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**COMPARATIVE
REPORT**

**THE LEGAL FRAMEWORK FOR THE
DETENTION OF ASYLUM SEEKERS IN
EUROPE**

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The information contained in this report is up to date as of December 2025, unless otherwise stated.

This report is part of a series of comparative reports on the topic of detention in the context of asylum procedures. The first report, on the conditions and places of detention, can be accessed [here](#).

1. Information on HU is necessarily limited mostly to entitlement in law as, since 2020, access to asylum in Hungary is de facto impossible due to the Embassy procedure: see AIDA, *Country Report Hungary on 2025*, available [here](#).

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GLOSSARY

1951 Refugee Convention	1951 United Nations Convention Relating to the Status of Refugees .
Administrative detention	Deprivation of liberty based on administrative measure rather than a criminal conviction. This is notably the case of the detention of asylum seekers and third-country nationals for removal purposes.
AIDA countries	The 26 European countries covered by ECRE's AIDA database, namely: Austria, Belgium, Bulgaria, Cyprus, Czechia, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Ukraine, UK, Switzerland, Serbia, and Türkiye.
Asylum and Migration Management Regulation (AMMR)	Regulation 2024/1351 , on Asylum and Migration Management.
Asylum Procedures Directive (APD)	Directive 2013/32 , on a common asylum procedure
Asylum Procedures Regulation (APR)	Regulation 2024/1348 , on a common asylum procedure
Asylum seeker(s)	Person(s) seeking international protection, whether through recognition as a refugee, as a subsidiary protection beneficiary or through another protection status on humanitarian grounds.
Detention	As per Article 2(h) of the 2013 RCD and article 2(9) of the 2024 RCD, 'confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement'. This applies to EU Member States, with the exception of those who have opted out of the RCD.² Article 5 ECHR defines deprivation of liberty as a factual situation where a person is confined in a particular restricted space for a not negligible length of time and has not consented to this confinement. The distinction between a restriction on freedom of movement and deprivation of liberty is 'one of degree or intensity, and not one of nature or substance'.³
De facto detention	When a person is effectively deprived of their liberty in practice even if no formal detention order has been issued or if the situation is not formally recognised as detention by law. <i>De facto</i> opposes to <i>de jure</i> , i.e. detention recognised in national law as such.
Dublin III Regulation	Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
People in a vulnerable position	This report uses the expression 'people in a vulnerable position' to reflect the understanding that vulnerability is not an inherent or fixed characteristic, but may arise from a combination of personal circumstances, lived experiences and structural factors, including migration and asylum policies themselves. Vulnerability may evolve over time and be exacerbated by detention, displacement, legal uncertainty or inadequate reception conditions. ⁴ However, where referring directly to EU legislation and standards, this report retains the terminology used in the relevant legal instruments, including 'vulnerable persons' and 'applicants with special reception needs'.

- Ireland had opted out of the 2013 RCD until 2018, but has opted into the 2024 RCD from its inception; Denmark opted out of both the 2013 RCD and the 2024 RCD.
- European Court of Human Rights (ECtHR), *Guide on Article 5 : Right to liberty and security*, updated 28 February 2026, available [here](#), 8ff.
- See VULNER project, available [here](#), in particular VULNER / Luc Leboeuf, 'Lived Vulnerabilities in Asylum and Migration. Confronting the 'Vulnerability' Label with Migrants' Experiences', June 2023, available [here](#).

Point of entry holding facilities or transit zone	According to EMN, 'a clearly designated and limited area located in an airport, in a port or at the external land borders on the territory of a State, where a third-country national, who has not crossed a border control and has not yet passed a checkpoint, is temporarily placed until a decision concerning the entry or the refusal of entry into the territory of the State in question is taken by the competent authorities of that State'. ⁵
Reception Conditions Directive (2013 RCD)	Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast)
Recast Reception Conditions Directive (2024 RCD)	Directive 2024/1346 laying down standards for the reception of applicants for international protection (recast)
Returns Directive	Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals
Screening Regulation	Regulation 2024/1356 introducing the screening of third-country nationals at the external borders
Unaccompanied child	A third country national under the age of 18 who is not in the care of an adult responsible by law or custom or who was left unaccompanied by such an adult.
Vulnerable people	As defined in Article 21 of the 2013 RCD, includes children, unaccompanied children, disabled people, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation. It should be noted that the 2024 RCD no longer refers to the concept of vulnerability but rather special procedural or reception needs, however the Screening regulation still refers to vulnerability as well as special reception or procedural needs.

5. EMN, 'Currently applicable asylum procedures at the border in view of implementing the Pact on Migration and Asylum', January 2026, available [here](#), p. 14.

LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
AMIF	The European Union's Asylum, Migration and Integration Fund
CATE	Centros de Atención Temporal de Extranjeros Centres for the Temporary Assistance of Foreigners (Spain)
CCAC	<i>Κλειστές Ελεγχόμενες Δομές</i> Closed Controlled Access Centres (of Islands) (Greece)
CCDH	<i>Council of Europe Steering Committee for Human Rights</i>
Charter	Charter of Fundamental Rights of the European Union
CIE	<i>Centros de Internamiento de Extranjeros</i> Foreigners' Detention Centres (Spain)
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CPR	Centro di Permanenza per il Rimpatrio Return Detention Centre (Italy)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRA	<i>Centre de rétention administrative</i> Administrative detention centre (France)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
EMN	European Migration Network
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other sexual and gender minorities
NGOs	Non-Governmental Organisations
PRDC	<i>Προαναχωρησιακά Κέντρα Κράτησης (Προ.Κε.Κ.Α)</i> Pre-removal Detention Centres (Greece)
2013 RCD	Reception Conditions Directive 2013
RIC	<i>Κέντρο Υποδοχής και Ταυτοποίησης</i> Reception and Identification Centre (Greece)
2024 RCD	Recast Reception Conditions Directive 2024
UN	United Nations
UNCAT	Subcommittee on Prevention of Torture on the United Nations
UNHCR	United Nations High Commissioner for Refugees

METHODOLOGY

The comparative report examines existing practices relating to the legal framework of asylum detention across AIDA countries. It primarily draws from the European Council on Refugees and Exiles (ECRE)'s Asylum Information Database (AIDA) country reports, which provide up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions, detention and content of international protection in 27 countries,⁶ complemented by desk research.

This report examines the legal framework of asylum detention in 26 countries, including 21 EU Member States. All 21 EU Member States covered by AIDA have been bound by the 2013 Reception Conditions Directive (2013 RCD) since its adoption, except for Ireland. All such 21 EU Member States are bound by the 2024 Reception Conditions Directive (2024 RCD), including Ireland. As this report, published in July 2026, examines detention practices in 2025 and early 2026, prior to the application of the Pact on Migration and Asylum, the analysis is based on the standards set out in the 2013 RCD, the Asylum Procedures Directive (APD) and the Dublin III Regulation. Each section includes a dedicated note indicating whether the relevant provisions remain unchanged under the new framework of the Pact or highlighting any significant modifications introduced by it. For the 5 non-EU countries, the standards on detention discussed in this report are also covered by international and European human rights law, which all countries covered by this research are bound by.⁷ Notably, all 26 countries covered by this report are parties to the European Convention on Human Rights (ECHR), to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As it is based on practices reported for AIDA countries up to 2025, this comparative report primarily reflects the EU asylum acquis prior to the applicability of the provisions of the EU Pact on Migration and Asylum. However, each chapter also provides an overview of the main changes introduced by the new EU asylum legislation, which became fully applicable on 12 June 2026.

This report – and its companion report,⁸ focused on the detention of asylum seekers, also aims to clarify the legal framework applicable to detention in the return context. Indeed, while often the distinction between the detention of asylum seekers and people under a return procedure are blurred in practice, EU law requires compliance with the same core guarantees on detention conditions through the legislation on returns.

National data on the scale and use of detention is scarce, incomplete, unclear, fragmented, and difficult to compare. Reports have highlighted the challenges involved in analysing trends on asylum detention trends given largely due to the lack of systematic and consistent data collection practices.⁹ Eurostat does not collect statistics on detention of asylum seekers and alternatives to detention, as they fall outside the scope of the Migration Statistics Regulation. This leads to a lack of homogeneity in how Member States collect and present statistics on detention (e.g., making it difficult to distinguish between the detention of asylum seekers and other third country nationals).¹⁰ In this sense, the authors acknowledge that some information gaps are likely to remain due to a lack of reporting or access to some sources and a relative lack of data and statistics on the detention of asylum seekers.

6. Egypt is not covered by this report. By default, when no other source is provided, information on state practices is taken from the Updates on 2024 and 2025 of the AIDA country reports, available [here](#).

7. This report examines places and conditions of detention in 21 EU Member States (including IE which only opted into the RCD in 2018; all other 20 EU Member States covered in this report have been bound by the 2013 RCD since its adoption are all 21 are bound by the 2024 RCD, including IE) and 5 non-EU Member States (RS, CH, UA, UK, TR). Notably, all 26 countries covered by this report as parties to the ECHR and to European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

8. See AIDA, 'At the margins: Places and conditions of detention', June 2026, available [here](#).

9. EPRS, 'Detention of migrants: a measure of last resort' (2023), p. 2, available [here](#).

10. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, available [here](#).

INTRODUCTION

The detention of people seeking international protection is a longstanding practice in the context of the European Union (EU) legal framework, despite extensive evidence of its harmful effects on individuals and its limited effectiveness as a migration management tool.¹¹ Critically, the detention of asylum seekers is characterised by a high degree of opacity, including through attempts to circumvent the legal safeguards applicable to detention through recourse to practices not formally classified as such.

The detention of asylum seekers is subject to strict safeguards under human rights law. EU institutions are mandated to take into account the EU Charter of Fundamental Rights (the Charter) in both the design and the subsequent implementation of any EU legislation and policy.¹² Article 6 of the Charter, Article 5 of the European Convention on Human Rights (ECHR), Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and Article 31 of the 1951 Refugee Convention.¹³ Regardless of how it is labelled in domestic systems, detention must comply with the principles of legality, necessity and proportionality, be applied only for a legitimate purpose, used as a measure of last resort if alternatives to detention cannot be applied and for the shortest possible period, and be accompanied by appropriate material conditions and procedural guarantees.¹⁴ However, practices through which States circumvent their international and EU law duties remain, stemming from ambiguities in legal frameworks, and often driven by deliberate policy choices.

Detention can occur at different stages of the asylum procedure: (a) upon arrival, to decide the right to enter the territory (including for the determination of the person's identity or nationality); (b) when lodging the asylum application, pending its examination (including to organize the transfer to another EU Member State deemed responsible for the application); and (c) following a negative asylum decision, pending return. This report seeks to clarify the instances when States resort to deprivation of liberty of asylum seekers, whether formally designated as such or occurring *de facto*, and, at the same time, clearly demarcate the procedural safeguards that countries must respect when countries make recourse to such practices.

This comparative report sets out applicable legal standards and assesses the selected countries' compliance with this framework. Furthermore, it points towards how the implementation of the EU Pact on Migration and Asylum may affect existing detention frameworks and practices. Each chapter therefore concludes with an assessment of the Pact's potential legal and practical implications of the Pact, as well as a list of key recommendations. In particular, the report is structured as follows:

- » **Chapter I** examines the concepts of 'detention', '*de facto* detention' and 'restrictions of freedom of movement'.
- » **Chapter II** examines the legal framework of detention in the context of asylum procedures.
- » **Chapter III** examines the procedural safeguards regarding detention of asylum seekers, including the duration of detention, the judicial review of detention, and the available legal assistance to access said judicial review.
- » **Chapter IV** briefly covers the legal framework applicable to detention in the context of return procedures.

A final section draws conclusions and makes targeted recommendations to European countries and EU institutions regarding existing practices and the implementation of the Pact.

11. See, among many others, World Health Organization, 'Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide', 4 May 2022, available [here](#); Altaf Saadi, Caitlin Palter, Paola Langer, 'The health-related experiences of detained immigrants with and without mental illness', *Journal of Migration and Health*, Volume 11, 2025, available [here](#); Reem Khalid Saifelddeen, Sasha Menon, Naomi Glover, Cornelius Katona, 'The impact of immigration detention on mental health: an updated systematic review', *Springer Nature*, 16 May 2026, available [here](#).
12. For a more detailed analysis of this obligation see Policy Department for Olivier de Schutter, study for the European Parliament, 'The Implementation of the Charter of Fundamental Rights in the EU institutional framework', PE 778.858, November 2025, p. 7, available [here](#).
13. UN General Assembly, '1951 Convention Relating to the Status of Refugees', 28 July 1951, available [here](#).
14. ECtHR, *Guide on Article 5 : Right to liberty and security*, updated 28 February 2026, available [here](#); *Explanations relating to the Charter of Fundamental Rights*, OJ 2007 C 303/17, 2007, available [here](#), explanation to Article 6; CJEU, C-601/15 PPU, *J. N. v Staatssecretaris van Veiligheid en Justitie*, 15 February 2016, available [here](#); United Nations Human Rights Committee, *General Comment No. 35 on Article 9 ICCPR (Liberty and security of person)*, CCPR/C/GC/35, 2014, available [here](#).

CHAPTER I - THE CONCEPTS OF DETENTION, DE FACTO DETENTION AND RESTRICTIONS OF THE FREEDOM OF MOVEMENT

1. Detention and *de facto* detention

» Article 5(1) of the ECHR

Khlaifia and Others v. Italy [GC], App No 16483/12; *R.R. and Others v. Hungary*, App No 36037/17

» Article 6 of the Charter of Fundamental Rights of the EU (Charter)

» Article 2(h) of the Reception Conditions Directive (2013 RCD)

Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*; C-808/18, *European Commission v. Hungary*

Detention under the ECHR

Under the ECHR, the boundary that clearly demarcates detention and mere restrictions of movement is not conclusively defined either in the provisions of the ECHR or in the case law of the European Court of Human Rights (ECtHR). The same inconclusiveness arises at EU level, where Article 2(h) of the recast Reception Conditions Directive of 2013 (2013 RCD) defined 'detention' as any situation of '*confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement*'.¹⁵ A similar conceptualization is done by the United Nations High Commissioner for Refugees (UNHCR).¹⁶

In the context of migration governance in recent years, several European countries appear to increasingly blur the distinction between detention and other restrictive measures, such as restrictions on freedom of movement and alternatives to detention, either in law or in practice. The difficulty in differentiating between these types of measures can lead to situations that amount to *de facto* detention,¹⁷ whereby people are effectively deprived of their liberty in practice, while no formal detention order has been issued or the situation is not formally recognised as detention by law.¹⁸ These practices are particularly harmful as they do not grant applicants access to a remedy against the detention measure.¹⁹

The ECtHR has consistently held that the definition of 'detention' is fact-based and may include formal detention as mandated through a detention order (i.e., *de jure* detention), but also any other practice of *de facto* detention. In this sense, the Court has noted that the difference between a restriction of movement and a deprivation of liberty is one of *degree* and not of substance,²⁰ where the two concepts are to be distinguished in terms of the severity of their interference with a person's liberty.²¹ In order to determine whether a person is facing detention, a factual assessment of their individual situation,²² the applicable legal regime, and the duration and nature and degree of the actual restrictions imposed is required.²³ As such, when assessing whether a situation amounts to 'detention', the ECtHR does not consider itself bound by the legal conclusions reached by domestic authorities, but rather undertakes an autonomous assessment of the situation.²⁴

15. 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), OJ 2013 L180/96.

16. See UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2012), para 5, available [here](#); where it is stated that "detention" refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities'.

17. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133; and Ulrike Brandl, 'Mix and Match. Detention, 'De-Facto Detention' or just Restrictions of Freedom of Movement in the New Pact – EU Immigration and Asylum Law and Policy, 14 October 2024, available [here](#).

18. ECRE; 'Boundaries of liberty: asylum and *de facto* detention in Europe' (2018); p. 8; available [here](#).

19. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, available [here](#).

20. See, e.g., ECtHR, *Khlaifia and others v. Italy* (Grand Chamber), Application No 16483/12, Judgment of 15 December 2016, para 64; available [here](#).

21. ECRE; 'Boundaries of liberty: asylum and *de facto* detention in Europe' (2018); p. 8; available [here](#).

22. ECtHR, *Nolan and K. v. Russia*, Application No 2512/04, judgment of 12 February 2009.

23. ECtHR, *Khlaifia v. Italy*, para 64; ECtHR, *R.R. and Others v. Hungary*, Application No 36037/17, Judgment of 2 March 2021, para 74; or ECtHR, *J.B. and Others v. Malta*, Application No 1766/23, 22 October 2024, para 81, available [here](#). See also Lilian Tsourdi, 'Asylum Detention in EU Law: Falling between Two Stools?' (2016); 35 *Refugee Survey Quarterly* 11.

24. See, for example, ECtHR, *Khlaifia v. Italy*, para 71; or ECtHR, *H.M. v. Switzerland*, Application No 39187/98, 26 February 2002, paras 30 and 48, available [here](#).

The ECtHR has clarified that the official qualification of a practice as ‘detention’, whether through law or practice, is immaterial to the assessment of the existence of a deprivation of liberty.²⁵ In this sense, the Court has consistently struck down attempts by European countries to qualify places of detention as something else (e.g., areas for border controls or transit zones, or reception facilities for registration and asylum procedures) in an aim to circumvent their obligations regarding deprivations of liberty. For example, the Court considered that asylum seekers who were not allowed to leave a centre ‘for first aid and assistance’ following their rescue at sea were effectively detained, despite a lack of official designation as such by Italian legislation.²⁶ Moreover, both airport transit zones²⁷ and transit zones at the land border²⁸ have been sanctioned as *de facto* detention practices. In a similar way, the Court found that the retention of asylum seekers in ‘hotspots’ closed reception centres for the identification and registration of migrants where they could not leave amounted to deprivation of liberty, both in Italy²⁹ and Greece.³⁰

However, the ECtHR has also clarified that, while the prohibition of leaving a place is a strong indicator of detention, it is not absolute.³¹ It is the assessment of the factual circumstances of the asylum seekers in the particular area that is decisive to the existence or not of a practice of detention. Therefore, ‘*the mere fact that it was possible for the applicants to leave [a transit zone] voluntarily cannot rule out an infringement of the right to liberty*’.³² Further illustrating this point, the Court considered a situation whereby a building was not locked but asylum seekers had to ‘ask for permission to go to the nearest village’ and were constantly subject to controls as amounting to a deprivation of liberty.³³ In ‘borderline cases’, the Court places particular relevance in the duration and degree of restrictions on the individual as relevant factors to determine whether a measure amounts to detention or a restriction on freedom of movement.³⁴ As such, the isolation of reception centres from services and transport may also point towards a deprivation of liberty.³⁵ The ECtHR has considered the existence of a practice of detention even if the person concerned has agreed to the confinement.³⁶

Detention under EU law

At EU level, the definition of ‘detention’ in the asylum context provided by the 2013 RCD combined wording from Article 31 of the 1951 Refugee Convention (i.e., restrictions on movements of refugees) with terms from Article 5 ECHR (i.e., deprivation of liberty), while also falling short of clarifying under what circumstances an asylum seeker is effectively ‘deprived of his or her liberty’.³⁷ In any case, the existence of an interference with the right to liberty amounting to ‘detention’ has been examined by the Court of Justice of the EU (CJEU) in relation to this definition.³⁸ In this sense, the CJEU has also examined the cumulative effects of the stay of asylum seekers in land transit zones (in particular, in Hungary).³⁹ Similarly to the approach taken by the ECtHR, the CJEU concluded that a situation whereby asylum seekers were forced to remain in a restricted, closed transit zone, with their movements being limited and monitored, and from which they could not leave voluntarily (e.g., because that would mean withdrawing their asylum application), constituted a deprivation of liberty. Further, the CJEU has held that such restrictions qualify as detention under EU law, especially when there is no legal alternative or meaningful access to exit options.⁴⁰

25. ECtHR, *Khlaifia v. Italy*, para 71.

26. ECtHR, *Khlaifia v. Italy*, para 68.

27. See, for example, ECtHR, *Amuur v. France*, Application No 19776/92, Judgment of 25 June 1996, para 52; ECtHR, *Riad and Idiab v. Belgium*, Application Nos 29787/03 and 29810/03, Judgment of 24 January 2008, para 68; and ECtHR, *Z.A. and Others v. Russia* [GC], Application Nos 61411/15, 61420/15, 61427/15 and 3028/16, 21 November 2019, para 138, available [here](#).

28. See, for example, ECtHR, *R.R. and Others v. Hungary*, para 83.

29. ECtHR, *J.R. and Others v. Greece*, Application No 22696/16, 25 January 2018, available in French [here](#). However, the Court also found that once the facility had become semi-open, asylum seekers were only subjected to a restriction of movement.

30. ECtHR, *J.A. and Others v. Italy*, Application No 21329/18, 30 March 2023, available [here](#).

31. ECRE; ‘Boundaries of liberty: asylum and *de facto* detention in Europe’ (2018); p. 9; available [here](#).

32. ECtHR, *Riad and Idiab v. Belgium*, para 68.

33. ECtHR, *Stanev v. Bulgaria*, Application No 36760/06, Judgment of 17 January 2012, para 124. In this case, the Court found accommodation on a mountain pass (from where the nearest town could only be reached by transport which asylum seekers could not afford, or where they needed express permission to enter and exit) to amount to a deprivation of liberty.

34. See, for example, ECtHR, *Guzzardi v. Italy*, Application No 7367/76, Judgment of 6 November 1980, where the Court found that the holding of a person in the island of Sardinia under strict supervision and curfew, and being required to report to the authorities twice amounted to detention. *A sensu contrario*, the Court found that special supervision by police entailing that the person could not leave his own home without informing the police, reporting obligations on certain days and an obligation to stay at home during the night was not considered as deprivation of liberty but only a restriction of freedom of movement (ECtHR, *Raimondo v. Italy*, Application No 12954/87, Judgment of 22 February 1994).

35. ECtHR, *Stanev v. Bulgaria*, Application No 36760/06, Judgment of 17 January 2012, paras 123-132.

36. ECtHR, *Kasparov v. Russia*, Application No 53659/07, Judgment of 11 October 2016, para 36.

37. ECRE; ‘Boundaries of liberty: asylum and *de facto* detention in Europe’ (2018); p. 8; available [here](#).

38. CJEU, Opinion of Advocate General Pikamäe, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, 23 April 2020, para 151, available [here](#).

39. CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, 14 May 2020, paras 216-231, available [here](#); and, C-808/18, *European Commission v. Hungary*, 17 December 2020, available [here](#).

40. PICUM, ‘Immigration detention in transit zones: What European courts say’, January 2024, available [here](#).

Recently, the EU Agency for Asylum (EUAA) has also clarified that if restrictions imposed (individually or cumulatively) amount to a situation that is comparable to a deprivation of liberty, these will also not qualify as alternatives to detention, but rather as ‘*alternative forms of detention or de facto detention*’. This would also be irrespective of how they are labelled in national law.⁴¹

National practice

In contrast with the abovementioned established jurisprudence, *de facto* detention practices of asylum seekers have been reported in most countries in Europe. There are multiple reports regarding practical arrangements that can amount to deprivation of liberty implemented to hold third-country nationals in a variety of places unsuitable for such purposes (see [At the margins: Places and conditions of detention](#)) and outside of clear legal frameworks. When these practices involve persons who might wish to apply for international protection, this poses also specific challenges regarding access to the right to seek asylum.⁴²

Compliance with the case law of the ECtHR regarding the confinement of asylum seekers at border and transit zones is divergent across European countries.

In **Austria**,⁴³ **Germany**,⁴⁴ **Greece**,⁴⁵ **Romania**,⁴⁶ **Spain** (in dedicated areas at international airports and ports),⁴⁷ **Switzerland**,⁴⁸ **Serbia**,⁴⁹ the **United Kingdom**⁵⁰ and **Türkiye**⁵¹ asylum seekers at the airport can be subject to *de facto* detention (see [Lawfulness \(and non-arbitrariness\) of detention](#)). In the context of border controls in the area of Alpes-Maritimes in **France**, newly arrived asylum seekers have been held without a formal detention order in a ‘temporary detention zone’. More so, it is relevant to note that in Mayotte, many foreigners coming from Comoros are arrested and detained when they arrive on the island.⁵²

In **Greece**, allegations of *de facto* detention without following any formal procedure for those subjected to a pushback at the borders has been long reported.⁵³ In 2025, the ECtHR found that ‘*the arrest and subsequent detention of irregular migrants – a kind of temporary forced disappearance – formed part of the documented modus operandi of the practice of “pushbacks”*’ in Greece.⁵⁴ In **Hungary**, testimonies indicate that asylum seekers were detained overnight in shipping containers and a petrol station before being pushed back to Serbia.⁵⁵

In **Italy**, for years it has been reported that people - including unaccompanied children - are subject to *de facto* detention in hotspots, for identification purposes.⁵⁶ Similarly, a regime of *de facto* detention is applied

41. EUAA, ‘Guidelines on Alternatives to Detention, Practical Guide’, December 2024, p. 18, available [here](#).

42. Lighthouse reports, ‘Europe’s black sites’, 8 December 2022, available [here](#).

43. AIDA, *Country Report Austria on 2024*, p. 146, available [here](#). In Austria, the Asylum Act (as applicable prior to the implementation of the EU Pact) allowed the authorities to prevent asylum seekers who had arrived by air from entering the territory and to require them to remain at the airport while the border procedure was pending. While they remained free to leave Austria, they could not enter the territory if they chose to pursue their asylum application.

44. AIDA, *Country Report Germany on 2024*, p. 210, available [here](#). German Courts have consistently rejected to consider this as detention (German Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996; German Federal Court, Decision V ZB 170/16, 16 March 2017, available in German [here](#)). The fiction of non-entry into the territory is maintained, even if the person is transferred to a hospital or to court.

45. AIDA, *Country Report Greece on 2025*, available [here](#).

46. AIDA, *Preparing for reform: Romania’s asylum system ahead of the EU Pact*, August 2025, p. 28, available [here](#).

47. AIDA, *Country Report Spain on 2025*, p. 150, available [here](#). Persons who apply for asylum at borders or in airports must remain *de facto* detained in *ad hoc* spaces (*Salas de Inadmisión de Fronteras*) until their application is declared admissible. From the moment an asylum application is made, there is a period of 4 working days (extendable to 10 in some cases) to issue a decision of admission, non-admission or rejection.

48. AIDA, *Country Report Switzerland on 2024*, pp. 114 and 127, available [here](#). The Swiss Federal Court clearly recognized this as an uncontested deprivation of liberty (Swiss Federal Court, Decision BGE 129 II 193, 27 May 1997, para 4, available in German [here](#)).

49. AIDA, *Country Report Serbia on 2024*, pp. and 81, available [here](#).

50. AIDA, *Country Report the United Kingdom on 2025*, p. 108, available [here](#). Many airports or reporting centres have short-term holding facilities where people are held under detention powers for up to 24 hours.

51. AIDA, *Country Report Türkiye on 2024*, p. 130, available [here](#). See the judgment of the Turkish Constitutional Court in *B.T.*, Decision 2014/15769, 30 November 2017.

52. AIDA, *Country Report France on 2024*, p. 142, available [here](#). It should also be noted that, in 2023, 303 passengers of a flight coming from India were maintained in an *ad hoc* waiting zone specially created in a small airport near Paris. 25 people asked for asylum but were released by the judge before their request was examined due to procedural irregularities. Regarding the territory of Mayotte, it is however relevant to mention that it does not fall under the scope of the EU asylum *aquis* (see Article 349 TFEU).

53. AIDA, *Country Report Greece on 2025*, July 2026, available [here](#).

54. ECtHR, *A.R.E. v. Greece*, Application No 15783/21, 7 January 2025, para 288, available [here](#).

55. Lighthouse reports, ‘Europe’s black sites’, 8 December 2022, available [here](#).

56. AIDA, *Country Report Italy on 2024*, pp. 148, 187, 209, 211 and 215, available [here](#). See also ECtHR, *J.A. and Others v. Italy*, Application No 21329/18, 30 March 2023, available [here](#); and *A.T. v. Italy*, Application No 47287/17, 23 November 2023, available [here](#). See also ASGI, ‘L’Hotspot di Pantelleria: un microcosmo di diritti sospesi’, July 2025, available in Italian [here](#).

to all newly arrived asylum seekers in **Slovenia** until the lodging of their asylum applications.⁵⁷ In **Greece**, asylum seekers are *de facto* detained for reception and identification and the registration of their application, both in mainland Reception and Identification Centres (RICs) and in Closed Controlled Access Centres (CCACs) on the islands. A practice of *de facto* detention pending transfers to RICs also applies.⁵⁸ In the **United Kingdom**, asylum seekers who enter via the Channel are formally detained at the Manston asylum processing centre upon arrival while their asylum claim is registered and accommodation found.⁵⁹ In **Austria**, asylum seekers who apply for international protection at the police may be detained for up to 48 hours without a detention order, for safeguarding the first steps of the procedure and a security check.⁶⁰

In **Cyprus**, asylum seekers are *de facto* detained for several months in the first reception centre of Pournara after the registration of their application.⁶¹ In 2024, UNHCR reported 22 cases of people '*allegedly subjected to incommunicado detention in undisclosed locations, including in police cars and warehouses*', including 11 children, after crossing the buffer zone, in or near this centre, and who were then returned to the buffer zone.⁶²

In the **Netherlands**, the Dutch Council of State ruled that transferring an asylum seeker to a specific reception facility for disruptive applicants did not amount to detention, mainly because they are allowed to leave the facility and relinquish their right to reception facilities, despite this measure being a significant restriction on the freedom of movement.⁶³

In **Malta**, newly arrived asylum seekers were systematically *de facto* detained on public health grounds until 2024 (with some cases still being reported in 2025).⁶⁴

In **Ireland**, the Human Rights and Equality Commission noted that Direct Provision centres could be considered *de facto* detention as, in practice, leaving the centres could prove impossible given the limited financial allowance for asylum seekers and the often isolated location of the centres.⁶⁵ Similarly, civil society has criticised that isolation in remote locations, as well as reporting obligations and supervision applied to asylum seekers, potentially giving rise to deprivation of liberty, underpin federal reception and processing centres in **Switzerland**.⁶⁶ The Swiss Federal Administrative Court, however, also concluded that accommodation in a 'special centre' for asylum seekers '*who pose a significant danger to public safety and order or who significantly disrupt the operation and security of federal centres*' does not represent a deprivation of liberty.⁶⁷

Third country nationals have reported *de facto* detention upon interception at the **Croatian** border,⁶⁸ which monitoring organisations continued to document in 2025.⁶⁹

In **Türkiye**, asylum seekers who are apprehended outside their designated province may be *de facto* detained pending their transfer back or their transfer to a removal centre.⁷⁰ In May 2026, the ECtHR found that the act of keeping a person in police headquarters pending the administrative proceedings to ensure

57. AIDA, *Country Report Slovenia on 2025*, p. 96, available [here](#). Leaving the reception centre would entail negative consequences for asylum seekers. In particular, if asylum applicants leave before lodging their application they will be processed as foreigners and thus can be detained in the foreigners' centre and processed in the return procedure.
58. AIDA, *Country Report Greece on 2025*, available [here](#).
59. AIDA, *Country Report United Kingdom on 2025*, p. 100, available [here](#).
60. AIDA, *Country Report Austria on 2024*, p. 147, available [here](#).
61. AIDA, *Country Report Cyprus on 2025*, p. 117, available [here](#).
62. UNHCR, *Submission by the Office of the UNHCR in the cases of Z.A. and Others v. Cyprus (No. 32295/24) and E.A. and Others v. Cyprus (No. 5455/25)*, 5 November 2025, available [here](#).
63. Netherlands, Council of State [*Afdeling Bestuursrechtspraak van de Raad van State*], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, 202300933/1/V1, 11 September 2024; and Council of State [*Afdeling Bestuursrechtspraak van de Raad van State*], *Applicant v The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, *Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers, COA)*, 202401533/1/V1, 11 September 2024.
64. AIDA, *Country Report Malta on 2024*, p. 115, available [here](#). The ECtHR found the Maltese practice of *de facto* detaining all new arrivals under public health legislation as a violation of Article 5(1) ECHR (see *A.D. v. Malta*, Application No 12427/22, 17 October 2023, available [here](#)). In 2024, Malta reverted to automatically detaining all new arrivals for an almost mandatory minimum of two months.
65. AIDA, *Country Report Ireland on 2024*, p. 111, available [here](#).
66. AIDA, *Country Report Switzerland on 2024*, pp. 96, 114 and 124, available [here](#). See also Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 27, available [here](#).
67. Swiss Federal Administrative Court, Decision F-1389/2019, 20 April 2020.
68. CPT, *Croatia: Visit 2020*, CPT/Inf(2021)29, para 38, available [here](#).
69. BVMN, *Infrastructuring Nature – Case Study: Croatia – Bosnia and Herzegovina*, 25 May 2026, pp. 44-45, available [here](#).
70. AIDA, *Country Report Türkiye on 2024*, p. 130, available [here](#). According to stakeholders, the combination of the registration ban in certain provinces and the travel ban continued to force Syrians and non-Syrians either to stay illegally in one province or to travel illegally to other provinces, thus risking detention and deportation.

their eventual transfer to a removal centre amounted, in practice, to an unlawful deprivation of liberty.⁷¹

In **Bulgaria**, investigations revealed asylum seekers being '*routinely locked in a small, cage-like structure next to a border police station in Sredets*' resembling '*a disused dog kennel*', near the Turkish border.⁷²

In **Serbia**, *de facto* detention in abandoned houses, a warehouse and a police station garage have been reported.⁷³

In **Switzerland**, the definition of detention of asylum applicants is not totally clear, so that (a) temporary detention (up to three days) and (b) the holding of foreign nationals in airport transit zones are not officially considered detention.⁷⁴

Considerations on Pact implementation

- » Article 2(9) of the 2024 RCD
- » Articles 9 and 10 of the APR

The definition of 'detention' in the 2024 Reception Conditions Directive (RCD) does not change compared to the 2013 RCD.⁷⁵

However, the Pact provides for a possible expansion of the use of detention - or at least of restrictions of the freedom of movement – by mandating that a person subject to screening and border procedures shall remain in a situation that has been described as 'fiction of non-entry', as it is established that they shall not be granted an authorization to enter the territory of the EU. This requires Member States to adopt some measures to ensure that the person cannot move freely across the territory.⁷⁶ The Pact introduces the possibility for Member States to impose restrictions on applicants' freedom of movement, notably through Article 9 of the 2024 RCD. In principle, this provision seeks to distinguish such restrictions from detention. In practice, serious concerns remain that screening and border procedures may often be carried out in highly restrictive settings amounting, in substance, to *de facto* detention, particularly where applicants are unable to leave designated facilities or border zones freely. The distinction will ultimately depend on the factual circumstances and degree of restriction imposed in practice, as highlighted by longstanding case law.

Additionally, through the application of certain provisions of the Asylum Procedure Regulation (APR) and Screening Regulation, there will be an increased focus on processing at the borders, including through the introduction of a common screening process and the mandatory application of the border procedure in certain instances. The topic is further explored in detail in the following sections (see [Lawfulness \(and non-arbitrariness\) of detention](#) and [Restrictions to the freedom of movement of asylum seekers](#)).

