



Border Procedures for Asylum Applications in EU+ Countries



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1. Introduction

Repeated calls to organise fast and efficient procedures for international protection have been made within the Common European Asylum System (CEAS), often with a focus on the external borders of the European Union (EU). As a possible solution, a more extensive use of border procedures has been put forward to efficiently process applicants for international protection directly upon arrival.

Currently at the level of national legislation, EU Member States do not have a uniform way of shaping the border procedure provided by the recast Asylum Procedures Directive (APD). As a result, national border procedures are not necessarily comparable nor applied in similar cases.

In this context, this report gathers relevant information on border procedures to inform discussions on the topic. As EASO's current mandate focuses on organising, coordinating and promoting the exchange of information across asylum authorities in Member States and between the Commission and Member States, rather than monitoring and evaluating the implementation of asylum procedures in practice, the report concentrates primarily on explaining the current legislative border procedures in EU+ countries, touching to a lesser extent on their implementation on the ground.

The report explains the framework provided by the recast [APD \(Directive 2013/32/EU\)](#) for this type of asylum procedure¹ and provides an overview of selected aspects of border procedures in EU+ countries,² focusing on:

- The scope of the procedure (admissibility, status determination);
- Countries that apply/do not apply border procedures;
- The steps in the application of the procedure;
- Time limits to issue a decision;
- Possible outcomes;
- Appeals;
- Safeguards provided to asylum applicants; and
- Available data on border procedures.

The latest developments in border procedures at the national level in EU+ countries are also presented, along with relevant case law.

The report concludes by highlighting points raised by stakeholders regarding border procedures in EU+ countries. The main considerations related to border procedures are summarised based on the experiences of EU+ countries where applicable.

For more detailed information, the Annex provides a description of the application of border procedures in each EU+ country.

¹ The recast APD applies to Member States bound by the CEAS. Denmark is not bound by the recast APD, and Ireland has opted out of the recast APD. The United Kingdom withdrew from the European Union and became a third country (non-EU country) as of 1 February 2020.

² Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland.

2. Overview of the border procedure

Applications for international protection may be made at the border of an EU+ country or in a transit zone before an applicant enters the territory. In these cases, EU+ countries may choose to decide on such applications directly at the border or in transit zones. The procedure used in those cases is commonly referred to as a ‘border procedure’.

Figure 1. Map of EU+ countries which implement border procedures



Source: EASO.

The recast APD regulates the process for border procedures, primarily in Article 43.³ The recast APD prescribes that border procedures can consist of examining the admissibility of the application or undertaking a full examination in situations where accelerated procedures can be applied as well (see recast APD, Articles 31(8) and 43(1)). Thus, border procedures can be implemented when the same grounds apply as for accelerated procedures. Border procedures may also be conducted as accelerated procedures.

According to the recast APD, Article 31(8), Member States may conduct a full examination of an application for international protection in the border procedure (and/or accelerated procedure) on

³ The border procedure was also addressed in the previous version of the [Asylum Procedures Directive](#) that underlined a pre-existing mechanism applied by Member States. Therefore, some EU+ countries may have several years of experience using various forms of this procedure.

the following grounds, that broadly concern situations where the application appears to have less merit or the applicant's behaviour is not as desired:

*(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are **not relevant** to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or*

*(b) the applicant is from a **safe country of origin** within the meaning of this Directive; or*

*(c) the applicant has **misled the authorities** by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or*

*(d) it is likely that, in bad faith, the applicant has **destroyed or disposed of an identity or travel document** that would have helped establish his or her identity or nationality; or*

*(e) the applicant has made **clearly inconsistent and contradictory, clearly false or obviously improbable representations** which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or*

*(f) the applicant has introduced **a subsequent application for international protection that is not inadmissible** in accordance with Article 40(5); or*

*(g) the applicant is making an application **merely in order to delay or frustrate** the enforcement of an earlier or imminent decision which would result in his or her removal; or*

*(h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either **not presented himself or herself to the authorities** or **not made an application for international protection as soon as possible**, given the circumstances of his or her entry; or*

*(i) the applicant **refuses to comply with an obligation to have his or her fingerprints taken** in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (12); or*

*(j) the applicant may, for serious reasons, be considered a **danger to the national security or public order** of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.*

As mentioned, EU+ countries do not have a uniform way of shaping border procedures provided by the recast APD. To adapt the procedure to their specific national context, countries may use specific procedural solutions or implement aspects from the border procedure in different ways. Thus, the scope and features of a border procedure within the national legal framework may vary across EU+ countries.

