing for a more proper assessment of the application and a more stable process for the asylum seeker – which is aligned with the right to asylum (article 18 of the Charter) and the principle of non-refoulement (Article 33 of the 1951 Refugee Convention).

With time, the Member States concluded that the system was inefficient, lacking mechanisms of implementation, the countries had different assumptions about the process, and most applications were still being analysed without this regulation.¹¹ One important issue was the regulation’s tendency to place a disproportionate burden on border countries like Greece, where asylum systems were often overwhelmed and under-resourced. An example of this is the case *M.S.S. v. Belgium and Greece*¹², where the ECtHR ruled that both countries violated Article 3 of the ECHR, in Greece’s case for their inhumane treatment with the asylum seeker, and in Belgium’s for sending him back and exposing him to these conditions. Additionally, the regulation failed to provide adequate legal remedies for asylum seekers to challenge transfer decisions and did not sufficiently consider individual vulnerabilities or family connections. These shortcomings undermined both the fairness and effectiveness of the EU system and raised serious concerns about its compatibility with fundamental human rights obligations.¹³

⁹European Commission, ‘Asylum shopping’ (European Migration Network, 2024) https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/asylum-shopping_en Accessed 9 May 2025.

¹⁰“A refugee who, although not returned directly to a country where they may be persecuted, is denied asylum or unable to find a State willing to examine their request, and are shuttled from one country to another in a constant search for asylum.” European Commission, ‘Refugee in orbit’ (European Migration Network, 2024) https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/refugee-orbit_en Accessed 9 May 2025.

¹¹International Refugee Law, ‘The Dublin Regulation: A Critical Examination of a Troubled System’ (*International Refugee Law Website*, 26 August 2013) <https://internationalrefugeelaw.wordpress.com/2013/08/26/the-dublin-regulation-a-critical-examination-of-a-troubled-svstem/> Accessed 9 May 2025.

¹²*MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) <https://hudoc.echr.coe.int/fre?i=001-103050> Accessed 9 May 2025.

In 2003, to address these flaws, the Dublin II regulation was adopted¹⁴. It transformed the Dublin system into binding law of the EU and, although maintaining some basic criteria established in the convention – such as first country of irregular entry and family unity – it introduced simplified procedures and established deadlines.

Its creation enforced the operationalization of EURODAC, “a centralized biometric database operated by the EU that stores fingerprints of asylum seekers and irregular migrants”¹⁵ – this helps Member States know if the person has already applied for asylum in another country or if the seeker has entered irregularly into another Member State¹⁶.

Although amendments were made, they failed to address the challenges associated with the “first entry” rule, hence still burdening border controls, like Greece¹⁷. The system failed to ensure a fair sharing of responsibilities between Member States, going against the principle of solidarity and fair burden sharing enshrined in Article 80 of the TFEU. The absence of an effective mechanism for redistributing applicants generated significant political tensions and a growing lack of trust between states, jeopardising the very spirit of cooperation in the common asylum area.

Additionally, the attempt of addressing secondary movements, mainly with the EURODAC system, proved not efficient due the overburdening of the first entry countries. The countries weren’t capable to register all of the asylum seekers in a fast and efficient way¹⁸- which resulted in asylum seekers being able to avoid registration and move to another country of their choice to ask for asylum.¹⁹

¹³Paul Gragl, ‘The Shortcomings of Dublin II: Strasbourg’s M-S-S Judgment and its Implications for the European Union’s Legal Order’ in Wolfgang Benedek, Florence Benoit-Rohmer, Wolfram Karl and Manfred Nowak (eds), *European Yearbook on Human Rights 2012* (NWV Neuer Wissenschaftlicher Verlag 2012) 123–39 (City Research Online)<https://openaccess.city.ac.uk/id/eprint/2411/1/The%20Shortcomings%20of%20Dublin%20II.pdf> Accessed 10 May 2025.

¹⁴Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003] OJ L50/1 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343> Accessed 10 May 2025.

¹⁵eu-LISA, ‘Eurodac’ (*European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice*) (2024) <https://www.eulisa.europa.eu/activities/large-scale-it-systems/eurodac> Accessed 10 May 2025.

¹⁶Niovi Vavoula, ‘The Transformation of Eurodac from an Asylum Tool into an Immigration Database’ (*EU Migration Law Blog*, 16 October 2024) <https://eumigrationlawblog.eu/the-transformation-of-eurodac-from-an-asylum-tool-into-an-immigration-database/> Accessed 9 May 2025.

¹⁷Nikolaos Anadiotis, ‘Question for written answer E-000885/2025 to the Commission: The disproportionate burden Greece bears in managing migration’ (*European Parliament, Official Website* 28 February 2025) https://www.europarl.europa.eu/doceo/document/E-10-2025-000885_EN.html Accessed 10 May 2025.

¹⁸eKathimerini Newsroom, ‘More than a third of migrants not fingerprinted, officials say’ (*eKathimerini News*, 20 August 2015) <https://www.ekathimerini.com/news/200728/more-than-a-third-of-migrants-not-fingerprinted-officials-say/> Accessed 10 May 2025.

¹⁹“As a consequence of the mass influx of refugees in Europe in 2015, frontline Member States like Greece and Italy faced numerous challenges including difficulties with fingerprinting all of those arriving irregularly at the EU, which led to thousands of migrants left without registration.” Paul Gragl, ‘The Shortcomings of Dublin II: Strasbourg’s M.S.S. Judgment and its Implications for the European Union’s Legal Order’.

Due to this criticism, in 2013, Dublin III came into being, which strengthened the rights of applicants, such as the right to information, personal interview and the possibility of appeal, and created early warning mechanisms to support states under pressure. However, the central logic of the system - the responsibility of the first country of entry - remained, and criticism of the lack of solidarity between member states continued to grow, leading to the current reform proposal under the New Pact on Migration and Asylum²⁰.

The New Pact was created in 2020, and aims to rebuild the trust between member states, promote solidarity and ensure a fairer and more effective migration management system. At the centre of this new legal framework is the Asylum and Migration Management Regulation (AMMR), designed to replace the Dublin III Regulation.