Recommendations

- » Where countries prevent asylum seekers from leaving border facilities to access other parts of their territory, these measures should legally qualify as deprivation of liberty in national legislations. This is of particular relevance to safeguard the legality of the deprivation of liberty, considering the documented particular harmful effects of detention on people and the impingement on fundamental rights that these measures entail.
- » *De facto* detention, a practice that is currently widespread in Europe and which prevents the relevant guarantees to kick in, should not take place. All practices amounting, in law or in fact, to detention should be clearly classified as such in national law.

71. ECtHR, *Z.A. and K.S. v. Türkiye*, Application No 36449/17, 5 May 2026, para 72, available [here](#).

72. Lighthouse reports, 'Europe's black sites', 8 December 2022, available [here](#).

73. Global Detention Project and Collective Aid, *Serbia: Submission to the UN Committee on the Elimination of Racial Discrimination*, March 2026, available [here](#), 7; Border Violence Monitoring Network, *Illegal pushbacks and border violence reports – Detention – monthly report*, May 2025, available [here](#), 17.

74. AIDA, *Country Report Switzerland on 2025*, p. 115, available [here](#).

75. Article 2(9) of the 2024 RCD.

76. Cases in which procedures take place in a 'fiction of non-entry' have already been registered in several AIDA countries in the past (namely, DE, BE, FR, GR, ES). The case law of the ECtHR is also not consistent regarding the practices of detention of asylum seekers under the fiction of non-entry. For a detailed analysis of this matter see EPRS, 'Legal fiction of non-entry in EU asylum policy', April 2024, pp. 2-4, available [here](#).

2. Restrictions of the freedom of movement of asylum seekers

- » Articles 2 of Protocol No 4 of the ECHR
Garib v. the Netherlands [GC], Application No 43494/09
- » Article 7 of the 2013 RCD

Restrictions of freedom of movement under EU law

Article 7 of the 2013 RCD underlined asylum seekers' right to freedom of movement, stating that '*applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State*'. This could to some extent be restricted, since Member States could '*decide on the residence of the applicant*', exclusively (a) for reasons of public interest, public order or (b) when necessary, for the swift processing of an asylum application.⁷⁷

Under Article 7(3) of the 2013 RCD, Member States could, moreover, individually subject the provision of material reception conditions to the asylum seekers' actual residence in that specific place. The CJEU already assessed the practice of some Member States to reduce or withdraw material reception conditions as a penalty for national rules violations and found that the principle of human dignity requires Member States to never stripe asylum seekers of their ability to meet basic needs. In this sense, withdrawal of housing, food, or clothing will be contrary to EU law if it places asylum seekers in extreme material poverty, and this irrespective of whether alternative homeless shelters are available.⁷⁸

While the EUAA clearly distinguishes between a measure of restriction of freedom of movement from alternatives to detention (AtDs), it also recognizes that in some cases the same measure (e.g., reporting to authorities) could be used both as an AtD (under Article 10 of the 2024 RCD) or as a restriction of freedom of movement (under Article 9 of the 2024 RCD) (see [Alternatives to detention](#)). While it is not clear how or on what basis this distinction should be made, one could assume it is regarding the degree of restriction, seeing as the EUAA considers AtDs a '*more flexible*' measure than a restriction of freedom of movement.⁷⁹ However, this already happens in practice in some countries. In **Croatia**, the law foresees restrictions on freedom of movement as AtDs, in four ways: (a) prohibition of movement outside the reception centre for asylum seekers; (b) prohibition of movement outside a specific area; (c) reporting to authorities; (d) by reporting in person at the reception centre for asylum seekers at a designated time,; and (e) depositing travel documents and tickets with the Reception Centre for asylum seekers.⁸⁰

Restrictions of freedom of movement under the ECHR

Despite being considered as 'less restrictive' or 'less onerous' than detention, a measure restricting the freedom of movement of asylum seekers is still subject to certain guarantees also under Article 2 of Protocol No 4 of the ECHR. In particular, where a restriction concerns the rights to freedom of movement and freedom to choose one's residence and is limited in geographical scope, covering only particular areas of the territory of a given State, the Court will consider whether the measure was actually '*justified by the public interest in a democratic society*' (Article 2(4) of Protocol No 4 of the ECHR).⁸¹ This test will require the Court to determine (1) whether the restriction served the 'public interest', and (2) whether it was 'justified in a democratic society'.⁸²

National practice

20 AIDA countries have in place legislation that effectively provides for restrictions on the freedom of movement of asylum seekers (**RS, HU, MT, CY, TR, UA, BG, GR, RO, HR, CZ, AT, SI, IT, DE, CH, NL, FR, ES** and **SK**), with only 5 countries excluding these types of restrictions (**PL, SE, BE, UK** and **PT**), although in all of these countries a dispersal scheme is foreseen.

77. Article 7(2) of the 2013 RCD.

78. CJEU, C-233/18 *Zubair Haqbin*, 12 November 2019, para 53, available [here](#).

79. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 9, available [here](#). The EUAA has promised it will produce guidance on reception organisation and management measures, including restrictions of freedom of movement, in the future.

80. AIDA, *Country Report Croatia on 2024*, p. 134, available [here](#).

81. ECtHR, *Garib v. the Netherlands* [GC], Application No 43494/09, 6 November 2017, para 110, available [here](#).

82. ECtHR, *Garib v. the Netherlands* [GC], paras 115-116 and 136-141.

In **Italy**'s first reception centres,⁸³ **Slovenia**'s asylum home,⁸⁴ in **Poland**,⁸⁵ and in **Croatia**,⁸⁶ asylum seekers are free to exit provided accommodation during daytime, but they must return at night.

In **Hungary**, while there is freedom of movement across the territory, for asylum seekers to stay away of the reception centre for more than 24 hours they will need to notify authorities in writing.⁸⁷ Similarly, in the **Czech Republic** if an asylum seeker intends to leave the reception (or accommodation) center for a period exceeding 24 hours, they need to notify the authorities in writing in advance. If they intend to leave the reception centre for more than three days, they must submit written notification to authorities at least 2 working days before, and they may leave for a maximum of ten consecutive days (with the possibility of leaving again only after 2 days).

In **Ireland**, while freedom of movement is not expressly restricted in law, state accommodation residents are required to seek permission if they are going to be away from their accommodation overnight. Moreover, in practice, freedom of movement is restricted due to the very low level of financial support given to asylum seekers, making it too costly to travel. This has been denounced as a *de facto* detention measure (see [Detention and de facto detention](#)).⁸⁸

In **Belgium**,⁸⁹ **Greece**,⁹⁰ **France**,⁹¹ **Germany**,⁹² **Portugal**,⁹³ **Poland**,⁹⁴ **Romania**,⁹⁵ **Türkiye**⁹⁶ and **Ukraine**,⁹⁷ asylum seekers may be assigned to reside in a specific place, with their material reception conditions being interrupted if they do not comply with it. In **Slovakia**, although there is no limitation on the freedom of movement of asylum seekers as such, material reception conditions are provided only while asylum seekers reside in an asylum facility operated by the authorities.⁹⁸ Similarly, freedom of movement is restricted in this way even in countries in which the law itself does not contain restrictions on freedom of movement. Also in the **UK**, accommodation by the Home Office (due to a lack of financial resources) will cease to be provided if an asylum seeker stays elsewhere for more than a few days.⁹⁹

In **Slovenia**¹⁰⁰ and **Türkiye**¹⁰¹ freedom of movement restrictions have implications for the asylum procedure itself. If an asylum seeker leaves the premises of the asylum home and does not return after several days, their application is considered to be implicitly withdrawn.

In practice, several AIDA countries go further than simply requiring residence in a particular place, and provide for geographical restrictions to the physical movement of asylum seekers (**GR**, **ES**,¹⁰² **BG**, **SI**). This could, for example, happen by allowing asylum seekers to move freely only within an assigned area (e.g., an island in **GR**¹⁰³ or the municipality where they are accommodated in **SI**¹⁰⁴), or by restricting their freedom of movement due to public order or national security reasons (**AT**¹⁰⁵ and **CY**¹⁰⁶).

In **Bulgaria**, failure to comply with a measure restricting freedom of movement will result in the imposition of a detention measure,¹⁰⁷ and the **Netherlands** has legislation setting out asylum seekers' reporting duties to

83. AIDA, *Country Report Italy on 2024*, p. 173, available [here](#).
84. AIDA, *Country Report Slovenia on 2025*, p. 84, available [here](#).
85. AIDA, *Country Report Poland on 2024*, p. 67, available [here](#).
86. AIDA, *Country Report Croatia on 2024*, p. 98, available [here](#).
87. AIDA, *Country Report Hungary on 2025*, p. 88, available [here](#).
88. AIDA, *Country Report Ireland on 2025*, p. 98, available [here](#).
89. AIDA, *Country Report Belgium on 2024*, p. 143, available [here](#).
90. AIDA, *Country Report Greece on 2025*, available [here](#).
91. AIDA, *Country Report France on 2025*, p. 125, available [here](#).
92. AIDA, *Country Report Germany on 2024*, p. 165, available [here](#).
93. AIDA, *Country Report Portugal on 2025*, p. 136, available [here](#).
94. AIDA, *Country Report Poland on 2024*, p. 67, available [here](#).
95. AIDA, *Country Report Romania on 2025*, p. 126, available [here](#).
96. AIDA, *Country Report Türkiye on 2024*, p. 102, available [here](#).
97. AIDA, *Country Report Ukraine on 2025*, p. 65, available [here](#).
98. AIDA, *Country Report Slovakia on 2025*, available [here](#).
99. AIDA, *Country Report the UK on 2025*, p. 79, available [here](#).
100. AIDA, *Country Report Slovenia on 2025*, pp. 83-84, available [here](#).
101. AIDA, *Country Report Türkiye on 2024*, p. 102, available [here](#).
102. AIDA, *Country Report Spain on 2025*, p. 110, available [here](#).
103. AIDA, *Country Report Greece on 2025*, available [here](#).
104. AIDA, *Country Report Slovenia on 2025*, pp. 83-84, available [here](#).
105. AIDA, *Country Report Austria on 2025*, p. 116, available [here](#).
106. AIDA, *Country Report Cyprus on 2025*, p. 107, available [here](#).
107. AIDA, *Country Report Bulgaria on 2025*, p. 92, available [here](#).

authorities.¹⁰⁸

Considerations on Pact implementation

- » Article 9 of the 2024 RCD
- » Article 54(1) of the APR

As a general rule, asylum seekers may move freely within the territory of the Member State they are undergoing the asylum procedure in.¹⁰⁹ However, the 2024 RCD provides for four types of restrictions Member States may impose in this sense: (a) the organisation of reception systems (Article 7); (b) the allocation of asylum seekers to a geographical area (Article 8); (c) restrictions of freedom of movement of asylum seekers (Article 9); and (d) detention of asylum seekers (Article 10).

As such, a novelty of the Pact is the express introduction of an article dedicated to the possibility for Member States to apply restrictions of freedom of movement to asylum seekers.¹¹⁰ In fact, the new article has been renamed, shifting the focus from '*freedom of movement*' to '*restrictions on freedom of movement*'.¹¹¹ Member States now have enhanced discretion to, '*where necessary*', decide that an asylum seeker was allowed to reside only in a specific place (adapted for housing them) and, in particular, for (a) reasons of public order, or –and this is a novelty– (b) effectively preventing the person from absconding (in relation to a procedure under the AMMR).

This provision (i.e., Article 9 of the 2024 RCD) should be read in conjunction with Article 54(1) of the APR, which provides a mandatory recourse to a restriction of the freedom of movement of asylum seekers under a border procedure. In essence, Member States '*shall require (...) applicants to reside at or in proximity to the external border or transit zones as a general rule or in other designated locations within [their] territory*'.¹¹² In particular, this applies unless Member States decide to operate a more restrictive detention regime (with the necessary pre-assessment of the applicability of AtDs, as developed under [Alternatives to detention](#)).¹¹³

The European Commission, in a guidance document issued to Member States on the use of detention under the new Pact rules, has argued that '*[t]he necessity of [detention] decisions (...) is presumed for all applicants subject to asylum border procedure in accordance with Article 43-54(1) APR [and] to screening as per Art. 6 and 9 SR*'. This, according to the Commission, leads to the conclusion that '*when the border procedure is applied in accordance with Article 54(1) APR, Member States do not have to justify in their individual decisions why the restriction of freedom of movement is necessary in the individual case*'.¹¹⁴

However, there might be some limits to the automatic assumption of the necessity of the measure. First, Member States may make recourse to this type of restriction '*where necessary*', with no exceptions to this requirement being expressly made regarding border procedures (Article 9(1) of the 2024 RCD). Second, the fact that a sort of ex-post necessity assessment could be required, given the reference to (a) the need to take account of the individual situation of the applicant (including special reception needs) when imposing such a measure, and (b) the exclusion from border procedures of asylum seekers with special reception needs where the necessary support cannot be provided.¹¹⁵ Finally, the guarantees of Article 2 of Protocol No 4 of the ECHR still apply to any measure restricting the freedom of movement of asylum seekers, including the need to carry out the 'public interest' test.

It is worthwhile remembering that, while carrying out border procedures, Member States are not obliged to make recourse to detention. For asylum seekers in a border procedure, the APR only refers to the mandatory application of restrictions on the freedom of movement (i.e., asylum seekers in the border procedure must be

108. AIDA, *Country Report the Netherlands on 2025*, p. 143, available [here](#).

109. Article 7(1) of the 2024 RCD.

110. Article 9 of the 2024 RCD.

111. ECRE, 'Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council, of 14 May 2024, laying down standards for the reception of applicants for international protection (recast)', September 2024, p.8, available [here](#).

112. Article 54(1) APR.

113. Article 54(1) APR states that '*[d]uring the examination of applications subject to a border procedure, a Member State shall require, pursuant to Article 9 of Directive (EU) 2024/1346 and without prejudice to Article 10 thereof, the applicants to reside at or in proximity to the external border or transit zones as a general rule or in other designated locations within its territory*' (emphasis added by the authors).

114. European Commission, 'Guidance document on the use of detention, alternatives to detention and restrictions of freedom of movement under the 2024 recast Reception Conditions Directive', June 2026, pp. 19-20, available [here](#).

115. Article 53(2)(b) APR.

required to reside in specific locations at or in proximity to the border or within the territory),¹¹⁶ which notably must not result in *de facto* detention.¹¹⁷ However, for the reasons developed above regarding screening, this will be the likely outcome, given –among others– the remote locations of the ‘multipurpose’ centres where border procedures will take place. This would also be the case if the asylum seekers are required to reside ‘*in a specific place*’ where they are not allowed to freely leave.¹¹⁸

This is already the case in several EU Member States, in a context of increasing use of *de facto* detention (see [Detention and *de facto* detention](#)). Moreover, in practice, the use of detention in border procedures is almost always the case in Europe (see [Lawfulness \(and non-arbitrariness\) of detention](#)). As such, the impact of the new introduction of the possibility to restrict the freedom of movement of asylum seekers might be limited, particularly in light of its *de facto* use by multiple Member States prior to the entry into force of the EU Pact.

Certain guarantees also apply to the imposition of a restriction of the freedom of movement of asylum seekers under the EU Pact. In particular, the measure ‘*shall be proportionate and take into account relevant aspects of the individual situation of the applicant, including the special reception needs of that applicant*’.¹¹⁹ More so, Member States are required to state the reasons for taking this measure, and inform the affected person of it, as well as of the legal avenues to challenge this decision, in writing.¹²⁰ While no strict deadline is required to lift such a measure, where the decision to restrict the freedom of movement of an asylum seeker has been applied for more than 2 months, it shall be *ex officio* reviewed by a judicial authority.¹²¹ An appeal, comprising a review of the measure in fact and in law by a judicial authority, may also be lodged at the request of the applicant.¹²² Member States shall ensure that free legal assistance and representation is made available as necessary regarding this appeal.¹²³

In any case, the implementation of Article 9 at national level should be very closely monitored. The 2024 RCD clearly establishes how decisions on the restriction of freedom of movement should not result in detention (Recital 19). In practice, due to the likely creation of (multi-purpose) centres at the border and the application of the fiction of non-entry, as noted above, it will not always be easy to distinguish whether the obligation to stay in the border area is a restriction of freedom of movement or, actually, a *de facto* detention measure.¹²⁴ UNHCR has already cautioned against movement restrictions that, due to their intensity or cumulative effects, may amount to *de facto* detention.¹²⁵

Recommendations

- » Member States should always conduct an individualized assessment of the necessity and proportionality of the measure before deciding to impose a residence or other geographical restriction on asylum seekers, as they constitute an impingement on the fundamental right to freedom of movement.
- » Restrictions of the freedom of movement must not result in *de facto* detention, either due to their intensity or their cumulative effects.

116. Article 9 of the 2024 RCD and Article 54(1) APR.

117. UNHCR, Advocacy Brief: ‘Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum’, 2025, p. 4., available [here](#).

118. ECRE, ‘Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council, of 14 May 2024, laying down standards for the reception of applicants for international protection (recast)’, September 2024, pp. 8-9, available [here](#).

119. Article 9(4) of the 2024 RCD.

120. Article 9(5) of the 2024 RCD.

121. Article 9(5) of the 2024 RCD.

122. Articles 9(5) and 29(2) of the 2024 RCD.

123. Article 29(2) of the 2024 RCD, which also states how ‘[s]uch legal assistance and representation shall consist of the preparation of the appeal or request for review, including, at least, the preparation of the required procedural documents, and participation in the hearing before the judicial authorities on behalf of the applicant. Free legal assistance and representation shall be provided by legal advisers or other suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant’. Further, according to Article 29(3), ‘Member States may decide not to grant free legal assistance and representation where: (a) the applicant has sufficient resources; or (b) the appeal or review is considered to have no tangible prospect of success, in particular if the appeal or review is at a second level of appeal or higher’.

124. Ulrike Brandl, ‘Mix and Match. Detention, ‘De-Facto Detention’ or just Restrictions of Freedom of Movement in the New Pact – EU Immigration and Asylum Law and Policy’, EU Migration Law Blog, 14 October 2024, available [here](#).

125. UNHCR, Advocacy Brief, ‘Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum’, September 2025, p.3, available [here](#). UNHCR has developed a checklist of factors to be considered in the determination of whether a situation constitutes *de facto* detention, which can be found [here](#).

CHAPTER II - LEGAL FRAMEWORK FOR THE DETENTION OF ASYLUM SEEKERS

1. Lawfulness (and non-arbitrariness) of detention

- » Article 5(1) of the ECHR
 - Saadi v. the United Kingdom* [GC], Application No 13229/03; *Khlaifia and Others v. Italy* [GC], App No 16483/12; *Suso Musa v. Malta*, App No 42337/12
- » Article 6 of the Charter
 - C-808/18 *European Commission v. Hungary*; Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*; C-36/20 PPU *Ministerio Fiscal*
- » Articles 8 and 9 of the 2013 RCD
- » Article 26 of the APD
- » Articles 28 and 2(n) of the Dublin III Regulation
 - C-163/17 *Jawo*
- » Article 31 of the 1951 Refugee Convention

Under international human rights law, international refugee law and EU law, the detention of asylum seekers is an exceptional measure that may only be used as a last resort and cannot be justified solely by an individual's irregular entry or presence.¹²⁶ Nevertheless, European states increasingly resort to detention during the examination of asylum applications. Often this is done in clear contravention of their obligation to refrain from arbitrary detention¹²⁷ and the prohibition of penalisation of refugees for their potential irregular entry.¹²⁸ In any case, the use of detention – whether *de jure* or *de facto* – in asylum procedures is subject to strict legal constraints and safeguards for which guidance is extensively provided by the case law of European courts, on the right to liberty¹²⁹ and the right to freedom of movement,¹³⁰ as well as on the provisions contained in secondary EU legislation.¹³¹

Lawfulness of detention under the ECHR

Article 5 ECHR protects people against arbitrary detention by establishing that '*[e]veryone has the right to liberty and security of person*'. The ECtHR has consistently held that the fact that an individual is seeking asylum cannot, in itself, justify detention.¹³² Accordingly, for a deprivation of liberty to comply with Article 5 ECHR, it must be lawful and free from arbitrariness.¹³³

As per Article 5(1) ECHR, the lawfulness requirement primarily demands that any deprivation of liberty be effected '*in accordance with a procedure prescribed by law*'. First, this requires the detention to have '*a legal basis in domestic law*'.¹³⁴ In the asylum context, Article 5(1)(f) ECHR provides two exhaustive grounds for a lawful detention,¹³⁵ namely: (1) to prevent a person from effecting an unauthorised entry into the country, or (2) with a view to deportation or extradition (see [Chapter IV – Between asylum and return detention](#)). The Court also noted that these circumstances must be given a '*narrow interpretation*' given that '*they constitute*

126. See, among others, Article 31 1951 Refugee Convention, Article 9 UDHR, Article 9(1) ICCPR, Article 6 EU Charter, or Article 5(1) ECHR.

127. Article 5 ECHR; Article 6 of the Charter.

128. Article 31 1951 Refugee Convention.

129. Article 5 ECHR and Article 6 EU Charter.

130. Article 2 Protocol 4 ECHR.

131. ECRE; 'Boundaries of liberty: asylum and *de facto* detention in Europe' (2018), p. 7, available [here](#).

132. ECtHR, *R.T. v. Greece*, Application No 5124/11, 11 February 2016, para 88, available [here](#); or ECtHR, *B.F. v. Greece*, Application No 59816/13, 14 October 2025, para 73, available [here](#).

133. See ECtHR, *Khlaifia and Others v. Italy* [GC], para 92; or ECtHR, *Z.A. and Others v. Russia* [GC], para 161.

134. See, *inter alia*, ECtHR, *Amuur v. France*, Application No 19776/92, 25 June 1996, para 50, available [here](#). However, on occasion, the ECtHR has also considered the grounds for detention and the assessment of the 'lawfulness' of detention as separate requirements (see, for example, ECtHR, *Denis and Irvine v. Belgium* [GC], Application Nos 62819/17 and 63921/17, 1 June 2021, para 125, available [here](#)).

135. The Court has noted that no deprivation of liberty will be lawful unless it falls within one of the grounds in Article 5(1) ECHR. See, among others, *Denis and Irvine v. Belgium* [GC], para 124.

exceptions to a most basic guarantee of individual freedom'.¹³⁶ Indeed, the Court has clearly noted how detention in these cases 'is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country'.¹³⁷

The first limb of this provision allows the detention of an asylum seeker (or other third-country national) prior to a State granting an authorisation to enter its territory.¹³⁸ However, the Court also noted that '*where a State which has gone beyond its obligations in creating further rights or a more favourable position (...) enacts legislation (of its own motion or pursuant to European Union law) explicitly authorising the entry or stay of immigrants pending an asylum application (...), detention for the purpose of preventing an unauthorised entry may raise an issue as to the lawfulness of the detention under Article 5 § 1 (f)*'.¹³⁹

In any case, the question as to *when* an individual is to be considered as having been granted formal authorisation to enter – and, therefore, when this ground for detention ceases to apply – largely depends on national law (which includes the transposition of relevant EU law).¹⁴⁰ While the time elapsed is not a decisive factor in the Court's assessment of whether a deprivation of liberty falls under the scope of this lawful ground for immigration detention, the Court has found that '[w]hen more time has lapsed and the applicant is in the meantime physically present on the territory of a State, adherence to the requirement of close connection between immigration detention and prevention of unauthorised entry will need to be strictly scrutinised'.¹⁴¹ The ECtHR's case law does not offer specific guidelines on the maximum time lapse acceptable in this context (as it has ruled that '*fixed time-limits are not a requirement of Article 5 § 1 (f)*'¹⁴² – see [Duration of detention](#)),¹⁴³ but considered periods of three months' detention pending a determination of an asylum claim to be unreasonably lengthy.¹⁴⁴ On the contrary, it considered lawful a seven-day detention with the aim to determine an applicant's asylum application.¹⁴⁵

The Court has repeatedly found detention ordered on national security grounds not to be sufficiently linked to the ground of preventing unauthorised entry.¹⁴⁶

The second requirement regarding whether '*a procedure prescribed by law*' has been followed relates to the quality of the law and, in particular, the obligation to conform to the relevant substantive and procedural rules of national law.¹⁴⁷ Placing a particular relevance on the general principle of legal certainty, the Court requires that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application.¹⁴⁸ Moreover, any deprivation of liberty must be preceded by a decision that clearly informs the detained person of the legal grounds and factual reasons for their detention.¹⁴⁹ Access to an effective remedy against detention is also an integral part of the assessment of the lawfulness of detention (see [Judicial review of detention](#)).

While the Court has clearly established that the lack of a clear statutory basis for the detention of asylum seekers is in itself sufficient to find a violation of Article 5(1) ECHR,¹⁵⁰ it has also taken into account the practical reality in a State, specifically in the case of mass arrivals of asylum seekers. In this context, the Court has considered that Article 5(1)(f) ECHR does not prohibit the detention of asylum seekers in a transit zone on grounds, for example, that it is necessary to ensure their presence pending the examination of their applications, or the need to examine their admissibility speedily.¹⁵¹ More so, subject to the prohibition of arbitrariness (see

136. See, for example, ECtHR, *Z.A. and Others v. Russia* [GC], para 159.

137. ECtHR, *Suso Musa v. Malta*, Application No 42337/12, 23 July 2013, para 97, available [here](#).

138. The ECtHR has ruled that it cannot accept that as soon as an asylum seeker has surrendered to the immigration authorities, they should be considered to be seeking to effect an 'authorised' entry so that detention cannot be justified (ECtHR, *Saadi v. the United Kingdom* [GC], Application No 13229/03, 29 January 2008, para 65, available [here](#)).

139. ECtHR, *Suso Musa v. Malta*, para 97; ECtHR, *O.M. v. Hungary*, Application No 9912/15, 5 July 2016, para 47, available [here](#).

140. See, *inter alia*, ECtHR, *Suso Musa v. Malta*, para 97; or ECtHR, *M.B. v. the Netherlands*, paras 63-69, for an example of the transposition of EU law into national law.

141. ECtHR, *M.B. v. the Netherlands*, Application No 71008/16, 23 April 2024, para 74, available [here](#).

142. ECtHR, *Komissarov v. Czech Republic*, Application No 20611/17, 3 February 2022, para 52, available [here](#).

143. ECtHR, *Suso Musa v. Malta*, para 96.

144. ECtHR, *Kanagaratnam and Others v. Belgium*, Application No 15297/09, 13 December 2012, paras 94-95, available in French [here](#).

145. ECtHR, *Saadi v. the United Kingdom* [GC].

146. See ECtHR, *M.B. v. the Netherlands*, Application No 71008/16, 23 April 2024, paras 70-75, available [here](#); or ECtHR, *B.A. v. Cyprus*, Application No 24607/20, 2 July 2024, paras 60-64, available [here](#).

147. ECtHR, *Saadi v. the United Kingdom* [GC], para 67.

148. See, *inter alia*, ECtHR, *Khlaifia and Others v. Italy* [GC], paras 91-92; ECtHR, *Z.A. and Others v. Russia* [GC], para 161; or ECtHR, *Denis and Irvine v. Belgium* [GC], para 128.

149. See, for example, ECtHR, *Khlaifia and Others v. Italy* [GC], para 115; or *R.M. and others v. Poland*, Application No 11247/18, 9 February 2023, para 29, available [here](#) – pending before the Grand Chamber.

150. See, *inter alia*, ECtHR, *Z.A. and Others v. Russia* [GC], paras 164-165; or, most recently, ECtHR, *Z.A. and K.S. v. Türkiye*, para 72.

151. ECtHR, *Z.A. and Others v. Russia* [GC], para 163.

below), the Court considered that in this context the lawfulness requirement could be satisfied by a national legal regime that provides only for the name of the competent authority to order detention in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of detention, and the applicable judicial appeal.¹⁵²

While a deprivation of liberty may be lawful in terms of national law, the Court has found that it still may be considered arbitrary and, therefore, violate Article 5(1) ECHR.¹⁵³ Therefore, the notion of ‘arbitrariness’ extends beyond lack of conformity with national law.¹⁵⁴ While the Court has not formulated a global definition as to what types of conduct might constitute ‘arbitrariness’ for the purposes of Article 5(1), key principles have been developed on a case-by-case basis, making it clear that this notion varies to a certain extent depending on the type of detention involved.¹⁵⁵ The requirements under Article 5 ECHR have been generally translated into the detention having been ordered in good faith, after an individual assessment, and only where it is necessary and proportionate to the aim pursued.

However, while it is relevant to other grounds of detention permitted in Article 5 ECHR, a test of the necessity of the detention is not, as such, required under Article 5(1)(f) ECHR.¹⁵⁶ This test may nevertheless be required under domestic legislation, as happens, for example, when States transpose EU law.¹⁵⁷ If so and this is not upheld, the Court will find detention to be arbitrary.¹⁵⁸ Similarly, the Court considered that the test of proportionality applied to detention under Article 5(1)(f) ECHR will only be relevant in the sense that the deprivation of liberty should not exceed what is reasonably required for the purpose pursued.¹⁵⁹

In short, for a detention measure justified under Article 5(1)(f) ECHR not to be considered ‘arbitrary’, the Court has noted that, not only must the national legal basis must not only be ‘*sufficiently accessible and precise*’,¹⁶⁰ but the deprivation of liberty itself must be carried out in good faith, be closely connected to the purpose of preventing unauthorised entry of the person to the country, the place and conditions of detention should be appropriate, and the length of the detention should not exceed that reasonably required for the purpose pursued.¹⁶¹

The ECtHR has also on some occasions evaluated the use of the exception in Article 5(1)(b) in justifying the detention of asylum seekers. In particular, this exception permits the deprivation of liberty ‘*for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law*’. States considered this provisions could apply, for example, in relation to the detention of asylum seekers that were under a legal obligation to cooperate with the asylum authority in providing information for the purposes of immigration and asylum procedures, or to prevent asylum seekers from absconding.¹⁶² The Court has also assessed the application of this article *ex officio*, in particular in relation to the need to secure a Dublin transfer.¹⁶³ After reiterating the need for an individual assessment of each case,¹⁶⁴ the Court concluded that, in the absence of a ‘*specific and concrete legal obligation*’ which the asylum seeker in question would fail to satisfy, Article 5(1)(b) ECHR cannot serve as a legal basis for asylum detention.¹⁶⁵

The Court noted some differences in what asylum detention under Article 5(1)(b) requires to also pass the non-arbitrariness test.¹⁶⁶ First, there must be an unfulfilled obligation incumbent on the asylum seeker, and the detention must be truly necessary for the purpose of securing its fulfilment, so that as soon as this obligation is fulfilled, the basis for detention under this provision ceases to exist. Under this necessity requirement, the Court further noted that the detention of an individual is such a serious measure that it is justified only as a measure of last resort, where other less severe measures have been found to be insufficient to attain the

152. ECtHR, *Z.A. and Others v. Russia* [GC], para 162.

153. See, among many others, ECtHR, *Saadi v. the United Kingdom* [GC], para 67; ECtHR *Amuur v. France*, para 50; *Chahal*, para 118.

154. ECtHR, *Z.A. and K.S. v. Türkiye*, para 41.

155. ECtHR, *Saadi v. the United Kingdom* [GC], para 68.

156. ECtHR, *Saadi v. the United Kingdom*, paras 70 and 72.

157. ECtHR, *J.R. and Others v. Greece*, para 111, available in French [here](#); and *Muhammad Saqawat v. Belgium*, Application No 24962/18, 30 June 2020, paras 47-49, available in French [here](#).

158. ECtHR, *Rusu v. Austria*, Application No 34082/02, 2 October 2008, available [here](#).

159. See, *inter alia*, ECtHR, *Saadi v. the United Kingdom*, paras 72-73; or ECtHR, *Suso Musa v. Malta*, para 93.

160. ECtHR, *Amuur v. France*, para 50.

161. See, *inter alia*, ECtHR, *Saadi v. the United Kingdom*, para 74; ECtHR, *Azimov v. Russia*, Application No 67474/11, 18 April 2013, para 161, available [here](#); or ECtHR, *L.M. and others v. Russia*, Application Nos 40081/14 and 2 others, 15 October 2015, para 146, available [here](#); or ECtHR, *B.F. v. Greece*, para 67.

162. ECtHR, *O.M. v. Hungary*, paras 34-35 and 48.

163. ECtHR, *Dshijri v. Hungary*, App No. 21325/16, 23 February 2023, paras 13-14, available [here](#); or ECtHR, *O.M. v. Hungary*, para 54.

164. ECtHR, *Dshijri v. Hungary*, para 13; or ECtHR, *O.M. v. Hungary*, para 54.

165. ECtHR, *O.M. v. Hungary*, para 54.

166. ECtHR, *O.M. v. Hungary*, paras 42-44; ECtHR, *Saadi v. the United Kingdom*, para 70.

objective in question (see [Alternatives to detention](#)). Second, this obligation should not be given a wide interpretation. Third, the detention should be proportionate, in that a balance must be struck between the importance of securing the immediate fulfilment of the obligation and the importance of the right to liberty. Finally, the detention must not be punitive in character. In this assessment, the Court considers the following points relevant: the nature of the obligation arising from the relevant legislation, including its underlying object and purpose; the person being detained and the particular circumstances leading to the detention; and the length of the detention.

Lawfulness of detention under EU law

At the EU level, Article 6 of the Charter protects the right to liberty, which in the context of asylum ‘*has been given flesh by EU secondary law*’.¹⁶⁷ In particular, this legislation (1) provides a definition of what amounts to detention in the asylum context (see [Detention and de facto detention](#)), and then (2) introduces a legal basis for lawful detention, setting out an exhaustive list of grounds, limitations, guarantees and conditions that would need to be met by a Member State to justify limiting the right to liberty. These guarantees correspond, essentially, to the tests of legality, necessity, and proportionality under Article 52(1) of the Charter.¹⁶⁸

Further, the exceptional nature of detention was clearly established in the 2013 RCD, with the freedom of movement of asylum seekers being established as the default mode of reception under the EU *acquis*.¹⁶⁹

Two elements were introduced into secondary EU asylum legislation to enable a detention measure to pass the test of ‘legality’. First, the prohibition that a person is held in detention ‘*for the sole reason that he or she is an applicant [for international protection]*’.¹⁷⁰ This essentially mirrors the rationale behind Article 31 of the 1951 Geneva Convention.¹⁷¹

Second, Article 8(3) of the 2013 RCD established an exhaustive list of six grounds for which an asylum seeker could be detained,¹⁷² namely: (a) to determine or verify their identity or nationality; (b) to determine the necessary elements on which the asylum application is based where there is a ‘*risk of [the asylum seeker] absconding*’; (c) to decide on the right of the asylum seeker to enter the territory of the State;¹⁷³ (d) when the asylum seeker is detained subject to a return procedure, and there are reasonable grounds to believe that they are making the asylum application merely to delay or frustrate the enforcement of the return decision (see [Chapter IV – Between asylum and return detention](#)); (e) on national security or public order grounds; and (f) in the context of a procedure under the Dublin III Regulation.¹⁷⁴ As was the case under the jurisdiction of the ECtHR, as per Article 9(1) of the 2013 RCD, detention should only be applied ‘*for as long as the grounds (...) are applicable*’.