Depending on specific national policies or simply due to geographical position and the nature of a country's borders (and the propensity of applicants to lodge applications there), countries may, for example, limit the application of the border procedure only to applications for international protection submitted at airports while excluding the procedure for land or sea arrivals (e.g. Austria and Germany).

According to the recast APD, Article 43(2), a decision issued in a border procedure should be taken within a reasonable timeframe. Any time limits should be proportionate, providing a realistic opportunity both for applicants to present their case and for the determining authority to assess the claim. In addition, if a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for the application to be processed in accordance with the available procedures.

Regarding the applicability of border procedures, the recast APD, Recital 21 highlights that “[a]s long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not per se entail an automatic recourse to border or accelerated procedures”. In addition, the recast APD, Article 31(8) provides that border procedures and accelerated procedures are to be conducted “in accordance with the basic principles and guarantees laid down in Chapter II of this Directive”. Decisions, including those in border and accelerated procedures, are to be taken as soon as possible, but always “without prejudice to an adequate and complete examination being carried out” (recast APD, Recital 18).

Applicants in need of special procedural guarantees are not exempted from border procedures, as the recast APD does not provide for a general exemption. However, the recast APD, Article 24(3) states that when special procedural guarantees cannot be provided within the framework of border procedures and where the applicant is in need of such “special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply” the border procedure. This presupposes that countries have developed a mechanism to identify vulnerable applicants within the short delays of a border procedure.⁴

With respect to unaccompanied children, according to the recast APD, Article 25(6)(b), Member States may apply border procedures only if: the applicant comes from a safe country of origin; the applicant has introduced a subsequent application; the applicant may be considered a danger to national security or public order; the safe third country concept applies; the applicant presented false documents; or the applicant, in bad faith, destroyed or disposed of an identity or travel document. The last two grounds are applicable only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision, provided full opportunity was given to show good cause of action.

Overall in 2019, most first instance decisions issued in EU+ countries using accelerated or border procedures led to a rejection of the asylum application for a significantly higher share than for decisions made through normal procedures. According to data exchanged in the framework of EASO's Early Warning and Preparedness System (EPS), the recognition rate for first instance decisions⁵ under the border procedure was 7 % and 10 % for decisions under the accelerated procedure, compared to the total EU+ recognition rate for first instance decisions of 33 % in 2019.

Thus, the border and accelerated procedure is used in different formats and for different scopes, leading to varied recognition rates across the EU+ countries.