The AMMR maintains some core elements of the Dublin system, such as the criteria for determining the State responsible, but seeks to address its most obvious shortcomings. Among the main innovations is the introduction of a mandatory solidarity mechanism, which obliges all member states to contribute in some way – be it through relocations, operational support or financial contributions. This model aims to correct the imbalance in the distribution of responsibilities and ease the pressure on external border countries.²¹

In addition, the AMMR establishes stricter deadlines than the ones that were created in 2003, and more harmonised procedures for the transfer of asylum seekers, with the aim of reducing legal uncertainty and speeding up processes. It also strengthens procedural safeguards, including vulnerability assessments and the right to appeal. However, the regulation still favours containment and border control, which raises concerns about respect for the fundamental rights of applicants. The proposal still faces political resistance and criticism from human rights organisations, but it undeniably represents an attempt by the European Union to respond to the weaknesses of the current system with a more coordinated and supportive approach.

3 Allocation of Responsibility, Solidarity Mechanism and Conditions for Transfers

While the AMMR introduces reforms aimed at improving the fairness and efficiency of the EU's asylum system, many of its core elements reflect a continuation of previous irregularities. Persistence of First-Country-of-Entry Rule²² still does not remove any weight off of border states, with per capita figures – such as Cyprus, receiving 1 application per 78 inhabitants in 2023, and Germany, while receiving the highest number of total applications,

²⁰European Commission, 'Pact on Migration and Asylum' (*European Commission, Migration and Asylum- May 2024*). https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en Accessed 10 May 2025.

²¹Council of the European Union, 'A New Asylum and Migration Management Regulation' (*Consilium*, 14 May 2024). <https://www.consilium.europa.eu/en/policies/asylum-migration-management/> Accessed 12 May 2025.

²²Ibid.

had a per capita rate of only 1 per 252 inhabitants²³ – highlighting the unequal distribution of responsibility.

Although the AMMR attempts to address this through new tools such as the Solidarity Mechanism and “meaningful links” criteria, concerns still remain whether practical effectiveness and fairness will truly be a reality in the EU landscape.

3.1 Reframing Responsibility: Meaningful Links Criteria

To try and temper the rigidity of the first-entry rule, the AMMR introduced the criteria of “meaningful links” regarding family ties, prior legal residence (article 29), or educational history (article 30). This attempt to try and shift responsibility to states with closer connections to the applicants also tries to reduce secondary movements by aiming to place applicants in places where they would most likely choose to set their life. However, the reliance on bureaucratic verification such as validating diplomas issued within the past six years can create administrative problems (requiring more coordination amongst authorities and entities and more resources). This concern is expressed by various entities who, after reviewing the new asylum laws, including AMMR, highlight the more than ever need of significant investment in funding, training and infrastructures given that without these, material challenges could hinder the effective operation of the new system.²⁴

In the case of family reunification the two most noteworthy changes are in regards to family members who have been naturalised or who hold long-term resident status and family ties established not only in the country of origin but also in transit countries. These are innovations made by the legislator that take into account the specific needs of applicants, tackling issues of certain Member States restricting family reunification to only ties pre-existing in the country of origin, for example²⁵. However, critics view them as being difficult to anticipate their practical impact, given that the status of long-term residency is “under-used” and “too difficult” as stated by the Commission.²⁶ Recital 54 shows other concerns of proving family ties, however it did not include binding rules preventing Member States from imposing excessive requirements of proof and thus applicants may still face

²³European Union Agency for Asylum, 'EU Received Over 1.1 Million Asylum Applications in 2023' (EUAA, 28 February 2024) <https://euaa.europa.eu/news-events/eu-received-over-1-million-asylum-applications-2023> Accessed 10 May 2025. ; Francesco Maiani, 'Responsibility-determination under the new Asylum and Migration Management Regulation: plus ça change...' (EU Migration Law Blog, 18 June 2024). <https://eumigrationlawblog.eu/responsibility-determination-under-the-new-asylum-and-migration-management-regulation-plus-ca-change/> Accessed 10 May 2025.

²⁴Philippe De Bruycker (ed), 'Genealogy of and Futurology on the pact on Migration and Asylum' in *The EU Pact on Migration and Asylum: 2024 Blog Series* (Odysseus Network, 2024) 4-15. <https://odysseus-network.eu/wp-content/uploads/2024/10/Blog-series-finalpdf.pdf> Accessed 10 May 2025.

²⁵European Council on Refugees and Exiles (ECRE), *Not There Yet: Family Reunification for Beneficiaries of International Protection* (ECRE, fevereiro de 2023) <https://ecre.org/wp-content/uploads/2023/02/AIDA-Family-Reunification-February-2023.pdf> Accessed 15 May 2025; Stefania D'Ignoti, 'What a Syrian Family's Quest to Reunite Says About Safe and Legal Pathways to the EU' (*The New Humanitarian*, 18 July 2022) <https://www.thenewhumanitarian.org/news-feature/2022/07/18/Syria-EU-safe-legal-pathways> Accessed 10 May 2025.

²⁶Maiani, 'Responsibility-determination under the new Asylum and Migration Management Regulation: plus ça change...'.

significant hurdles in proving family relationships. Another concern relates to varying interpretations of the notion of “family” across the EU Member States (which will be developed further below).²⁷ These choices made by national legislators can create an idea of “asylum lottery”, creating disproportionate hardship for applicants seeking to reunite with their family.

3.2 Solidarity Mechanism

The Solidarity Mechanism is the biggest change from Dublin III, where the AMMR imposes departure from the previous ad hoc solidarity premised around mutual trust.²⁸ It allows Member States to choose which type of measure they want to contribute to the Solidarity Pool – choosing between relocations of applicants, financial contributions (to acts in Member States or acts in or in relation to third countries) or alternative solidarity measures.²⁹

However, by permitting states to avoid relocations through financial or alternative contributions, the system risks replicating Dublin III’s inequities. These new possibilities may have enormous consequences: wealthier countries may opt for financial contribution to avoid the political and logistical challenges that come with integrating asylum seekers, leaving frontline states with resources but providing no relief in overcrowded reception centers, which could also make the exercise of the right to asylum even more difficult.³⁰

Another issue highlighted is the intended use of this money, and whether the Commission will review it.³¹ The idea of contributing to third countries has also been highly criticised as EU funds have been historically linked to abuses in countries such as Turkey with the 2016 EU-Türkiye deal³², Libya³³ and Tunisia³⁴ and now the case of Egypt³⁵.