Regarding the detention of asylum seekers during a Dublin procedure, Article 8(3)(f) of the 2013 RCD was complemented by Article 28 of the Dublin III Regulation. While Member States ‘*shall not hold a person in detention for the sole reason that he or she is subject to the [Dublin] procedure*’,¹⁷⁵ they could choose to detain an asylum seeker to secure a Dublin transfer ‘*[w]hen there is a significant risk of absconding*’. The concept of ‘risk of absconding’ was defined in the same Regulation as ‘*the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant (...) who is subject to a transfer procedure may abscond*’.¹⁷⁶

The application of detention grounds under Article 8(3) of the 2013 RCD remained non-mandatory for Member States. Member States could, therefore, decide which – if any – of such grounds to incorporate into their

167. Victor Davio, ‘Detention in the Hungarian Transit Zones: A Case of Higher Fundamental Rights Protection by EU Law Vis-a-Vis the ECHR’, *European Law Review* 47, no. 3 (2022), p. 393–409, at 398.

168. As required by Article 52(1) of the Charter for any limit to its rights to be considered lawful. See also CJEU, C-601/15 PPU *J.N.*, 15 February 2016, para 50, available [here](#).

169. ECRE, ‘Boundaries of liberty: asylum and *de facto* detention in Europe’ (2018); p. 14; available [here](#).

170. Article 8(1) of the 2013 RCD and Article 26 APD.

171. Article 31(1) of the 1951 Refugee Convention states that States ‘*shall not impose penalties, on account of their illegal entry or presence, on refugees who (...) enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence*’.

172. *Inter alia*, CJEU, C-808/18 *European Commission v. Hungary*, 17 December 2020, para 168, available [here](#).

173. This ground for detention is to be read in conjunction with Article 43(1) APD, which enables Member States to establish the so-called ‘accelerated border procedures’ to decide, at its border or transit zones: (a) on the admissibility of asylum applications made there; and (b) on the substance of asylum applications under certain circumstances (listed in Article 31(8) APD).

174. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast); OJ L 180, pp. 31–59, available [here](#).

175. Article 28(1) Dublin III Regulation.

176. Article 2(n) Dublin III Regulation.

national legislation.¹⁷⁷ However, outside of these grounds, EU Member States could not lawfully administratively detain an asylum seeker, even under the (arguably) more open grounds discussed above under Article 5(1)(f) ECHR.¹⁷⁸

The CJEU has extensively ruled on the grounds for detention set forth in Article 8(3) of the 2013 RCD, establishing, *inter alia*, that:

- » All assessed detention grounds (i.e., Articles 8(3)(a), (b)¹⁷⁹ and (e)¹⁸⁰) are lawful and in conformity with the Charter, as they are strictly circumscribed to meet the requirement of proportionality.
- » Even in a declared ‘state of emergency’, or a situation of mass influx of asylum seekers, Member States cannot disregard the grounds in Article 8(3) of the 2013 RCD and place an asylum seeker in detention solely because they are irregularly staying in their territory.¹⁸¹ The same goes for the case where an asylum seeker has expressed their wish to apply for international protection before an authority that is not competent to receive it.¹⁸²
- » A detention centre holding an asylum applicant whose application is processed under a border procedure does not have to be located exactly at the border.¹⁸³
- » The ground under Article 8(3)(c) of the 2013 RCD includes the detention regime that may be established by Member States when they decide to apply border procedures,¹⁸⁴ ‘to ensure the[ir] effectiveness’.¹⁸⁵
- » The assessment of the application of Article 8(3)(c) of the 2013 RCD should be done under the legal framework regulating border procedures, even where the Member State in question does not recognize that it is applying a border procedure (e.g., as was the case regarding Hungarian transit zones).¹⁸⁶
- » The detention of an asylum seeker based on Article 8(3)(c) of the 2013 RCD is only justified to allow Member States ‘to examine, before granting the applicant for international protection the right to enter its territory, whether his or her application is not inadmissible (...) or whether that application must not be rejected as unfounded on one of the grounds listed in Article 31(8) of [the APD]’ (i.e., the grounds that permit the use of the accelerated or border asylum procedure).¹⁸⁷ In this sense, a legal regime permitting the detention of asylum seekers also during the judicial proceedings where they challenged the rejection of their asylum application was found to be contrary to EU law.¹⁸⁸
- » The individual conduct of the asylum seeker needs to represent a ‘genuine, present and sufficiently serious threat, affecting a fundamental interest of society or the internal or external security’ of the Member State to be justified under Regarding Article 8(3)(e) of the 2013 RCD.¹⁸⁹
- » An asylum seeker ‘absconds’ when they ‘deliberately evades the reach of the national authorities responsible for carrying out his transfer, in order to prevent the transfer’. There is a *iuris tantum* presumption in this sense where the transfer cannot be effected because the asylum seeker in question

177. Article 8(3) *in fine* RCD.

178. The ECtHR always considers national legislation (including transpositions of EU law) to determine the lawfulness of a detention measure. And so, the EU legal framework may provide for more favourable standards, in which case national courts will be bound to apply EU law and cannot limit themselves to an assessment solely based on the ECHR. That being said, the two legal frameworks are broadly similar, with the EU having codified the above-discussed ECtHR case law into its legal framework. See Alexis Galand, ‘Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union’, *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, 2025, p. 115.

179. CJEU, C-18/16 K., 14 September 2017, available [here](#).

180. CJEU, C-601/15 PPU J.N., 15 February 2016, available [here](#).

181. CJEU, C-72/22 PPU M.A., 30 June 2022, paras 92-93, available [here](#).

182. CJEU, C-36/20 PPU *Ministerio Fiscal*, 25 June 2020, available [here](#).

183. CJEU, Joined Cases C-50/24 to C-56/24, *Danané and Others*, 16 April 2026, available [here](#).

184. CJEU, C-808/18 *European Commission v. Hungary*, para 172; or CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, paras 237-238.

185. CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, para 239.

186. CJEU, C-808/18 *European Commission v. Hungary*, para 180.

187. It should be noted, however, that in the ordinary meaning of the terms ‘a decision on the right to enter’ (Article 8(3)(c) of the 2013 RCD) and ‘prevent (...) an unauthorised entry’ (Article 5(1)(f) ECHR), this should imply a state measure taken against a person before his or her physical entry into the territory of the country (see ECRE; ‘Boundaries of liberty: asylum and *de facto* detention in Europe’ (2018); p. 16; available [here](#)). However (see [The concepts of detention and de facto detention](#)), the ECtHR considered that such right extends ‘until a State has authorised entry into the country’, even when the asylum seekers are factually already present in the territory of the country in question. The confusion also exists at EU level, where the RCD allows Member States to detain asylum seekers to decide on their right to enter the territory while it would, in principle, not even be applicable if the person was not *already* within the territory of a Member State (considering the scope of the RCD covers only ‘the territory, including the border (...) [and] transit zones’ of a Member State).

188. CJEU, C-808/18 *European Commission v. Hungary*, paras 183-185.

189. See, *inter alia*, CJEU, C-808/18 *European Commission v. Hungary*, para 172; CJEU, C-601/15 PPU J.N., para 67; or CJEU, C-72/22 PPU M.A., 30 June 2022, paras 89-90.

has left the accommodation allocated to them without informing the authorities.¹⁹⁰ Moreover, to be able to lawfully apply Article 28(2) of the Dublin III Regulation, Member States must establish, in a binding provision of general application, objective criteria that underline the reason why an asylum seeker subject to a transfer procedure may abscond.¹⁹¹

- » An asylum seeker cannot be detained on the sole ground that they are unable to provide for their needs.¹⁹²

As already noted, however, meeting one of the codified grounds for detention does not suffice for a detention measure to be deemed lawful under Article 6 CFREU, the 2013 RCD, or the Dublin III Regulation. In particular, the 2013 RCD put forward a series of procedural guarantees and safeguards for a detention measure to escape arbitrariness by being '*used only as a last resort, [and] deemed to be necessary, reasonable and proportionate to a legitimate purpose*'.¹⁹³ Similarly, the Dublin III Regulation required that detention is only ordered '*on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively*' (Article 28(2)). Relevantly, contrary to ECtHR case law regarding asylum detention, EU law precludes asylum detention '*without the necessity and proportionality of that measure having first been examined*'.¹⁹⁴

The test of the 'necessity' of the detention measure looks at whether detention is indispensable and absolutely essential to achieve the legitimate objective of general interest in a specific case.¹⁹⁵ This requirement was theoretically ensured under the 2013 RCD by requiring a justification to be ordered through a written and reasoned decision by the judicial or administrative authorities,¹⁹⁶ '*on the basis of an individual assessment of each case*' (Article 9(2)).¹⁹⁷

The CJEU has also emphasised the need to conduct an individual assessment of the necessity of detention where a third-country national who was initially detained under the Return Directive applies for international protection and is subsequently kept in detention under the 2013 RCD.¹⁹⁸

Finally, the test of 'proportionality' of the detention measures versus the objective pursued (i.e., the ground for detention) is, again, required on several levels under the 2013 RCD. First, detention must be a measure of last resort,¹⁹⁹ applicable only '*if other less coercive alternative measures cannot be applied effectively*'.²⁰⁰ Second, the RCD identified the necessity for precise time limits to detention to be put in place in national legislation, with detention being as short as possible and only for as long as the identified grounds for detention subsist.²⁰¹

The EUAA has further highlighted that, if the legal ground for detention ceases to exist, then the detention would lack a legal basis and must be lifted immediately.²⁰²

National practice

A. Grounds for detention used in AIDA countries

All 26 AIDA countries have national laws regulating migration-related detention and, in practice, detain people for migration or asylum reasons. The use of available grounds of detention is varied.²⁰³

The table below illustrates the recourse to the different detention grounds in the national legislations of all 26 AIDA countries.

190. CJEU, C-163/17 *Jawo*, 19 March 2019, available [here](#).

191. CJEU, C-528/15 *Al Chodor*, 15 March 2017, available [here](#).

192. CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*.

193. CJEU, C-601/15 PPU *J.N.*, para 63.

194. CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS*, 14 May 2020, para 266, available [here](#).

195. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 37, available [here](#).

196. CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*, paras 256-266.

197. Article 8(2) of the 2013 RCD. See, for example, CJEU, C-601/15 PPU *J.N.*, para 69; CJEU, C-36/20 PPU *Ministerio Fiscal*, paras 101-102; CJEU, C-18/16 *K.*, para 48; or CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*, para 258.

198. CJEU, case C-534/11 *Arslan*, 30 May 2013, available [here](#).

199. CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*, para 221.

200. Article 8(2) of the 2013 RCD. See CJEU, C-808/18 *European Commission v. Hungary*, para 175.

201. Article 9(1) of the 2013 RCD. See CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*, para 278.

202. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 69, available [here](#).

203. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 50, available [here](#).

Grounds for detention as provided for in national laws in AIDA countries* ²⁰⁴

	Verification of identity / nationality (Article 8(3)(a) 2013 RCD)	Determination of elements founding the asylum application if significant risk of absconding (Article 8(3)(b) 2013 RCD)	Decision on right to enter the territory (Article 8(3)(c) 2013 RCD)	National security or public order (Article 8(3)(e) 2013 RCD)	Dublin procedure or transfer (Articles 8(3)(f) 2013 RCD and 28 Dublin III Regulation)
AT				X	X
BE	X	X	X	X	X
BG	X	X		X	X
HR	X	X		X	X
CY	X	X	X	X	X
CZ	X	X	X	X	X
FR		X	X	X	X
DE					
GR	X	X		X	X
HU	X	X	X	X	X
IE	X		X ²⁰⁵	X	X
IT	X	X	X	X	X
MT	X	X	X	X	X
NL	X	X	X	X	X
PL	X	X		X	X
PT			X	X	X
RO ²⁰⁶	X	X	X	X	X
SK	X	X		X	X
SI	X	X	X	X	X
ES					
SE	X		X	X	X
RS** ²⁰⁷	X	X	X	X	-
CH**	X		X	X	X
TR**	X	X	X	X	-
UA**	X				-
UK**			X		-

Sources: AIDA Country Reports on 2024 and 2025, available [here](#); Global Detention Project, Country Profiles, available [here](#); and Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes,

204. For a comparative analysis of AIDA countries' use of the ground on detention under Article 8(3)(d) of the 2013 RCD (i.e., pending a return procedure), see [Chapter IV – Detention in the context of returns](#).

205. It should be noted that, in Ireland, a person could first be refused leave to land under immigration law (e.g., because they did not have the required travel documents or visa) and then subsequently apply for international protection. In those cases, Irish law allowed for the detention of a person who had been refused leave to land in certain circumstances. While this was not a direct transposition of Article 8(3)(c) of the 2013 RCD, it served a similar function for asylum seekers. It is, in any case, important to distinguish between (a) a refusal of leave to land (i.e., an immigration decision), and (b) the power to detain a person who has been refused leave to land. In particular, it is the detention power, and not the refusal of leave to land itself, that is comparable to Article 8(3)(c) of the 2013 RCD. In addition, the Irish leave to land regime applies to all third-country nationals that have been refused entry, whereas Article 8(3)(c) of the 2013 RCD applies only to asylum seekers.

206. The grounds for detention in Article 8(3) of the 2013 RCD are all transposed into Romanian law as a reason for applying a measure of 'public custody'. While in Romania this measure is considered as a mere restriction of the freedom of movement, not deprivation of liberty, in practice it constitutes detention.

207. It should be noted that individuals in need of international protection in Serbia may be at risk of detention in a number of situations, despite the fact that the authorities rarely resort to such practices. Examples include a situation where the person does not possess a valid travel document, cannot be identified and, therefore, cannot be immediately expelled. While this would, in theory concern only people who have not expressed their intention to seek asylum in Serbia, detainees in Serbia have in latest years been predominantly of countries with potential protection profiles (e.g., Afghanistan or Syria). Additionally, another problematic practice consists in convicting persons coming from refugee-producing countries for irregular entry or stay, in contravention with the principle of non-penalisation for illegal entry or stay (Article 31 of the 1951 Refugee Convention). In this sense, it is not uncommon for potential refugees to be sentenced to a short-term in prison as a result of their irregular entry or stay in Serbia. See AIDA, *Country Report Serbia on 2024*, pp. 197-199, available [here](#).

Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, pp. 51-52, available [here](#).

Methodological notes:

* The table above illustrates the legal frameworks prior to any adaptation of national legislations to implement the EU Pact (which often includes the transposition of additional detention grounds).

** The authors acknowledge that the legal framework for these five countries is different. While they all contracting parties to the ECHR, they are not part of the EU legal acquis (with the exception of Switzerland and the relevant provisions of the Dublin system). However, for the purposes of a more holistic comparison, they have been included into this table whenever their national legislation also provides for a ground of detention that is also envisioned in Article 8(3) of the 2013 RCD.

As can be observed, the legislation of several EU Member States (**BE, CY, CZ, HU, IT, MT, NL, RO** and **SI**) foresees the possibility to apply detention to asylum seekers for all the grounds envisioned in the RCD.²⁰⁸ Only two country (**ES, DE**) do not foresee any of the grounds for detention in Article 8(3) of the 2013 RCD in their legislation (although, as will be seen, apply detention in some of these cases in practice).

The grounds for detention in Article 8(3) of the 2013 RCD are all transposed into **Romanian** law as a reason for applying a measure of 'public custody'. While in Romania this measure is considered as a mere restriction of the freedom of movement, not deprivation of liberty, in practice it constitutes detention.²⁰⁹

In practice, during the regular asylum procedure, 3 AIDA countries use asylum detention frequently (**GR, MT** and **PL**), 18 countries use it only rarely (**AT, BE, BG, HR, CY, CZ, FR, GR, HU, IT, NL, RS, SK, SI, SE, CH, UA**, and **UK**), while it is reportedly not used in 5 countries (**DE, IE, PT, RO, ES**).

While UNHCR has clarified that detention is not justified on grounds of expulsion if an asylum procedure is ongoing,²¹⁰ a number of AIDA countries also apply detention to people who were already detained and were issued a removal order before they submitted their asylum application (**CY, DE, GR, FR, IT, PT, RO, ES**, and **UK**).²¹¹

Since 2024, in **Germany**, asylum seekers can be detained if grounds for detention apply at the time when they lodged their application. This is relevant notably for cases where persons file a subsequent application in order to avoid imminent removal.²¹²

In **Spain**, people who apply for asylum after being placed in detention (both in detention centres for foreigners (CIEs), and in penitentiary structures) remain detained pending the decision on admission to the asylum procedure.²¹³

While, as described above, the list under Article 8(3) of the 2013 RCD is exhaustive, the national legislation in several EU Member States expands it by including the possibility to detain asylum seekers on additional grounds (**AT, BG, CZ, DE, HU, IE, IT, MT, PT, SI, SE, CH, NL, RS, UK**).²¹⁴ Among the most notable examples:

In **Bulgaria**²¹⁵ and **Portugal**²¹⁶ asylum seekers may be detained on public health grounds.

In **Germany**, the law provides the possibility of applying detention to asylum seekers to 'enforce cooperation' with the authorities.²¹⁷

208. As discussed under [From asylum detention to detention under the Return Directive](#), all such 8 countries also have transposed the detention ground under Article 8(3)(d) of the 2013 RCD.

209. AIDA, *Country Report Romania on 2025*, available [here](#).

210. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', 2012, available [here](#).

211. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 54, available [here](#).

212. AIDA, *Country Report Germany on 2024*, p. 204, available [here](#).

213. AIDA, *Country Report Spain on 2025*, p. 150, available [here](#).

214. See also Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 52, available [here](#).

215. AIDA, *Country Report Bulgaria on 2025*, p. 132, available [here](#).

216. AIDA, *Country Report Portugal on 2025*, p. 164, available [here](#).

217. AIDA, *Country Report Germany on 2024*, p. 206 and 210, available [here](#).

Persons arriving in **Hungary** with a single-entry permit to apply for asylum (because of the applicable embassy procedure) can be placed in a closed facility for 4 weeks following the registration of their asylum application, without any available legal remedy to challenge the placement.²¹⁸

In **Ireland**, additional grounds for detention set forth in national law include: being suspected of having committed a serious non-political crime outside Ireland, having the intention to leave the country to irregularly enter another, acting in a manner undermining the asylum system, awaiting trial for a criminal-related offences, destroying identity or travel documents (or being in possession of forged ones).²¹⁹

In **Italy**, the law provides for the possibility of imposing a detention measure to an asylum seeker that can be subject to exclusion clauses or that has submitted a subsequent application during the execution of a removal procedure.²²⁰

Four countries apply detention as a disciplinary measure. In **Switzerland**, the legal framework foresees the prohibition of exiting the reception centre for one or several days, and/or placement in the 'reflection room' until the arrival of the police, for a maximum of 2 hours.²²¹ In **Slovenia**, asylum applicants can be 'accommodated' in a special, separate room of the reception centre for up to 3 days as a punitive measure (in case of violation of house rules).²²² In the **Netherlands**, asylum seekers can be placed in the 'Enforcement and Supervision Location', designed for those '*who have caused tension or any form of nuisance*' at a regular asylum centre, which is considered as *de facto* detention by lawyers. The Dutch Council of State has ruled it is merely restriction to the freedom of movement rather than deprivation of liberty as applicants are legally allowed to leave the centre.²²³ However, it should be borne in mind that, in doing so, they would forfeit their right to reception.²²⁴ In **Serbia**, asylum seekers can be detained in case of non-compliance with the obligations of the house rules in asylum and reception centres, and also for an inadequate cooperation during the asylum procedure.²²⁵

In some Member States (**AT, BE, BG, CY, FR, GR, MT, RO, UK, TR**), detention is also used without a clear legal basis in national law.²²⁶ Some notable examples include:

In **Austria**, persons who submit a subsequent asylum application are often detained in practice. Moreover, if a person applies for asylum while in detention, they may be detained during the admissibility procedure.²²⁷

In **Cyprus**, asylum seekers who are considered to have implicitly withdrawn their asylum applications are arrested when stopped in public or places of work or at home as part of police raids, and detained due to their irregular stay in the country.²²⁸

In **Belgium**, in 2025, civil society organisations and lawyers observed that an increasing number of people were arrested at the premises of the Immigration Office when they appeared in response to an appointment in connection with a subsequent asylum application. Some courts have found that such practices constitute an unfair strategy aimed at misleading the asylum seeker, which should result in their release, while other courts consider the practice lawful.²²⁹

In **Malta**, throughout 2024 and 2025, certain groups of people were detained immediately following the lodging of their asylum applications. Only once at the premises of the International Protection Agency would people be issued a detention order justifying the detention on the basis of grounds in the 2013 RCD.²³⁰

In **Romania**, while the ground for detention in Article 8(3)(c) of the 2013 RCD is not transposed into national

218. AIDA, *Country Report Hungary on 2025*, p. 102, available [here](#).

219. AIDA, *Country Report Ireland on 2024*, p. 140, available [here](#).

220. AIDA, *Country Report Italy on 2024*, p. 217, available [here](#).

221. AIDA, *Country Report Switzerland on 2025*, p. 116, available [here](#).

222. AIDA, *Country Report Slovenia on 2025*, p. 83, available [here](#).

223. Dutch Council of State, ECLI:NL:RVS:2024:3564, 11 September 2024, available in Dutch [here](#).

224. AIDA, *Country Report the Netherlands on 2024*, p. 150, available [here](#).

225. AIDA, *Country Report Serbia on 2024*, p. 195, available [here](#).

226. Note that this section does not refer to those instances of *de facto* detention, which are developed in detail under [The concepts of detention and de facto detention](#) above. Notably, these examples are, in fact, classified as detention, but lack a legal basis in national law.

227. AIDA, *Country Report Austria on 2024*, p. 146, available [here](#).

228. AIDA, *Country Report Cyprus on 2025*, p. 141, available [here](#).

229. Move coalition, *Newsletter Detention 2-2025*, May 2025, available in French [here](#) and in Dutch [here](#), p. 3-4; and *Newsletter Detention 3-2025*, September 2025, available in French [here](#) and in Dutch [here](#).

230. AIDA, *Country Report Malta on 2025*, available [here](#).

law, asylum seekers who apply at a border crossing point can be held in the dedicated rooms at the crossing points, in spaces dedicated to carrying out border procedures (also at an airport transit zone).²³¹

In the **United Kingdom**, there are four 'residential short-term holding facilities', in which asylum seekers can be held for up to seven days, an additional one where some people are detained for screening.²³²

In **Türkiye**, while 'removal centres' are essentially defined as facilities dedicated for the administrative detention for the purpose of removal, in practice they are also used to detain asylum seekers. Moreover, a number of asylum seekers are arbitrarily detained without legal basis, including people apprehended outside their designated province, to be transferred back; or people having a criminal record (even if already acquitted).²³³

Detention for the verification of identity or nationality (Article 8(3)(a) of the 2013 RCD)

The EUAA noted that Article 8(3)(a) of the 2013 RCD should not be interpreted as justifying detention for all those asylum seekers who do not possess proper documentation. Detention should only be applied if it is clear that it is the only way for authorities to determine or verify the identity or nationality.²³⁴

However, the vast majority of AIDA countries permit the detention of asylum seekers for the purpose of verifying their identity or nationality (**BE, BG, HR, CY, CZ, GR, HU, IE, IT, MT, NL, PL, RO, SK, SI, SE, RS, CH, TR** and **UA**).

In **Italy**, asylum applicants may be detained in hotspots or first reception centres for the purpose of establishing their identity or nationality and, if this is not possible in those premises, they can be transferred to a pre-removal detention centre (CPR). However, national law does not specify in which cases the need for identification arises. Civil society organizations have criticised this as a violation of the prohibition on detention of asylum seekers for the sole purpose of examining their application. People fleeing their countries often do not have identification documents and cannot contact the authorities of the countries of origin as this could be interpreted as re-availing themselves of the protection of that country.²³⁵

In **Bulgaria**, 'short-term detention' is used for security checks, profiling and identification.²³⁶

Since 2024, in **Germany** the grounds for detention to enforce cooperation were expanded so that this form of detention can now also be ordered in cases of persons who do not cooperate in the establishment of their identity.²³⁷

Swiss law permits the so-called 'temporary detention' for identification purposes when the person's personal cooperation is required, or for the purpose of issuing a decision in connection with their residence status.²³⁸

While not transposed into its national legislation as such, this detention ground is somehow realized in practice also in **Germany**. In particular, third-country nationals may be detained if there is a risk of absconding, which is presumed if the person misrepresents their identity to the authorities.²³⁹

Detention for the determination of elements founding the asylum application if there is a significant risk of absconding (Article 8(3)(b) of the 2013 RCD)

17 AIDA countries permit the detention of asylum seekers for determining elements that found their application provided there is a significant risk of absconding (**BE, BG, HR, CY, CZ, FR, GR, HU, IT, MT, NL, PL, RO, SK, SI, RS**, and **TR**). The definition of 'risk of absconding' is normally done in line with that used for justifying detention under Dublin rules (see below).

In **Italy**, the assessment of the existence of a 'risk of absconding' (to note, no *significant* risk is mentioned) in this context is made on a case by case basis, for example: (a) when the applicant has previously and

231. AIDA, *Preparing for reform: Romania's asylum system ahead of the EU Pact*, August 2025, p. 28, available [here](#).

232. AIDA, *Country Report United Kingdom on 2025*, p. 108, available [here](#).

233. AIDA, *Country Report Türkiye on 2024*, pp. 128 and 130, available [here](#).

234. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 14, available [here](#).

235. AIDA, *Country Report Italy on 2024*, pp. 218-219, available [here](#).

236. AIDA, *Country Report Bulgaria on 2025*, p. 109, available [here](#).

237. AIDA, *Country Report Germany on 2024*, p. 204, available [here](#).

238. AIDA, *Country Report Switzerland on 2025*, p. 117, available [here](#).

239. Section 62 (3) No 1 together with Section 62 (3a) (No 1) and Section 62 (3b) (No1) of the Asylgesetz (German Asylum Law).

systematically provided false declarations or documents on their personal data in order to avoid the adoption or the enforcement of an expulsion order; (b) when the applicant has not complied with alternatives to detention or a previous detention order; (c) after a repeated refusal to undergo fingerprinting at hotspots or on the national territory; (d) due to the absence of a passport or other equivalent document; or (e) due to a violation of the measures ordered in the event of the granting of a time limit for voluntary departure.

In **Greece**, this ground of detention is reportedly used in a large number of cases, even where detention is not necessary in order to determine those elements on which the application for international protection is based which could not be obtained otherwise.²⁴⁰

In **Romania**, asylum seekers are detained during an admissibility or accelerated procedure only in cases where the authorities identify well-founded reasons for a risk of absconding.²⁴¹

In **France**, while this detention ground is transposed into national law, this provision is ineffective in practice because the decrees implementing the law are not applicable.²⁴²

Detention pending a decision on the right to enter the territory (Article 8(3)(c) of the 2013 RCD)

The application of the so-called 'fiction of non-entry' occurs already in practice in 13 AIDA countries (**PT, ES, FR, BE, NL, CH, SI,**²⁴³ **DE, IT, CZ, AT, RO, and GR**).

Different provisions in the 2013 RCD regulate the holding of asylum seekers at the border. Article 18(1)(a) allows housing in kind to be provided also in '*premises used for the purpose of housing applicants during the examination of an application made at the border or in transit zones*'. Articles 10(5) and 11(6) of the 2013 RCD refer to derogations from certain conditions in cases where '*the applicant is detained at a border post or in a transit zone*'. As seen above, however, the CJEU established that the restrictions of movement at border or transit zones that some Member States put in place have to be classified as detention.²⁴⁴

Article 8(3)(c) of the 2013 RCD, which allowed Member States to detain asylum seekers pending a decision on their right to enter the territory has generally been transposed into national legislation as a provision enabling the detention of asylum seekers during border procedures. In this sense, in a case concerning border detention in Belgium, the CJEU made the remark that '*the decisions for their 'detention in a designated place at the border', (...), constitute decisions based on Article 8(3)(c) of Directive 2013/33, which authorises the detention of an applicant for international protection in order to rule on his or her right to enter the territory*'.²⁴⁵

As seen above, in most EU Member States asylum seekers arriving at a border-crossing point are subject to detention measures, whether or not formally designated as such. In 17 AIDA countries the detention under the ground in Article 8(3)(c) of the 2013 RCD is provided as an option in national law (**BE, CY, CZ, FR, HU, IE, IT, MT, NL, PT, RO, SI, SE, RS, CH, TR and UK**).²⁴⁶ In some occasions, this is done far beyond the physical borders of states, something that the CJEU has recently clarified is possible under EU law.²⁴⁷ Even if detention in the context of the authorisation of the right to enter the territory is formally acknowledged in these countries, in several cases it falls far short of complying with the requirements of an individualised assessment, necessity, proportionality and prior consideration of less coercive alternatives, and appears instead systematically applied.²⁴⁸

In **Belgium**, asylum seekers who arrive at the border are systematically detained before being allowed to enter the territory.²⁴⁹ The Belgian Council of State has dismissed arguments suggesting that migrants actually enter the territory even without the necessary documents for legal entry, given that the airport transit zones form part of the Belgian territory.²⁵⁰ Similarly, the Swiss Federal Administrative Court has

240. AIDA, *Country Report Greece on 2025*, July 2026, available [here](#).

241. AIDA, *Country Report Romania on 2024*, p. 141, available [here](#).

242. La Cimade, 'Rétention de demandeurs d'asile: ça s'en va et ça revient', 12 November 2025, available [here](#).

243. The border procedure is not applied in practice.

244. CJEU, C-808/18 *European Commission v. Hungary*, para 180.

245. CJEU, Joined Cases C-50/24 to C-56/24 *Danané and Others*, para 29.

246. ECRE, 'Boundaries of liberty: asylum and *de facto* detention in Europe' (2018); p. 16; available [here](#).

247. CJEU, Joined Cases C-50/24 to C-56/24 *Danané and Others*.

248. In 8 AIDA countries most asylum seekers are detained at the border (BE, BG, CZ, FR, MT, NL, ES, and TR). It does not appear to be applied as a measure of last resort, but instead as a structural method at the EU borders. See also Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby, 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 53, available [here](#).

249. AIDA, *Country Report Belgium on 2024*, pp. 161-163, available [here](#).

250. Belgian Council of State, Decision 102.722, 21 January 2002.

ruled it possible to carry out an arrest to prevent illegal entry even within a certain time and space *after* the border has effectively been crossed, thereby confirming the fiction discussed above.²⁵¹

In the **Czech Republic**,²⁵² anybody who applies for asylum at the airport is issued a so-called ‘decision denying entry into the territory’, which essentially corresponds to a detention order (and corresponds to the grounds a detention decision).

In addition to waiting zones in at least 26 of its airports (as of June 2026), **France** also foresees administrative detention in international ports and train stations. If a person makes an asylum application at the border, they are automatically maintained in the waiting zone for the duration of the border procedure (i.e., while awaiting a decision on their application for an authorisation to enter the territory on asylum grounds).²⁵³

In 2023, **Italy** introduced into its legislation the possibility to detain asylum seekers in hotspots during the border procedure, for the sole purpose of ascertaining their right to access the State’s territory. Detention could take place where the asylum seeker had not presented a valid passport or other equivalent document, or did not provide for suitable financial guarantee.²⁵⁴ After the refusal of some courts to validate detention orders issued on these grounds, and a preliminary reference of validity lodged by the Court of Cassation to the CJEU, Italian legislation was amended and the provisions regarding the financial guarantee amended.

In November 2023, **Italy** and **Albania** signed a Protocol for the construction of two extraterritorial processing centres on Albanian territory under Italian jurisdiction, to which third country nationals intercepted in international waters and who could be channelled into asylum border procedures or return procedures would be held. The Albanian areas in question were equated to CPRs in Italian legislation, with the intention of systematically detaining migrants brought there. Italian courts have repeatedly refused to validate the detention orders issued for people brought to these centres in Albania. Several Italian Courts also lodged preliminary references to the CJEU aimed at establishing the legality of the scheme under EU law,²⁵⁵ which are awaiting judgment at the moment of writing this report.²⁵⁶ In March 2025, the Italian Government amended the relevant law ratifying the Protocol, introducing, among the categories of people who can be transferred to Albania, those who are already detained in CPRs due to their irregular stay, without the need for any new validation by courts. In this sense, in May 2025, the Criminal Court of Cassation overturned a ruling by the Civil Court of Appeal, which had refused to validate the detention of a foreign national in Albania who applied for asylum there. In particular, the Court of Cassation understood that, at that point, the relevant centres in Albania were equated to CPRs under Italian legislation, where people could be detained even after the submission of an asylum application.²⁵⁷

In **Ireland**, in 2021 a dedicated immigration facility at Dublin airport was opened for use where an individual is refused leave to land at the air border (which, has been reported, has in the past included asylum seekers).²⁵⁸ A person could first be refused leave to land under immigration law (e.g., because they did not have the required travel documents or visa) and then subsequently apply for international protection. In those cases, Irish law allowed for the detention of a person who had been refused leave to land in certain circumstances. While this was not a direct transposition of Article 8(3)(c) of the 2013 RCD, it served a similar function for asylum seekers. It should, in any case, be distinguished between (a) a refusal of leave to land (i.e., an immigration decision), and (b) the power to detain a person who has been refused leave to land. In particular, it is the detention power, and not the refusal of leave to land itself, that is comparable to Article 8(3)(c) of the 2013 RCD. In addition, the Irish leave to land regime applies to all third-country nationals that have been refused entry, whereas Article 8(3)(c) of the 2013 RCD applies only to asylum seekers.

In **the Netherlands**, the Dutch Council of State ruled that applicants for temporary protection at the border shall not be detained on the same legislative basis that is used for detaining asylum seekers.²⁵⁹ Third-country nationals who have been refused entry at the Dutch border are obliged to stay in an area or place

251. Swiss Federal Administrative Court, Decision D-6502/2010, 16 September 2010.

252. AIDA, *Country Report Czech Republic on 2025*, publication expected in June 2026.

253. AIDA, *Country Report France on 2024*, p. 145, available [here](#).

254. AIDA, *Country Report Italy on 2024*, p. 68, available [here](#).

255. CJEU, Joined Cases C-758/24 *Alace* and C-759/24 *Canpelli*, 1 August 2025, available [here](#). Among others, the Court considered it contrary to EU law for a Member State to designate a safe country of origin with exceptions for certain categories of people.

256. The progress of the cases can be found in Curia under the following references: Joined cases C-706/25 *Comeri* and C-707/25 *Sidilli*, and C-414/25 *Sedrata*.

257. AIDA, *Country Report Italy on 2024*, pp. 48-51, available [here](#).

258. AIDA, *Country Report Ireland on 2024*, p. 38, available [here](#).

259. Dutch Council of State, *Applicants v. The Minister for Asylum and Migration (de Minister van Asiel en Migratie)*, BRS.24.000105, 30 October 2024. A summary of the judgment by the EUAA can be found [here](#).

designated by the border control officer. If the person makes an asylum application at the border, they will be detained throughout the entire (border) procedure. In practice, this leads to an initial systematic detention of all asylum seekers at the external Schengen borders of the Netherlands.²⁶⁰

The systematic detention of asylum seekers in **Portugal** within the context of border procedures resumed in 2023. This includes the detention of people in the transit zone of the Lisbon airport.²⁶¹

Türkiye applies a similar ground for detention of asylum seekers, namely the detention at border gates, for the purpose of preventing irregular entry.²⁶²

Cyprus does not apply this ground for detention in practice.

Additionally, and as noted above, several countries also *de facto* detain asylum seekers at airports (or other) border crossing points (**AT**,²⁶³ **BG**, **CY**, **CZ**, **DE**,²⁶⁴ **GR**, **RO**, **ES**, **CH**,²⁶⁵ **RS**, **UK**,²⁶⁶ and **TR**.²⁶⁷

Detention at the border takes place also outside the scope of ground in Article 8(3)(c) of the 2013 RCD.