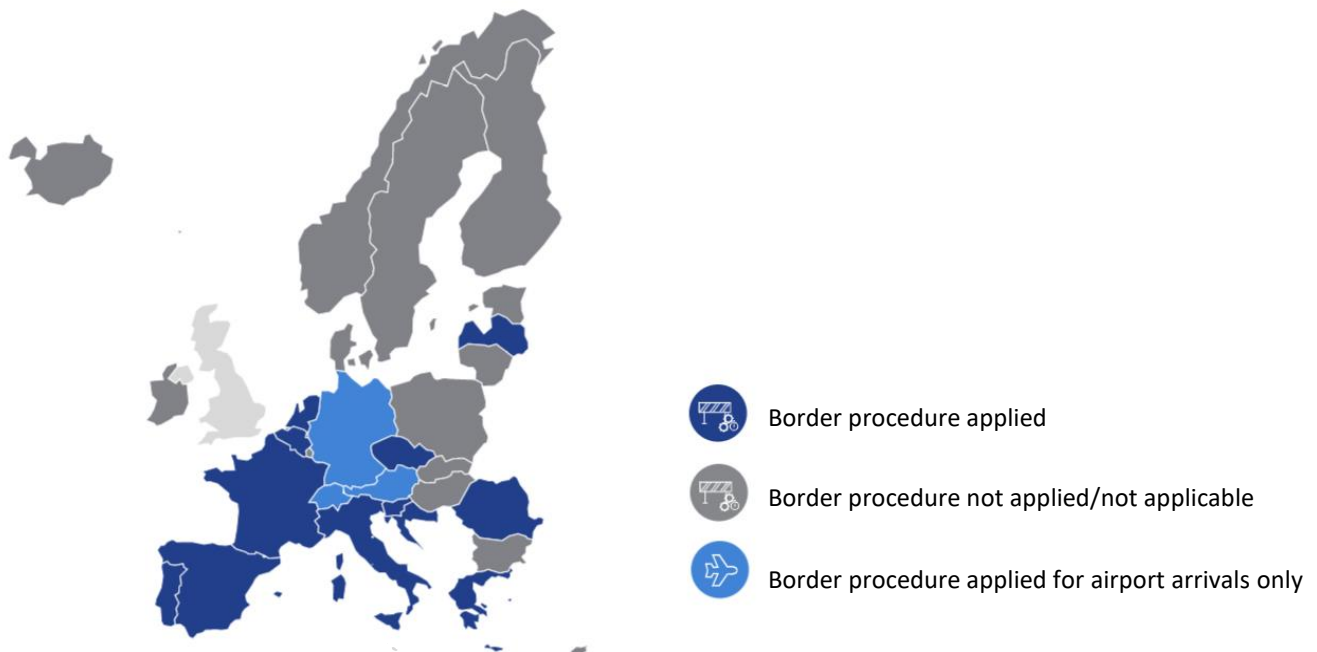
⁴ Recast APD, Article 24 and recast Reception Conditions Directive, Article 22.

⁵ Recognition rate refers to the proportion of positive decisions granting EU-regulated international protection in overall first instance decisions, including refugee status and subsidiary protection status and excluding national forms of protection.

2.1 Application of border procedures by EU+ countries

The border procedure is currently applicable in the following EU+ countries: Austria, Belgium, Croatia, Czechia, France, Germany, Greece, Italy, Latvia, the Netherlands, Portugal, Romania, Slovenia, Spain and Switzerland.

Figure 2. Application of border procedures by EU+ countries



Source: EASO.

Greece, for instance, applies two types of border procedures for applications for international protection submitted in transit zones of ports or airports: a ‘border procedure’ (applied for applications made at the airport, usually Athens International Airport) and an ‘exceptional border procedure’ (applied in the five Eastern Aegean islands with ‘hotspots’).⁶

The border procedure is not applied in Bulgaria, Cyprus, Denmark (which is not bound by the recast APD), Estonia, Finland, Hungary, Iceland (which is not bound by the recast APD), Ireland (which opted out of the recast APD), Luxembourg, Malta, Norway (which is not bound by the recast APD), Slovakia and Sweden.

In addition, Lithuania does not provide for a border procedure in its national law, however asylum applications at border crossing points are analysed in accelerated procedures and all border procedure-related provisions are applicable. Furthermore, Poland does not currently apply a border procedure, though a draft law introducing this procedure is in the process of adoption.

As mentioned above, Austria and Germany limit the application of the border procedure to applications for international protection submitted at airports, while there is no specific provision for land arrivals. In Switzerland, the border procedure is applicable only in two airports.

⁶ AIDA Greece. (2020). Country Report: Greece—2019 Update. Edited by ECRE. Written by Greek Refugee Council. https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2019update.pdf, pp. 86 and 139; [Law 4636/2019](#), Article 90, para. 1.

2.2 Initial steps and competent authorities

After an application for international protection is made under the border procedure, the applicant is informed of his/her rights and obligations during the procedure in a language he/she understands and is taken to a reception facility and provided accommodation.