²⁷Tineke Strik, Betty de Hart and Ellen Nissen, *Family Reunification: A Barrier or Facilitator of Integration? A Comparative Study*. (Publications Office of the European Union, European Commission (ed), 2013) <https://repository.ubn.ru.nl/bitstream/handle/2066/126552/126552.pdf> Accessed 10 May 2025.

²⁸Ciara Smyth, 'The Dublin Regulation, Mutual Trust and Fundamental Rights: No Exceptionality for Children?' (2022) 28(4–6) *European Law Journal* 242 <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12469> Accessed 10 May 2025.

²⁹Philippe De Bruycker, *The New European Solidarity Mechanism: Towards a Fair Sharing of Responsibility Between Member States?* (Policy Study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, September 2024) 5-21. <https://library.fes.de/pdf-files/bueros/bruessel/21419.pdf> Accessed 10 May 2025.; European Commission, 'Asylum and Migration Management Regulation' (European Commission) https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en#asylum-and-migration-management-regulation Accessed 10 May 2025.

³⁰De Bruycker, *The New European Solidarity Mechanism: Towards a Fair Sharing of Responsibility Between Member States?*

³¹Ibid.

³²EuroMed Rights, 'How EU Funds in Türkiye Fuel Human Rights Violations & Forced Deportations' (*EuroMed Rights Webpage*) (6 November 2024) <https://euromedrights.org/publication/how-eu-funds-in-turkiye-fuel-human-rights-violations-forced-deportations/> Accessed 10 May 2025.

³³Greens/EFA, 'New Study Shows EU Funding Linked to Human Rights Abuses Beyond External Borders' (*Greens/EFA Press*) (29 November 2023) <https://www.greens-efa.eu/en/article/press/new-study-shows-eu-funding-linked-to-human-rights-abuses-beyond-external-borders> Accessed 10 May 2025.

³⁴Ibid.

³⁵Andreina De Leo and Eleonora Milazzo, *Responsibility-Sharing or Shifting? Implications of the New Pact for Future EU Cooperation with Third Countries* (Policy Study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, June 2024) 5-21. <https://library.fes.de/pdf-files/bueros/bruessel/21302.pdf> Accessed 10 May 2025.

3.3 Expedited Transfers: New Timelines and Procedural Concerns

The stricter timelines for take back and take charge procedures are also significant novelties of the AMMR, aiming to accelerate responsibility determination and discourage secondary movements. With take charge requests being reduced from three months under Dublin III to two months, and replies with only one month³⁶ (or even shorter in cases of EURODAC fingerprint matches), or take back procedures having shifted from requests to notifications and confirmation from requiring state within just two weeks³⁷. These processes are aimed at reducing the likelihood of secondary movements, given that these deadlines are intended to limit the window in which applicants might move onward in hopes of avoiding transfer of shifting responsibility. However, this may also lead to decrease in successful take charge requests, especially for cases of family reunification, and could increase the responsibility of border states, thus imposing more pressure on these states. Various authors noted that these accelerated procedures may come at the expense of procedural fairness, potentially restricting the applicant's intervention in these processes.³⁸

3.4 Conditions of Transfer

Regarding the conditions of transfer, the AMMR imposes clear obligations on applicants to apply for protection and stay in the Member State deemed responsible, introducing consequences for non-compliance, such as the withdrawal of reception conditions³⁹ and, in some cases, detention to ensure transfer to the responsible country. These measures are aimed at deterring secondary movements by removing the benefits of moving onward - such as housing and support - and by increasing the chance of enforced transfers.⁴⁰ The Regulation also allows the extension of the transfer period from six months to up to three years if applicants attempt to evade responsibility, signaling a tougher stance on procedural delays.⁴¹ While these stricter measures may deter some irregular secondary movements, they leave applicants seeking to achieve greater living conditions more vulnerable. Such measures raise important questions about compliance with fundamental rights, particularly regarding fair procedures and adequate living standards—issues explored in the following section.

³⁶European Commission, 'Legislative Files in a Nutshell – Pact on Migration and Asylum' (*European Commission Official Website*) https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum/legislative-files-nutshell_en Accessed 15 May 2025.

³⁷European Council on Refugees and Exiles (ECRE), *Comments on the Regulation of the European Parliament and of the Council on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013* (May 2024) https://ecre.org/wp-content/uploads/2024/05/ECRE_Comments_Asylum-and-Migration-Management-Regulation.pdf Accessed 15 May 2025.

³⁸Francesco Maiani, 'Responsibility-Determination under the New Asylum and Migration Management Regulation: Plus Ça Change...'.
Accessed 16 May 2025.

³⁹See Article 18(1) of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management (AMMR), which allows for the reduction or withdrawal of reception conditions in cases of non-compliance with transfer procedures.

⁴⁰European Parliament, *Briefing on the European Union's Migration and Asylum Policy* (EPRS BRI(2024)762326) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762326/EPRS_BRI\(2024\)762326_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762326/EPRS_BRI(2024)762326_EN.pdf) Accessed 16 May 2025.

⁴¹European Council on Refugees and Exiles (ECRE), *Comments on the Regulation of the European Parliament and of the Council on Asylum and Migration Management, Amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and Repealing Regulation (EU) No 604/2013* (May 2024) https://ecre.org/wp-content/uploads/2024/05/ECRE_Comments_Asylum-and-Migration-Management-Regulation.pdf Accessed 16 May 2025.