In **Spain**, third-country nationals that arrived irregularly in the Canary Islands are detained in Temporary Foreigners' Assistance Centres (CATEs) for a maximum of 72 hours. People are then transferred to detention in Foreigners Detention Centres (CIEs) to await expulsion, but this detention always needs the validation of a judge. However, in case a person manifests their intention to apply for asylum while in a CATE, the expulsion order will be suspended and they shall be released from detention.²⁶⁸

While it might not be the case at all border crossing points, most AIDA countries have facilities at airports where third-country nationals may be held.²⁶⁹ By way of exception, in three countries, when a person expresses their intent to apply for international protection at the airport, they are not detained / released from detention at the airport and redirected to the relevant authorities:

In **Malta**, although there is a holding space at Malta international airport (where people entering irregularly are detained), NGOs state that, to their knowledge, persons requesting asylum at the airport are referred to the International Protection Agency.²⁷⁰

In **Slovenia**, persons requesting asylum are brought to the Asylum Home, where they will however be *de facto* detained during the early stages of their procedure until formal lodging of the application.²⁷¹ Although detention occurs in the transit zones, it is not for the purposes of the border procedure.

In **Sweden**, people seeking asylum at an airport or a port are referred to the Swedish migration agency to register their application.²⁷²

Detention on national security or public order grounds (Article 8(3)(e) of the 2013 RCD)

Most countries examined through AIDA provide for the detention of asylum seekers on national security or

260. AIDA, *Country Report the Netherlands on 2024*, p. 168, available [here](#).

261. AIDA, *Country Report Portugal on 2025*, p. 164, available [here](#).

262. AIDA, *Country Report Türkiye on 2024*, p. 129, available [here](#).

263. AIDA, *Country Report Austria on 2024*, p. 146, available [here](#); AIDA, *Country Report Czech Republic on 2025*, publication expected in June 2026; AIDA, *Country Report Germany on 2024*, p. 210, available [here](#); AIDA, *Country Report Greece on 2025*, available [here](#); AIDA, *Preparing for reform: Romania's asylum system ahead of the EU Pact*, August 2025, p. 28, available [here](#); AIDA, *Country Report Spain on 2025*, p. 150, available [here](#); AIDA, *Country Report Switzerland on 2024*, pp. 114 and 127, available [here](#); AIDA, *Country Report Serbia on 2024*, pp. 81 and 82, available [here](#); AIDA, *Country Report the United Kingdom on 2025*, p. 108, available [here](#); AIDA, *Country Report Türkiye on 2024*, p. 130, available [here](#).

264. German Courts have consistently rejected to consider this as detention (German Federal Constitutional Court, Decision 2 BvR 1516/93, 14 May 1996; German Federal Court, Decision V ZB 170/16, 16 March 2017, available in German [here](#)). The fiction of non-entry into the territory is maintained, even if the person is transferred to a hospital or to court.

265. The Swiss Federal Court clearly recognized this as an uncontested deprivation of liberty (Swiss Federal Court, Decision BGE 129 II 193, 27 May 1997, para 4, available in German [here](#)).

266. Many airports or reporting centres have short-term holding facilities where people are held under detention powers for up to 24 hours.

267. See the judgment of the Turkish Constitutional Court in *B.T.*, Decision 2014/15769, 30 November 2017.

268. ECRE, 'Managing arrivals at the EU external borders: Accessing protection in the Canary Islands', July 2026, available [here](#).

269. For a detail account of detention at airport transit zones, see AIDA, 'At the margins: Places and conditions of detention', June 2026, pp. 14-15, available [here](#).

270. AIDA, *Country Report Malta on 2024*, p. 118, available [here](#).

271. AIDA, *Country Report Slovenia on 2025*, p. 99, available [here](#).

272. AIDA, *Country Report Sweden on 2024*, p. 28, available [here](#).

public order grounds, while only four do not include such provisions in national legislation (**DE, ES, UA** and **UK**).

In **Romania**, asylum seekers may be placed in specific closed spaces of the reception centre due to national security grounds. This is formally recognised as detention at the national level.²⁷³

In **Greece**, detention on public order or national security grounds is often used without proper justification, sometimes based solely on a prior prosecution for a minor offence (even where the court decided to suspend the custodial sentences), or following a court decision on irregular stay/entry.²⁷⁴

In **Germany**, the Constitutional Court does not allow for immigration detention to be solely imposed on national security or public order grounds.²⁷⁵

Detention pending a Dublin procedure or transfer (Articles 8(3)(f) of the 2013 RCD and 28 Dublin III Regulation)

Seven AIDA countries frequently detain asylum seekers during the Dublin procedure (**AT, BE, CZ, HU, MT, PL**, and **CH**). Additionally, thirteen countries also report making use of detention in this context, albeit rarely (**BG, HR, CY, FR, DE, GR, IE, IT, NL, RO, SK, SI**, and **SE**). Only two countries (**PT** and **ES**) do not use of detention during the Dublin procedure in practice.²⁷⁶

In **Austria**, detention is almost systematic during the 72 hours preceding the transfer of an asylum seeker to the responsible Member State.²⁷⁷

In **Cyprus**, Dublin returnees may be detained upon return, including persons whose final decision has not been issued.²⁷⁸

In the **Czech Republic**, people found by the police as having entered irregularly and who have a EURODAC hit in another EU Member State are routinely detained for the purpose of their Dublin transfer.²⁷⁹

In **Germany**, while the law does not provide for the transposition of this detention ground, Dublin transfers are usually preceded by arrests and police custody, which usually lasts for a very short period since many people are transferred on the same day.²⁸⁰ In fact, in early 2025, the so-called 'Dublin centres' opened, where people in the Dublin procedure could be detained up to 2 weeks.

In **France**, asylum seekers under the Dublin procedure can be placed in administrative detention during the procedure of determination of the responsible State and to enforce their transfer once the transfer decision has been notified.²⁸¹

In **Hungary**, civil society organizations have denounced that detention measures are imposed quasi automatically in Dublin transfer cases.²⁸²

In the **Netherlands**, detention at the border can be extended with the aim of executing a Dublin transfer.²⁸³ The Regional Court Amsterdam concluded that beneficiaries of international protection from other Member States should be released from border detention after the checks on EURODAC have been completed.²⁸⁴ The Council of State ruled that EU law does not prohibit the automatic application of the border procedure and border detention to everyone who applies for asylum at the border.²⁸⁵

In **Portugal**, while the law provides for the possibility of detaining asylum seekers subject to Dublin

273. AIDA, *Country Report Romania on 2024*, p. 141, available [here](#).

274. AIDA, *Country Report Greece on 2025*, July 2026, available [here](#).

275. German Constitutional Court, judgment of 16 May 2007, 2 BvR 2106/05, juris Rn. 22.

276. For an analysis of detention in the context of the Dublin Regulation, see EPRS, 'Dublin Regulation on international protection applicants', February 2020, pp.73-75, available [here](#).

277. AIDA, *Country Report Austria on 2024*, p. 148, available [here](#).

278. AIDA, *Country Report Cyprus on 2025*, p. 144, available [here](#).

279. AIDA, *Country Report Czech Republic on 2025*, p. 85, available [here](#).

280. AIDA, *Country Report Germany on 2024*, p. 200, available [here](#).

281. AIDA, *Country Report France on 2024*, p. 144, available [here](#).

282. AIDA, *Country Report Hungary on 2025*, p. 102, available [here](#).

283. AIDA, *Country Report the Netherlands on 2024*, p. 168, available [here](#).

284. Regional Court Amsterdam, ECLI:NL:RBDHA:2021:12551, 7 October 2021.

285. Dutch Council of State, ECLI:NL:RVS:2021:1648, 28 July 2021; and Dutch Council of State, ECLI:NL:RVS:2021:2870, 22 December 2022.

procedures, this is not done in practice.²⁸⁶

In **Romania**, while the law provides that the 'placement in specially designed closed spaces' cannot be ordered regarding asylum seekers subject to a Dublin procedure, the law does provide for their placement in 'public custody centres' which, in practice, amounts to detention.²⁸⁷ Dublin returnees are likely to be detained upon being transferred back to the country, as the authorities may deem them at high risk of absconding.²⁸⁸

In **Italy**, the possibility to detain asylum seekers during a Dublin procedure when there is a significant risk of absconding was introduced in 2023.

Regarding the concept of 'risk of absconding', the EUAA has established that the assessment should be based on objective criteria laid down in national law and be carried out on an individual basis. Moreover, the existence of such a risk should not be derived automatically from the lack of identity documents or of a fixed address, also considering that most asylum seekers do not possess them.²⁸⁹ However, this is not always the case at national level.

The concept of 'risk of absconding' is not defined in national laws in 3 AIDA countries (**BG**, **IE**,²⁹⁰ **PT**), while in some others (**AT**, **HR**,²⁹¹ **CZ**, **CY**, **GR**, **HU** and **SE**) it is only defined through a non-exhaustive list, which leaves significant discretion to national authorities when issuing a detention order. This is particularly relevant considering that the interpretation of this concept is fundamental to assess the application of detention of asylum seekers under two of the detention grounds in the RCD.²⁹²

In **AT**, **HR**, **DE**, **GR**, **HU**, **PT** and **SI**, national law does not refer to a '*significant*' risk of absconding. To the contrary, **BE**, **CY**, **CZ**, **FR**, **IE**, **IT**, **NL**, **PL**, **RO**, **SI** and **SE** legislation refers to either a '*serious*', '*significant*' or '*considerable*' risk of absconding.

In **Belgium** and **France**²⁹³ national legislation was modified to define the concept exhaustively in line with relevant CJEU case law on the matter.²⁹⁴ Even so, civil society organisations have argued that this definition provides overly broad criteria.²⁹⁵

Elements influencing the consideration of the existence of a 'risk of absconding' in different national contexts include, among others: concealing information relating to the migratory route, family composition and prior asylum applications, and the refusal to submit to fingerprinting (**FR**²⁹⁶); having entered the country irregularly with an active EURODAC hit (**CZ**,²⁹⁷ **HR**²⁹⁸); having escaped a first transfer attempt (**IT**²⁹⁹, **AT**³⁰⁰); lacking an identity or travel document (**IT**, **PL**³⁰¹); lacking a reliable address (**IT**; **GR**³⁰²); lacking financial resources (**IT**); having used different aliases (**SE**³⁰³); expressing strong negative feelings towards the transfer decision (**SE**, **CY**,³⁰⁴ **DE**³⁰⁵); having submitted false information or withheld essential information from authorities (**DE**, **SE**); having made a subsequent application without a right to remain (**AT**); having a

286. AIDA, *Country Report Portugal on 2025*, p. 164, available [here](#).

287. AIDA, *Country Report Romania on 2024*, p. 141, available [here](#).

288. AIDA, *Preparing for reform: Romania's asylum system ahead of the EU Pact*, August 2025, p. 29, available [here](#).

289. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 40, available [here](#).

290. AIDA, *Country Report Ireland on 2024*, p. 140, available [here](#).

291. As stated above, detention in Dublin cases is rarely used in Croatia (approx. once or twice a year), and the AIDA HR expert is not aware that a 'risk of absconding' was considered in these cases because of any other reason than the ones listed in the law.

292. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 53, available [here](#).

293. French Court of Cassation, Decision No 1130, 27 September 2017; and French Court of Cassation, Decision No 17 14866, 7 February 2018.

294. CJEU, C-528/15 *Al Chodor*, 15 March 2017, available [here](#).

295. AIDA, *Country Report Belgium on 2024*, p. 163, available [here](#).

296. AIDA, *Country Report France on 2024*, p. 145, available [here](#).

297. AIDA, *Country Report Czech Republic on 2025*, pp. 87-88, available [here](#).

298. AIDA, *Country Report Croatia on 2024*, p. 132, available [here](#).

299. AIDA, *Country Report Italy on 2024*, p. 98, available [here](#).

300. AIDA, *Country Report Austria on 2024*, pp. 147-148, available [here](#).

301. AIDA, *Country Report Poland on 2024*, p. 95, available [here](#).

302. UNHCR Comments on the Draft Law of the Ministry of Migration and Asylum, August 2025, available [here](#).

303. AIDA, *Country Report Sweden on 2024*, p. 112, available [here](#).

304. AIDA, *Country Report Cyprus on 2025*, p. 144, available [here](#).

305. AIDA, *Country Report Germany on 2024*, pp. 207-209, available [here](#).

sufficient link with the country such as family relations, sufficient resources or secured residence (**AT**); having violated the reception centre's house rules (**HR**); irregular entry into the country (**NL**,³⁰⁶ **PL**); non-compliance with imposed alternatives to detention (**RO**)³⁰⁷; or national security considerations (**DE**).

In **Switzerland**, a person in the Dublin procedure can be detained not with regards to a 'risk of absconding', but rather if there are specific indications that they 'intend to evade removal'. The law provides some indications as to when this may be assumed (including having submitted several asylum applications under different identities or having been convicted of a felony). Civil society organizations have criticised this approach for not being in line with the Dublin III Regulation, and the Swiss Federal Supreme Court required the alignment of the provision with the Dublin Regulation.³⁰⁸

Civil society organizations in **Germany** have criticised the approach towards the determination of a 'risk of absconding' for contradicting the principle that detention should be a measure only of last resort and also the need to conduct an individual assessment before imposing a detention measure.³⁰⁹

B. Other issues concerning the lawfulness of detention in AIDA countries

As discussed above, the detention of asylum seekers is not always 'lawful' within the meaning of European case law. In a number of AIDA countries, asylum seekers are detained in circumstances that fall outside the grounds permitted under national legislation, including the transposition of EU law. The lawfulness and non-arbitrariness of the detention of asylum seekers throughout Europe has been called into question also on other fronts.

In **Belgium**, the order to detain asylum seekers at the border contains a mostly standardised motivation. This issue has been confirmed by the Committee Against Torture (CAT).³¹⁰ UNHCR also raised concerns that the legal provisions do not sufficiently prevent arbitrary detention, as these orders lack all guarantees, such as the test of necessity, the obligation to consider less coercive measures, or the need for an individual assessment.³¹¹

In **Croatia**, lawyers reported that decisions on the restriction of freedom of movement do not contain a thorough and reasoned individual assessment.³¹²

In **Cyprus**, the detention of asylum seekers is based on an administrative order and not a judicial order.³¹³ However, there is no evidence that there is an effective procedure in place to base the detention decision on an individual assessment of each case.³¹⁴

In **Germany**, although detention is to be mandated by courts, since 2019 authorities are expressly given competence to temporarily detain people if there is a risk of absconding and if a court order cannot be obtained immediately.³¹⁵

In **Greece**, a lack of a comprehensive individualised procedure for each detention case has been reported. This includes the lack of consideration of particular circumstances of each case when considering detention, as well as the misinterpretation of conditions and legal grounds for the lawful imposition of a detention measure.³¹⁶

In **Ireland**, the law provides that, for certain grounds, asylum seekers may be detained without the need for a warrant.³¹⁷

In **Malta**, since 2023, most applicants rescued at sea are automatically detained, with detention duration largely depending on nationality. In the detention decision-making procedure, no individualised assessment is made, and less coercive alternatives are hardly ever explored. The detention order includes the full list of

306. AIDA, *Country Report the Netherlands on 2024*, p. 171, available [here](#).

307. AIDA, *Country Report Romania on 2024*, p. 142, available [here](#).

308. AIDA, *Country Report Switzerland on 2025*, pp. 119-120, available [here](#).

309. AIDA, *Country Report Germany on 2024*, pp. 207-209, available [here](#).

310. CAT, 'Concluding observations on the fourth periodic report of Belgium', 25 August 2021, para 29.

311. AIDA, *Country Report Belgium on 2024*, pp. 161-163, available [here](#).

312. AIDA, *Country Report Croatia on 2024*, p. 133, available [here](#).

313. AIDA, *Country Report Cyprus on 2025*, p. 143, available [here](#).

314. AIDA, *Country Report Cyprus on 2025*, p. 144, available [here](#).

315. AIDA, *Country Report Germany on 2024*, pp. 209, available [here](#).

316. AIDA, *Country Report Greece on 2025*, July 2026, available [here](#).

317. AIDA, *Country Report Ireland on 2024*, p. 140, available [here](#).

detention grounds, with the one(s) applicable to the asylum seeker ticked. No information is provided as to the facts or legal considerations made in relation to each person.³¹⁸

Concerns have also been raised that detention is not used as a measure of last resort and is often applied or prolonged automatically in **Poland**.³¹⁹

According to civil society organizations, the detention of asylum seekers in the context of border procedures in **Portugal** is applied systematically without an individual assessment of its necessity or proportionality.³²⁰

While the grounds for ordering detention are normally included into the detention decision in **Slovenia**, they are often not sufficiently justified, which leads to their successful challenge before the courts.³²¹ By law and practice, Slovenian authorities first issue a detention decision and then consider the opportunity to apply an alternative to detention.³²²

Human rights organisations in **Ukraine** have for many years raised concerns regarding significant risks of arbitrary detention of asylum seekers, with detention being ordered in cases where it is disproportionate or where there are no grounds for detention.³²³ The ECtHR has also condemned these practices.³²⁴

Considerations on Pact implementation

- » Article 43(2) of the APR
- » Articles 9 and 10 of the 2024 RCD
- » Articles 5 and 6 of the Screening Regulation

As previously observed, the use of detention or *de facto* detention practices is likely to become more widespread due to the introduction of the Screening Regulation,³²⁵ the mandatory grounds for the application of asylum border procedures and additional grounds for detention.

Screening Regulation

First, regarding the Screening Regulation (see also [Detention and *de facto* detention](#)), a key concern has been the introduction of Article 6 of the Regulation, establishing that persons subject to the screening at the external border are not authorised to enter the territory of the Member State. This means that the screening at the external border takes place in the so-called 'fiction of non-entry'.³²⁶ Member States are allowed to lay down in national law measures necessary to ensure the persons involved remain available to the authorities responsible for carrying out the screening. These measures are aimed at preventing risks of absconding, threats to internal security or to public health resulting from the person absconding and can be used to justify the detention of asylum seekers under the ground of their entry not being authorised (former Article 8(3)(c) of the 2013 RCD, reproduced by Article 10(d) of the 2024 RCD).

While detention is not explicitly required during the screening procedure, it is likely to be used, either officially or *de facto*, especially in the context of screening at the external borders. In particular, even in the absence of an official detention practice, screening centres will likely be located in border regions and remote areas of the territory of Member States, which means that, in practice, there will be a high chance that closed, controlled screening centres and *de facto* detention will be used for all new arrivals. In any case, it is difficult to envision a measure that confines a person at or near the border, preventing their entry into the territory for up to seven days (i.e., the maximum duration of the screening procedure), that would not amount to detention.³²⁷

318. AIDA, *Country Report Malta on 2025*, p. 122, available [here](#).

319. AIDA, *Country Report Poland on 2024*, p. 96, available [here](#).

320. AIDA, *Country Report Portugal on 2025*, p. 164, available [here](#).

321. AIDA, *Country Report Slovenia on 2025*, p. 98, available [here](#).

322. EMN, 'Detention and alternatives to detention in international protection and return procedures', 2021, p. 8, available [here](#).

323. AIDA, *Country Report Ukraine on 2025*, p. 75, available [here](#).

324. See, for example, ECtHR, *Shoygo v. Ukraine*, Application No 29662/12, 30 September 2020.

325. Screening formalises the hotspot approach of Greece and Italy, where *de facto* detention takes place, in very poor conditions. For further information, see among others ECRE, 'The implementation of the hotspots in Italy and Greece', December 2016, available [here](#).

326. For a comprehensive assessment of the concept of the legal fiction of non-entry, see ECRE, Kelly Soderstrom, 'An Analysis of the Fiction of Non-entry as Appears in the Screening Regulation', September 2022, available [here](#).

327. ECRE, 'Comments on the Regulation of the European Parliament and of the Council Introducing the Screening of Third-Country Nationals at the External Borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817', February 2025, p. 19, available [here](#).

If detention is used during the screening process, then the standard rules on the use of detention derived from international law apply (i.e., detention can be applied only if it proves necessary on the basis of an individual assessment, and if less coercive measures cannot be effectively applied). The Screening Regulation stresses that detention should only be applied as a measure of last resort, in accordance with the principles of necessity and proportionality and should be subject to an effective remedy (recital 11). If the screened person makes an asylum application, they will be subject to the conditions for the use of detention in the 2024 RCD. The Screening Regulation expressly refers to detention in the screening procedure, stipulating that the guarantees of the Returns Directive apply to persons who did not file an asylum application (Article 8(7)).

Asylum Procedure Regulation

Additionally, under the rules introduced by the Pact, a significantly higher number of applicants compared to the previous legislative framework will likely be channelled into asylum border procedures. This might, in turn, also lead to an increase in the number of cases of detention at the border.

The APR also requires border procedures to take place in the ‘fiction of non-entry’, as the person is not authorised to enter the territory of a Member State until the conclusion of the border procedure (Article 43(2)). This provision allows authorities to use detention to examine a claim without granting access to the territory because, within the scope of Article 10(d) of the 2024 RCD.

While this detention ground can apply to all asylum seekers that are channelled to the asylum border procedure, the EUAA has already clarified that *‘the systematic application of detention without an individual assessment is not compliant with international and EU legal standards. Therefore, the circumstance alone that the applicant is channelled to the asylum border procedure is not sufficient to issue a detention order under Article 10(4) (d)’*.³²⁸ The EUAA also clarifies that, while it is mandatory to channel an asylum seeker to the asylum border procedure if they are considered to pose a threat to national security,³²⁹ this does not automatically justify their detention, as the requirements for channelling to the asylum border procedure on these grounds are different from those to impose detention.³³⁰

However, Member States are not obliged to use detention while carrying out border procedures.³³¹ The APR only refers to the mandatory application of restrictions on the freedom of movement (i.e., asylum seekers in the border procedure must be required to reside in specific locations at or in proximity to the border or within the territory) for asylum applicants in a border procedure,³³² which notably must not result in *de facto* detention (see [Restrictions to the freedom of movement of asylum seekers](#)).³³³

Reception Conditions Directive (recast)

Regarding the grounds for detention of asylum applicants, the 2024 recast of the RCD introduced two additional grounds compared to the previous version of the Directive, listed in Article 10(4): (1) where an asylum seeker has not complied with a measure imposing a restriction of their freedom of movement and there is a risk of absconding (Article 10(4)(c)); (2) to decide on their right to enter the territory in the context of a border procedure (Article 10(4)(d)). Given the rest of the detention grounds are maintained, the rules of the 2013 RCD and the extensive case law on grounds for detention continue to apply.

It should be noted, in any case, that while the new APR and 2024 RCD provide for extended reasoning to detain persons, they do not amend the guarantees for the lawfulness of said detention. Under Article 10(1), (2) and (4) of the 2024 RCD, Member States are still constrained by applicable guarantees to detention. In particular, they may not detain a person simply because they are an asylum seeker, but can do so only when it proves necessary and on the basis of an individual assessment of each case, provided that one of the exhaustive grounds in Article 10(4) apply, and if other less coercive alternative measures cannot be applied effectively. However, as noted by the EUAA, assessing the individual cases for newly arrived asylum seekers might be challenging in a border context, particularly given the short timeframe for the assessment.³³⁴

328. EUAA, ‘Guidelines on Alternatives to Detention, Practical Guide’, December 2024, p. 14, available [here](#).

329. Article 10(4)(f) of the 2024 RCD.

330. EUAA, ‘Guidelines on Alternatives to Detention, Practical Guide’, December 2024, p. 15, available [here](#).

331. Articles 46-50 APR.

332. Article 9 of the 2024 RCD and Article 54(1) APR.

333. UNHCR, Advocacy Brief: ‘Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum’, 2025, p. 4., available [here](#).

334. EUAA, ‘Guidelines on Alternatives to Detention, Practical Guide’, December 2024, p. 47, available [here](#).

Asylum and Migration Management Regulation

Regarding the responsibility determination and transfer procedure, as was the case under Dublin rules,³³⁵ Article 44(1) AMMR clearly establishes that a person cannot be detained solely for the purposes of that Regulation. This implies that people cannot be detained only to realize a transfer under it but, rather, there need to be additional grounds for detention. This is complemented by Article 44(2), in which detention is permitted for people under the AMMR procedure '*[w]here there is a risk of absconding or where the protection of national security or public order so requires*'. Detention is also allowed where persons avoid or hamper the preparation of the transfer process. The same type of guarantees as under the RCD (i.e., necessity, proportionality and need to consider AtDs) apply.³³⁶

However, compared to the Dublin III Regulation, the AMMR (Article 44(2)) lowers the threshold of the risk of absconding which justifies detention.³³⁷ First, by eliminating the reference to a 'significant' risk of absconding (as under Dublin rules). Second, by providing a very broad definition of 'risk of absconding',³³⁸ comprising any action by which an asylum seeker does not remain available to the competent authorities (e.g., by leaving the territory of the Member State without authorisation, due to the failure to notify their absence from an accommodation centre or assigned area of residence, or the failure to present themselves to the authorities). While it is positive that a definition of 'risk of absconding' is now provided in EU legislation, the definition is much broader than the interpretation given by the CJEU,³³⁹ as it does not concern the 'deliberate evasion' to prevent transfer but is rather extended to the failure to remain available to the competent authorities. This broad language may capture a considerable proportion of people subject to transfer and hence lead to systematic detention under the AMMR too. Finally, by referring to national law for the determination of the existence of a risk of absconding, this concept becomes even broader considering that, in practice, EU Member States already use a wide range of criteria to justify this detention ground and interpret it in a very broad manner.

Recommendations

- » Given its punitive character and documented harmful effects on people, detention of asylum seekers should be avoided, with Member States making recourse to it only as a measure of very last resort. The systematic detention of asylum seekers has to be avoided. Individualized assessments of the necessity and proportionality of the measure should always be conducted.
- » If countries decide to resort to detention, this must be limited to the very narrow circumstances in which it is allowed by EU and international law. Grounds for the detention of asylum seekers set out in national legislations of EU Member States should be clearly limited to those provided in the 2013 RCD.
- » Where countries resort to restrictions on freedom of movement or deprivation of liberty, they should: (1) conduct an individualised assessment of each case to establish the necessity and proportionality of the measure; (2) consider the application of alternatives to detention; and (3) communicate a properly motivated detention decision, which refers to the avenues for judicial challenge, to the individual concerned.
- » The provisions in the 2013 RCD on detention of asylum seekers should always be read in conjunction with the Charter, the ECHR and relevant case law of European courts limiting the discretionary use of detention practices.
- » Member States should choose not to make obligatory recourse to detention during the screening procedure. In any case, detention during screening cannot be applied automatically, as all guarantees regarding the use of detention apply.
- » EU Member States should carry out the border procedure without resorting to detention, by not invoking Article 10(4)(d) of the 2024 RCD.

335. Article 28(1) Dublin III Regulation.

336. Article 44(2) AMMR.

337. 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, available [here](#).

338. Article 2(p) AMMR.

339. CJEU, C-163/17 *Jawo*.

2. Alternatives to detention

- » Article 5(1) of the ECHR
Thimothawes v. Belgium, Application No 39061/11
- » Article 10(2) of the 2013 RCD
C-601/15 PPU *J.N.*; C-72/22 PPU *M.A.*
- » Article 28(2) of the Dublin III Regulation
C-528/15 *Al Chodor*

As it is not the main object of this comparative report, the present sub-chapter will provide a more limited overview of the legal framework applicable and practice related to alternatives to detention (AtDs).³⁴⁰

While there is no universally accepted definition of AtDs, they can be considered as non-custodial measures applied in place of detention that is lawful but unnecessary. According to the EUAA, two core elements define AtDs: (1) they apply only where a lawful ground for detention exists; and (2) they are less restrictive than a measure of deprivation of liberty.³⁴¹

Under primary EU law, under the necessity requirement (see [Lawfulness \(and non-arbitrariness\) of detention](#)), the restriction should be the least restrictive possible and proportionate to the legitimate goal pursued.³⁴² This is further clarified under secondary EU law. Article 10(2) of the 2013 RCD provided that '*when necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively*'. The CJEU also clarified that detention of asylum seekers may only be ordered if other less coercive alternative measures cannot be applied effectively.³⁴³ Article 28(2) of the Dublin III Regulation also established how '*Member States may detain the person concerned in order to secure transfer procedures (...) only in so far as (...) other less coercive alternative measures cannot be applied effectively*'. The CJEU has also referred to this article in the Dublin Regulation, stressing that it permits the detention of applicants only where other less coercive alternative measures cannot be applied effectively.³⁴⁴

In the context of the ECHR,³⁴⁵ the Court explicitly requires the assessment of AtD (also called less coercive measures) if the person is in a vulnerable situation.³⁴⁶

The applicability of an AtD is fundamentally tied to the lawfulness of detention. The EUAA has clarified that, where no grounds for detention can be established –or have ceased to apply–, AtDs have no legal basis and cannot be enforced.³⁴⁷

As the consideration of AtDs constitutes an obligation in the context of asylum procedures, Article 8(4) of the 2013 RCD required that Member States lay down in national law the relevant rules concerning AtDs (such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place).

National practice

The legislation of most AIDA countries addresses AtDs, referring to 'less coercive/ severe alternative

340. An extensive analysis of the legal framework and European national practice regarding alternatives to detention (AtDs) has been conducted by ECRE. A legal note highlighting the findings is expected to be published by September 2026, under the title '*Alternatives to immigration detention: Challenges in implementation despite established legal standards*'.

341. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 11, available [here](#).

342. CJEU, C-60/00 *Carpenter*, 11 July 2002, para. 45, available [here](#). See also Violeta Moreno-Lax, 'Beyond Saadi v UK: Why the 'Unnecessary' Detention of Asylum Seekers is Inadmissible under EU Law', Human Rights and International Legal Discourse, 2011, p. 177 and 197.

343. CJEU, C-601/15 PPU *J.N.*, 15 February 2016, para 61, available [here](#), and CJEU, C-72/22 PPU *M.A.*, 30 June 2022, para 82, available [here](#).

344. CJEU, C-528/15 *Al Chodor*, para. 25. In joined cases C-704/20 and C-39/21, *C, B and X*, 8 November 2022, para. 78, the CJEU noted that the person concerned cannot be detained where a less coercive measure can be applied effectively.

345. ECtHR, *Thimothawes v. Belgium*, Application No 39061/11, para. 73, available [here](#).

346. For other cases, as described under [Lawfulness \(and non-arbitrariness\) of detention](#), under Article 5(1)(f) the Court not always requires the necessity of the measure to be assessed

347. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 12, available [here](#).

measures',³⁴⁸ 'less severe but equally sufficient means',³⁴⁹ 'measures ensuring availability',³⁵⁰ or 'restrictive measures'.³⁵¹

Law and practice throughout AIDA countries varies regarding the requirement to assess AtDs, the type of AtDs available under the law, or their use in practice. The following table illustrates what AtDs are available and applied in practice across AIDA countries.

Types of AtDs provided for in law in AIDA countries			
Reporting duties	Financial guarantee	Residence restrictions	Surrendering documents
AT, BE, BG, CH, CY, DE, GR, ES, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, RS, TR, UA, UK.	AT, BG, CH, CY, GR, HU, MT, NL, PL, TR, UA, UK.	AT, BE, CH, CY, DE, GR, ES, FR, HR, HU, IE, IT, MT, NL, PL, PT, RO, RS, SI, TR, UA, UK.	BG, CH, DE, GR, ES, FR, HR, IT, MT, PL, SE, RS.

Source: AIDA Country Reports on 2024 and 2025.

In addition to the four alternatives provided for in the RCD, some AIDA countries also resort to electronic monitoring (**FR, PT, CH, TR, and UK**), sureties (**UA and TR**), or case management and return counselling services (which have been introduced or tested in **BE, CY, DE, and IT**).³⁵²

In most Member States (**AT, BE, BG, CY, the CZ, FR, HR, HU, IT, MT, NL, PL, SK, and SE**), an assessment of whether to impose detention or an alternative to detention is undertaken simultaneously with the consideration of the existence of grounds for detention.³⁵³

Notwithstanding the requirements under international and EU law, and domestic provisions that generally provide for the assessment of AtDs, AIDA reports indicate that AtDs remain infrequently used in practice across AIDA countries.³⁵⁴ In particular, AtDs are reportedly used in practice in 11 AIDA countries (**BE, HR, FR, DE, MT, NL, SE, CH, TR, UA, and UK**), rarely used in 3 countries (**AT, CY, and SK**), and are not used in practice in 12 AIDA countries (**BG, CZ, GR, HU, IT, IE, PL, PT, RO, RS, SI, and ES**).

Considerations on Pact implementation

- » Articles 10(5) and 11(2) of the 2024 RCD
- » Article 44(2) of the AMMR

Under the 2024 RCD, guarantees on AtDs are somewhat reinforced, as Article 11(2) now requires the provision of reasons '*why less coercive alternative measures cannot be applied effectively*'. In this sense, work on AtDs becomes even more important with the new asylum rules. In the short-term, it will be necessary to demonstrate that alternative measures are available and can be used effectively, thus rendering it unlawful to detain applicants. In the longer-term, the challenge will be to ensure greater availability of AtDs.³⁵⁵

Member States are still required to ensure that rules on AtDs are laid down in national law (Article 10(5) of the 2024 RCD). Examples of AtDs set out in the new RCD remain the same (i.e., regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place).

Regarding the situation at the border, as developed above (see [Lawfulness \(and non-arbitrariness\) of](#)

348. AIDA, *Country Report Belgium on 2024*, p.165; AIDA, *Country Report Portugal on 2025*, p. 165, available [here](#); and AIDA, *Country Report Türkiye on 2024*, p. 131, available [here](#).

349. AIDA, *Country Report Germany on 2024*, p. 211.

350. AIDA, *Country Report Hungary on 2025*, p. 102.

351. AIDA, *Country Report Romania on 2025*, p. 144.

352. ECRE, Legal Note on '*Alternatives to immigration detention: Challenges in implementation despite established legal standards*', expected publication in September 2026.

353. EMN, 'Detention and alternatives to detention in international protection and return procedures', 2021, p. 8, available [here](#).

354. The provided information compiles the responses to the question '*Are alternatives to detention used in practice?*' in the AIDA country reports. It should not, however, be interpreted as indicating that countries listed in the 'No' column never assess the applicability of AtDs. For example, case law from Greece demonstrates that courts may examine the use of such measures (see *X. v Decision of Alternate Police Director on extending detention*, 407/2018, 17 December 2018, available [here](#); and *Applicants v Greek State (Minister for Citizen Protection)*, No AP2200/2024, 11 November 2024, available [here](#)).

355. ECRE, 'Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council, of 14 May 2024, laying down standards for the reception of applicants for international protection (recast)', September 2024, available [here](#).

detention), Member States may choose to apply a regime of detention whenever they are implementing border procedures.³⁵⁶ However, if they choose to do so, the full set of substantive and procedural guarantees will apply. This includes the necessary confirmation that less coercive measures cannot be applied in each individual case.