Table 1. Competent authorities for border procedures

	AT	The Federal Office for Immigration and Asylum (<i>Bundesamt für Fremdenwesen und Asyl - BFA</i>)
	BE	Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Border Police Section of the Federal Police and the Border Control Section of the Immigration Office
	HR	Ministry of the Interior, Directorate for Immigration, Citizenship and Administrative Affairs
	CZ	Ministry of the Interior
	FR	Ministry of the Interior with opinion from the French Office for the Protection of Refugees and Stateless Persons (OFPRA)
	DE	Federal Office for Migration and Refugees (BAMF)
	EL	Asylum Service
	IT	Territorial Commissions for the Recognition of International Protection
	LV	Office of Citizenship and Migration Affairs
	NL	Immigration and Naturalisation Service (IND), the Royal Marechaussée and the Identification and Seaport Police
	PT	National Director of Immigration and Border Service (SEF)
	RO	General Inspectorate for Immigration (GII)
	SI	Ministry of Interior, International Protection Procedures Division
	ES	Ministry of Interior (Border Police and Office of Asylum and Refugee and Alien's Office)
	CH	State Secretariat for Migration (SEM)

Source: EASO.

2.3 Provision of an interview



Before a decision is made, the applicant is usually given the opportunity of a personal interview, except for applications subject to a preliminary examination that is conducted solely by written submissions according to the national law. The interview may be omitted only if “the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available” or “the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control.”⁷ During the interview, the applicant may be assisted by a lawyer or representatives of an NGO, and provided with the assistance of an interpreter if needed.

An interview is provided, for instance, in Belgium, Czechia, France, Germany, Greece, Italy, Latvia, the Netherlands, Portugal, Romania, Slovenia, Spain and Switzerland, while Austria provides a ‘screening interview’ and Latvia provides an ‘initial interview’. In practice, Lithuania also provides an ‘initial interview’.

Figure 3. Provision of an interview in border procedures by EU+ country



Source: EASO.

2.4 Material reception conditions at the border



In the context of the border procedure, applicants are accommodated in reception centres⁸ at or near the border or in the transit zone. They remain in such accommodation centres at least for the duration of the border proceedings. Since they are not allowed to enter the territory, in practice they are likely to be placed in detention pursuant to the recast Asylum Reception Conditions Directive, Article 8(3c).⁹

⁷ Recast APD, Article 14(2).

⁸ Recast RCD, Article 18(1a).

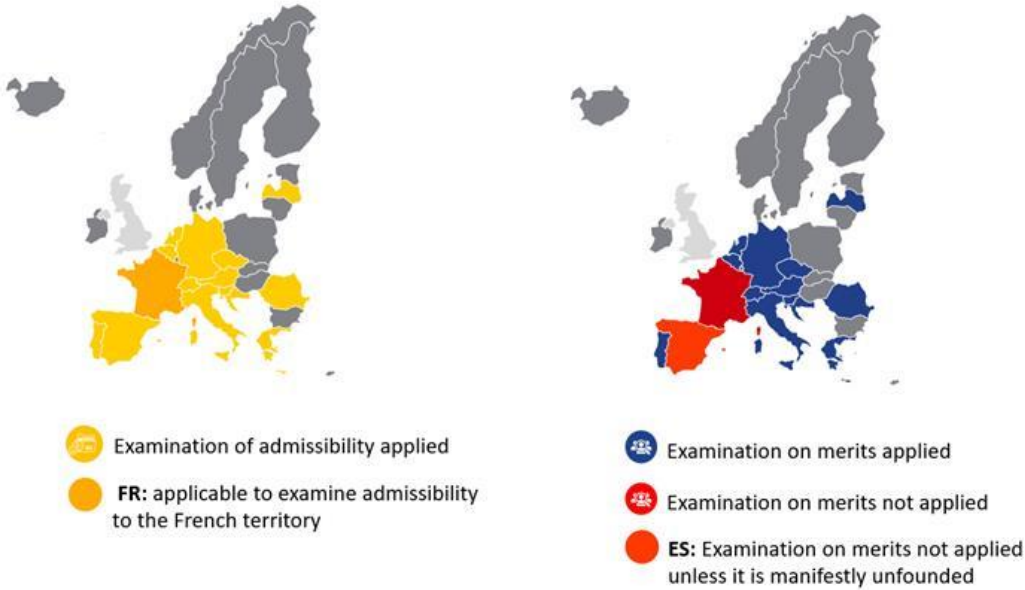
⁹ Jens Vedsted-Hansen, *Asylum Procedures Directive 2013/32/EU* in: Kay Hailbronner, Daniel Thym (Ed.) *EU Immigration and Asylum Law, A Commentary*, 2nd Edition 2016, p. 1372.