4 Fundamental Rights Analysis

4.1 Right to Asylum

Under the AMMR, applicants must remain in the Member State responsible for their application, cooperate with authorities (Art 17(3)–(5)), and comply with transfer decisions (Art 17(5)). Failure to do so triggers suspension of some reception benefits (Art 18(1)), though member states must still ensure a basic standard of living. Exceptions apply when there are reasonable grounds to believe that the asylum seeker is a victim of human trafficking or violations of human rights (Article 18(3) and (4)). Meanwhile, the recast Reception Conditions Directive (RCD) applies an identical sanction for absence (Art 21 RCD) but without these safeguards. This has two implications: 1) benefits may be withdrawn solely upon notification of transfer, before confirmation or review, and 2) secondary movements are penalized more harshly under the RCD than under the AMMR, despite often being motivated by dire reception conditions, raising a risk of indirect refoulement. It remains unclear whether Art. 21 RCD’s silence on exceptions is a drafting oversight or a deliberate exclusion, potentially requiring clarification by national courts or the CJEU. Moreover, given the dire reception conditions in some Member States, benefit sanctions may offer little deterrent effect.

The AMMR sets a two-week deadline for take-charge/take-back requests concerning detained applicants (Article 45(1)). This short period undermines fairness and due process (Article 47 Charter), as applicants must collect complex documentation (e.g. proof of family and dependency links, previous residence, evidence of persecution), often requiring coordination across Member States. A Council-commissioned impact assessment noted that shortening take-charge deadlines risks shifting responsibility by default to first-arrival states because they simply cannot assemble the necessary documentation in time⁴². The CJEU in *Jawo v Germany* (Case C-163/17) emphasized that Dublin transfers must allow for an “effective and rapid remedy” (Art. 47 CFR), including suspensive effect to prevent prejudice where delay would prejudice the remedy. The AMMR appears to fall short of this standard.

EUAA reports that access to free legal assistance in expedited or Dublin procedures (under which Article 45 of AMMR operates) is “problematic”⁴³. The Irish Refugee Council has also raised concerns about limited access to legal aid for asylum seekers undergoing the accelerated procedure⁴⁴. The effectiveness of the legal aid guarantees in Articles 21 and 22, is limited by language barriers, lack of interpreters and low NGO capacity (e.g. in 2023, the Hungarian Helsinki Committee, the only NGO providing asylum legal aid, was denied access

⁴²European Parliamentary Research Service, *The European Commission’s New Pact on Migration and Asylum: Horizontal Substitute Impact Assessment*, PE 694.210, 57-79. (Study of the European Parliamentary Research Service, 12 August 2021) [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU\(2021\)694210_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694210/EPRS_STU(2021)694210_EN.pdf) Accessed 19 May 2025.

⁴³European Union Agency for Asylum, *Asylum Report 2024* (EUAA, June 2024) 3.9.1 (162-165) https://euaa.europa.eu/sites/default/files/publications/2024-06/2024_Asylum_Report_EN.pdf Accessed 20 May 2025.

⁴⁴Irish Refugee Council, *Input to the Asylum Report 2024* (30 November 2023) https://euaa.europa.eu/sites/default/files/2024-02/irish_refugee_council.pdf. Accessed 22 May 2025.

to key facilities⁴⁵). ECRE has also flagged concerns over vague wording in Article 43(5), which allows national authorities to apply a “merits test” that can exclude applicants from legal aid if their appeals are deemed unlikely to succeed – denying numerous applicants access to legal representation during pivotal stages of their proceedings⁴⁶.

Applicants must appeal transfer decisions within 1 to 3 weeks (Art. 43(2)), and the scope of appeal is narrowly confined to specific issues (Art. 43(1)). These constraints run counter to established case law and fail to uphold the right to an effective remedy (Charter Art. 47; ECHR Art. 13). Suspensive effect has also been substantially limited (Article 43(3) AMMR), since there is no automatic suspensive effect for implementation of the transfer decision pending appeal, unless the applicant requests it. This represents an erosion of the right to an effective remedy.

Moreover, the one-month windows for suspension decisions and appeal outcomes are too short, as few courts would be able to examine a case in such a short period of time. METAdrasi *Input to the EASO Asylum Report 2021 (2021)* expressed concerns about the removal of automatic suspensive effect, pointing out that this limitation may violate non-refoulement, as upon appeal it might be shown that an applicant (already expelled to a third country) is entitled to protection⁴⁷. The CJEU has consistently held – e.g., *C.K. v Republika Slovenija* (C-578/16) and *AHY v Minister for Justice* (C-359/22) – that automatic suspensive effect is mandatory where removal poses a real risk of inhuman or degrading treatment. Since the AMMR lacks the necessary safeguards to prevent the remedy from becoming ineffective, it violates article 47 of the Charter.

4.2 Right to Family Life

Amnesty International has highlighted that facilitating family reunification offers a safer and more effective pathway to protection of the right to family life in Europe, especially given the dangerous routes many refugees take to rejoin family⁴⁸. Unfortunately, the AMMR restrictions seem to undermine this objective.

Firstly, Article 2(8) defines “family member” narrowly, in contrast to Article 7 of the EU Charter, which protects “family life” in a broad sense. EU case law, including *Dereci and Others* (C-256/11), and the ECtHRs interpretation of Article 8 ECHR have affirmed that protection extended beyond traditional nuclear families, including extended and *de facto* family bonds. Yet the AMMR excludes key categories⁴⁹ such as siblings (except minor

⁴⁵Hungarian Helsinki Committee, *Input to the Asylum Report 2024* (European Asylum Support Office, 30 November 2023) <https://euaa.europa.eu/sites/default/files/Hungarian-Helsinki-Committee.pdf> Accessed 22 May 2025.

⁴⁶European Council on Refugees and Exiles, *ECRE Comments on the Regulation of the European Parliament and of the Council on Asylum and Migration Management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013* (May 2024) https://ecre.org/wp-content/uploads/2024/05/ECRE_Comments_Asylum-and-Migration-Management-Regulation.pdf accessed 20 May 2025.

⁴⁷Felix Peerboom, 'Flexible Responsibility or the End of Asylum Law as We Know It?' (*Verfassungsblog*, 26 April 2023) <https://verfassungsblog.de/flexible-responsibility-or-the-end-of-asylum-law-as-we-know-it/> Accessed 20 May 2025.