While all types of AtDs can be used in the context of border procedures, the EUAA recognizes the difficulties in the implementation of some of them in practice. This is particularly so considering, among other things, the fiction of non-entry and the fact that border procedures often take place in areas with difficult access. To overcome these challenges, the EUAA suggests applying a combination of different AtDs during border procedures (e.g., residence in designated locations near the border and regular reporting). Even so, the EUAA recognizes that the fiction of non-entry can significantly affect AtDs, notably by restricting access to the territory and services. Nevertheless, it remains fundamental that it is ensured that asylum seekers, particularly those with vulnerabilities, have access to necessary support services, for which collaboration with civil society and international organisations will be critical.³⁵⁷

As for the transfers within what used to be the Dublin system, under Article 44(2) AMMR Member States may also detain the person concerned *'only in so far as (...) other less coercive alternative measures cannot be applied effectively'*. As clarified in the preamble (65), *'detention should (...) only [be] allowed as a measure of last resort'*.

Recommendations

- » In accordance with the principles of necessity and proportionality, asylum detention should be used only as a measure of last resort, where its objective cannot be achieved through an AtD.
- » The use of AtDs should be expanded, engaging national civil society organizations with relevant expertise in their design.
- » AtDs must themselves comply with the requirements of necessity and proportionality, including under the right to freedom of movement, which implies that such measures must be the least restrictive available. When assessing the need for AtDs to be imposed, preference should always be given to those less onerous to asylum seekers.

3. Detention of vulnerable asylum seekers

- » Article 5(1) of the ECHR
Thimothawes v. Belgium, Application No 39061/11; *Suso Musa v. Malta*, Application No 42337/12
- » Article 26(1) of the APD
- » Article 11(1)-(6) of the 2013 RCD
C-441/19 TQ
- » Article 28(4) of the Dublin III Regulation

As a rule, vulnerable people should not be detained, considering the harmful effects of detention are aggravated in these cases.³⁵⁸ The detention of children is particularly damaging due to the effect it may have on their development, even when they are not separated from their families.³⁵⁹ In this sense, the use of detention in cases of vulnerable asylum seekers is tightly circumscribed by the framework of the ECHR. As noted by the Council of Europe Steering Committee for Human Rights (CDDH), vulnerability narrows both the scope for

356. Article 54(1) APR.

357. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 62, available [here](#).

358. As noted by the Council of Europe, the following (non-exhaustive list of) groups have been specifically understood as 'vulnerable' by international bodies: children, asylum seekers, stateless persons, persons with serious health conditions (including mental health), victims of human trafficking, victims of torture, ill-treatment and domestic violence, pregnant women and nursing mothers, LGBTI persons, persons with disabilities, the elderly (see CDDH, 'Practical Guidance on Alternatives to Immigration Detention: fostering effective results', 17 September 2019, p. 14, available [here](#)). The EUAA has considered that vulnerability factors to be taken into account include: whether the person is a child (unaccompanied or not), a single parent with children or an elderly person, whether they have a disability or any medical conditions (physical or mental) not compatible with detention (including conditions requiring medical treatments that cannot be provided in detention settings) or whether they may be survivors of human trafficking, torture, rape or other forms of psychological, physical or sexual violence such as gender-based violence, female genital mutilation, child or forced marriage, or violence committed with a sexual, gender, racist or religious motive (EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 41, available [here](#)).

359. EPRS, 'Detention of migrants: a measure of last resort' (2023), p. 4, available [here](#).

detention and the State's margin of appreciation.³⁶⁰

Detention of vulnerable asylum seekers under the ECHR

The ECtHR found that decisions to detain asylum seekers that are generalised or automatic, without an individual assessment of the particular needs of the persons concerned, may constitute a violation of Article 5(1)(f) ECHR.³⁶¹ Detention procedures must be individualised to clearly identify vulnerabilities and prevent detention where it may not be safe or appropriate given a person's particular needs. This individualised assessment requirement extends to the examination of the imposition, extension, and continuation of detention.

As mentioned above, as part of this individualized assessment, the ECtHR explicitly requires the assessment of AtDs if the person is in a vulnerable situation, such as persons suffering from serious illnesses,³⁶² victims of torture and children. As such, the ECtHR has ruled that the detention of children³⁶³ and adults with vulnerabilities³⁶⁴ is not conform with Article 5(1)(f) ECHR if the aim that is pursued can be achieved by other less intrusive means, requiring the domestic authorities to consider AtDs in the light of the specific circumstances of the individual case.

In general, the ECtHR considers three elements in relation to the compatibility of the detention of a vulnerable asylum seeker with Article 5(1) ECHR: (1) their medical condition; (2) the adequacy of the medical assistance provided in detention; and (3) the advisability of maintaining the detention measure in view of the state of their health.³⁶⁵

Regarding asylum seeking children, the ECtHR has held that detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of their migration or residence status.³⁶⁶ Further, the Court does consider that detention must be necessary to achieve the aim pursued, so that the detention of a child will comply with Article 5(1)(f) ECHR only where the national authorities can establish that such a measure was adopted after verifying that no other less restrictive measure could be adopted.³⁶⁷ Even when such assessment has been conducted, the Court has stressed that the detention of children under Article 5(1)(f) ECHR can be justified only for a short period of time.³⁶⁸

Regarding the detention of accompanied children, the Court has held that, where children are detained with their parent(s) but the detention order is only issued against the parent, the detention of the child will be in breach of Article 5(1) ECHR.³⁶⁹ In some cases, the Court has found a violation of Article 5(1) ECHR regarding the detained accompanied children but not in respect of the parents.³⁷⁰ More so, the best interest of the child involves keeping the family together as far as possible.³⁷¹ However, parental accompaniment during detention does not absolve authorities from their duty to protect children.³⁷²

Further, the detention of children in inappropriate conditions may of itself constitute a violation of Article 5(1) ECHR, irrespective of whether the children were accompanied by their parents.³⁷³

During an age assessment procedure, and in relation to the imposition of detention measures, the ECtHR has

360. CCDH, 'Practical Guidance on Alternatives to Immigration Detention: fostering effective results', 17 September 2019, p. 14, available [here](#).

361. ECtHR, *Thimothawes v. Belgium*, para 73; ECtHR, *Suso Musa v. Malta*, para 100.

362. ECtHR, *Yoh-Ekale Mwanje v. Belgium*, Application No 10486/10, 20 December 2011, paras 124-125, available [here](#).

363. ECtHR, *A.B. and Others v. France*, Application No 11593/12, 12 July 2016, para 123, available [here](#); ECtHR, *Nikoghosyan and Others v. Poland*, Application No 14743/17, 3 March 2022, para 86, available [here](#); and ECtHR, *Rahimi v. Greece*, Application No 8687/08, 5 April 2011, paras 108-110, available [here](#).

364. As regards an adult with a medical condition, see ECtHR, *Yoh-Ekale Mwanje v. Belgium*. As regards the assessment of the vulnerability of the applicant, an LGBTI asylum-seeker, under Article 5(1)(b), see ECtHR, *O.M. v. Hungary*, para 53.

365. ECtHR, *Dybeku v. Albania*, Application No 41153/06, 18 December 2007, available [here](#).

366. ECtHR, *Popov v. France*, Application Nos 39472/07 and 39474/07, 19 January 2012, available [here](#).

367. ECtHR, *Nikoghosyan and Others v. Poland*, paras 65 and 87-88; ECtHR, *Rahimi v. Greece*, para 109.

368. ECtHR, *M.H. and Others v. Croatia*, Application Nos 15670/18 and 43115/18, 18 November 2021, para 237, available [here](#); and ECtHR, *M.H. and S.B. v. Hungary*, Application Nos 10940/17 and 15977/17, 22 February 2024, para 76, available [here](#).

369. ECtHR, *Minasian and Others v. the Republic of Moldova*, Application No 26879/17, 17 January 2023, paras 40-42, available [here](#).

370. ECtHR, *Muskhadzhiyeva and Others v. Belgium*, Application No 41442/07, 19 January 2010, available [here](#).

371. ECtHR, *Popov v. France*, Application Nos 39472/07 and 39474/07, para 141.

372. In relation to a claim under Article 3 ECHR due to detention measures being applied: ECtHR, *R.M. and Others v. France*, Application No 33201/11, 12 July 2016, para 71, available [here](#); and ECtHR, *M.H. and Others v. Croatia*, Application Nos 15670/18 and 43115/18, 18 November 2021, para 192, available [here](#); or ECtHR, *R.R. and Others v. Hungary*, Application No 36037/17, 2 March 2021, para 59, available [here](#).

373. ECtHR, *M.H. and Others v. Croatia*, para 239; and ECtHR, *G.B. and Others v. Turkey*, Application No 4633/15, 17 October 2019, para 151, available [here](#).

concluded that the presumption of minority must apply.³⁷⁴

It should be recalled that under the Istanbul Convention – which the EU ratified in 2023,³⁷⁵ require gender considerations to be taken into account in all EU policies and legislation. Therefore, a specific gendered assessment of the impact of the detention should always be carried out in this context.³⁷⁶

Detention of vulnerable asylum seekers under EU law

Despite strong condemnation by international organisations such as UNHCR,³⁷⁷ there is also no general exclusion of the detention of vulnerable applicants (including children) from EU asylum legislation.

However, as noted by the EUAA, *‘[t]he assessment of elements of compliance with the procedure, risks of absconding and degree of cooperation needs to be balanced by an assessment of vulnerabilities’*. In such assessment, *‘factors such as health conditions,³⁷⁸ the presence of dependants and the age of the individual must be carefully considered’*.³⁷⁹ More so, the reference to *‘where vulnerable persons are detained’* and *‘applicants with special reception needs’* in Article 11(1) of the 2013 RCD could be interpreted as a special degree of assessment being required before placing a vulnerable asylum seeker in detention.

In relation to detention, the categories of asylum seekers that should be subject to specific attention are defined by the 2013 RCD based on their health conditions, age, and gender.³⁸⁰ In particular, as per Article 21 of the 2013 RCD, vulnerable people include children,³⁸¹ unaccompanied children, disabled people, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

Regarding children, Article 11(2) of the 2013 RCD required that they *‘be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively’*, with the need to conduct effort to *‘release [them] and place them in accommodation suitable for minors’*. As with any measure involving children, their best interest *‘shall be a primary consideration’*, which is a fundamental principle outlined in Article 24 of the Charter. Unaccompanied children, in particular, *‘shall be detained only in exceptional circumstances’*, with all efforts being required to release them as soon as possible.³⁸² Regarding families with children, the 2013 RCD only referred to certain special provisions regarding the conditions of their detention (see [At the margins: Places and conditions of detention](#)).

The CJEU ruled that in detention cases affecting children, Member States are required to carry out in-depth assessments of their situation, considering their best interests.³⁸³ Further, the Court requires that, when deciding on measures to be imposed on children, Member States *‘take due account of factors such as the minor’s well-being and social development, taking into particular consideration the minor’s background such as safety and security considerations’*.³⁸⁴ The Court has also stressed the need for children to be detained exclusively *‘as a measure of last resort’*, and found a violation of EU law in a detention regime in transit zones due to the *‘systematic and automatic nature’* of the detention of unaccompanied children.³⁸⁵

The EUAA further points out how, when detention or an AtD is applied to children, a legal representative or guardian must also be appointed in all cases, which is paramount for children to be able to lodge an asylum

374. ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17, 21 July 2022, paras 153-154, available [here](#).

375. Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011, available [here](#). It was ratified by the EU through Decisions 2023/1075 and 2023/1076 in October 2023.

376. For a detailed assessment of (progress on) EU commitments to gender equality and the need for gender mainstreaming, see AMAL, ECRE, ‘Joint Shadow Report on GREVIO Baseline Evaluation Procedure for the EU’, November 2025, available [here](#).

377. *‘Child refugees, including those who are irregularly present, should not be detained for immigration-related purposes, including when accompanied by parents or legal guardians who have entered or are present irregularly’* (UNHCR, ‘Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees’, 23 September 2024, para 38, available [here](#)).

378. Mental health shall also be considered, as per Article 11(1) of the 2013 RCD.

379. EUAA, ‘Guidelines on Alternatives to Detention, Practical Guide’, December 2024, p. 41, available [here](#).

380. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; ‘Reception conditions across the EU’, Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, p. 56, available [here](#).

381. See CJEU, C-233/18 *Zubair Haqbin*, para 53.

382. Article 11(3) of the 2013 RCD.

383. CJEU, C-441/19 *TQ*, 14 January 2021, paras 46, 60, available [here](#).

384. CJEU, C-233/18 *Zubair Haqbin*, para 54.

385. CJEU, C-808/18 *European Commission v. Hungary*.

application and challenge the detention order effectively.³⁸⁶

UNHCR argues that, as a general rule, asylum seekers with long-term physical, mental, intellectual and sensory impairments should not be detained.³⁸⁷ Further, the prevention of trafficking cannot be used as a blanket ground for detention, and countries should rather focus on appropriate alternatives.³⁸⁸ While UNHCR also strongly advises against the detention of pregnant women and nursing mothers,³⁸⁹ the 2013 RCD also allowed the detention of female asylum seekers, provided that certain special arrangements as to the conditions of their detention are made (see [At the margins: Places and conditions of detention](#)).

The same provisions applied to detention under the Dublin III Regulation.³⁹⁰

National practice

Despite the condemnation by international organizations and civil society, as well as the special standard of care highlighted both by the ECtHR and CJEU, the detention of vulnerable asylum seekers is a common practice in Europe.

In several AIDA countries civil society organizations have denounced the lack of, difficulty in properly conducting and poor quality of vulnerability assessments at the beginning of detention and throughout the detention period (**CZ, CY, GR, MT, PT, TR**).³⁹¹

Croatia³⁹² and **Serbia**³⁹³ allow the detention of vulnerable applicants if an individual assessment evidences that detention is in line with their special needs. In any case, there have been no recorded cases of vulnerable applicants in **Serbia** in recent years. Similarly, **UK** policy is that vulnerable people are unsuitable for detention, and that they should only be detained exceptionally or when their care can be satisfactorily managed. However, in practice, vulnerable people are often detained (e.g., survivors of torture or seriously mentally ill people). Pregnant women may only be detained, for a maximum of 72 hours or 7 days exceptionally, where (a) they will shortly be removed from the UK; and (b) there are exceptional circumstances justifying detention.³⁹⁴

German federal law prohibits the detention of vulnerable asylum seekers. However, since in **Germany** people can lose their status of 'applicants' as a result of a Dublin procedure, they may be detained for the purpose of a Dublin transfer.³⁹⁵ Moreover, there is also regulation at regional level, with only some Federal States having regulations regarding the detention of certain vulnerable groups (e.g., elderly persons, persons with disabilities, nursing mothers or single parents). Further, *de facto* detention at airport detention facilities is also applied to pregnant women, victims of torture and persons with medical conditions.³⁹⁶

In **Portugal**, vulnerable persons (e.g., pregnant women, sick people, victims of torture) are held in detention with no apparent adjustments made to respond to their individual special needs (see [At the margins: Places and conditions of detention](#)).³⁹⁷

In the **Netherlands**, persons for whose individual circumstances detention is disproportionately burdensome (e.g., due to a serious mental condition or long-term hospitalisation needs) and persons with special procedural guarantees are excluded from border detention. If these circumstances arise while in detention, the person will be excluded from detention. However, it is not the case that vulnerability automatically excludes border detention. The authorities will frequently contend that vulnerable people can be subjected to the border procedure as there is room to take into account vulnerabilities. In principle, no group of

386. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 41, available [here](#).

387. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', 2012, para 9.5, available [here](#).

388. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', 2012, para 9.4, available [here](#).

389. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention', 2012, para 9.3, available [here](#).

390. Article 28(4) Dublin III Regulation.

391. AIDA, *Country Report Czech Republic on 2025*, p. 87, available [here](#); AIDA, *Country Report Cyprus on 2025*, pp. 116 and 148, available [here](#); AIDA, *Country Report Greece on 2025*, available [here](#); AIDA, *Country Report Malta on 2025*, p. 121, available [here](#); AIDA, *Country Report Portugal on 2025*, p. 167, available [here](#); AIDA, *Country Report Türkiye on 2024*, p. 136, available [here](#).

392. AIDA, *Country Report Croatia on 2024*, p. 135, available [here](#).

393. AIDA, *Country Report Serbia on 2024*, p. 201, available [here](#).

394. AIDA, *Country Report the UK on 2025*, pp. 104-106, available [here](#).

395. AIDA, *Country Report Germany on 2024*, p. 212, available [here](#).

396. AIDA, *Country Report Germany on 2024*, p. 213, available [here](#).

397. AIDA, *Country Report Portugal on 2025*, p. 167, available [here](#).

vulnerable third country nationals is automatically excluded from territorial detention.³⁹⁸

Polish legislation prohibits the detention of asylum seekers whose psychophysical state leads to believe that they are victims of violence or to whom detention causes a serious threat to their life or health. Therefore, pregnant women can be detained and persons with disabilities are also sometimes detained. However, this prohibition is often not respected in practice, also due to poor vulnerability identification mechanisms (including the refusal of courts to accept the opinions of independent psychologists).³⁹⁹

In **Slovenia**, vulnerable asylum seekers can only be detained in some centres.⁴⁰⁰

In **Spain**, persons who might be victims of trafficking are detained in practice due to a lack of proper identification procedures.⁴⁰¹

Some AIDA countries, however, present good practices in their policies regarding the detention of vulnerable asylum seekers.

In the **Czech Republic** the law states that vulnerable persons must generally be allowed to enter the territory without a formal non-admission decision (i.e., that equates to a detention decision). People with a disability can be placed in detention unless the disability itself prevents it.

In **Cyprus**, while vulnerable asylum seekers are systematically detained, persons with physical disabilities will usually not be detained if the condition is serious or released, provided there is a medical confirmation of the condition. Women will also be released upon confirmation of a pregnancy.⁴⁰² Similarly, asylum detention in **Hungary** must be terminated if the person requires extended hospitalisation.⁴⁰³

Greek⁴⁰⁴ and **Ukrainian**⁴⁰⁵ legislation does not prohibit the detention of vulnerable asylum seekers, but does provide a number of guarantees regarding the conditions of their detention (see [At the margins: Places and conditions of detention](#)).

Since 2024, **Maltese** legislation expressly permits the detention of vulnerable asylum seekers. In practice, however, after the initial detention period upon arrival and disembarkation, people that are visibly vulnerable are released from detention.⁴⁰⁶

In **Spain**, in practice, pregnant women and persons requiring assistance may be exempted from the border procedure and admitted to the territory in some cases.⁴⁰⁷

Detention of asylum-seeking children

Regarding child asylum applicants, only three AIDA countries fully exclude them from detention (**IE, HU, CY**). **Slovenia** excludes the detention of unaccompanied children, while **Spain** does not detain asylum seeking families with children. However, the detention of children occurs in practice often despite a prohibition to that effect being enshrined in law (**BE, BG, IT, FR, PL, TR**, and exceptionally in **UA** and **SI**).

398. AIDA, *Country Report the Netherlands on 2025*, p. 174, available [here](#).

399. AIDA, *Country Report Poland on 2024*, pp. 98-103, available [here](#).

400. AIDA, *Country Report Slovenia on 2025*, p. 99, available [here](#).

401. AIDA, *Country Report Spain on 2025*, p. 152, available [here](#).

402. AIDA, *Country Report Cyprus on 2025*, pp. 116 and 148, available [here](#).

403. AIDA, *Country Report Hungary on 2025*, p. 104, available [here](#).

404. AIDA, *Country Report Greece on 2025*, available [here](#).

405. AIDA, *Country Report Ukraine on 2025*, p. 77, available [here](#).

406. AIDA, *Country Report Malta on 2025*, pp. 118-119, available [here](#).

407. AIDA, *Country Report Spain on 2025*, p. 152, available [here](#).

Detention of migrant children in AIDA countries*					
Families with children			Unaccompanied children		
Frequently	Rarely	Never	Frequently	Rarely	Never
TR, PT, PL, MT, GR, FR, BG	AT, BE, UK, UA, CH, SE, SI, RS, NL, IT, DE, HR, CZ, SK	ES, IE, HU, CY	MT, GR, BG	AT, UK, UA, TR, CH, SE, ES, RS, RO, PT, PL, NL, IT, DE, FR, HR, BE, CZ, SK	SI, IE, HU, CY

Source: AIDA Country Reports on 2024 and 2025.

**Methodological note: the answers provided in the table above refer to the detention of children in the migration context, and not only to asylum-seeking children. In particular, this is so primarily because of two reasons: (1) because of the above-mentioned practical impossibility to distinguish statistics regarding the detention of asylum seekers and other migrants (including under a return procedure); and (2) because, in practice, information on access to the asylum procedure for children is flawed and insufficient, which translates into children with protection needs not being considered as such.*

In **Croatia**, the detention of children⁴⁰⁸ (including as young as below the age of 7) has substantially grown over the last years.⁴⁰⁹

Detention of families with children is a widespread practice among AIDA countries.

In several AIDA countries the law expressly allows for the detention of families with children (**MT, PT, BG, RO, ES, RS**)⁴¹⁰.

While a legislative change in **Belgian** and **French** legislation over the last years brought about the prohibition of detaining asylum-seeking children, in practice this is not always respected.⁴¹¹

In the **Netherlands**, families with children may be detained at the border when there is a criminal record or their family ties are not found real or credible. Families with children are in principle also not detained in the territory, with some exceptions (i.e., obstruction the return procedure, additional information needed for the processing of an application, public order grounds, or significant risk of absconding in Dublin cases) where they will be placed in a closed family detention centre.⁴¹²

Contrasting with the above, some positive -albeit limited- practices can, however, also be observed.

While the law permits the detention of families with children, this is only exceptionally the case in practice in **Romania**⁴¹³ and not applied in practice in **Serbia**.⁴¹⁴

In **Cyprus**, the law prohibits the detention of all asylum-seeking children.⁴¹⁵ A change in **German, Belgian, and French** legislation over the last years brought about the prohibition of detaining asylum-seeking children.⁴¹⁶

Children are also not detained in the **UK** (except for short periods pending removal).⁴¹⁷

In the **Czech Republic**, children are excluded, by law, from detention unless they have repeatedly violated an AtD imposed on them.⁴¹⁸

408. This reference is to children who are not asylum seekers, but rather are detained under the Law on Foreigners.

409. AIDA, *Country Report Croatia on 2024*, p. 128, available [here](#).

410. AIDA, *Country Report Malta on 2025*, p. 118, available [here](#); AIDA, *Country Report Portugal on 2025*, p. 166, available [here](#); AIDA, *Country Report Bulgaria on 2025*, p. 112, available [here](#); AIDA, *Country Report Romania on 2025*, pp. 165-166, available [here](#); AIDA, *Country Report Spain on 2025*, p. 152, available [here](#); AIDA, *Country Report Serbia on 2024*, p. 201, available [here](#).

411. AIDA, *Country Report Belgium on 2024*, p. 167, available [here](#); AIDA, *Country Report France on 2025*, p. 153, available [here](#). Regarding France, the legislation prohibiting the detention of families with children will not come into force in Mayotte until 2027.

412. AIDA, *Country Report the Netherlands on 2025*, pp. 174-175, available [here](#).

413. AIDA, *Country Report Romania on 2025*, pp. 165-166, available [here](#).

414. AIDA, *Country Report Serbia on 2024*, p. 201, available [here](#).

415. AIDA, *Country Report Cyprus on 2025*, p. 143, available [here](#).

416. AIDA, *Country Report Germany on 2024*, p. 204, available [here](#); AIDA, *Country Report Belgium on 2024*, p. 167, available [here](#); AIDA, *Country Report France on 2025*, p. 153, available [here](#).

417. AIDA, *Country Report the UK on 2025*, p. 105, available [here](#).

418. AIDA, *Country Report Czech Republic on 2025*, p. 87, available [here](#).

While, in theory, the detention of unaccompanied children is more limited by law in Europe, many countries continue to apply it in practice.

In **Croatia**,⁴¹⁹ **Malta**⁴²⁰ and **Portugal**,⁴²¹ the law expressly allows for the detention of unaccompanied children.

In **Cyprus**,⁴²² **Bulgaria**,⁴²³ **Hungary**,⁴²⁴ **Ireland**,⁴²⁵ **Italy**,⁴²⁶ **Poland**,⁴²⁷ **Romania**,⁴²⁸ **Slovakia**,⁴²⁹ **Ukraine**,⁴³⁰ and **Türkiye**,⁴³¹ the legislation specifically prohibits the detention of unaccompanied children. However, in practice, unaccompanied children are often held in detention in these countries.

- » In **Bulgaria**, unaccompanied children above the age of 14 are often ‘attached’ to adults present in the group of people with whom they travelled and detained as ‘accompanied’.
- » In **Cyprus**, children are *de facto* detained, as they are sometimes held in reception centres (but not formal detention centres).
- » In **Italy**, unaccompanied children are detained in hotspots, a practice that has been condemned by the ECtHR in the past.⁴³²
- » In **Türkiye**, unaccompanied children are often declared to be over the age of 18 and detained.
- » In **Poland**, unaccompanied children are sometimes placed in detention if they are accompanied by unrelated adults, or when they were placed in detention as irregular migrants (which is possible under the law) and only then applied for asylum.
- » In **Ukraine**, exceptional cases of detention of unaccompanied children have been reported in the past, but this has not been observed in recent years.
- » In **Slovakia**, the Ombudsperson documented at least one case involving the detention of a person claiming to be a child, proving that the legal prohibition may not always operate as a fully effective safeguard in practice.

A change in the law led to the prohibition of the detention of unaccompanied children under the pretext of ‘protective custody’ in **Greece**, while they can still be detained (and *de facto* detained) for other reasons. Of particular concern is the prolonged *de facto* detention of unaccompanied children in highly unsuitable and overcrowded conditions in so-called ‘safe areas’ in the RIC.⁴³³

In **Bulgaria**, an exception to the detention of people with disabilities and unaccompanied children is applied at the border. However, in practice, the police applies this exception only to children who are visibly minor and below 14 years of age. Moreover, while Bulgarian law prohibits the detention of unaccompanied children in the territory, children could in practice spend several days in detention while authorities verify their identity and confirm they are unaccompanied. The CPT has further stated that some of those children deemed as accompanied were, in fact, unaccompanied and had just been ‘attached’ to an accompanying adult.⁴³⁴

In **Germany**, in practice, children are taken into custody for a few hours on the day the Dublin transfer

419. AIDA, *Country Report Croatia on 2024*, p. 135, available [here](#).

420. AIDA, *Country Report Malta on 2025*, p. 118, available [here](#).

421. AIDA, *Country Report Portugal on 2025*, p. 166, available [here](#).

422. AIDA, *Country Report Cyprus on 2025*, p. 143, available [here](#).

423. AIDA, *Country Report Bulgaria on 2025*, p. 112, available [here](#).

424. AIDA, *Country Report Hungary on 2025*, p. 103, available [here](#).

425. AIDA, *Country Report Ireland on 2025*, p. 127, available [here](#).

426. AIDA, *Country Report Italy on 2024*, pp. 120-122, available [here](#).

427. AIDA, *Country Report Poland on 2024*, pp. 103-107 available [here](#). The ECtHR has already condemned Poland for their practices related to the detention of children (*R.M. and Others v. Poland*, Application No 11247/18, 9 February 2023, available [here](#)).

428. AIDA, *Country Report Romania on 2025*, p. 165, available [here](#).

429. AIDA, *Country Report Slovakia on 2025*, available [here](#).

430. AIDA, *Country Report Ukraine on 2025*, p. 77, available [here](#).

431. AIDA, *Country Report Türkiye on 2024*, p. 135, available [here](#).

432. ECtHR, *A.T. and Others v. Italy*, Application No 47287/17, 23 November 2023, available [here](#).

433. AIDA, *Country Report Greece on 2025*, available [here](#).

434. AIDA, *Country Report Bulgaria on 2025*, pp. 106-107 and 112, available [here](#).

takes place.⁴³⁵

In **Slovenia**, children may only be detained until they express their intention to apply for asylum. In practice, unaccompanied children have also been *de facto* detained in reception areas until the lodging of their asylum application.⁴³⁶

In practice, the detention of unaccompanied children has been observed in **Spain**, due to lacking age assessment procedures. However, if an unaccompanied child is identified while in detention, they will immediately be released.⁴³⁷

Some positive practices can instead be observed regarding other countries.

In **Serbia**⁴³⁸ and **Hungary** (since 2024),⁴³⁹ although the law expressly allows for the detention unaccompanied children, this is not done in practice.

In the **Czech Republic**, unaccompanied children may only be detained in case of danger to national security or public order, or if it is considered in their best interest.⁴⁴⁰

In the **Netherlands**, while a work instruction to authorities expressly permits unaccompanied children to be detained at the border when in doubt about their minority, this is not currently applied in practice. Unaccompanied children are in principle also not detained on the territory, with some exceptions (e.g., when they are suspected of or having convicted a crime, have left the reception centre, or have not abided by a duty to report or a freedom restrictive measure) where they will be placed in a closed family detention centre.⁴⁴¹

To determine whether detention should be applied to children, some countries make distinctions depending on their age.

The law in **Switzerland** and **Austria**⁴⁴² prohibits the detention of children under the age of 15 and 14, respectively. However, in **Switzerland** laws and practices vary regionally: while several cantons prohibit the detention of children by law, several other do not order it as a matter of principle, and others do it in practice. Moreover, the detention of children does occur at the border (in airport transit zones), although their entry into the territory is usually allowed more rapidly compared to cases involving adults.⁴⁴³

Several countries (**CZ, PL, DE, FR, BE, MT, RO, GR, TR**) allow to detain children pending age assessment or where their declared age is in dispute.⁴⁴⁴ In **Austria**, however, the detention of unaccompanied children who are undergoing an age assessment is excluded.⁴⁴⁵ In the Netherlands, no cases were identified at the time of writing in which unaccompanied children undergoing an age assessment were detained in practice, although such detention is not formally excluded.⁴⁴⁶

435. AIDA, *Country Report Germany on 2024*, p. 213, available [here](#).

436. AIDA, *Country Report Slovenia on 2025*, p. 99, available [here](#).

437. AIDA, *Country Report Spain on 2025*, p. 152, available [here](#).

438. AIDA, *Country Report Serbia on 2024*, p. 201, available [here](#).

439. AIDA, *Country Report Hungary on 2025*, p. 103, available [here](#).

440. AIDA, *Country Report Czech Republic on 2025*, p. 87, available [here](#).

441. AIDA, *Country Report the Netherlands on 2025*, pp. 174-175, available [here](#).

442. AIDA, *Country Report Austria on 2025*, p. 151, available [here](#).

443. AIDA, *Country Report Switzerland on 2025*, pp. 122-123, available [here](#).

444. AIDA, *Country Report Austria on 2025*, p. 151, available [here](#); AIDA, *Country Report Poland on 2024*, pp. 103-107 available [here](#) (see also *R.M. and Others v. Poland*, Application No 11247/18, 9 February 2023, available [here](#)); AIDA, *Country Report Germany on 2024*, p. 213, available [here](#); AIDA, *Country Report France on 2025*, p. 153, available [here](#); AIDA, *Country Report Belgium on 2024*, p. 167, available [here](#); AIDA, *Country Report Malta on 2025*, p. 119, available [here](#); AIDA, *Country Report Romania on 2025*, p. 165, available [here](#); AIDA, *Country Report Greece on 2025*, available [here](#); AIDA, *Country Report Türkiye on 2024*, p. 135, available [here](#).

445. AIDA, *Country Report Austria on 2025*, p. 151, available [here](#).

446. In the Netherlands, however, no cases were identified at the time of writing in which unaccompanied children undergoing an age assessment were detained, although such detention is not formally excluded. AIDA, *Country Report the Netherlands on 2025*, p. 175, available [here](#).

Considerations on Pact implementation⁴⁴⁷

- » Articles 43, 45 and 53 of the APR
- » Articles 10 and 13 of the 2014 RCD
- » Article 44 of the AMMR
- » Article 12 of the Screening Regulation

The 2024 RCD strengthens some guarantees for vulnerable applicants but falls short of establishing a general or automatic exemption from the use of detention. Among the changes introduced, the general substitution of the term '*vulnerable person*' for '*applicants with special reception needs*' throughout the entire 2024 RCD should be noted.⁴⁴⁸ Article 24 of the 2024 RCD maintains a non-exhaustive list of categories of people that would qualify as '*persons with special reception needs*', namely: children (accompanied and unaccompanied), persons with disabilities, elderly people, pregnant women, LGBTI people, single parents with children, victims of trafficking, persons with serious illnesses, persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of violence (including FGM). The Screening regulation keeps the reference to 'vulnerability' as well as 'special reception or procedural needs'.⁴⁴⁹

The detention of applicants with special reception needs is prohibited where detention '*would put their physical and mental health at serious risk*' and specifies that Member States shall consider the '*physical and mental*' health of applicants with special reception needs (Article 13(1) of the 2024 RCD). However, existing derogations permitting the detention of applicants with special reception needs in situations that fall short of the standard of meeting special reception needs, if '*justified*' and '*for a reasonable period of time*' are maintained (Article 13(6) of the 2024 RCD).

A new additional safeguard stipulates that '*when detaining an applicant, Member States shall take into account any visible signs, statements or behaviour indicating that the applicant has special reception needs. Where the [vulnerability assessment] has not yet been completed, it shall be completed without undue delay and its results shall be taken into account when deciding whether to continue detention (...)*' (Article 10(3) of the 2024 RCD). Further, Member States are obliged to ensure regular monitoring of asylum seekers with special reception needs, taking into account their particular situation, including their physical and mental health (Article 13(1) of the 2024 RCD).

Article 13 of the 2024 RCD has detailed provisions regarding children, in which it is set out that children can be detained, but only as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively. Article 13(2) of the 2024 RCD creates an additional protection for children, calling for respect for '*the principle of family unity*', allowing children to be detained only either '*where the minor's parent or primary care-giver is detained*' for accompanied children or '*where detention safeguards the minor*' for unaccompanied children (although such situations are hardly imaginable⁴⁵⁰). As was also the case with the previous rules, when detained, unaccompanied children should be released as soon as possible and their detention regularly and automatically reviewed.⁴⁵¹ Additionally, Article 13(2) of the 2024 RCD establishes that AtDs should be the default approach in the case of families with children.

Border procedures might often be conducted from detention (see [Lawfulness \(and non-arbitrariness\) of detention](#)), a setting where certain vulnerable applicants will struggle to access to a procedure because of the likely impact on them, including people subject to violence or torture. In particular, because of the likely remote locations where border procedures could take place, access to lawyers and other relevant NGOs -of particular relevance to vulnerable people, also regarding their identification- could be severely limited. Moreover, the very context of detention is not likely to create a safe space where people -particularly vulnerable and, among them, children- feel free to express themselves and disclose their vulnerabilities. Some – albeit limited – exceptions to the applicability of border procedures to vulnerable applicants are however foreseen in the APR. Articles 21(2) and 53(2)(c) APR provide for an exemption from the border procedure for applicants with special needs when the necessary support cannot be provided in the locations in which the border procedure is taking place (i.e., in those situations Member States have an obligation to authorise entry and channel the asylum seeker to the appropriate procedure). Further, under Article 53(1) APR, unaccompanied children have to be

447. For further analysis of these provisions, see ECRE's comments to the 2024 RCD, the APR, the AMMR and the Screening Regulation, all available [here](#).

448. Articles 13, 19(2), 20(3), 24, 25(1), 25(4), and 33 of the 2024 RCD.

449. Recitals (7) and (37) and Articles 1 and 12(3) Screening Regulation.

450. Ulrike Brandl, 'Mix and Match. Detention, 'De-Facto Detention' or just Restrictions of Freedom of Movement in the New Pact' (EU Migration Blog, 14 October 2024, available [here](#).