2.5 Decision and time limits to issue a decision



The examination of a case under border procedures may be limited to admissibility or it may include a full examination of the substance of an application for international protection.

Figure 4. Examination of admissibility vs examination of the merits of an application in border procedures, by EU+ country

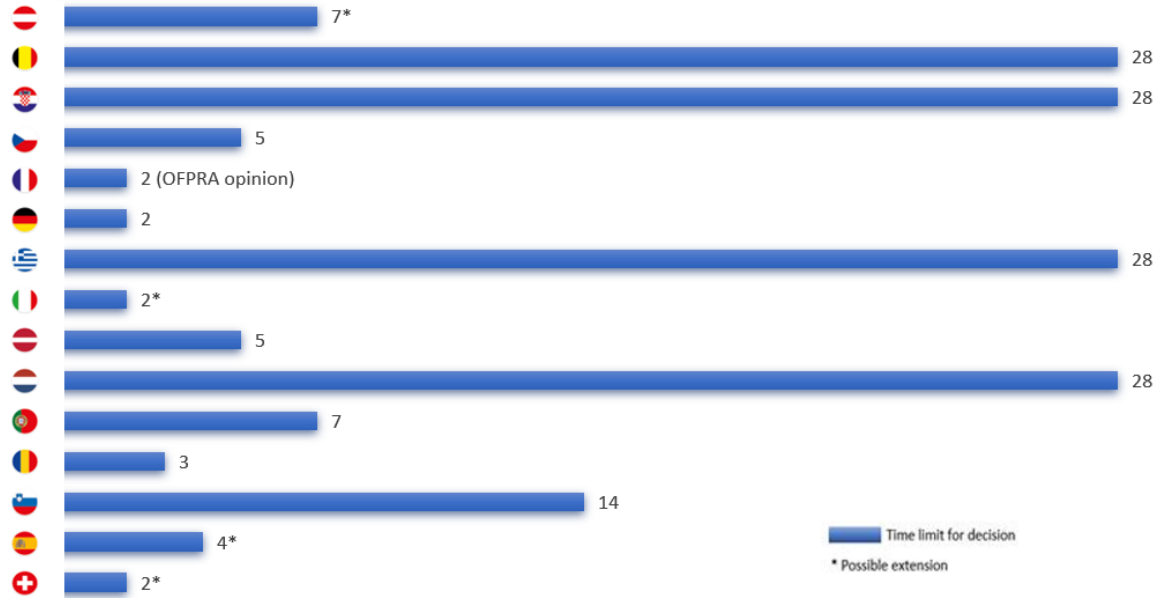


Source: EASO.



The determining authority will decide on the application within a time limit that varies across EU+ countries from 2 days (e.g. Germany and Switzerland) to a maximum of 28 days, which may include the appeal (e.g. Belgium and Greece). The time limit is usually calculated from the moment the application is lodged or received by the determining authority, and not from when the application for international protection is made before the border police.

Figure 5. Time limits for a decision in border procedures, by EU+ country (in days)



Source: EASO.

2.6 Entry to the territory



If a border procedure cannot be completed within the prescribed time limit, and within a maximum of four weeks, access to the territory is to be granted and the applicant’s case is to be further processed.

2.7 Impact on the Dublin procedure



An assessment under the Dublin procedure may also take place when an application is lodged under the border procedure. If the Dublin III Regulation is applicable, a consultation procedure will take place with the presumed responsible Member State, and the applicant is notified.

2.8 Possible outcomes

Border procedures may be limited to the examination of admissibility or a full examination of the merits of an application for international protection may be undertaken.

The case may be dismissed as inadmissible pursuant to the recast APD, Article 33(2), and the decision may be appealed by the applicant according to national legal provisions. The case then follows the rules for appeals.

If upon examination the case is considered admissible, the applicant may be admitted to the territory if, according to national law, no examination of the substance is to take place within the border procedure and the case is then processed on the merits according to the applicable procedure, whether regular or accelerated.