⁴⁸Amnesty International, 'EU Leaders Should Uphold Right to Asylum in Europe' (*Amnesty International*, 6 February 2023) <https://www.amnestv.eu/news/eu-leaders-should-uphold-right-to-asylum-in-europe/> Accessed 19 May 2025.

⁴⁹UNHCR, 'Families Together' (*UNHCR Official Website*) <https://www.unhcr.org/familiestogether/> Accessed 19 May 2025.

unmarried siblings of minors), grandparents, and other carers. It also inconsistently excludes spouses from the dependency clause (Articles 34 and 35), even though marital ties are commonly recognized as central to family life⁵⁰.

UNHCR notes disparities across Member States: while countries like the Netherlands and Portugal recognize broader family ties, others impose strict documentation requirements, creating practical barriers⁵¹. The absence of binding rules on evidence enables Member States to impose excessive burdens of proof⁵². In Cyprus, for example, authorities unlawfully demanded proof of stable income from refugee applicants, a practice condemned by both national human rights commissioners⁵³.

Although Recital 47 identifies family reunification as a priority, the AMMR lacks substantive rights-based provisions, shifting focus instead to applicant obligations (Article 9 AMMR). Some protections from Dublin III have also been weakened: for instance, the mandatory health certificate for individuals with serious medical needs (Art. 32(1) Dublin III) has been replaced with a vague obligation for Member States to share such information only to the best of their ability (Articles 48(2)(1) and 50(1))⁵⁴.

In paragraph 62 of *K.A. v Belgium (C-82/16)*, the CJEU held that family reunification requests must be examined on their merits, even where national entry bans apply, as required by Articles 7 and 47 of the Charter. Automatic refusal without providing reasons or avenues for appeal contravene these rights, and procedural requirements should not be so extensive as to amount to an automatic rejection.

Furthermore, although the threshold for stopping transfers is frequently linked to Article 4 of the Charter, some scholars contend that serious breaches of Article 18⁵⁵ — such as the denial of family reunification — may also warrant halting a transfer. However, the CJEU's restrictive interpretation risks marginalizing other rights, despite the Charter's claim of equal legal standing for all rights it enshrines.

4.3 Rights of Minors under the AMMR

The ambiguity surrounding family definitions also impacts unaccompanied minors, exposing them to procedural delays and inconsistent protection. Pre-AMMR, the default rule for unaccompanied minors was that the responsible Member State was the state where the minor was present, to avoid delaying the procedure for such vulnerable applicants.

⁵⁰Francesco Maiani, 'Responsibility-determination under the new Asylum and Migration Management Regulation: plus ça change...'.
⁵¹ UNHCR, 'Families Together'.

⁵²Francesco Maiani, 'Responsibility-determination under the new Asylum and Migration Management Regulation: plus ça change...'.
⁵³AIDA Cyprus, *Country Report: Cyprus—2019 Update (2020)*, ed ECRE, written by Cyprus Refugee Council

https://www.asylumineurope.org/sites/default/files/report-download/aida_cv_2019update.pdf 113-114, Accessed 18 May 2025.

⁵⁴Rebekah Vance and Nicole Yoder, *From Crisis to Cooperation: A Way Forward for EU Asylum Policy – A Critical Analysis of the Dublin III Regulation and AMMR* (2024).

⁵⁵Ciara Smyth, 'The Dublin Regulation, Mutual Trust and Fundamental Rights: No Exceptionality for Children?' (2023) 29 *European Law Journal* <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12469>

The new rule (art.17(1) + 25(5) + recital 53) is that responsibility belongs to the state where the application was 1st registered. This raises the question of whether the general consensus on the meaning of “best interests of the child” changed, and it still includes considerations of family unity, re-traumatization, and connections established within the time the child stayed in another MS (such as the state where they were 1st registered).

The text of the Article 23(1) merely requires that “The best interests of the child shall be a primary consideration”, without specifying criteria, methodology or deadlines. Additionally, NGOs warn that many States lack trained guardians or child-protection personnel to conduct meaningful assessments⁵⁶. As a result, many Member States default to the procedures used for adults. The absence of standardised criteria such as age thresholds, risk factors, and participation rights for conducting best-interest assessments, leaves discrepancies in practice between Member States⁵⁷. Legal Scholar Ciara Smyth argues for using a rights-based approach, using the substantive rights of the child as concrete guidelines for determining the best interests of the child. This would prevent arbitrary assessments, where a State determines the child’s best interest according to what is convenient. Given the seemingly arbitrary nature of the change introduced by the AMMR, a rights-based approach appears justified.

The lack of binding deadlines for family tracing further undermines safeguards, risking transfers before verifying family links—contrary to Article 24(2) of the Charter and Article 3 UNCRC. Lastly, despite Article 24 of the Charter, the CJEU in *M.A., S.A. and A.Z.* (2019) and *L.G.* (2023) treated the child’s best interests as a secondary concern, subordinated to institutional doctrines like mutual trust.

4.4 Prohibition of torture and inhuman or degrading treatment or punishment (Article 4 Charter FRUE)

The judgment in *N.S. and M.E.* (Joined Cases C-411/10 and C-493/10) established that systemic deficiencies in a Member State's asylum system could preclude transfers under the Dublin Regulation. In *C.K. v Republika Slovenija* (C-578/16), the CJEU expanded this principle, confirming that return is also not permissible where individual circumstances pose a real risk of inhuman or degrading treatment under Article 4 CFR - even in the absence of systemic flaws. Similarly, in *M.S.S. v Belgium and Greece* (ECtHR, App. No. 30696/09), both states were found liable for enabling a transfer despite foreseeable Article 3 ECHR violations. However, the AMMR appears to dilute this protection. While it acknowledges individual risks

⁵⁶Ottavia Spaggiari, Isobel Thompson, and Iliana Papangeli, ‘How European Countries Wrongfully Classify Children Seeking Asylum as Adults’ (*The New Humanitarian*, 10 April 2024) <https://www.thenewhumanitarian.org/investigations/2024/04/10/how-european-countries-wrongfully-classify-children-seeking-asylum-adults> Accessed 24 May 2025.