451. Article 11(2) of the 2024 RCD.

exempted from the asylum border procedure, unless there are security considerations.⁴⁵² Article 53(1)(d) APR provides an exemption on health (including mental health).

As was the case under the Dublin rules, the AMMR (Article 44) does not exclude the possibility to detain vulnerable asylum seekers, including children.

A positive addition is the need to conduct health and (other) vulnerability checks for all third-country nationals subject to the screening process (Article 12 of the Screening Regulation). These preliminary vulnerability checks may form part of the assessments of special reception or procedural needs foreseen respectively by Article 25 of the 2024 RCD and Article 20 of the APR (as per Article 12(5) of the Screening Regulation). If there are indications of vulnerabilities or of special reception or procedural needs, the asylum seeker needs to be provided with '*timely and adequate support in adequate facilities*' (Article 12(4) Screening Regulation). In any case, given the very short deadlines for completion of the screening process (i.e., 7 days), it is most likely that the vulnerability-identification process will have to continue during later stages of the procedure (up to the maximum of 30 days established in the 2024 RCD).

Recommendations

- » Before making recourse to the detention of asylum seekers, countries should conduct complete vulnerability assessments, conducted by appropriately trained staff (including medical) that can ensure an appropriate quality of the identification process at the earliest stages of the screening procedure. This is of particular relevance as the identification of vulnerabilities should result in the channelling of the person into the adequate procedure and, where relevant, the application of less onerous alternatives to detention.
- » Member States must ensure that sufficient training and guidance on the identification of vulnerabilities is provided to those authorities in charge of conducting the screening procedure.
- » The double vulnerability of children stemming from their intrinsic vulnerability as asylum seekers and children is a decisive factor which must take precedence over considerations of immigration control. In this sense, given that it can never be considered in their best interest, the detention of children should be excluded by law and in practice. Moreover, family members of accompanied children should be accommodated with their children and not detained. If Member States make recourse to it, however, they should ensure that detention for children should be used only as a measure of last resort.
- » Children should never be detained on the basis of their own or of their parents' migratory status, as such detention is contrary to the best interests of the child and has severe, lasting impacts on their fundamental rights and wellbeing.⁴⁵³
- » In the exceptional event where the detention of children nevertheless does occur, it must be for the shortest time possible and in child-appropriate facilities (which can never be prisons or police custody) with education, play, and psychosocial support (see [At the margins: Places and conditions of detention](#)).
- » States must cease practices that separate family members through detention measures.
- » Detention should also be excluded for vulnerable individuals (including pregnant and nursing women as well as asylum seekers with medical conditions, mental health concerns, or disabilities).
- » EU Member States should maintain provisions on the prohibition or limitation of the use of detention for applicants with special reception needs that already existed previously in EU asylum legislation.
- » Unaccompanied children, survivors of trauma or trafficking, and persons with disabilities should always be exempted from border procedures (and, thus, detention at the border) due to the practical difficulties of providing the necessary support to them in such a context.
- » The independent monitoring mechanism that Member States are required to set up under the Screening Regulation⁴⁵⁴ and the APR,⁴⁵⁵ together with relevant civil society organizations with experience at the border, should monitor the effects of the increased use of detention at the border that is likely to result

452. Article 42(3)(b) APR.

453. UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, available [here](#), para 61; recalled in UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, available [here](#); UNHCR, UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available [here](#).

454. Article 10(2) Screening Regulation.

455. Article 43(4) APR.

from the implementation of the Pact. Given the lack of clarity of some of the provisions in the new legislation, lawyers and civil society organizations must be prepared to lodge the necessary legal challenges and requests for preliminary references to the CJEU, to ensure that the Courts continue delimiting the parameters of the use of detention.

CHAPTER III - PROCEDURAL SAFEGUARDS FOR DETENTION

1. Duration of detention

- » Article 5(1) of the ECHR
Komissarov v. the Czech Republic, App No 20611/17
- » Article 9(1) of the 2013 RCD
Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*
- » Article 28(3) of the Dublin III Regulation
C-60/16 *Mohammad Khir Amayry v. Swedish Migration Agency*

Duration of detention under the ECHR

As previously discussed (see [Lawfulness \(and non-arbitrariness\) of detention](#)), the ECtHR considers the duration of the detention measure to assess its proportionality.

The ECtHR considers that '*fixed time-limits are not a requirement of Article 5§1(f)*',⁴⁵⁶ and the assessment of the duration of a detention measure should, therefore, be assessed case-by case.⁴⁵⁷

Duration of detention under EU law

At the EU level, Article 9(1) of the 2013 RCD identified the necessity for national legislation to establish time limits for the duration of detention for asylum cases. Administrative procedures relevant to the grounds that justify the detention measure must be executed with due diligence, so that delays that cannot be attributed to the asylum seeker will not justify the continuation of a deprivation of liberty. UNHCR also considers it is not permissible to prolong detention due to inefficient processing modalities or resource constraints.⁴⁵⁸ Similarly, Article 28(3) of the Dublin III Regulation required that detention is for as short a period as possible and never longer than what is reasonably necessary to effect a transfer with due diligence.

The CJEU has clarified that, under the 2013 RCD, Member States are not required to set a specific maximum period for detention if the ground on which it was ordered continues to apply and that the administrative procedures linked with that ground are carried out diligently. As such, detention will only be lawful given '*effective procedural safeguards that allow his or her detention to be ended as soon as it ceases to be necessary or proportionate*'.⁴⁵⁹

However, EU law sets time limits for procedures that might develop while detaining asylum seekers.

Article 43(2) APD established that a (first-instance) decision within the border procedure shall be taken in a maximum of four weeks, from the date on which the asylum application was made.⁴⁶⁰ If this deadline is not complied with, the asylum seeker must be granted entry into the territory of the Member State. This is so even where arrivals of a large number of asylum seekers make it impossible to apply the border procedures within that four-week period (although, in this situation, the freedom of movement of asylum seekers could be still restricted to an area in proximity to its borders or its transit zones⁴⁶¹). In this sense, asylum seekers could not

456. ECtHR, *Komissarov v. the Czech Republic*, Application No 20611/17, 3 February 2022, para 52, available [here](#).

457. For example, the Court found: the excessive length of an asylum detention measure for 2 years and 9 months on national security grounds was arbitrary (ECtHR, *B.A. v. Cyprus*, paras 60-66); a shorter detention period but that followed no limit fixed in national law was contrary to Article 5(1) ECHR (ECtHR, *J.B. and Others v. Malta*, para 86); the 'clearly excessive' duration of a detention measure in an airport transit zone that ranged from five months to over a year and nine months (ECtHR, *Z.A. and Others v. Russia*, para 169); or the fact that Article 5(1) ECHR also covers deprivations of liberty of very short length (e.g., some hours as in ECtHR, *O.H. and Others v. Serbia*, Application No 57185/17, 3 February 2026, para 151, available [here](#)). Moreover, the Court also found that the excessive duration of detention might lead to a violation of Article 3 ECHR where the places where detention is ordered (e.g., a transit zone), by nature, were intended to receive people for extremely short periods of time (ECtHR, *Riad and Idliab v. Belgium*, Application Nos 29787/03 and 29810/03, 24 January 2008, available [here](#)).

458. UNHCR, 'Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees', 23 September 2024, para 37, available [here](#).

459. CJEU, Joined Cases C924/19 PPU and C925/19 PPU *FMS and others*, para 264.

460. CJEU, Joined cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, para 240.

461. Article 43(3) of the 2013 RCD. See CJEU, Joined cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, para 247.

be detained under Article 8(3)(c) of the 2013 RCD beyond these four weeks.⁴⁶²

Article 28(3) of the Dublin III Regulation provided for shortened time-limits for the different steps of the procedure whenever a person was detained (i.e., maximum one month since the lodging of the application until the submission of a take charge/back request, or two weeks to submit a reply to such request, and a maximum of six weeks to effect the transfer since the acceptance of the request). Failure to meet these deadlines must inevitably result in the release of the asylum seeker from detention.

The CJEU found that Member States can establish, in their legislation, a period of maximum two months detention of an asylum seeker whose deprivation of liberty began after the requested Member State accepted a take charge request. However, two conditions must apply. In particular, the duration of detention (1) must not go beyond the period necessary for the transfer, which shall be assessed on a case-by-case basis; and (2) must not be longer than six weeks from the date when the appeal or review against the transfer decision ceased to have suspensive effect (even when it was granted *ex officio*). However, in the same case, the CJEU also concluded that Member States cannot provide that, in such a situation, detention can be maintained for 3 or 12 months during which the Dublin transfer could be reasonably carried out. Further, the CJEU clarified that the number of days during which the asylum seeker was already detained after the take charge or take back request was accepted need not be deducted from the six weeks from when the appeal or review no longer has suspensive effect (as developed above).⁴⁶³

Both the EUAA and UNHCR have remarked that the duration of detention of asylum seekers should be as short as possible and not last longer than what is necessary to achieve the legitimate state objective.⁴⁶⁴ According to UNHCR, this applies in relation to both the initial detention order as well as any extensions. An indefinite detention period can render an otherwise lawful detention decision disproportionate and, therefore, arbitrary.⁴⁶⁵ UNHCR requires that maximum periods in detention are established in law. More so, these maximum periods cannot be circumvented by ordering the release of an asylum seeker only to re-detain them on the same grounds shortly afterwards.⁴⁶⁶ As an example, while a minimal period of detention may be lawful in order to carry out checks for identification, public health or security purposes, such detention must last only as long as reasonable efforts are required and made to establish identity, carry out such checks, or mitigate such risks. Further, detention decisions (including their extension) must be taken on an individual basis and be subject to minimum procedural safeguards.⁴⁶⁷

National practice

The national practice regarding detention periods of asylum seekers varies across AIDA countries. Some Member States establish maximum detention durations, while others do not, or do so with exceptions.

General maximum asylum detention periods

Most AIDA countries (**BE, BG, CZ, DE, ES, FR, HR, HU, MT, PL, RO, SI, RS, SE, TR**) apply maximum asylum detention periods of 6 months or less, limited by law or in practice.⁴⁶⁸ For example:

In **France**, a person can remain in administrative detention places (LRA) for 48 hours, after which they have to be transferred to administrative detention centres (CRA) for maximum 90 days. These are respected in practice (with the average length of stay for 2024 having been about 33 days).⁴⁶⁹

In **Bulgaria**, short-term detention can be ordered for a maximum of 30 days, although in practice the average duration is way below this. Detention during the status determination procedure in closed reception facilities is limited by the law to the shortest period possible, but in practice asylum seekers are detained

462. See also CJEU, C-808/18 *European Commission v. Hungary*, para 181; or CJEU, Joined cases C-924/19 PPU and C-925/19 PPU, *FMS and others*, paras 241-245.

463. CJEU, C-60/16 *Mohammad Khir Amayry v Swedish Migration Agency (Migrationsverket, SMA)*, 13 September 2017, available [here](#).

464. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 69, available [here](#).

465. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2012), paras 44, available [here](#).

466. UNHCR, 'Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention' (2012), paras 46, available [here](#).

467. UNHCR, 'Guidelines on International Protection No. 14: Non-penalization of refugees on account of their irregular entry or presence and restrictions on their movements in accordance with Article 31 of the 1951 Convention relating to the Status of Refugees', 23 September 2024, para 37, available [here](#).

468. AIDA, *Country Report Belgium on 2024*, p. 169, available [here](#); AIDA, *Country Report Czech Republic on 2025*, pp. 87 and 92, available [here](#); AIDA, *Country Report Croatia on 2024*, p. 135, available [here](#); AIDA, *Country Report Germany on 2024*, pp. 206 and 210, available [here](#); AIDA, *Country Report Poland on 2025*, p. 92, available [here](#); AIDA, *Country Report Serbia on 2024*, p. 201, available [here](#); AIDA, *Country Report Sweden on 2025*, p. 119, available [here](#).

469. AIDA, *Country Report France on 2025*, p. 155, available [here](#).

until the decision on their asylum applications becomes final, which on average in 2025 was 89 days but for some asylum seekers extended to 6-7 months.⁴⁷⁰

The maximum period of asylum detention in **Hungary** is 8 months, but 30 days for families with children. In 2025, the average detention period was 42 days.⁴⁷¹

Maltese legislation establishes a 9-month time limit for the detention of asylum seekers, but the average duration of detention for 2024 was just 48 days. Detention duration is closely connected to the nationality of the asylum seeker: while people from high recognition nationalities are detained for about 2 months, nationals of countries with low protection and high return rates are usually automatically detained for the entirety of their asylum procedure.⁴⁷²

In **Romania**, detention is ordered for a period of 30 days, which can be prolonged by another 30 days in special accommodation closed areas upon request to the courts, and in public custody centres up to 6 months. In practice, the average length in 2025 was 35 days for adults and 29 for children.⁴⁷³

In **Slovenia**, asylum seekers may be detained for a maximum of 3 months, with the possibility of extension for one more month. This is respected in practice, with the average duration of detention of asylum applicants having been 39 days in 2025.⁴⁷⁴ The regime of *de facto* detention that is applied to all newly arrived asylum applicants until they have lodged their application (see [Detention and de facto detention](#)) lasts from 3 to 20 days in practice.⁴⁷⁵

While **Türkiye** permits the detention of asylum seekers up to 30 days, this not always respected in practice.⁴⁷⁶

The extension of the initial maximum period of detention is permitted in almost all AIDA countries but, in some, this leads to prolonged maximum detention periods. For example:

In **Austria**, while detention cannot exceed 6 months for adults, this period can be extended up to 19 months on exceptional grounds.⁴⁷⁷

In the **Netherlands**, the law provides different maximum time limits for the detention of asylum seekers depending on the detention ground that is applicable. While for territorial detention the maximum is 18 months, detention on grounds of public order can be ordered for a period of up to 6 months (with the possibility of an extension for another 9 months in some cases).⁴⁷⁸

In **Switzerland**, detention of asylum seekers can be ordered for a maximum of 6 months, which can be extended by an additional time up to 12 months for failure to cooperate with authorities. Importantly, when a person is released and detained again the duration is summed up, unless they have left the national territory. For children, who can be detained from 15 years old, the maximum period of detention is 6 months which may be extended by up to 6 additional months.⁴⁷⁹

In **Ukraine**, the detention of asylum seekers is permitted for up to 18 months (i.e., an initial detention of 6 months with the possibility to extend it for up to 12 additional months).⁴⁸⁰

In three AIDA countries (**CY**, **IE**, and the **UK**) the law allows the detention of asylum seekers subject to no time limit.⁴⁸¹

While in **Cyprus**, once detained, asylum seekers will usually remain detained for the duration of their asylum procedure and a potential appeal, in **Ireland** it is usually shorter periods. In the **UK**, however, pregnant women and children can generally not be detained for more than 72 hours.

470. AIDA, *Country Report Bulgaria on 2025*, p. 115, available [here](#).

471. AIDA, *Country Report Hungary on 2025*, p. 104, available [here](#).

472. AIDA, *Country Report Malta on 2025*, p. 122, available [here](#).

473. AIDA, *Country Report Romania on 2025*, p. 167, available [here](#).

474. AIDA, *Country Report Slovenia on 2025*, p. 100, available [here](#).

475. AIDA, *Country Report Slovenia on 2025*, p. 96, available [here](#).

476. AIDA, *Country Report Türkiye on 2024*, p. 137, available [here](#).

477. AIDA, *Country Report Austria on 2024*, pp. 151-152, available [here](#).

478. AIDA, *Country Report Netherlands on 2025*, p. 176, available [here](#).

479. AIDA, *Country Report Switzerland on 2025*, pp. 122-123, available [here](#).

480. AIDA, *Country Report Ukraine on 2025*, p. 77, available [here](#).

481. AIDA, *Country Report Cyprus on 2025*, p. 149, available [here](#); AIDA, *Country Report Ireland on 2025*, p. 128, available [here](#); AIDA, *Country Report the United Kingdom on 2025*, p. 106, available [here](#).

Maximum asylum detention periods at the border

A number of AIDA countries provide for extensive periods of detention at their borders. In some countries detention at the border extends even to the entirety of the asylum procedure (and even beyond, if kept in detention pending a return procedure). Notable examples include the following:

In **Austria**, persons held in border facilities are *de facto* detained as they are forced to stay in the initial reception centre at the airport. Individuals can only be maintained at the border for a maximum duration of 6 weeks, although practice suggests that the airport procedure is carried out in less than 6 weeks. The fact that this deadline goes beyond the four weeks deadline foreseen in Article 43 APD has not been litigated so far.⁴⁸² The measure securing refusal of entry (i.e., *de facto* detention) could be maintained only for as long as strictly necessary and, in any event, for no longer than six weeks.⁴⁸³

In **Belgium**, asylum seekers can be detained at the border for an initial period of 2 months, which can be prolonged by consecutive periods of 2 months. The total duration of the detention cannot be longer than 5 months, unless the person poses a risk for public order or national security, in which case the detention can again be prolonged by periods of 1 month up to a maximum of 8 months. In practice, however, longer periods of detention are consistently documented.⁴⁸⁴

In the **Czech Republic**, the total detention of asylum seekers at the airport may not exceed 180 days since making of the application (including extensions).⁴⁸⁵

In **France**, the placement in waiting zones is ordered initially for 4 days, which can be extended for a period of 8 days (and, in exceptional circumstances or when the person obstructs departure, for 8 additional days). If a person held in a waiting zone makes an asylum application after the 14th day, detention can further be extended for 6 more days, with a view to allowing the authorities to conduct the asylum procedure (i.e., detention can extend to 26 days if the person applies for asylum on the 20th day of detention). If a person makes an asylum application at the border, they are automatically maintained in the waiting zone for the duration of the border procedure. The average period of detention in waiting zones is about 5-6 days.⁴⁸⁶

In countries such as the **Netherlands** or **Portugal**, border detention may be prolonged during appeals against negative asylum decisions.⁴⁸⁷

In **Romania**, detention at the border upon apprehension cannot exceed 24 hours, which is respected in practice.⁴⁸⁸

In **Spain**, persons issued with detention orders upon arrival are detained in police stations for a maximum of 72 hours (after which they need to be transferred to a CIE with the validation by a judge). Further, the maximum duration of people's *de facto* detention and their obligation to remain in border facilities is 8 days, after which the asylum seeker is usually admitted to territory to continue their asylum process through the regular procedure.⁴⁸⁹

The law in **Türkiye** does not specify a maximum time limit for the detention at airports.⁴⁹⁰

Maximum asylum detention periods in Dublin procedures

Practice also differs regarding the duration of detention in Dublin procedures, with some countries establishing shorter maximum detention periods (e.g., seven days in **IE**,⁴⁹¹ or 30 days (that could be prolonged) in the **CZ**⁴⁹²). Other countries provide for a 6-week maximum (e.g., **BE**, **HR**,⁴⁹³ **IT**, **RO**).

482. AIDA, *Country Report Austria on 2024*, p. 49, available [here](#).

483. AIDA, *Country Report Austria on 2024*, p. 147, available [here](#).

484. AIDA, *Country Report Belgium on 2024*, p. 169, available [here](#).

485. AIDA, *Country Report Czech Republic on 2025*, p. 47, available [here](#).

486. AIDA, *Country Report France on 2025*, p. 156, available [here](#).

487. AIDA, *Country Report Netherlands on 2025*, p. 176, available [here](#); AIDA, *Country Report Portugal on 2025*, p. 168, available [here](#).

488. AIDA, *Country Report Romania on 2025*, p. 167, available [here](#).

489. AIDA, *Country Report Spain on 2025*, pp. 152-153, available [here](#).

490. AIDA, *Country Report Türkiye on 2024*, p. 137, available [here](#).

491. AIDA, *Country Report Ireland on 2025*, p. 128, available [here](#).

492. AIDA, *Country Report Czech Republic on 2025*, p. 92, available [here](#).

493. AIDA, *Country Report Croatia on 2024*, p. 135, available [here](#).

In **Belgium**, when the asylum seeker refuses to board a plane or refuses to collaborate, the Immigration Office takes a new detention order based on another legal ground, which results in the start of a new period of detention.⁴⁹⁴

In **Italy**, the maximum of 6 weeks can be extended by a judge for an additional thirty days, up to a maximum of 6 additional weeks in the event of serious difficulties in carrying out the transfer.⁴⁹⁵

Romanian legislation restates the 6-week maximum detention time limit of the Dublin III Regulation also allows for the extension of the detention by maximum 12 months (i.e., until a total of 18 months) in Dublin cases where it is impossible to transfer the asylum seeker to the responsible Member State.⁴⁹⁶

In other AIDA countries the maximum detention period under a Dublin procedure extends far beyond.

In **Germany**, the maximum detention duration pending removal under Dublin is 6 months, subject to an extension to 18 months if the person hinders removal⁴⁹⁷).

During the Dublin procedure in **Switzerland**, asylum seekers may be detained up to: (a) 7 weeks while preparing the responsibility-determination decision (until the request is issued); (b) 5 weeks during a procedure for reconsideration; and (c) 6 weeks to ensure the transfer. Additionally, people can be detained for another 6 weeks if they refuse to board the transport to effect the transfer (which can be further extended by 3 months upon request to the judicial authority). The detention served under the Dublin regime will be deducted from the total maximum detention period of 18 months. The UNCAT denounced the excessive length of this detention.⁴⁹⁸

In **Austria**, asylum seekers under the Dublin procedure are often detained immediately after lodging their application and may be kept in detention until they are transferred to the responsible Member State.⁴⁹⁹

Considerations on Pact implementation

- » Article 11(1) of the 2024 RCD
- » Article 45(1) of the AMMR
- » Article 51(2) of the APR

Changes brought forward by the Pact regarding the time limits that operate for the detention of asylum seekers are limited. In particular, as was the case under the 2013 RCD, the 2024 RCD requires that detention be as short as possible and applied only for as long as the identified grounds for detention subsist. As an additional safeguard, administrative procedures relevant to the grounds that justify the detention measure must be executed with due diligence, so that delays that cannot be attributed to the asylum seeker will not justify the continuation of detention.⁵⁰⁰ While detention can only be applied while a legal ground for detention is in place, Member States could still decide to apply a restriction of the freedom of movement of asylum seekers under Article 9 of the 2024 RCD.⁵⁰¹

Regarding the possibility of an increased use of detention in the context of border procedures (see [Lawfulness \(and non-arbitrariness\) of detention](#)), it should be noted that the APR introduces a maximum standard 12-week deadline for the border procedure,⁵⁰² after which asylum seekers should be let into the territory and be channelled into the appropriate procedure.⁵⁰³ In practice, this should rule out the indefinite application of detention at the border. Furthermore, the EUAA cautions against the understanding that asylum seekers should be detained for the full or maximum duration of the border procedure, as authorities need to constantly assess the individual situation of each asylum seeker and release them from detention where grounds for it no longer apply (e.g., because an asylum seeker was detained to decide on their right to enter the territory and

494. AIDA, *Country Report Belgium on 2024*, p. 169, available [here](#).

495. AIDA, *Country Report Italy on 2024*, p. 218, available [here](#).

496. AIDA, *Country Report Romania on 2025*, p. 167, available [here](#).

497. AIDA, *Country Report Germany on 2024*, p. 206, available [here](#).

498. AIDA, *Country Report Switzerland on 2025*, p. 123, available [here](#).

499. AIDA, *Country Report Austria on 2024*, p. 152, available [here](#).

500. Article 11(1) of the 2024 RCD.

501. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 69, available [here](#).

502. Some exceptions, however, apply as this can be extended to (a) 16 weeks after relocation (Article 51(2) *in fine* APR), or b) 18 weeks under Article 11(1) of Regulation 2024/1359 addressing situations of crisis and force majeure in the field of migration and asylum (i.e., the Crisis Regulation).

503. Article 51(2) APR.

this right has effectively been granted).⁵⁰⁴

As was the case under the Dublin rules, Article 44(3) of the AMMR requires that detention is for as short a period as possible and never longer than what is reasonably necessary to complete the procedure and effect the transfer with due diligence. However, the provisions on time limits for detained asylum seekers in the AMMR can be seen as an improvement, given that their intention is to minimize the time of detention and remove ambiguities of the Dublin rules in this regard. In particular, Article 45 introduces different time periods and deadlines for Member State action on take charge requests and take back notifications in those situations where asylum seekers are detained as part of a take back or take charge procedure. In those cases, the requesting Member State has to submit the request or notification within two weeks from registration or reception of an Eurodac hit if the person is immediately detained, or one week from the date on which detention started if the person was detained at a later stage.⁵⁰⁵ For take charge procedures, the requested Member State shall reply within one week (instead of one month as in the general situation under the AMMR) from the receipt of the request.⁵⁰⁶ If the asylum seeker is in detention, the transfer under the AMMR must occur within five weeks (a) from the date on which the request was accepted or the notification was confirmed or, (b) where an appeal was lodged or a review requested, from the date the review or appeal has ceased to have suspensive effect.⁵⁰⁷ After that deadline, the asylum seeker in question must be released from detention. As per Article 46(2) AMMR, in cases of imprisoned applicants, deadlines for the realisation of transfers are extended up to one year.

Recommendations

- » The detention of asylum seekers should always be for the shortest possible time and only be maintained while the specific ground of detention remains applicable, which should be assessed on a regular basis by authorities.
- » National legislation should specify the maximum period of detention of asylum seekers allowed under each ground for detention transposed. Under no circumstances should the detention of asylum seekers exceed these periods.

2. Judicial review of detention

- » Articles 5(2) and (4) and 13 of the ECHR
Khlaifia and Others v. Italy [GC], App No 16483/12
- » Article 47 of the Charter
- » Article 26(2) of the APD
- » Article 9(3)-(5) of the 2013 RCD
C-704/20 C, V and X; C-925/19 PPU, *FMS and others*
- » Article 28(4) of the Dublin III Regulation

The availability and access to an effective remedy against a detention measure is a fundamental part of the lawfulness of the detention (see [Lawfulness \(and non-arbitrariness\) of detention](#)).⁵⁰⁸

Judicial review of detention under the ECHR

Before the ECtHR, this right is given expression also through Article 5(2) and (4) ECHR, which in essence require two elements.⁵⁰⁹

- (a) Under Article 5(2) ECHR, any person who has been arrested must be informed of the essential legal and factual grounds for their deprivation of liberty in simple, non-technical language that they can understand,⁵¹⁰ so as to be able to apply to a court to challenge its lawfulness in accordance with Article 5(4) ECHR. Whilst this information must be conveyed 'promptly', it need not be related in its entirety at

504. EUAA, 'Guidelines on Alternatives to Detention, Practical Guide', December 2024, p. 70, available [here](#).

505. Article 45(1) AMMR.

506. Article 45(2) AMMR.

507. Article 45(3) AMMR.

508. ECRE; 'Boundaries of liberty: asylum and *de facto* detention in Europe' (2018); p. 12; available [here](#).

509. See, *inter alia*, ECtHR, *Khlaifia and Others v. Italy*, para 115.

510. ECtHR, *Louled Massoud v. Malta*, Application No 24340/08, 27 July 2010, paras 43-47 and 71, available [here](#).

the very moment of the arrest.⁵¹¹

Whether the content and promptness of the communicated information are sufficient is to be assessed on a case by case basis. Where the person is not properly informed of the reasons of their detention or is informed in a language they do not understand,⁵¹² the right to an effective remedy is ‘*deprived of all effective substance*’.⁵¹³

- (b) To render accessible a judicial challenge against the detention measure (and any extension decision), which will result in its speedy judicial review of those elements relevant to the lawfulness of the deprivation of liberty according to Article 5(1) (see [Lawfulness \(and non-arbitrariness\) of detention](#)).⁵¹⁴

The ECtHR has emphasised there are strict standards to ensure compliance with this requirement of a rapid review of the lawfulness of a detention measure (e.g., finding a violation of Article 5(4) ECHR in a nine-month delay from an appeal to the release of the applicant).⁵¹⁵ The exact timeframe that will render a review measure compliant with Article 5(4) must be assessed in light of the individual circumstances, taking into account the complexity of the proceedings as well as the conduct by the authorities and the applicant. If the decision involves a child (also accompanied), courts need to review their detention with particular expedition and diligence.⁵¹⁶

Proceedings to challenge a detention measure must be adversarial and ensure equality of arms between the detained asylum seeker and authorities.⁵¹⁷ If children are detained as accompanying their parents but are not issued with an individualized detention order themselves which they can challenge, this will be contrary to Article 5(4) ECHR.⁵¹⁸

The relevant judicial authority must be competent to order the release of the detained asylum seeker if the judicial challenge against the lawfulness of their detention is successful.⁵¹⁹ The Court has found, for example, that the Maltese Immigration Appels Board could not be considered a court as required by Article 5(4) ECHR, given its lack of independence and limited scope of the reviews it carried out regarding detention orders.⁵²⁰

Article 13 ECHR, moreover, requires that, when a violation of the rights contained in the ECHR are violated, people “*have an effective remedy before a national authority*”. The remedy needs to be effective both “*in practice as well as in law*”.⁵²¹

Further, under Article 13 ECHR, the Court also requires that a remedy exists at national level by which individuals can complain about the conditions of their detention (see [At the margins: Places and conditions of detention](#)).⁵²²

Judicial review of detention under EU law

At EU level, the right to an effective remedy is enshrined as an integral part of the fundamental rights to liberty and security (Article 6 of the Charter) and as an autonomous right on its own (Article 47 of the Charter). The 2013 RCD establishes minimum safeguards that should be in place for asylum seekers that have been placed in detention, in particular regarding the judicial review of the detention measure,⁵²³ access to legal assistance to do so, and provision of information on how to challenge a detention order.⁵²⁴ The content of these rights according to the CJEU can be summarized as follows:

- » If detention is ordered by the administrative authorities in a Member State, a speedy judicial challenge of the lawfulness of detention must be provided. This can either be *ex officio* and/or at the request of the asylum seeker. However, as noted by some scholars, ‘*[i]n the absence of automatic reviews, access to*

511. See, for example, ECtHR, *Khlaifia and Others v. Italy* [GC], para 115; or ECtHR, *Athary v Turkey*, Application Mo. 50372/09, ECHR, 11 March 2013, para 36.

512. ECtHR, *Rahimi v. Greece*, para 120.

513. ECtHR, *Khlaifia and Others v. Italy* [GC].

514. Article 5(4) ECHR.

515. ECtHR, *K.A. v. Cyprus*, Application No 63076/19, 2 July 2024, paras 41-43, available [here](#).

516. ECtHR, *G.B. and Others v. Türkiye*, paras 167 and 186.

517. ECtHR, *A. and Others v. the United Kingdom* [GC], Application No 3455/05, 19 February 2009, para 203, available [here](#).

518. ECtHR, *Minasian and Others v. the Republic of Moldova*, paras 49-54.

519. Article 5(4) ECHR.

520. ECtHR, *J.B. and Others v. Malta*.

521. ECtHR, *Čonka v. Belgium*, Application No 51564/99, 2 February 2002, para 75, available [here](#).

522. ECtHR, *Khlaifia and Others v. Italy* [GC], paras 270-271.

523. Article 9(3) of the 2013 RCD and Article 26(2) APD.

524. Article 9(4) of the 2013 RCD.

the judge becomes contingent on detainees' ability to obtain sufficient information on their rights and seek legal assistance'.⁵²⁵

- » The judicial authority in charge of the review must be '*an independent and impartial tribunal previously established by law*' in the sense of Article 47 of the Charter.⁵²⁶
- » It is for national law to specify the period within which the judicial review shall be conducted. However, it shall be decided '*as speedily as possible*' from the beginning of detention if done *ex officio*, or from the launch of the relevant proceedings if done at the initiative of the detained asylum seeker.⁵²⁷ According to the EUAA, taking a decision within less than one week can certainly be considered a good practice that is compliant with the legal requirement of speediness.⁵²⁸
- » As for the content of the judicial review, the CJEU has clarified that the judicial authority reviewing the compliance the lawfulness of a detention measure must raise, of its own motion, any arguments that calls this lawfulness into question, even if it has not been raised by the detained person.⁵²⁹
- » In the absence of a national provision providing for the judicial review of the lawfulness of a detention measure, national courts can declare of their own motion that they have jurisdiction to rule over such detention and permit the release of the detained asylum seeker if relevant.⁵³⁰
- » The judicial review that Member States make available must provide an accessible and effective means to challenge the detention measure. In this sense, '*rules that [make] it virtually impossible or excessively difficult to protect rights*' would not comply with this requirement.⁵³¹
- » Detention must also be periodically reviewed by a judicial authority, either *ex officio* and/or at the request of the detained asylum seeker. This includes whenever the detention period is prolonged, or new relevant circumstances or information becomes available that may affect the lawfulness of the detention measure.⁵³² The periodic review of detention may also examine the applicability and appropriateness of AtDs.⁵³³
- » The result of a successful judicial challenge must be the immediate release of the detained asylum seeker.⁵³⁴

Some commentators have argued that the standard set in EU law to inform the detained asylum seeker of the reasons for such detention (provided by Article 9(4) 2013 RCD), may not meet the standard required by the ECtHR (see above), as it only required this information to be conveyed in a language which they understand or are '*reasonably supposed to understand*'.⁵³⁵

These standards are equally applicable and relevant to detention under the Dublin III Regulation.⁵³⁶

The EUAA, in its guidelines regarding AtDs, makes it clear that Article 47 of the Charter also requires that '*Alternatives to detention must be subject to a judicial review that takes into account any changes in the individual circumstances*'.⁵³⁷

Neither the CJEU nor the ECtHR oblige countries to provide for an onward appeal against an asylum detention measure.⁵³⁸

525. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, p. 118.

526. CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and others*. For a comprehensive assessment of the assessment by European courts of the requirements for the body in charge of adjudicating immigration detention, see Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 116-117.

527. Article 9(3) of the 2013 RCD.

528. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 63, available [here](#).

529. CJEU, C-704/20 C, *V and X*, 8 November 2022, available [here](#).

530. C-925/19 PPU, *FMS and others*.

531. CJEU, C-199/82 *Amministrazione delle Finanze dello Stato*, 9 November 1983, available [here](#).

532. Article 9(5) of the 2013 RCD.

533. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 14, available [here](#).

534. Article 9(3) *in fine* of the 2013 RCD.

535. ECRE, 'Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU', January 2015, available [here](#).

536. Article 28(4) Dublin III Regulation.

537. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 14, available [here](#).

538. ECtHR, *Toth v. Austria*, Application No 118974/85, 12 December 1991, available [here](#); CJEU, C-69/10 *Samba Diouf*, 28 July 2011, available [here](#). See also Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, p. 123.

National practice

Required guarantees for the use of detention are generally enshrined in national law, including judicial review, legal assistance and representation. Judicial remedies against a detention order are available to asylum seekers in all EU Member States in theory. However, access to these rights has been criticised as inconsistent and often limited in practice in Europe.⁵³⁹ Even for asylum seekers who are issued with a detention order, access to an effective remedy against it is not always granted.

In most AIDA countries the procedure to challenge a detention order can be activated both *ex officio* and upon the request of the applicant subjected to the detention order (**AT**, **BE** (only when detention is prolonged after 4 months), **CH** (not for detention in the context of a Dublin procedure), **HR**, **DE**, **FR**, **GR**, **HU**, **IE**, **IT**, **MT**, **NL**, **PL**, **PT**, **SE**, **UA**, **UK**). In other countries, however, detention can only be challenged upon the request of the detained asylum seeker (**BG**, **CY**, **CZ**, **ES**, **RO**, **RS**, **SI**, **SK**, **TR** (only in the context of returns)).