If the examination under the border procedure includes an examination of the merits, the possible outcomes are the following:

- The application may be rejected as unfounded (recast APD, Article 32(1)) if the applicant does not qualify for international protection pursuant to Directive 2011/95/EU (Qualification Directive);
- The application may be rejected as manifestly unfounded for the reasons provided in the recast APD, Article 32(2) (e.g. the applicant comes from a safe country of origin); or
- The applicant may be granted refugee status, subsidiary protection or possibly a form of national protection, such as humanitarian protection, if provided under national law and determined within the same procedure.

2.9 Appeals



Time limits to lodge an appeal against a decision adopted under a border procedure may vary from two days (e.g. France and Spain) to one month (e.g. Italy). An appeal against a decision adopted under a border procedure may have an automatic suspensive effect, meaning that the applicant cannot be returned to the country of origin until a final decision is taken on the application. If the national law does not provide for an automatic suspensive effect upon lodging an appeal (e.g. the Netherlands), the applicant must request separately the application of a provisional measure precluding his/her removal (temporary legal protection). The applicant must be allowed to remain on the territory pending the decision of the court or tribunal in this regard.

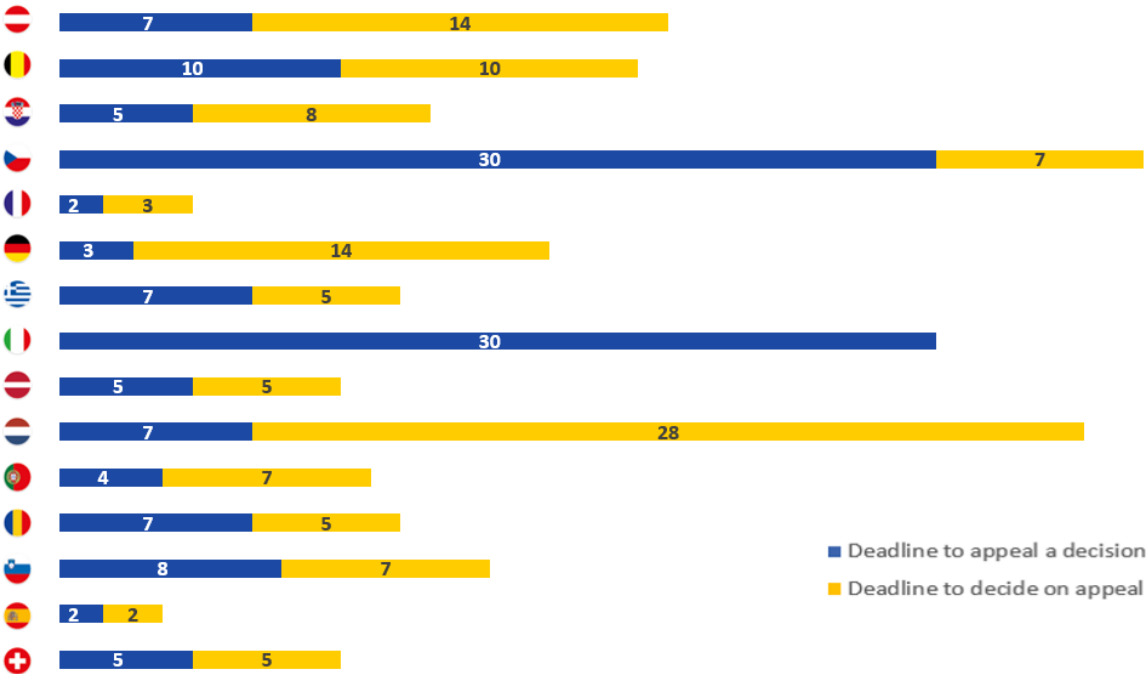
Time limits may also apply to requesting such a provisional measure. In accordance with the recast APD, Article 46(6), in specific cases, there is also the possibility of an *ex officio* review of whether the applicant may be allowed to remain on the territory. Depending on the national law, a competent court or tribunal may decide on an appeal either based on written evidence submitted by the parties or by holding an oral hearing in accordance with the recast APD, Article 46(3) that provides for the right to an effective remedy.

Time limits for pronouncing a decision on appeal varies across EU+ countries, some countries providing for very short time limits (e.g. two days in Spain; five days in Romania).