⁵⁷“In the past, SEF issued multiple transfer decisions regarding unaccompanied asylum seekers claiming to be under 18 years of age, who had been previously registered as adults in other Member States. These decisions made no reference to the applicant’s claim of minority in Portugal. Such decisions lead to a number of judicial decisions with discrepant outcomes. While in some cases, the best interest of the child was a clear concern, in at least one, the applicant was deemed to be an adult due to the lack of evidence proving childhood.” European Council on Refugees and Exiles, *Asylum Information Database: Country Report Portugal – Dublin Procedure* (10 July 2024) <https://asylumineurope.org/reports/country/portugal/asylum-procedure/procedures/dublin/> Accessed 24 May 2025.

(e.g. Article 4 CFR), it omits reference to systemic deficiencies, marking a regression from earlier jurisprudence. Articles 43(1)(a) permits appeals, but the grounds are narrowly framed, raising concerns that this shift reflects an effort to maintain the perception of uniform fundamental rights protection across the EU, rather than a genuine rights-based approach.

Prior case law is inconsistent in the threshold applied to Article 4 violations, particularly regarding minors. While *Tarakhel v Switzerland* lowered the threshold due to child vulnerability, later in *Jawo* and *Ibrahim* it did not fully integrate the child's best interests into the assessment. This reflects a lack of clarity in the Court's approach to balancing Article 4 with Article 24 CFR. Finally, the Dublin system's core assumption of mutual trust among Member States can be challenged under Article 4 of the Charter. Yet, scholars such as Chiara Smyth⁵⁸ argue that this presumption has consistently overshadowed other fundamental rights, particularly the right to asylum under Article 18 of the Charter of Fundamental Rights.

5 Portuguese Case Study

Portugal occupies a unique place in the European asylum landscape. Although not deemed as a frontline country, Portugal has consistently and actively participated in solidarity mechanisms, particularly through voluntary relocation and resettlement. In 2023, a total of 2,695 asylum applications⁵⁹ were registered in Portugal, a notable increase of 31% from the previous year.⁶⁰ The country is also characterised by high first-instance protection rate, where of 440 decisions in 2023, 71% resulted in positive outcomes.⁶¹ At the same time, Portugal is an avid participant of the relocation and resettlement programmes, hosting more than 59,000 individuals in temporary protection – primarily people displaced due to the Ukrainian war – making it the second-highest EU recipient after Germany.⁶²

Despite these efforts to create a welcoming policy environment, Portugal remains more of a transit rather than a final arrival country. Many asylum seekers move onward in search of better economic opportunities, family reunification, or more robust integration support in other Member States.⁶³ Therefore, it has one of the highest rates of withdrawal of pending asylum applications (62% in 2022)⁶⁴ which causes strain in administrative processes and complicates case management.

⁵⁸Ciara Smyth, 'The Dublin Regulation, Mutual Trust and Fundamental Rights: No Exceptionality for Children?' (2023) 28 (4-6) *European Law Journal* 242-262 <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12469> Accessed 17 May 2025.

⁵⁹European Council on Refugees and Exiles (ECRE), *Asylum Statistics – Portugal* (AIDA and ECRE, July 2024) <https://asylumineurope.org/reports/country/portugal/statistics/> Accessed 17 May 2025.

⁶⁰OECD, *International Migration Outlook 2024: Portugal* (6 November 2024) https://www.oecd.org/en/publications/2024/11/international-migration-outlook-2024_c6f3e803/full-report/portugal_d44fe0e7.html Accessed 17 May 2025.

⁶¹Ibid.

⁶²European Commission, *Applicants and Beneficiaries of International Protection in Portugal – 2023 Statistical Overview* (European Commission, 2023) <https://migrant-integration.ec.europa.eu/library-document/applicants-and-beneficiaries-international-protection-portugal-2023> Accessed 17 May 2025.; UNHCR, *Portugal* (UNHCR, 2023) <https://www.unhcr.org/countries/portugal> Accessed 18 May 2025.

⁶³European Commission, *Applicants and Beneficiaries of International Protection in Portugal – 2023 Statistical Overview* (European Commission, 2023) <https://migrant-integration.ec.europa.eu/library-document/applicants-and-beneficiaries-international-protection-portugal-2023-statistical-en> Accessed 17 May 2025.; Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD Publishing, 2019).

This makes Portugal an interesting case study to examine how AMMR's stricter transfer deadlines and anti-secondary movement provisions may affect a country that appears to have an asylum infrastructure that is both generous and fragile. Additionally, in light of the recent governmental change in direction regarding asylum and migration, this country may become a less welcoming one, leading to an exacerbation of these already high withdrawal rates.

5.1 Portugal's options regarding the Solidarity Mechanism

Portugal has a documented record of participating in EU relocation efforts and resettlement efforts⁶⁵, welcoming over 1,500 asylum seekers from Italy and Greece and resettled Syrian refugees under the EU-Turkey agreement.⁶⁶ Consequently, Portugal is likely to continue to support relocation under the AMMR. At the same time, the rise of the far right and the election of the centre-right government (AD) – which has been criticised for publicising the expulsion of almost 34.000 migrants⁶⁷ and has show more restrictive immigration policies (such as being against “*manifestação de interesse*”⁶⁸) – shows signs of a more restrictive outlook on migration and asylum.

Moreover, the new Portuguese government is developing a migration policy⁶⁹ that extends the number of years required to obtain the citizenship card for residents (becoming one of the most difficult to obtain in Europe),⁷⁰ increases bureaucratic conditions for visa applications, and it has explicitly called for immigrants to leave the country, creating a more hostile environment for non-European citizens, especially individuals from Asian countries, who appeared on top of the list of those targeted for expulsion.⁷¹

https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf Accessed 17 May 2025.

⁶⁴Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD Publishing, 2019) https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf Accessed 17 May 2025.

⁶⁵European Commission, 'Portugal: The Commitment to Hosting Refugees and Migrants Continues' (*European Commission*, 4 February 2021) https://migrant-integration.ec.europa.eu/news/portugal-commitment-hosting-refugees-and-migrants-continues_en Accessed 17 May 2025.