In **Belgium**, detention can be challenged every month, by lodging a request to be released with the courts.⁵⁴⁰

In **Bulgaria**, the law no longer provides for automatic judicial review of detention orders, following the abolition of judicial review upon prolongation of detention.⁵⁴¹

In **Germany**⁵⁴² and **Spain** (after the first 72 hours),⁵⁴³ authorities must request the courts to order detention. **Italian** legislation requires the validation of the detention by a judge within the first 48 hours. A further *ex officio* review is provided for at later stages.⁵⁴⁴

While **Greek** legislation provides for a judicial review that should be carried out both *ex officio* and at the request of the asylum seeker, the possibility to challenge a detention order is restricted in practice due to shortcomings in the receipt of interpretation services and legal aid.⁵⁴⁵

Similarly, while provided by law, detention reviews (either *ex officio* or upon request) are uncommon in practice in **Portugal**, with release normally happening either when the asylum seeker is admitted to the regular procedure or at the end of the maximum detention time limit after a negative decision has been issued and an appeal lodged.⁵⁴⁶

In **Hungary**, however, people that are put into detention following entry through the embassy procedure could be placed in detention for 4 weeks following the registration of their asylum application without any available legal remedy to challenge it.⁵⁴⁷

The scope of the judicial review of detention of asylum seekers also varies between AIDA countries, from the review of points of law exclusively, to the review of both points of law and fact. The scope of the review is considered insufficient in several AIDA countries.

The **Greek** and **Cypriot**⁵⁴⁸ courts usually automatically confirm detention orders and only review manifest factual errors. In **Spain**, the initial detention of individuals found in an irregular situation is almost automatic, with the review by criminal judges focusing on the existence of past criminal behaviours and mostly following the submission of the administrative authority.⁵⁴⁹

In **Belgium**, the judicial review only examines the legality of the detention (which, in any case, has been reported to be often almost arbitrary), but not its appropriateness or its proportionality.⁵⁵⁰ In **Hungary**, courts often fail to assess the necessity and proportionality of detention individually, and also often fail to detect clear mistakes in detention orders.⁵⁵¹ In **Germany**, it has been reported that courts often do not

539. EPRS, 'Detention of migrants: a measure of last resort', 2023, p. 7, available [here](#).

540. AIDA, *Country Report Belgium on 2025*, available [here](#).

541. AIDA, *Country Report Bulgaria on 2025*, available [here](#).

542. AIDA, *Country Report Germany on 2025*, available [here](#).

543. AIDA, *Country Report Spain on 2025*, p. 219, available [here](#).

544. AIDA, *Country Report Italy on 2024*, available [here](#).

545. AIDA, *Country Report Italy on 2024*, available [here](#).

546. AIDA, *Country Report Portugal on 2025*, p. 178, available [here](#).

547. AIDA, *Country Report Hungary on 2025*, p. 102, available [here](#).

548. AIDA, *Country Report Cyprus on 2025*, available [here](#).

549. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119.

550. AIDA, *Country Report Belgium on 2025*, available [here](#).

551. AIDA, *Country Report Hungary on 2025*, available [here](#).

sufficiently examine the necessity and proportionality of detention.⁵⁵²

In several countries an onward appeal is available.

In **Cyprus** and **Italy** an onward appeal is available but difficult to access in practice and is also limited to points of law.⁵⁵³ In **Belgium**, a third instance appeal before the Court of Cassation also provides a purely judicial review.⁵⁵⁴ In contrast, countries such as **Spain** provides for several onward appeals on both points of fact and law.⁵⁵⁵

The speediness of the judicial review has also been reported as an issue in a number of AIDA countries.

In 2021, the **Spanish** Ombudsman reported delays in the delivery of detention orders in the Canary Islands by the judiciary due to lack of resources.⁵⁵⁶

The ECtHR has found that the geographical distribution of courts on **Greek** hotspots has actually restricted access to a speedy judicial review of detention.⁵⁵⁷ The ECtHR also criticized the speediness of review in **Cyprus** (with proceedings before courts lasting up to months).⁵⁵⁸

In **Malta**, the proceedings before the Constitutional Court, which the ECtHR has consistently held as an ineffective remedy due to the lack of speediness of the procedures (lasting up to several years).⁵⁵⁹

In the **Czech Republic**, a lack of adequate review of whether the grounds for detention persist throughout the detention period has been reported (despite a clear obligation being set in law).⁵⁶⁰

Since the cassation appeal in **Belgium** suspends the detention period and is not commonly treated within a reasonable time, the detention period can exceed the legal maximum. This practice has repeatedly been marked as a violation of Article 5(4) ECHR.⁵⁶¹

The ECtHR has also found in this sense against **Cyprus**, considering the length of time to issue a judicial decision against a detention order.⁵⁶²

In contrast to the above and as a positive practice, in **Malta** the speed of the *habeas corpus* proceedings before their Criminal Courts serve as a positive example, as detained asylum seekers are brought before them on the same day they lodged the application.⁵⁶³ However, it should be noted that, except for these proceedings in Malta, for all those *de facto* detention practices observed in the countries mentioned above (see *Detention and de facto detention*) no judicial remedy against the detention measure is available.⁵⁶⁴

Other procedural issues, such as the lack of a translation of the detention order into a language the detained asylum seeker can understand (**BE, BG, CY**), or the failure to provide access to the detention order (**CY**), or an excessive length of the proceedings resulting in detainees spending the maximum time possible in detention (**DE**) have been reported.

552. AIDA, *Country Report Germany on 2025*, available [here](#).

553. AIDA, *Country Report Cyprus on 2025*, available [here](#); AIDA, *Country Report Italy on 2024*, available [here](#).

554. AIDA, *Country Report Belgium on 2025*, available [here](#).

555. AIDA, *Country Report Spain on 2025*, available [here](#).

556. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119. See Spanish Ombudsperson, 'Migration on the Canary Islands', 2021, p. 78, available [here](#).

557. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119. ECtHR, *Kaak and others v. Greece*, Application No 34215/16, 3 October 2019, available [here](#).

558. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119. See ECtHR, *M.A. v. Cyprus*, Application No 41872/10, 23 July 2013, paras 169-170, available [here](#); ECtHR, *K.A. v. Cyprus*; and ECtHR *B.A. v. Cyprus*.

559. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119. See ECtHR, *Louled Massoud v. Malta*; and ECtHR, *A.D. v. Malta*.

560. AIDA, *Country Report Czech Republic on 2025*, pp. 48 and 87, available [here](#).

561. ECtHR, *Firoz Muneer v. Belgium*, Application No 56005/10, 11 April 2013, available [here](#); ECtHR, *M.D. v. Belgium*; ECtHR, *Makdoudi v. Belgium*, Application No 12848/15, 18 February 2020, available [here](#); ECtHR, *Muhammad Saqawat v. Belgium*, Application No 54962/18, 30 June 2020, available [here](#).

562. ECtHR, *M.A. v. Cyprus*, paras 169-170.

563. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 118-119. See ECtHR, *Louled Massoud v. Malta*; and ECtHR, *A.D. v. Malta*.

564. See, for example, as explained in AIDA, *Country report Austria on 2025*, p. 156, available [here](#).

Considerations on Pact implementation

- » Article 11(3)-(5) of the 2024 RCD
- » Article 44(5) of the AMMR

The Pact reinforces some guarantees for detained asylum seekers. Regarding the judicial review of detention, it is now subject to time limits of '*no later than 15 days or, in exceptional situations, no later than 21 days from the beginning of detention*' (when conducted *ex officio*, and from the application if done upon request of the detainee).⁵⁶⁵ Moreover, it is expressly provided now that Member States have the obligation to release an asylum seeker from detention when these time limits are not respected.⁵⁶⁶

While the requirement for a periodic review of the detention by a judicial authority, either *ex officio* or upon request, is maintained as a requirement after the first judicial review, an additional guarantee is established for unaccompanied children: the reviews of their detention must be automatic.⁵⁶⁷

Another relevant addition is the requirement for the detention order issued to an asylum seeker to state why less coercive alternative measures cannot be applied effectively. This should, in turn, also expand the scope of the judicial review of detention, with an obligation to assess not only the existence and availability of those measures, but also their effectiveness in the specific case of each asylum seeker.⁵⁶⁸

As was the case under the Dublin III Regulation, Article 44(5) of the AMMR now also requires that, if detention for the purposes of this regulation is ordered by administrative authorities, a '*speedy judicial review of the lawfulness of detention*' is provided (either *ex officio* or upon the request of the detainee).

Despite the additional guarantees introduced, that the presumption that an effective judicial remedy will be available at all national levels is not necessarily founded on an empirical observance, given the multiple shortcomings observed in accessing a remedy. These issues could be aggravated considering the risk of an increased recourse to asylum detention under the reformed asylum system.⁵⁶⁹

Recommendations

- » Judicial authorities should be mandated to conduct regular *ex officio* reviews of detention orders, both on points of law and of fact.
- » Information on the possibility to challenge a detention order should be provided in a clear and accessible manner to asylum seekers, always in a language that they can understand.
- » Both detention measures as well as other restrictions of the freedom of movement of asylum seekers should always be subject to judicial review in the same terms. The scope of the review of a measure restricting people's freedom of movement should include the assessment of whether the measure amounts to *de facto* detention.
- » Clear deadlines should be established in national law for the competent judicial authority to take a decision on the appeal against a detention measure, which shall undoubtedly qualify for a 'speedy' judicial review as required by European courts. Failure to meet such deadlines should result in the automatic release of asylum seekers from detention.
- » As noted by the EUAA (in its Guidelines on AtDs), when Member States decide on the frequency of judicial reviews of detention applied at the border, they must take into account the short timeframe in which border procedures must be completed.

565. While 'exceptional situations' are not defined in the 2013 RCD, Recital 4 of the Crisis Regulation provides the example of a significant migratory situation that puts pressure on the well-prepared Member States asylum and reception systems, while not leading to a level of mass arrivals (see UNHCR, Advocacy Brief: 'Restrictions of movement, detention and alternatives to detention under the European Union Pact on Migration and Asylum', 2025, p. 3, available [here](#)).

566. Article 11(3) of the 2013 RCD.

567. Article 11(5) of the 2013 RCD.

568. ECRE, 'Comments on the Directive (EU) 2024/1346 of the European Parliament and of the Council, of 14 May 2024, laying down standards for the reception of applicants for international protection (recast)', September 2024, available [here](#).

569. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, pp. 114 and 123.

3. Legal assistance for the review of detention

- » Article 9(6)-(10) of the 2013 RCD
- » Article 28(4) of the Dublin III Regulation
- » Article 23(2) of the APR
- » Article 47 of the Charter
- » Article 13 of the ECHR

Legal assistance for the review of detention under the ECHR

While the ECtHR has expressly recognized that '*Article 5 [ECHR] does not contain any explicit mention of a right to legal assistance*',⁵⁷⁰ regarding asylum and expulsion cases, a comprehensive interpretation of the right to an effective judicial review of detention and of the right to an effective remedy (under Article 13 ECHR) points towards another conclusion.

First, the ECtHR has found that the lack of access to interpreters and legal assistance may be an obstacle hindering access to an effective remedy in cases related to access to asylum.⁵⁷¹

Second, the ECtHR requires that all rights under the ECHR should be practical and effective (not merely theoretical). In this sense, the right to the judicial review of detention under Article 5(4) ECHR might be rendered illusory and theoretical if the detained asylum seeker cannot represent themselves effectively due to a lack of access to a lawyer (especially where the circumstances of the case demand support from a lawyer and the asylum seeker lacks resources to provide one for themselves).⁵⁷²

The Court has found, in relation to detention pending expulsion, that the lack of access to a lawyer contributed to find a violation of Article 5(4) ECHR, as it could not be assumed that the people in question had the legal knowledge necessary to understand the content of the order and lodge an appeal.⁵⁷³ Further, the Court has held that '*the apparent lack of a proper system enabling immigration detainees to have access to effective legal aid, may raise an issue as to the accessibility of such a remedy*'.⁵⁷⁴ In another case involving Greece, the Court took into account the insufficiency of the legal aid system to asylum seekers to challenge detention measures at the border to consider the existence of a violation of Article 5(4) ECHR.⁵⁷⁵

Third, the ECtHR has also held that in complying with the requirement that proceedings to challenge a detention measure must be adversarial and ensure equality of arms between the detained asylum seeker and authorities (see [Judicial review of detention](#)) it might be essential that the individual should have the effective assistance of their lawyer.⁵⁷⁶

Finally, the ECtHR reviews the 'lawfulness' of detention with regard to standards set out in national law. Therefore, where a country's national law requires legal assistance to be provided to challenge an asylum detention measure (as should be the case for EU Member States) and this is not effectively provided, the detention measure would not comply with the 'lawfulness' requirement of the ECHR.

Legal assistance for the review of detention under EU law

Given its crucial role in securing access to an effective remedy, whenever an asylum seeker wishes to challenge a detention measure imposed on them, EU Member States must ensure that they have access to free legal assistance and representation (through a procedure laid down in national law⁵⁷⁷). This must cover, at least, (a) the preparation of the required procedural documents and (b) participation in the hearing before the judicial authorities on their behalf.⁵⁷⁸

570. ECtHR, *Karachentsev v. Russia*, Application No 23229/11, 17 April 2018, para 62, available [here](#).

571. ECtHR, *M.S.S. v. Belgium and Greece* [GC], Application No 30696/09, 21 January 2011, para 319, available [here](#).

572. For a complete analysis of the necessity of assessing the specific circumstances of each case before concluding whether legal aid is available and/or effective, see: ECRE, Legal Note: 'The Guarantees of the EU Charter of Fundamental Rights in respect of Legal Counselling, Assistance and Representation in Asylum Procedures', August 2024, available [here](#).

573. ECtHR, *Kaak and Others v. Greece*, Application No 34215/16, 3 October 2019, para 122, available [here](#).

574. ECtHR, *Suso Musa v. Malta*, para 61.

575. ECtHR, *O.S.A. and Others v. Greece*, Application No 39065/16, 21 March 2019, para 56, available [here](#).

576. ECtHR, *Cernak v. Slovakia*, Application No 36997/08, 17 December 2013, para 78, available [here](#); and ECtHR, *Lutsenko v. Ukraine*, Application No 6492/11, 3 July 2012, para 96, available [here](#).

577. Article 9(10) of the 2013 RCD.

578. Article 9(6) of the 2013 RCD.

EU law specifies who may provide this legal assistance and representation, namely ‘*suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant*’ (which, evidently, directly excludes any person working for the asylum authority),⁵⁷⁹ but which Member States could choose to be ‘*specifically designated by national law to assist and represent applicants*’.⁵⁸⁰

However, EU Member States might decide to: (a) limit the provision of that free legal assistance and representation to a means test (i.e., to those asylum seekers who ‘*lack sufficient resources*’);⁵⁸¹ (b) impose a monetary and/or time cap to the provision of free legal assistance and representation, provided that these do not arbitrarily restrict access to these services;⁵⁸² (c) provide that, regarding fees and costs, the treatment of asylum seekers is not more favourable than that accorded to nationals in matters relating to legal assistance; and/or⁵⁸³ (d) demand the (partial or total) reimbursement of costs granted when the asylum seeker’s financial situation has improved considerably (or if the means test was done on the basis of false information).⁵⁸⁴

Pursuant to Article 23(2) APD, EU Member States must ensure that the legal counsellor who assists the asylum seeker has effective access to detention facilities and transit zones.

These standards are equally applicable and relevant to detention under the Dublin III Regulation.⁵⁸⁵

National practice

Access to free legal assistance for the review of asylum detention			
In law		In practice	
Yes	No	Yes	No
PT, ES, IE, UK, FR, BE, NL, SE, IT, HR, SI, CZ, AT, PL, HU, SK, GR, MT, BG, RO, UA, TR, CY	CH (except at the airport), DE, RS	PT, IE, FR, BE, NL, SE, IT, HR, SI, CZ, AT, SK, RO, UA	ES, UK, CH, DE, PL, HU, RS, GR, MT, BG, TR, CY

Source: AIDA Country Reports for 2024 and 2025.

Most countries’ legislation provides asylum seekers with the right to free legal assistance for the review of detention, except for three (**CH**, **DE** and **RS**). No significant concerns regarding access to legal assistance for asylum seekers in detention are reported in **AT**, **FR**, **IE**, **NL**, **SE**, and **SK**.

However, in 12 AIDA countries, albeit it being provided by law, the right to legal assistance is not always accessible in practice (**BG**, **CH**, **CY**, **DE**, **ES**, **GR**, **HU**, **MT**, **PL**, **RS**, **TR**, **UK**).

Access to legal assistance proves challenging in some countries in practice, including due to capacity constraints (**BE**, **BG**, **CH**, **ES**, **GR**, **PT**),⁵⁸⁶ difficulties in accessing detention facilities for lawyers and interpreters (**IT**, **HU**),⁵⁸⁷ lack of expertise of lawyers or quality of the legal assistance (**BE**, **HU**),⁵⁸⁸ delays in getting appointments (**UK**),⁵⁸⁹ or short timings for judicial review (**CY**, **SI**).⁵⁹⁰

In **Switzerland**, as a minimal constitutional guarantee (as the right to free legal assistance is regulated by cantonal law), the Federal Supreme Court ruled that free legal representation must be granted upon request in the procedure of prolongation of the detention after 3 months.⁵⁹¹

579. Article 9(6) of the 2013 RCD.

580. Article 9(7)(b) of the 2013 RCD.

581. Article 9(7)(a) of the 2013 RCD.

582. Article 9(8)(a) of the 2013 RCD.

583. Article 9(8)(b) of the 2013 RCD.

584. Article 9(9) of the 2013 RCD.

585. Article 28(4) Dublin III Regulation.

586. AIDA, *Country Report Belgium on 2025*, available [here](#); AIDA, *Country Report Bulgaria on 2025*, p. 121, available [here](#); AIDA, *Country Report Switzerland on 2025*, p. 131, available [here](#); AIDA, *Country Report Spain on 2025*, p. 159, available [here](#); AIDA, *Country Report Greece on 2025*, July 2026, available [here](#); AIDA, *Country Report Portugal on 2025*, p. 179, available [here](#).

587. AIDA, *Country Report Italy on 2024*, pp. 256-257, available [here](#); AIDA, *Country Report Hungary on 2025*, p. 114, available [here](#). See also ECRE, ‘At the margins: Places and conditions of detention’, June 2026, available [here](#).

588. AIDA, *Country Report Belgium on 2025*, available [here](#); AIDA, *Country Report Hungary on 2025*, p. 114, available [here](#).

589. AIDA, *Country Report UK on 2025*, p. 116, available [here](#).

590. AIDA, *Country Report Cyprus on 2025*, pp. 168 and 171, available [here](#); AIDA, *Country Report Slovenia on 2025*, p. 104, available [here](#).

591. AIDA, *Country Report Switzerland on 2025*, p. 131, available [here](#).

In **Portugal**, assistance for the purposes of detention review is limited to vulnerable asylum seekers.⁵⁹² In **Malta**, the possibility for asylum seekers to be granted free legal assistance and representation occurs only during the first review of the lawfulness of detention.⁵⁹³

A means test before obtaining access to free legal assistance is provided for in the legislations of several AIDA countries (**HU**, **PT**, **PL**, **SK**, **TR**, and **UK**).⁵⁹⁴

Considerations for Pact implementation

- » Article 11(6) of the 2024 RCD
- » Article 18(3) of the APR
- » Article 44(4) of the AMMR

The Pact maintains the clarity in that, for those cases where the 2024 RCD provides for a legal remedy to challenge an asylum detention measure, asylum seekers must be granted access to free legal assistance and representation.⁵⁹⁵ In the same line, the 2024 RCD, APR and AMMR provide for the need to make legal counselling accessible to asylum seekers that are detained.⁵⁹⁶

Recommendations

- » Given proper legal assistance and representation is paramount to access a truly effective legal remedy against asylum detention; access to them must be ensured for all asylum seekers, without making it exclusively contingent upon burdensome financial means tests.
- » Whenever national law provides for the specific designation of legal professionals who shall provide free legal assistance and representation to challenge an asylum detention measure, countries must ensure their appropriate training and expertise.

592. AIDA, *Country Report Portugal on 2025*, p. 179, available [here](#).

593. AIDA, *Country Report Malta on 2025*, p. 142, available [here](#).

594. AIDA *Country Report Hungary on 2025*, p. 114, available [here](#); AIDA, *Country Report Portugal on 2025*, p. 179, available [here](#); AIDA, *Country Report Poland on 2025*, p. 122, available [here](#); AIDA, *Country Report Slovakia on 2025*, available [here](#); AIDA, *Country Report Türkiye on 2024*, p. 151, available [here](#); AIDA, *Country Report UK on 2025*, p. 116, available [here](#).

595. Article 11(6) of the 2024 RCD.

596. Articles 11(6) of the 2024 RCD, 18(3) APR and 44(4) AMMR.

CHAPTER IV - BETWEEN ASYLUM AND RETURN DETENTION

The area of detention in the context of returns is where the distinction between the detention of asylum applicants and that of other third-country nationals is most frequently blurred. In practice, this distinction is often unclear, particularly in relation to pre-removal detention applied in the context of returns, transfers of beneficiaries of international protection to another Member State (as allowed by the CJEU⁵⁹⁷), and, in some cases, pending Dublin transfers.

Further, the return procedure is often considered as the automatic next step following a negative decision in the asylum procedure. In fact, Article 8(3)(d) of the 2013 RCD itself makes a link between asylum and return detention by providing the possibility of detaining asylum seekers that were ‘*detained subject to a return procedure (...) to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate (...) that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision*’.

In this sense, while not the object of this report, it would be incomplete to discuss the detention of asylum seekers without making at least a reference to the framework governing the framework of the detention of people under a return procedure.

1. From asylum detention to detention under the Return Directive

» Article 5(1)(f) of the ECHR

Louled Massoud v. Malta, App. No 24340/08; *A. and Others v. the UK* [GC], App. No 3455/05

» Article 8(3)(d) of the 2013 RCD

» Articles 15, 17 and 18 of the Returns Directive

C-357/09 *Kadzoev*; C-534/11 *Mehmet Arslan*

Detention in the return context under the ECHR

States may detain a third-country national for the purpose of their deportation or extradition (second limb of Article 5(1)(f) ECHR). Detention under this ground should not be punitive.⁵⁹⁸

A detention measure justified under this ground does not need to pass a ‘necessity’ test (e.g., to prevent the individual from committing an offence or absconding) but will rather be justified (only) for as long as the deportation proceedings are progressing (as noted also for the first limb of Article 5(1)(f) ECHR, see also [Lawfulness \(and non-arbitrariness\) of detention](#)).⁵⁹⁹ More so, the principle of proportionality is only applied to detention under the first limb of Article 5(1)(f) to the extent that the detention should not continue for an unreasonable length of time.⁶⁰⁰

However, a test of necessity of the detention measure may still be required under national law (which, as noted above, the Court considers to include EU law).⁶⁰¹ With regard to vulnerable people, the Court does consider their specific situation which may render their detention inappropriate (e.g., as an exception, when a child is involved, the ECtHR has considered that the detention must be necessary to secure the family’s removal).⁶⁰²

For a detention measure for the purposes of return not to be considered ‘arbitrary’, the ECtHR considers: (1) it must be carried out in good faith; (2) it must be closely connected to the ground of detention relied on; (3) the place and conditions of detention must be appropriate; and (4) the length of the detention should not exceed that reasonably required for effecting the return.⁶⁰³

597. CJEU, C-673/19 *M.A.*, 24 February 2021, available [here](#).

598. ECtHR, *Azimov v. Russia*, para 172.

599. ECtHR, *A. and Others v. the United Kingdom* [GC], para 164; ECtHR, *Yoh-Ekale Mwanje v. Belgium*, paras 117-119; ECtHR, *Lazăr v. Romania*, Application No 20183/21, 9 April 2024, paras 108-111, available [here](#); ECtHR, *B.F. v. Greece*, para 67.

600. ECtHR, *Saadi v. the UK*, para 72.

601. ECtHR, *Muzamba Oyaw v. Belgium*, Application No 23707/15, 28 February 2017, para 36, available [here](#); ECtHR, *J.R. and Others v. Greece*, para 111.

602. ECtHR, *Thimothawes v. Belgium*, paras 73 and 79-80; ECtHR, *A.B. and Others v. France*, para 120.

603. ECtHR, *A. and Others v. the United Kingdom* [GC], para 164; ECtHR, *Yoh-Ekale Mwanje v. Belgium*, paras 117-119; ECtHR, *Lazăr v. Romania*, paras 108-111.

Regarding the first of such requirements, the detention will only be justified for as long as the deportation proceedings are in progress. However, the measure will cease to be permissible if the return proceedings are not conducted with due diligence.⁶⁰⁴ In this sense, countries are required to make an active effort and take concrete and diligent steps to organize the deportation.⁶⁰⁵ The Court has considered that, for a detention measure to be according to Article 5(1)(f), there must be a realistic prospect that the deportation will be carried out (which includes taking into account the situation in the country of destination⁶⁰⁶).⁶⁰⁷ In this sense, national authorities have an obligation to continuously assess whether this is the case so long as the person remains in detention.⁶⁰⁸ Crucially, the ECtHR requires that authorities consider AtDs when there is no immediate prospect of return.⁶⁰⁹

As for the second requirement, the ECtHR has often held that where a third-country national applies for asylum while in detention in the context of a return procedure, keeping that person in detention will be ‘arbitrary’ as it can no longer be considered ‘closely connected’ to the ground of enforcing a return.⁶¹⁰ In the same reasoning, where a person cannot be removed because of a risk of an Article 3 ECHR violation upon return, the person can also not be kept in detention ‘under active review’ in view of a future potential deportation (e.g., when it becomes clear that no safe third country would (re)admit them).⁶¹¹

As for the requirement concerning the duration of detention, the ECtHR does not refer to a maximum time-limit and makes it conditional to the particular circumstances of each case.⁶¹² For example, the Court considered a fourteen-month pre-removal detention could not be justified for the purposes of deportation, as Maltese authorities had insufficiently pursued arrangements for return.⁶¹³ In any case, when national legislation does include a fixed time-limit, failing to comply with it may deem the detention measure unlawful under Article 5(1)(f) ECHR.⁶¹⁴ In fact, when assessing whether national law provides sufficient safeguards against an arbitrary detention, the Court may take into account the existence of specific time-limits and the availability of a judicial remedy against detention. The Court has further held that the deportation proceedings have been temporarily halted due to an interim measure, this should not result in a situation where the person in question remains detained for an unreasonably long time.⁶¹⁵

As regards the procedural safeguards under Article 5(2) and (4), the same considerations made regarding asylum detention apply (see [Chapter III – Procedural safeguards for detention](#)). Similarly, regarding the detention of persons with specific vulnerabilities, the same considerations apply under the second limb of Article 5(1)(f) as apply under the provision’s first limb (see [Detention of vulnerable asylum seekers](#)).

Detention in the return context under EU law

At EU level, conditions for a lawful detention with a view to deportation under the Return Directive are more circumscribed.

EU Member States may decide to detain a person with a view to their deportation, but only ‘*in order to prepare the return and/or carry out the removal process*’. This includes - but is not limited to – situations where there is

604. ECtHR, *A. and Others v. the United Kingdom* [GC], para 164; ECtHR, *Shiksaitov v. Slovakia*, Application Nos 56751/16 and 33762/17, 10 December 2020, para 56, available [here](#); ECtHR, *De Sousa v. Portugal*, Application No 28/17, 7 December 2021, para 79, available [here](#).

605. ECtHR, *A. and Others v. the United Kingdom* [GC], paras 169-170; or ECtHR, *B.F. v. Greece*, para 67.

606. ECtHR, *S.Z. v. Greece*, Application No 66702/13, 21 June 2018, available [here](#).

607. ECtHR, *Louled Massoud v. Malta*, paras 48-74; or ECtHR, *Mikolenko v. Estonia*, Application No 10664/05, 8 October 2009, available [here](#).

608. ECtHR, *Al Husin v. Bosnia and Herzegovina (no. 2)*, Application No 10112/16, 25 June 2019, para 98, available [here](#).

609. ECtHR, *Louled Massoud v. Malta*, para. 68; ECtHR, *Raza v. Bulgaria*, Application No 31465/08, 11 February 2010, para. 74, available [here](#); ECtHR, *S.Z. v. Greece*, para 58.

610. ECtHR, *R.U. v. Greece*, Application No 2237/08, 7 June 2011, paras 94-95, available [here](#); ECtHR, *Longa Yonkeu v. Latvia*, Application No 57229/09, 15 November 2011, para 143, available [here](#); and *Conka v. Belgium*, Application No 5164/99, 5 February 2002, para 42, available [here](#); ECtHR, *Komissarov v. the Czech Republic*, paras 45-53.

611. ECtHR, *A. and Others v. the United Kingdom* [GC], paras 166-167; ECtHR, *Al Husin v. Bosnia and Herzegovina (no. 2)*.

612. ECtHR, *Avad v. Bulgaria*, Application No 46390/10, 11 October 2011, para 128, available [here](#); or ECtHR, *J.N. v. the United Kingdom*, Application No 37289/12, 19 May 2016, available [here](#).

613. ECtHR, *Feilazoo v. Malta*, Application No. 6865/19, 11 March 2021, available [here](#).

614. ECtHR, *Komissarov v. the Czech Republic*, paras 50-52.

615. ECtHR, *Azimov v. Russia*, para 171; or ECtHR, *Matthews and Johnson v. Romania*, Application Nos 13124/21 and 20085/21, 9 April 2024, para 128, available [here](#).

a risk of absconding⁶¹⁶ or the person avoids or hampers the preparation of the removal process,⁶¹⁷ or where the person poses a genuine, present and sufficiently serious threat to national security or public order.⁶¹⁸ The detention ceases to be justified where there no longer is a '*reasonable prospect of removal*', in which case the person must be released immediately.⁶¹⁹ As clarified by the CJEU, the Return Directive does not permit the detention of a third-country national solely on the basis of the general criterion of a risk that the effective execution of the removal will be put in jeopardy.⁶²⁰

In order for such a detention measure to be justified, EU law does require a necessity and proportionality test to be carried out.⁶²¹ In this sense, the deprivation of liberty can be maintained only for as long as '*it is necessary to ensure successful removal*' and must be '*subject to the principle of proportionality with regard to the means used and objectives pursued*'.⁶²²

Each Member State is free to set a maximum period for detention, but not this cannot exceed six months,⁶²³ which may be extended for an additional maximum of 12 months in case where, despite reasonable efforts by national authorities, the return process is likely to last longer due to: (a) a lack of cooperation by the person concerned, or (b) delays in obtaining the necessary documentation from the relevant third countries.⁶²⁴ This amounts to a maximum pre-removal detention of 18 months. This does not include a situation where the detainee simply lacks identity documents. However, the fact that the person in question has not obtained an identity document where they could have, can be considered to show a lack of cooperation.⁶²⁵ The CJEU has also clarified that:

- » Member States are not required to release a third-country national in pre-removal detention just because they had not been immediately released when their previous detention under the Dublin III Regulation had been declared unlawful.⁶²⁶
- » To calculate the maximum period of pre-removal detention, all periods of detention completed in a Member State for the purpose of enforcing the same return decision must be aggregated.⁶²⁷

The CJEU clarified that detention will not be justified under Article 15(1) of the Return Directive for an asylum seeker whose application for international protection has just been rejected by the administrative authority and is now pending appeal.⁶²⁸

To be able to impose a detention measure in this context, Member States need to confirm that there are no other less coercive measures that could be applied effectively. Moreover, detention must be for the shortest possible period and can only be maintained for as long as the removal arrangements are in progress (which need to be executed with due diligence).⁶²⁹

Once again, EU law expressly permits the detention of children and families pending deportation. Member States may only detain them '*as a measure of last resort*' and '*for the shortest appropriate period of time*' (although the legislation does not provide what exactly shall be considered '*appropriate*'),⁶³⁰ and always taking the best interest of the child as a primary consideration.⁶³¹

Procedural guarantees also apply to this detention measure. First, it must be ordered in writing, with the reasons for it being provided in fact and in law.

616. Article 3(7) defines 'risk of absconding' as '*the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond*'. It is for Member States to clearly define, in national law, the objective criteria that determine the existence of such risk (see CJEU, C-8/15 *Al Chodor*, 15 March 2017, para 28).

617. Article 15(1) Return Directive.

618. CJEU, C-18/19 *WM*, 2 July 2020, available [here](#).

619. Article 15(4) Return Directive. See also CJEU, C-357/09 *Kadzoev*, 30 November 2009, paras 56, 60 and 65, available [here](#); or CJEU, C-61/11 *PPU El Dridi*, 28 April 2011, available [here](#).

620. CJEU, C-241/21 *I.L.*, 6 October 2022, available [here](#).

621. CJEU, Joined cases C-924/19 *PPU* and C-925/19 *PPU FMS and Others*, para 302.

622. Recital 16 to the Return Directive.

623. Article 15(5) Return Directive.

624. Article 15(5) Return Directive.

625. CJEU, C-146/14 *PPU Bashir Mohamed Ali Mahdi*, 5 June 2014, available [here](#).

626. CJEU, C-387/24 *C*, 4 October 2024, available [here](#).

627. CJEU, C-150/24 *Aroja*, 5 March 2026, available [here](#).

628. CJEU, C-269/18 *PPU C, J and S*, 5 July 2018, available [here](#).

629. Article 15(1) Return Directive.

630. Article 17(1) Return Directive.

631. Article 17(5) Return Directive.

Second, where detention is ordered by administrative (not judicial) authorities, Member States must provide for a speedy judicial review of the lawfulness of detention, whether *ex officio*⁶³² or at the request of the detainee. Within this review, the national judicial authority must examine -if necessary *ex officio*- whether the principles of *non-refoulement*, the best interest of the child, or family life preclude the removal.⁶³³ This review needs to be decided on as speedily as possible (which may be exceptionally extended in situations of '*exceptionally large number of third-country nationals to be returned*'⁶³⁴). If the detention is found unlawful, the detainee must be released immediately.⁶³⁵

Third, detention must constantly be reviewed at '*reasonable intervals of time*', either *ex officio* or at the request of the detainee. Where detention is for a prolonged period, the reviews must be supervised by a judicial authority.⁶³⁶ This supervision shall take into account points in fact and in law. It must permit the authority to decide on the necessity of an extension of detention, on whether detention may be replaced with AtDs, or whether the person should be released.⁶³⁷

This ground for detention (i.e., in the context of a return procedure) does not apply to third-country nationals who applied for asylum, from the making of the application until the resolution of an eventual appeal of a negative decision.⁶³⁸ However, under Article 8(3)(d) of the 2013 RCD, detention can also be ordered for an asylum seeker when two cumulative conditions are met: (1) the person is detained to prepare the return and/or carry out the removal under the Return Directive, and (2) there are reasonable grounds to believe that they made the asylum application merely to delay or impede the implementation of the return decision.⁶³⁹

National practice

As noted above, detention of people in the context of a return procedure is often not clearly distinguishable from the detention of asylum seekers and other migrants. Some legislations expressly make the distinction by including detention provisions for these categories in separate legislations (e.g., **IE**,⁶⁴⁰ **CZ**,⁶⁴¹ **HR**⁶⁴²). This distinction is, however, heavily blurred considering 'pre-removal' detention both in the context of returns and transfers of recognized refugees in other Member States (as allowed by the CJEU⁶⁴³), and sometimes also pending a Dublin transfer (e.g., **DE**, **CY**, **CH**).⁶⁴⁴

In **Germany**, asylum seekers are generally not detained if their application is not finally rejected and as long as they have permission to stay. However, some exceptions have been introduced with recent legal changes: for inadmissible or manifestly unfounded applications, a removal order may take effect regardless of legal remedy. However, if people are detained at this point, they do not have the legal status of asylum seekers, as the asylum seekers' permission to stay ceases to be valid once a removal order becomes enforceable. Accordingly, within the meaning of German law, detention is only ordered once an asylum application has been finally rejected or in the context of a Dublin transfer.⁶⁴⁵

Detention of asylum seekers under Article 8(3)(d) of the 2013 RCD

Most EU Member States covered by AIDA provide for the possibility of detaining asylum seekers who were subject to a return procedure if there are grounds to believe that asylum was requested only to delay or frustrate the return (**BE**, **BG**, **CY**, **CZ**, **FR**, **GR**, **HR**, **HU**, **IT**, **MT**, **NL**, **PL**, **PT**, **RO**, **SE**, **SK**, **SI**).