Table 2. Competent authority for appeals in border procedures, by EU+ country

	AT	The Federal Administrative Court (<i>Bundesverwaltungsgericht - BVwG</i>)
	BE	The Council for Alien Law Litigation (CALL)
	HR	Administrative courts
	CZ	Regional administrative courts
	FR	Administrative courts
	DE	Administrative courts
	EL	Independent Appeals Committees
	IT	Civil courts
	LV	District administrative courts
	NL	Regional courts (<i>Court of The Hague and its branches - Rechtbank</i>)
	PT	Administrative courts
	RO	District/administrative courts
	SI	The Administrative Court of Slovenia
	ES	Central Administrative Court (<i>Juzgado Central de lo contencioso-administrativo</i>)
	CH	The Federal Administrative Court

Figure 6. Time limits for appeals in border procedures, by EU+ country (in days)



Source: EASO.

3. Considerations related to balancing efficiency and timeliness with individual safeguards



Border procedures are recognised by Member States as an important tool to process efficiently and rapidly in particular applications that are clearly fraudulent, inadmissible or manifestly unfounded. At the same time, a high influx of applicants may render the application of border procedures more complicated for relevant authorities, especially in regard to ensuring procedural rights and protection of vulnerable persons in the specific time and location-bound setup of the border procedure.

There are certain safeguards that EU+ countries must provide to applicants for international protection within the border procedure. These include informing applicants of their rights and obligations in a language that they understand and informing them of the possibility to request the assistance of an interpreter, a doctor, a lawyer, a counsel or any other person of their choice. Applicants must not only be informed of these rights, but they must also be provided with effective access to an interpreter, a lawyer or a counsel.

In addition, vulnerable persons, such as minors or victims of psychological, physical or sexual violence, must have their specific needs assessed and considered through a mechanism set up by the state in order to decide whether the border procedure is compatible with their situation or whether they should be exempted from the border procedure and processed according to the applicable procedures.

Moreover, applicants must be provided with an effective remedy before a court or tribunal against a decision made through a border procedure. The competent court or tribunal examining the request for appeal must do so 'in terms of fact and law'. According to the recast APD, Article 46(7), for appeals against decisions made in border procedures applicants must enjoy the "necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy".

The feasibility of a border procedure may be strongly impacted by the availability and quality of necessary facilities at the border and in transit zones, as well as by a possible mass influx of applicants which might affect reception capacity or the provision of adequate safeguards throughout the procedure (e.g. interpretation services, age determination or identification of victims of human trafficking). While there is no comprehensive data on the availability of technological capabilities and facilities at borders, it can be noted that any limitations in facilities and technology are bound to make it more challenging to conduct a fully-fledged and efficient border procedure.

Several additional considerations on the above points have been raised by civil society organisations during discussions on the 2016 European Commission proposal of the [Asylum Procedures Regulation \(APR\)](#)¹⁰ and by the United Nations High Commissioner for Refugees (UNHCR) and the European Union Agency for Fundamental Rights (FRA) regarding elements necessary to secure the fairness of the examination provided within border procedures. This section briefly recalls some of those points for the sake of completeness.

¹⁰ [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU](#), COM(2016) 467 final, Brussels, 13 July 2016.

The need to safeguard against possible negative impacts of short deadlines in the border procedure was noted by the European Council on Refugees and Exiles (ECRE). ECRE observed that short time limits may lead to insufficient time for applicants to prepare for the interview and to gather evidence in support of their applications, may limit the applicant's access to information, interpretation services, legal assistance and adequate vulnerability assessments, and may impact the quality of decisions issued.¹¹

In addition, ECRE highlighted that due to short time limits applicants may face difficulties in appealing negative decisions and may face refoulement in the event that the risk of ill treatment upon return is not thoroughly assessed within short deadlines.¹²

A mass influx of applicants may also affect the provision of procedural safeguards in border procedures. According to FRA, in 2019, Greece registered delays in conducting first interviews and providing adequate legal assistance in 'hotspots'.¹³ According to FRA, in 'hotspots' in both Greece and Italy, there have been genuine efforts made by authorities to improve the provision of information on the right to apply for international protection.¹⁴ ECRE noted that in practice guarantees and safeguards may not be adequately implemented in border procedures.¹⁵ In addition, UNHCR highlighted that the very character of border procedures makes it more difficult to practically provide full procedural safeguards.¹⁶ It further noted that due process requirements in asylum applications submitted at the border should be the same as for those submitted in the territory.¹⁷