⁶⁶Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD Publishing, 2019) https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf Accessed 18 May 2025; Organisation for Economic Co-operation and Development (OECD), *In-donor Refugee Costs in Official Development Assistance (ODA): Portugal* (OECD, 2023) <https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/in-donor-refugee-costs-in-oda/oda-in-donor-refugee-cost-portugal.pdf> Accessed 18 May 2025.

⁶⁷Christian Chatelain, 'Portugal expulsar quase 34 mil imigrantes; 5 386 são brasileiros' *Público Brasil* (Lisboa, 2 de junho de 2025) https://www.publico.pt/2025/06/02/publico-brasil/noticia/portugal-expulsar-quase-34-mil-imigrantes-5386-sao-brasileiros-21_35308 Acedido em 7 de julho de 2025.

⁶⁸Observador, 'Parlamento chumbou resoluções para recuperar a manifestação de interesses para imigrantes' (Observador, 28 de fevereiro de 2025) https://observador.pt/2025/02/28/parlamento-chumbou-resolucoes-para-recuperar-a-manifestacao-de-interesses-para-imigrant_es/ Acessado em 18 de maio de 2025.

⁶⁹Portugal, Presidência do Conselho de Ministros, *Imigração regulada e humanista: Governo tem política migratória com controlo, dignidade e integração* (comunicado, 22 de junho de 2025) <https://www.portugal.gov.pt/pt/gc25/comunicacao/noticia?i=imigracao-regulada-e-humanista-governo-tem-politica-migratoria-com-controlo-dignidade-e-integracao> Acedido em 7 de julho de 2025

⁷⁰Euronews, 'Testes obrigatórios e mais tempo de residência: nacionalidade portuguesa com regras mais apertadas' *Euronews* (24 de junho de 2025). <https://pt.euronews.com/mv-europe/2025/06/24/testes-obrigatorios-e-mais-tempo-de-residencia-nacionalidade-portuguesa-co-m-regras-mais-ap> Acedido em 7 de julho de 2025

⁷¹Christian Chatelain, 'Portugal expulsar quase 34 mil imigrantes; 5 386 são brasileiros'.

In this context, it appears inevitable that Portugal will experience an increase in secondary movements, as both migrants and asylum seekers may no longer feel safe or welcome under the new legal and political scenario. In light of this shift, it is conceivable that the Member State might prioritise financial contributions over relocation, aligning with the new government's emphasis on tighter migration control. At the same time, Portugal's moderate asylum caseload and high withdrawal rate suggests that it will not be a country under much migratory pressure, hence Portugal is unlikely to become a major beneficiary of financial support from the solidarity pool.

5.2 Administrative Capacity and Procedural Challenges

Domestically, with the reform of the asylum and migration governance from the Immigration and Borders Services (SEF) to the Agency for Integration, Migration and Asylum (AIMA) in 2023, Portugal aimed to separate administrative and law enforcement capacities. However, this reform has led to massive administrative backlogs, delays and persistent understaffing.⁷² Although Portugal provides various integration initiatives, such as language classes, healthcare and social assistance⁷³, civil society organisations⁷⁴ and the Portuguese Ombudsman⁷⁵ report issues of inadequate interpretation services, delays in processes and inconsistent access to legal and social support. These challenges have been identified as affecting the provisions of adequate reception conditions and material support, for example with some cases of unaccompanied minors lacking access to adequate housing⁷⁶.

The AMMR's stricter timelines for take back and take charge procedures⁷⁷ will also likely increase pressure on Portugal's administrative system (if current capacity remains) and will most likely compromise applicant's rights, especially regarding family reunification (Article 7 and 24 CFR) and right to effective remedy (Article 47 CFR)⁷⁸, as tighter deadlines could limit applicants' ability to prepare their case and access necessary legal support, thus jeopardizing the exercise of fundamental rights.

⁷²The Portugal News, 'Concerns about AIMA consistency' (*The Portugal News*, 24 de fevereiro de 2025) <https://www.theportugalnews.com/news/2025-02-24/concerns-about-aima-consistency/95801> Acessado em 18 de maio de 2025. ; Visão, 'O fracasso da AIMA, a frustração dos imigrantes e a inércia do Governo' (*Visão*, 17 de maio de 2024) <https://visao.pt/exame/opiniao-exame/2024-05-17-o-fracasso-da-aima-a-frustracao-dos-imigrantes-e-a-inercia-do-governo/> Acessado em 18 de maio de 2025.

⁷³Eurocid, 'Integração de cidadãos nacionais de países terceiros' (*Eurocid*, 2025) <https://eurocid.mne.gov.pt/integracao-de-cidadaos-nacionais-de-paises-terceiros> Acessado em 19 de maio de 2025.

⁷⁴European Council on Refugees and Exiles (ECRE), *AIDA Country Report on Portugal – 2023 Update* (10 de julho de 2024) <https://ecre.org/aida-country-report-on-portugal-2023-update/> Acessado em 18 de maio de 2025.

⁷⁵Provedoria de Justiça de Portugal, *Contributions to the List of Issues in relation to the fifth periodic report of Portugal on the International Covenant on Civil and Political Rights* (Provedoria de Justiça, fevereiro de 2020) https://www.provedor-ius.pt/documentos/Contributions_to_the_List_of_Issues_ICCPR.pdf Acessado em 18 de maio de 2025.

⁷⁶European Council on Refugees and Exiles (ECRE), *AIDA Country Report on Portugal – 2023 Update* (10 de julho de 2024) <https://ecre.org/aida-country-report-on-portugal-2023-update/> Acessado em 19 de maio de 2025.

⁷⁷European Commission, 'Determining the Member State responsible for an asylum application' (*Migration and Home Affairs – Asylum in the EU*, 2025) https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/determining-member-state-responsible-asylum-application_en Acedido em 8 de julho de 2025

Within this framework, the two-week deadline established by Article 26 AMMR provides a very small window for the government to submit a take charge request, one that Portugal, in its current post-SEF conditions, may not be able to meet. Therefore, is likely to result in serious violations of the applicants' rights, especially those in vulnerable groups such as unaccompanied minors, who require a more complex and carefully managed procedure⁷⁹, something that the current government does not seem to prioritize⁸⁰.