In **Cyprus** and the **Czech Republic** (except for vulnerable asylum seekers) it is generally the case that people will be maintained in detention if they applied for asylum while in pre-removal detention, under the

632. CJEU, Joined cases C-704/20 and C-39/21 *C, B and X*, 8 November 2022, available [here](#).

633. CJEU, C-313/25 PPU *Adrar*, 4 September 2025, available [here](#).

634. Article 18(1) Return Directive.

635. Article 15(2) Return Directive.

636. Article 15(3) Return Directive.

637. CJEU, C-146/14 PPU *Bashir Mohamed Ali Mahdi*, 5 June 2014, available [here](#).

638. CJEU, C-534/11 *Mehmet Arslan*, 30 May 2013, available [here](#).

639. The CJEU has held that the fact that an asylum seeker has already had the possibility to access the asylum procedure is one objective criterion that can justify the existence of reasonable grounds to believe the person submitted the asylum application only to delay or frustrate their return (CJEU, C-186/21 *J.A.*, 3 June 2021, available [here](#)).

640. AIDA, *Country Report Ireland on 2025*, pp. 125-126, available [here](#).

641. AIDA, *Country Report Czech Republic on 2025*, pp. 87-88, available [here](#).

642. AIDA, *Country Report Croatia on 2024*, p. 128, available [here](#).

643. CJEU, C-673/19 *M.A.*, 24 February 2021, available [here](#).

644. AIDA, *Country Report Germany on 2025*, available [here](#); AIDA, *Country Report Cyprus on 2025*, available [here](#); AIDA, *Country Report Switzerland on 2025*, available [here](#).

645. AIDA, *Country Report Germany on 2025*, p. 200, available [here](#).

presumption that they are submitting the application merely to delay or frustrate the enforcement of the return.⁶⁴⁶

Only 5 EU Member States covered by AIDA have not transposed into their national legislation the ground for detention of asylum seekers under Article 8(3)(d) of the 2013 RCD (**AT, DE, IE, ES, SE**).⁶⁴⁷

However, in **Germany** and **Spain**, while Article 8(3)(d) is not transposed into national law, if an asylum application is lodged after a person has been taken into detention pending removal, this does not necessarily lead to a release.

- » In **Germany**, detention may be upheld for up to 4 weeks if certain conditions (such as a risk of absconding or an illegal stay for a duration of one month) are met.⁶⁴⁸ Moreover, asylum seekers may be detained if, at the time the asylum application was lodged (including a subsequent application), the conditions for detention pending deportation were already met.⁶⁴⁹
- » In **Spain**, people will remain detained pending their asylum decision (which will be processed under the urgent procedure, in a maximum of 3 months).⁶⁵⁰

In **Sweden**, there is a provision based on the likelihood of a refusal-of-entry or expulsion decision which concerns situations in which there are manifestly no grounds for asylum. Therefore, while Article 8(3)(d) of the 2013 RCD has not as such been directly transposed into Swedish law prior to the transposition of the EU Pact, there are grounds for detention that could potentially be used for a similar purpose.

Detention during the return procedure

All AIDA countries provide for the detention of third-country nationals prior to their deportation.

German law distinguishes several detention forms relevant to return procedures: (a) pre-removal detention (which, in turn, can be preparatory, to secure removal or to enforce cooperation); (b) rejection detention (to secure the enforcement of a rejection decision where immediate enforcement is not possible); (c) readmission detention (to secure readmission to another state under a readmission agreement); (e) custody pending departure (where immediate removal is feasible within 28 days); (f) temporary holding (if there is an urgent suspicion that the requirements for detention to secure removal are met and a judicial decision cannot be obtained in advance).⁶⁵¹

In **Austria**, **Germany**, the **Netherlands**, **Switzerland**⁶⁵² and **Türkiye**, detention to secure a return procedure can be ordered if a risk of absconding exists and detention is deemed proportionate. The introduction of a rebuttable presumption on the existence of a risk of absconding in some cases (e.g., having provided authorities with misleading information about their identity, having avoided removal in the past, having declared they will resist removal) has been heavily criticised in **Germany**.

In **Switzerland**, deportation detention has become a normalized instrument of migration policy.⁶⁵³

In **Bulgaria**, and **Malta**, third-country nationals are detained for pre-removal purposes immediately after their (irregular) entry into the country.⁶⁵⁴ In **Greece**, following the three months suspension of asylum in July 2025 for persons arriving by sea from North Africa, people were automatically placed in pre-removal detention without having the possibility to apply for asylum.⁶⁵⁵

In **Spain**, among others, third-country nationals can be placed in pre-removal detention when a judge issues a judicial detention order in cases where authorities are unable to carry out a deportation order within 72 hours. However, the judge will not issue such a detention order if there is no reasonable prospect

646. AIDA, *Country Report Cyprus on 2025*, available [here](#); *Country Report Czech Republic on 2025*, [here](#).

647. Catherine Woollard, Josephine Liebl, Eleonora Testi, Martin Wagner, Justyna Seges Frelak, Andrew Geddes, Rachel Westerby; 'Reception conditions across the EU', Study requested by the LIBE Committee of the European Parliament, PE 755.908, November 2023, pp. 51-52, available [here](#).

648. AIDA, *Country Report Germany on 2025*, available [here](#).

649. Sections 14(4)(1) AsylG and 71(8) of the German Asylum Law.

650. AIDA, *Country Report Spain on 2025*, available [here](#).

651. AIDA, *Country Report Germany on 2025*, p. 210, available [here](#).

652. AIDA, *Country Report Switzerland on 2025*, p. 117, available [here](#).

653. AIDA, *Country Report Switzerland on 2025*, p. 115, available [here](#).

654. AIDA, *Country Report Bulgaria on 2025*, available [here](#); *Country Report Malta on 2025*, available [here](#).

655. AIDA, *Country Report Greece on 2025*, available [here](#).

of removal. Complaints have been issued regarding allegations that judges validate detention orders of irregularly staying migrants without considering AtDs.⁶⁵⁶

In **Greece**, due to substantial delays in the registration of asylum applications, people that would qualify as asylum seekers have sometimes been detained on the basis of a return decision.⁶⁵⁷

Persons waiting to be deported (including asylum seekers who no longer have a right to remain on the territory) can be detained in 3 immigration detention centres in **Hungary**.⁶⁵⁸

AIDA countries deal with the impossibility to carry out the removal of a third country national in different ways, in some reported cases contrary to the requirements of the Return Directive and the ECHR.

In **Cyprus**, people who have been refused entry upon arrival but cannot be sent back on a return flight are held in a holding room at the airport, designated for *de facto* short-term deprivation of liberty.⁶⁵⁹

While to a lesser extent than in the past, in **Greece**, detention is imposed against persons whose removal is not feasible due to the situations prevailing in their country of origin or the suspension of readmissions to Türkiye since March 2020. This practice is also applied against asylum seekers.⁶⁶⁰ This is done despite multiple court decisions recognizing that in the absence of an actual prospect of removal detention lacks a legal basis.⁶⁶¹ A similar practice is observed in **Poland** and **Serbia**.⁶⁶²

National provisions and interpreting case law regarding the length of pre-removal detention also vary.

Some countries provide for shorter maximum detention periods than permitted under the Return Directive. For example, in **Ireland**, detention for pre-removal purposes can be ordered without a warrant, and can be applied for a total of 8 weeks.⁶⁶³ In **Sweden**, persons who are issued with an expulsion or refusal of entry order may be detained for up to 2 months, with a possibility of extension if there are exceptional grounds for no more than 3 months or, if it is likely that the execution will take longer because of the lack of cooperation by the third country national or because it takes time to acquire the necessary documents, more than 12 months.⁶⁶⁴

Others, however, provide for much longer detention periods. For example, **Greece** recently amended their legislation and now permits pre-removal detention for up to 24 months.⁶⁶⁵ The ECtHR condemned **Bulgaria** for a violation of Article 5(1) ECHR regarding the length of the pre-removal detention the country was applying, to a point where authorities were not taking any active steps to check the realistic prospects of removal.⁶⁶⁶

After legislation changed in 2024 in **Germany**, for pre-removal detention to be ordered, it is sufficient that the removal can take place within 6 months (instead of 3, as was the case before). In the same way, the maximum duration of custody pending removal increased from 10 to 28 days.⁶⁶⁷

In **Austria**, rejected asylum applicants are generally detained 48 hours prior to deportation. This, however, does not formally count as 'detention prior to deportation'.

Moreover, in some countries the maximum period is not always accounted for in a linear manner.

In **Belgium**, the detention deadline can be extended each time an asylum applicant refuses to board a plane, where the period is reset to zero (with the absolute maximum duration being 18 months).⁶⁶⁸

656. ECRE, 'Managing arrivals at the EU external borders: Accessing protection in the Canary Islands', July 2026, available [here](#).

657. AIDA, *Country Report Greece on 2025*, available [here](#).

658. AIDA, *Country Report Hungary on 2025*, p. 100, available [here](#).

659. AIDA, *Country Report Cyprus on 2025*, available [here](#).

660. AIDA, *Country Report Greece on 2025*, available [here](#).

661. Administrative Court of Kavala Decision AP394/24-05-2024, Administrative Court of Corinth, Decision Π2087/25-4-2024, Administrative Court of Rhodes, Decisions AP15/08-03-2024, AP41/18-07-2024, AP48/09-08-2024, AP71/20-11-2024.

662. AIDA, *Country Report Poland on 2025*, available [here](#); *Country Report Serbia on 2024*, available [here](#).

663. AIDA, *Country Report Ireland on 2025*, available [here](#).

664. AIDA, *Country Report Sweden on 2025*, available [here](#).

665. AIDA, *Country Report Greece on 2025*, available [here](#).

666. ECtHR, *Ali Reza v. Bulgaria*, Application No. 35422/16, 17 May 2022, available [here](#).

667. AIDA, *Country Report Germany on 2025*, p. 204, available [here](#).

668. AIDA, *Country Report Belgium on 2024*, p. 169, available [here](#).

In **Greece**, previous pre-removal detention periods are not taken into account towards the maximum detention period allowed. In practice, the time limit of detention is considered to start running from the moment an asylum application is formally lodged (which, due to delays in registration, makes periods of detention *de facto* longer).⁶⁶⁹

Several AIDA countries permit the pre-removal detention of children.

German law prohibits that unaccompanied children and families are taken into custody awaiting deportation. Children are taken into custody only for a few hours on the day the transfer takes place.⁶⁷⁰

In the **Netherlands**, unaccompanied children can only be placed in pre-removal detention if there is a prospect of removing them within 14 days.⁶⁷¹

Italian law permits the detention of families in CPRs. Families with children can be detained only in one of the 3 immigration detention centres in **Hungary**.⁶⁷²

Sweden permits the detention of children only for the purposes of expulsion or refusal of entry.⁶⁷³

In **Cyprus**, while the law permits the detention of children pending returns, in practice this is not applied.⁶⁷⁴

Some AIDA countries also present issues with the judicial review of pre-removal detention.⁶⁷⁵

For example, in **Italy**, *ex officio* judicial reviews of pre-removal detention conducted by the *Giudice di Pace* have been heavily criticised for validating detention orders issued by the administrative authority with very limited reasoning.

Similarly, it has been reported that **Maltese** courts critically fail to carry out a proper necessity assessment of pre-removal detention, which is usually enforced automatically upon the reception of a removal order.

Recommendations

- » During the return process, Member States should make recourse to detention only as a measure of last resort, prioritizing the use of AtDs whenever possible.
- » Access to the asylum procedure should be ensured to people in immigration detention (also when for return purposes). As soon as the willingness to apply for international protection is expressed by detained people, they should be channelled into the appropriate administrative procedure and their detention should be reassessed under the framework of asylum law (which foresees detention only in some clearly stipulated situations and only as a last resort). Whenever detention is no longer justified, people should be immediately released and channelled into the appropriate reception system.
- » People arriving at the border or intercepted within the territory should not be automatically placed in detention, but rather always given access to the asylum procedure and the corresponding reception system.
- » Both in their legislation and in the collection of data for statistical purposes, Member States should clearly distinguish between the detention of asylum seekers and other forms of immigration detention, particularly in border and transit zones, where the distinction is currently most blurred.
- » When Member States decide to make recourse to detention in the return context, this should only be maintained for the shortest possible time, and only as long as an actual reasonable prospect for removal exists, which should be assessed continuously by judicial authorities.
- » Vulnerable people, especially unaccompanied children and families, should be exempted from pre-removal detention.

669. AIDA, *Country Report Greece on 2025*, available [here](#).

670. AIDA, *Country Report Germany on 2025*, available [here](#).

671. AIDA, *Country Report Netherlands on 2025*, available [here](#).

672. AIDA, *Country Report Hungary on 2025*, p. 100, available [here](#).

673. AIDA, *Country Report Sweden on 2025*, p. 114, available [here](#).

674. AIDA, *Country Report Cyprus on 2025*, p. 148, available [here](#).

675. Alexis Galand, 'Judicial Protection in Immigration Detention: Challenges and Solutions in the Mediterranean Region of the European Union' (2025), *Mediterranean Journal of Migration*, Volume 2, Issue 1: 113-133, p. 122.

2. Reform of the return framework

The Return Border Procedure Regulation

The blurred lines between the detention of asylum seekers and returnees risks becoming even hazier with the implementation of the EU Pact on Migration and Asylum, particularly at the borders, where the new EU legislation mandates for quick border procedures that are supposed to effectively manage asylum processes and immediate return procedures. The Pact introduces a separate detention regime at the border, which shall be applicable in the context of the return border procedure set out in the new Return Border Procedure Regulation (RBPR).⁶⁷⁶

The return border procedure shall apply as the framework to prepare the deportation of those third-country nationals and stateless persons whose asylum application was rejected in the context of an asylum border procedure.⁶⁷⁷ The return border procedure continues to apply in a fiction of non-entry,⁶⁷⁸ thereby giving continuation to the non-authorization to enter the territory that applies at the border since the screening procedure.

The RBPR introduced a new ground for detention:⁶⁷⁹ the detention of third-country nationals whose application has been rejected in the context of an asylum border procedure. As such, while not obliged to do so, Member States may decide to impose a detention measure to people undergoing a return border procedure that no longer have a right to remain and are not allowed to remain. The specific grounds for doing so will depend on whether the person in question was detained already during the asylum procedure or not.

- (a) If the person was detained during the asylum border procedure, Member States can decide to continue applying detention for three grounds: (a) preventing the person's entry into the territory, (b) preparing their return, or (c) carrying out the removal process.⁶⁸⁰
- (b) If the person was not detained during the asylum border procedure, Member States can place them in detention: (a) if there is a risk of absconding (within the meaning of the Return Directive), (b) if they avoid or hamper the preparation of the return or removal process, or (c) if they pose a risk to public policy, public security or national security.⁶⁸¹

The standard guarantees for detention under EU law apply: detention may be imposed only as a measure of last resort, if it proves necessary on the basis of an individual assessment, and only if AtDs cannot be applied effectively.⁶⁸² The EUAA has argued that, at the start of the return border procedure, a new assessment needs to be conducted to establish whether detention remains applicable. In this sense, if a reasonable prospect of removal is not envisaged anymore, the person shall be released. Moreover, regarding the applicability of AtDs, the EUAA notes that if an AtD was applied during the asylum border procedure and the asylum seeker complied with it, the sufficiency of the same measure can be expected during the return border procedure (with the caveat of a likely increased risk of absconding following the rejection of the asylum application).⁶⁸³

The same procedural safeguards and principles regarding detention as set forth in the Return Directive are applicable when detention is applied in the context of the RBPR.⁶⁸⁴

People may be placed in detention during the return border procedure for a maximum of 12 weeks since the moment the person no longer has a right to remain and is not allowed to remain.⁶⁸⁵ Where this period has elapsed without the return having been effected, people shall be directed to a return procedure under the Return Directive.⁶⁸⁶ In this case, detention can continue up to the maximum period established therein (i.e., an absolute maximum of 18 months, see [Current practice: the Return Directive](#)). In this sense, where a consecutive detention is issued immediately after, the time spent in detention under the RBPR shall be included in

676. Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148, OJ L, 2024/1349, 22.5.2024.

677. Article 1(1) RBPR.

678. Article 4(1) RBPR.

679. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 15, available [here](#).

680. Article 5(2) RBPR.

681. Article 5(3) RBPR.

682. Article 5(1) RBPR.

683. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 47, available [here](#).

684. Article 4(3) RBPR.

685. Article 5(4) read in conjunction with Article 4(2) RBPR.

686. Article 4(4) RBPR.

calculating the absolute maximum periods of detention under the Return Directive.⁶⁸⁷ In any case, detention shall be maintained for as short a period as possible, and for only as long as a reasonable prospect of removal exists and while arrangements therefore are in progress and executed with due diligence.⁶⁸⁸

As the screening, border procedure and return procedure are all carried out at the borders (or in close proximity) and people concerned must be present there for the whole period of these three procedures, an uninterrupted detention measure for the whole period will also be possible.⁶⁸⁹

The Return Regulation

On 1 June 2026, the European Parliament and the Council of the EU finalized trilogue negotiations and reached a deal on the final text for the reform of the Return Directive, i.e., the Return Regulation.⁶⁹⁰ On 17 June 2026, the plenary of the European Parliament adopted the text after the first vote.⁶⁹¹ The vote of the Council of the EU remains pending at the date of writing this report.⁶⁹²

The Return Regulation is heavily restrictive in rights of third country nationals compared to its predecessor, most significantly in the area of detention.

Generally speaking, detention can be ordered for people in a return process only for the purposes of '*return, including for preparing the return, readmission, or carrying out the removal*'.⁶⁹³ The grounds for detention are, nevertheless, expanded and now include:⁶⁹⁴ (a) the existence of a risk of absconding; (b) the person hampering or avoiding readmission or the preparation of the return or removal process; (c) the person posing a security risk; (d) the determination of the person's identity or nationality; (e) non-compliance with the obligation of the person to cooperate with the removal process; (f) any other ground established in national law to ensure an effective return process. Detention shall be maintained only '*for as long as the grounds (...) are fulfilled and it is necessary to ensure the effective and successful return*'.⁶⁹⁵ When the grounds are no longer fulfilled, the person needs to be released immediately.⁶⁹⁶

There is no longer an express reference to the need to consider AtDs prior to the imposition of a detention measure. In fact, the text of the Return Regulation makes reference to the fact that Member States 'may' decide to impose an AtD.⁶⁹⁷ However, as extensively developed in preceding chapters to this report, this could be considered a condition of the 'necessity' and 'proportionality' tests that need to be conducted when making recourse to a deprivation of liberty.

Regarding the duration of detention, while it shall be maintained '*for as short a period as possible*',⁶⁹⁸ the absolute maximum period for detention is extended: 12 months, which can be extended up to 24 months if there is a lack of cooperation by the returnee or difficulty in obtaining documentation, or in other exceptional circumstances provided for in national law (without the Return Regulation specifying which ones). Detention may, moreover, be ordered for additional periods of up to 6 months even when that 24-month maximum has been reached, if there is (a) a risk of absconding, or (b) certain circumstances indicate a 'reasonable prospect of removal' (i.e., new information on the person's identity being available, the obtention of travel documents -or its presumption due to a change in circumstances, or an improvement of the cooperation with the third country).⁶⁹⁹

It should be noted that this maximum detention periods are to be applied in each Member State individually, so that if a person absconds to another Member State, detention for them could be ordered for the entire

687. Article 5(4) RBPR.

688. Article 5(4) RBPR.

689. EUAA, 'Guidelines on Alternatives to Detention', Practical Guide, December 2024, p. 12, available [here](#).

690. Council of the EU, Interinstitutional File 2025/0059 (COD), 10 June 2026, available [here](#).

691. European Parliament legislative resolution of 17 June 2026 on the proposal for a regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC (COM(2025)0101 – C10-0047/2025 – 2025/0059(COD)), 17 June 2026, available [here](#).

692. Legislative Observatory of the European Parliament, procedure of file 2025/0059 (COD), available [here](#).

693. Article 29(2) Return Regulation.

694. Article 29(3) Return Regulation.

695. Article 32(1) Return Regulation.

696. Article 32(2) Return Regulation.

697. Article 23c(1) Return Regulation.

698. Article 32(1) Return Regulation.

699. Article 32(3a) Return Regulation.

maximum period again in every new Member State they are in.⁷⁰⁰

Moreover, for those third-country nationals considered to pose a security risk, detention can be ordered for longer periods than the maximum set out above. The Return Regulation does not establish an absolute maximum time-limit in these cases but rather refers to national courts or tribunals to determine it on a case by case basis and review it at least every three months.⁷⁰¹

Some procedural guarantees are nevertheless maintained, including:

- » The need to conduct an individual assessment of the case, and detention only being ordered if it is considered 'proportionate'.⁷⁰²
- » Detention being ordered by administrative or judicial authorities, in a written format providing information about the reasons for detention and the available legal remedies to challenge it.⁷⁰³
- » The detention order can, however, be communicated orally or in writing, and through recourse to translation or interpretation services.⁷⁰⁴
- » The review of detention must take place, ex officio or at the request of the person, at least every six months.⁷⁰⁵ For unaccompanied children, in needs to happen ex officio at least every three months, or upon the request of the child.⁷⁰⁶ Wherever the detention period has exceeded 24 months by at least 3 months, judicial review needs to take place every 3 months.⁷⁰⁷
- » The judicial review of the lawfulness of detention needs to be conducted 'as speedily as possible' in a period laid down in national law.⁷⁰⁸

Vulnerable people are not excluded from detention, and Member States only have the obligation to '*take into account whether [they are] a vulnerable person*' when deciding to detain them.⁷⁰⁹ Unaccompanied children and families are also not excluded from detention, albeit only to be detained '*as a measure of last resort*', '*for the shortest appropriate period of time*' and taking into account the best interest of the child.⁷¹⁰

One of the main restrictive elements introduced by the Return Regulation is the possibility for Member States to establish agreements with third countries for them to receive third-country nationals that no longer have a right to remain in the EU, for their final deportation to be carried out from the third country in question (the so-called 'return hubs'). The likelihood that these deportation processes will take place in detention is confirmed when the Return Regulation expressly establishes how these agreements with third countries '*may include the conditions for detention in the third country*'.⁷¹¹

700. Article 32(2) Return Regulation.

701. Article 16(3)(d) Return Regulation.

702. Article 29(1) Return Regulation.

703. Article 29(5) Return Regulation.

704. Article 29(5) Return Regulation.

705. Article 33(1) Return Regulation.

706. Article 33(2) Return Regulation.

707. Article 33(3) *in fine* Return Regulation.

708. Article 33(3) Return Regulation.

709. Article 29(6) Return Regulation.

710. Article 35(1) Return Regulation.

711. Article 17(2) Return Regulation.

CONCLUSION AND RECOMMENDATIONS

An overview of European countries' practice regarding detention of asylum seekers evidences a need for legal clarity in legal frameworks both at European and national level. An observation of national practices shows a widespread use of *de facto* detention of asylum seekers, especially in border contexts. This practice leads to deprivation of legal guarantees for detainees, and a blurring of lines between restrictions on freedom of movement, deprivation of liberty and reception, a distinction clearly required by European legislation and courts.

Several European countries also provide for the detention of asylum seekers for a myriad of grounds, sometimes not even enshrining these in law, or going further than those permitted under the international and EU legal framework. European Courts have also repeatedly condemned the use of arbitrary detention practices, often lacking the required individual assessments of the necessity and proportionality of the measures. However, regardless of the legal qualification of a restrictive measure in national law, a factual assessment of all individual circumstances in each case remains necessary always. An extremely limited recourse to AtDs is also observed throughout Europe, often despite strong guarantees enshrined in national legislations.

The widespread detention of vulnerable persons in Europe, including that of children, is often caused by the lack of appropriate vulnerability identification mechanisms.

Procedural guarantees required when detaining asylum seekers are often not applied in practice in Europe. Lengthy detention periods are observed in some countries, as well as a poor review of detention measures by judicial authorities, access to which is often also limited by a lack of effective access to legal assistance to challenge detention measures.

Detention in the context of return procedures should be only a measure of last resort, where it can only be maintained as long as there is a reasonable prospect of removal, to be assessed on a case by case basis. However, detention in the return context is used in all AIDA countries, often at the expense of such guarantees and blurring the lines between pre-removal and asylum detention. This is particularly acute with regard to asylum seekers under a Dublin procedure.

Based on the above findings and conclusions drawn, the following recommendations can be made:

The concepts of detention and *de facto* detention:

- » Where countries prevent asylum seekers from leaving border facilities to access other parts of their territory, these measures should legally qualify as deprivation of liberty in national legislations. This is of particular relevance to safeguard the legality of the deprivation of liberty, considering the documented particular harmful effects of detention on people and the impingement on fundamental rights that these measures entail.
- » *De facto* detention, a practice that is currently widespread in Europe and which prevents the relevant guarantees to kick in, should not take place. All practices amounting, in law or in fact, to detention should be clearly classified as such in national law.

Restrictions of freedom of movement:

- » Member States should always conduct an individualized assessment of the necessity and proportionality of the measure before deciding to impose a residence or other geographical restriction on asylum seekers, as they constitute an impingement on the fundamental right to freedom of movement.
- » Restrictions of the freedom of movement must not result in *de facto* detention, either due to their intensity or their cumulative effects.

Lawfulness (and non-arbitrariness) of detention:

- » Given its punitive character and documented harmful effects on people, detention of asylum seekers should be avoided, with Member States making recourse to it only as a measure of very last resort. The systematic detention of asylum seekers has to be avoided. Individualized assessments of the necessity and proportionality of the measure should always be conducted.
- » If countries decide to resort to detention, this must be limited to the very narrow circumstances in which it is allowed by EU and international law. Grounds for the detention of asylum seekers set out in national legislations of EU Member States should be clearly limited to those provided in the 2013 RCD.

- » Where countries resort to restrictions on freedom of movement or deprivation of liberty, they should: (1) conduct an individualised assessment of each case to establish the necessity and proportionality of the measure; (2) consider the application of alternatives to detention; and (3) communicate a properly motivated detention decision, which refers to the avenues for judicial challenge, to the individual concerned.
- » The provisions in the 2013 RCD on detention of asylum seekers should always be read in conjunction with the Charter, the ECHR and relevant case law of European courts limiting the discretionary use of detention practices.
- » Member States should choose not to make obligatory recourse to detention during the screening procedure. In any case, detention during screening cannot be applied automatically, as all guarantees regarding the use of detention apply.
- » EU Member States should carry out the border procedure without resorting to detention, by not invoking Article 10(4)(d) of the 2024 RCD.

Alternatives to detention:

- » In accordance with the principles of necessity and proportionality, asylum detention should be used only as a measure of last resort, where its objective cannot be achieved through an AtD.
- » The use of AtDs should be expanded, engaging national civil society organizations with relevant expertise in their design.
- » AtDs must themselves comply with the requirements of necessity and proportionality, including under the right to freedom of movement, which implies that such measures must be the least restrictive available. When assessing the need for AtDs to be imposed, preference should always be given to those less onerous to asylum seekers.

Detention of vulnerable asylum seekers:

- » Before making recourse to the detention of asylum seekers, countries should conduct complete vulnerability assessments, conducted by appropriately trained staff (including medical) that can ensure an appropriate quality of the identification process at the earliest stages of the screening procedure. This is of particular relevance as the identification of vulnerabilities should result in the channelling of the person into the adequate procedure and, where relevant, the application of less onerous alternatives to detention.
- » Member States must ensure that sufficient training and guidance on the identification of vulnerabilities is provided to those authorities in charge of conducting the screening procedure.
- » The double vulnerability of children stemming from their intrinsic vulnerability as asylum seekers and children is a decisive factor which must take precedence over considerations of immigration control. In this sense, given that it can never be considered in their best interest, the detention of children should be excluded by law and in practice. Moreover, family members of accompanied children should be accommodated with their children and not detained. If Member States make recourse to it, however, they should ensure that detention for children should be used only as a measure of last resort.
- » Children should never be detained on the basis of their own or of their parents' migratory status, as such detention is contrary to the best interests of the child and has severe, lasting impacts on their fundamental rights and wellbeing.⁷¹²
- » In the exceptional event where the detention of children nevertheless does occur, it must be for the shortest time possible and in child-appropriate facilities (which can never be prisons or police custody) with education, play, and psychosocial support (see [At the margins: Places and conditions of detention](#)).
- » States must cease practices that separate family members through detention measures.
- » Detention should also be excluded for vulnerable individuals (including pregnant and nursing women as well as asylum seekers with medical conditions, mental health concerns, or disabilities).
- » EU Member States should maintain provisions on the prohibition or limitation of the use of detention for

712. UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, available [here](#), para 61; recalled in UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, available [here](#); UNHCR, UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017, available [here](#).

applicants with special reception needs that already existed previously in EU asylum legislation.

- » Unaccompanied children, survivors of trauma or trafficking, and persons with disabilities should always be exempted from border procedures (and, thus, detention at the border) due to the practical difficulties of providing the necessary support to them in such a context.
- » The independent monitoring mechanism that Member States are required to set up under the Screening Regulation⁷¹³ and the APR,⁷¹⁴ together with relevant civil society organizations with experience at the border, should monitor the effects of the increased use of detention at the border that is likely to result from the implementation of the Pact. Given the lack of clarity of some of the provisions in the new legislation, lawyers and civil society organizations must be prepared to lodge the necessary legal challenges and requests for preliminary references to the CJEU, to ensure that the Courts continue delimiting the parameters of the use of detention.

Duration of detention:

- » The detention of asylum seekers should always be for the shortest possible time and only be maintained while the specific ground of detention remains applicable, which should be assessed on a regular basis by authorities.
- » National legislation should specify the maximum period of detention of asylum seekers allowed under each ground for detention transposed. Under no circumstances should the detention of asylum seekers exceed these periods.

Judicial review of detention:

- » Judicial authorities should be mandated to conduct regular ex officio reviews of detention orders, both on points of law and of fact.
- » Information on the possibility to challenge a detention order should be provided in a clear and accessible manner to asylum seekers, always in a language that they can understand.
- » Both detention measures as well as other restrictions of the freedom of movement of asylum seekers should always be subject to judicial review in the same terms. The scope of the review of a measure restricting people's freedom of movement should include the assessment of whether the measure amounts to de facto detention.
- » Clear deadlines should be established in national law for the competent judicial authority to take a decision on the appeal against a detention measure, which shall undoubtedly qualify for a 'speedy' judicial review as required by European courts. Failure to meet such deadlines should result in the automatic release of asylum seekers from detention.
- » As noted by the EUAA (in its Guidelines on AtDs), when Member States decide on the frequency of judicial reviews of detention applied at the border, they must take into account the short timeframe in which border procedures must be completed.

Legal assistance for the review of detention:

- » Given proper legal assistance and representation is paramount to access a truly effective legal remedy against asylum detention; access to them must be ensured for all asylum seekers, without making it exclusively contingent upon burdensome financial means tests.
- » Whenever national law provides for the specific designation of legal professionals who shall provide free legal assistance and representation to challenge an asylum detention measure, countries must ensure their appropriate training and expertise.

Detention in the context of returns:

- » During the return process, Member States should make recourse to detention only as a measure of last resort, prioritizing the use of AtDs whenever possible.
- » Access to the asylum procedure should be ensured to people in immigration detention (also when for return purposes). As soon as the willingness to apply for international protection is expressed by detained people, they should be channelled into the appropriate administrative procedure and their detention should be reassessed under the framework of asylum law (which foresees detention only in some clearly stipulated situations and only as a last resort). Whenever detention is no longer justified,

⁷¹³. Article 10(2) Screening Regulation.

⁷¹⁴. Article 43(4) APR.

people should be immediately released and channelled into the appropriate reception system.

- » People arriving at the border or intercepted within the territory should not be automatically placed in detention, but rather always given access to the asylum procedure and the corresponding reception system.
- » Both in their legislation and in the collection of data for statistical purposes, Member States should clearly distinguish between the detention of asylum seekers and other forms of immigration detention, particularly in border and transit zones, where the distinction is currently most blurred.
- » When Member States decide to make recourse to detention in the return context, this should only be maintained for the shortest possible time, and only as long as an actual reasonable prospect for removal exists, which should be assessed continuously by judicial authorities.
- » Vulnerable people, especially unaccompanied children and families, should be exempted from pre-removal detention.

THE ASYLUM INFORMATION DATABASE (AIDA)

The Asylum Information Database (AIDA) is a database managed by the European Council on Refugees and Exiles (ECRE), containing information on asylum procedures, reception conditions, detention and content of international protection across 27 countries. This includes 21 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Czechia, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia) and 6 non-EU countries (Egypt, Switzerland, Serbia, Türkiye, Ukraine, United Kingdom).

- **Country reports**

AIDA contains national reports documenting asylum procedures, reception conditions, detention and content of international protection in 27 countries.

- **Comparative reports**

AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in 2013, 2014 and 2015. From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on [reception](#) (March 2016), [asylum procedures](#) (September 2016), [content of protection](#) (March 2017), [vulnerability](#) (September 2017), [detention](#) (March 2018), [access to the territory and registration](#) (October 2018), [reception](#) (May 2019), [asylum authorities](#) (October 2019), [digitalisation of asylum procedures](#) (January 2022), [family reunification](#) (February 2023), [access to socio-economic rights for temporary protection beneficiaries](#) (August 2023), [Access to socio-economic rights for temporary protection beneficiaries: 2023 Update](#) (January 2025), and [Places and conditions of detention](#) (June 2026).

- **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#), [Croatia](#), [France](#), [Belgium](#), [Germany](#), [Poland](#), [Romania](#) and [Spain](#).

- **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. These short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) [Dublin detention](#); (2) [asylum statistics](#); (3) [safe countries of origin](#); (4) [procedural rights in detention](#); (5) [age assessment of unaccompanied children](#); (6) [residence permits for beneficiaries of international protection](#); (7) [the length of asylum procedures](#); (8) [travel documents for beneficiaries of international protection](#); (9) [accelerated procedures](#); (10) [the expansion of detention](#); (11) [relocation](#); and (12) [withdrawal of reception conditions](#).

- **Statistical updates**

AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for [2016](#), [the first half of 2017](#), [2017](#), [the first half of 2018](#), [2018](#), [the first half of 2019](#), [2019](#) and [the first half of 2020](#), [2020](#), [2021](#), [2022](#), [2023](#) and [2024](#).

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