Additionally, the institutional fragmentation of AIMA may lead to further violations of fundamental rights, such as prohibition of torture (Article 3 ECHR) and right to effective remedy (Article 13 ECHR), if the government fails to properly address the current deficiencies in reception conditions, including administrative delays⁸¹ and high rates of application withdrawals⁸², already highlighted in the media. As established in the judgment of *M.S.S v. Belgium and Greece* (ECtHR 2011)⁸³, the Member State responsible for depriving the asylum seekers of their rights and dignity may face legal consequences, such as financial compensation. In this sense, even though Portugal does not suffer from the same conditions as Greece did by the time of the holding⁸⁴, its institutional deficiencies, combined with the pressure of the stricter obligations under the AMMR, could lead to similar implications for applicants.

5.3 Secondary Movements: Causes and the AMMR's Approach

The high rate of secondary movements from Portugal can be traced to several factors including limited employment opportunities, language barriers and the aim to reunite with family members⁸⁵ in other Member States. Civil society is seen to face a critical role in integration but support remains insufficient. AMMR's aim to accelerate procedures and transfers does little to tackle these root causes and will most likely exacerbate secondary movements, if administrative forces are not reformed. Without substantial reform and investment in capacity, legal integration support and legal safeguards, Portugal risks failing to meet the requisites imposed in the AMMR and thus compromising asylum seekers' rights.

⁷⁸European Council on Refugees and Exiles (ECRE), *AIDA Country Report on Portugal – 2023 Update* (10 de julho de 2024) <https://ecre.org/aida-country-report-on-portugal-2023-update/> Acessado em 21 de maio de 2025.

⁷⁹Anja Radjenovic, *Vulnerability of Unaccompanied and Separated Child Migrants* (European Parliamentary Research Service, Members' Research Service, Briefing PE 762.339, June 2024) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762339/EPRS_BRI\(2024\)762339_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762339/EPRS_BRI(2024)762339_EN.pdf) Accessed 1 July 2025.

⁸⁰ECRE, *AIDA Country Report on Portugal – 2023 Update* (Asylum Information Database, European Council on Refugees and Exiles, published 10 July 2024) https://asylumineurope.org/wp-content/uploads/2024/07/AIDA-PT_2023-Update.pdf Accessed 1 July 2025.

⁸¹TPN, 'AIMA complaints soar by 37 %' (*The Portugal News*, 14 Maio 2025) <https://www.theportugalnews.com/news/2025-05-14/aima-complaints-soar-by-37-97643> Accessed 1 July 2025

⁸²Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD Publishing, 2019) https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf Accessed 17 May 2025.

⁸³*MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011) <https://hudoc.echr.coe.int/fre?i=001-103050> Accessed 9 May 2025.

⁸⁴European Migration Network, *Annual Policy Report 2011: Greece* (Final Report, March 2012) https://home-affairs.ec.europa.eu/system/files/2020-09/gr_20120426_apr2011_en_version_final_en.pdf Accessed on 21 May 2025

⁸⁵Organisation for Economic Co-operation and Development (OECD), *Finding Their Way: The Integration of Refugees in Portugal* (OECD Publishing, 2019) https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/12/the-integration-of-refugees-in-portugal_af100fe8/d61fc5a7-en.pdf Acessado em 21 de maio de 2025.

5 Conclusion & Recommendations

The AMMR's reforms reflect incremental progress, yet they remain constrained by the same political divisions that undermined Dublin III. While the solidarity mechanism and expanded responsibility criteria acknowledge past failures, their design prioritizes flexibility over enforceable burden-sharing. Tighter deadlines may reduce procedural delays but risk eroding applicants' rights, and the focus on returns and deterrence underscores a securitized approach to migration that marginalizes protection goals. Ultimately, the AMMR's success hinges on member states' willingness to transcend minimal compliance and embrace genuine solidarity – a prospect that remains uncertain in today's polarized political climate.

In light of the challenges identified, the following policy recommendations are proposed:

6.1 Strengthen Legal Protections and Transfer Oversight:

To ensure fair access to justice, we propose the amendment of the AMMR and the Reception Conditions Directive (RCD) to guarantee the automatic suspensive effect of appeals and remove restrictive “merits tests” from legal aid. By establishing independent monitoring of transfer procedures and reception conditions, involving civil society organisations, public defenders, and EU agencies such as the FRA.

6.2 Early Integration and Reception Standards:

To reduce secondary movements, the EU must ensure dignified and consistent reception conditions across all Member States. This includes offering language and cultural orientation, free legal advice and training programs to support labour market integration and skill development. To do so, Member States should collaborate with local education providers, NGOs, and diaspora communities to deliver accessible, context-specific curricula focused on everyday communication, legal rights and basic cultural norms.

6.3 Protection of Vulnerable Groups:

Restore and strengthen safeguards for unaccompanied minors, including the “first presence” rule and harmonised criteria for best interests assessments. Expand the definition of “family member”, to include siblings, grandparents and extended family under the AMMR to promote safe and included reunification. In order to prioritise the child's best interest, reestablished the “first presence rule”.

6.4 Specific Recommendations to Portugal: Portugal should reinforce its role in EU asylum policy by addressing other specific recommendations:

6.4.1 Urgently invest in staffing and training at AIMA to meet the AMMR's accelerated procedural deadlines and minimize its internal administrative delays.

6.4.2 Collaborate with NGOs for example the Jesuit Refugee Service (JRS) Portugal, which provide psychological, medical, social and legal support to asylum seekers. Additionally, involving university legal clinics which can help offer rapid, pro bono legal assistance tailored to the AMMR's expedited procedures, especially for vulnerable groups such as unaccompanied minors and survivors of trafficking.

6.4.3 Promote EU-level reforms making ‘meaningful links’ binding to ensure fairer responsibility allocation and reduce arbitrary transfers. Portugal should leverage its active role by advocating for reforms in forums such as the Council of the EU and the European Parliament, emphasizing the need to make the ‘meaningful links’ criteria binding and harmonised. This would help ensure clearer and fairer responsibility-sharing rules, reducing arbitrary transfers and the “asylum lottery” effect.