According to ECRE, the fact that the recast APD does not explicitly exempt vulnerable categories from the application of the border procedure leads to divergent practices among Member States. Some states might allow, for instance, the use of the border procedure for unaccompanied minors (e.g. France, Spain and Germany), while others might not (Belgium, Croatia and the Netherlands).¹⁸ The Asylum Information Database (AIDA) Portugal also pointed that concerns remain for categories of vulnerable applicants who are exempted from border procedures but are actually confined and subject to the border procedure. This aspect was raised regarding applicants at the border in Portugal (pregnant women and families with children).¹⁹ Due to these differences between Member States, ECRE recommends that vulnerable categories be explicitly exempted from the application of the border procedure and to rather invest in the regular procedure to improve its fairness and efficiency.²⁰

¹¹ ECRE (European Council on Refugees and Exiles), [Border procedures: not a panacea, ECRE's assessment of proposals for increasing or mandatory use of border procedures, Policy Note 21](#), July 2019, p. 3.

¹² ECRE (European Council on Refugees and Exiles), [Border procedures: not a panacea, ECRE's assessment of proposals for increasing or mandatory use of border procedures, Policy Note 21](#), July 2019; ECRE, [Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\)](#), December 2014, pp. 48-49.

¹³ FRA, [Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy](#), FRA Opinion – 3/2019 [Hotspots Update], Vienna, February 2019.

¹⁴ FRA, [Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy](#), FRA Opinion – 3/2019 [Hotspots Update], Vienna, February 2019, p. 9.

¹⁵ ECRE (European Council on Refugees and Exiles), [Border procedures: not a panacea, ECRE's assessment of proposals for increasing or mandatory use of border procedures, Policy Note 21](#), July 2019, p. 3.

¹⁶ UNHCR, [UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation](#), April 2019, COM (2016) 467, p. 36.

¹⁷ UNHCR, [UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation](#), April 2019, COM (2016) 467, p. 36.

¹⁸ ECRE (European Council on Refugees and Exiles), [Border procedures: not a panacea, ECRE's assessment of proposals for increasing or mandatory use of border procedures, Policy Note 21](#), July 2019, p. 3.

¹⁹ AIDA Portugal. (2019). Country Report: Portugal—2019 Update. Edited by ECRE. Written by Portuguese Refugee Council (CPR). https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2018update.pdf, p. 43.

²⁰ ECRE (European Council on Refugees and Exiles), [Border procedures: not a panacea, ECRE's assessment of proposals for increasing or mandatory use of border procedures, Policy Note 21](#), July 2019, p. 3.

UNHCR also highlighted that detention of asylum applicants in order to decide on the right to enter the territory in the context of the border procedure poses the risk of widespread detention and appears to be contrary to the position that persons cannot be detained for the sole reason that they are seeking international protection.²¹ Detention should remain an exceptional measure applied only for a legitimate purpose and reviewed regularly. In addition, according to UNHCR, border procedures should not be applied to children as detention is not in a child's best interests.²²

4. Latest developments regarding border procedures in EU+ countries



According to publicly-available information, developments in the last two years occurred mainly in Greece, Italy and Switzerland.

In 2019 and 2020, Greece adopted laws (Law [4636/2019](#) on International Protection and other provisions amended by Law [4686/2020](#)), including provisions on the exceptional border procedure implemented since 2016 on the islands of Lesbos, Chios, Samos, Leros and Kos (the exceptional border procedure was based previously on Law 4375/2016, Article 60(4)).²³

In 2018, Italy introduced simplified and accelerated procedures which can now be applied at the border and in transit zones (see the [Immigration and Security Decree](#)).²⁴ In 2019, Italy identified border or transit areas in several provinces along the Slovene border and along the Ionian Sea coast, in Apulia, Sicily and Sardinia (Trieste, Gorizia, Crotone, Cosenza, Matera, Taranto, Lecce, Brindisi, Caltanissetta, Ragusa, Siracusa, Catania, Messina, Trapani, Agrigento, Metropolitan City of Cagliari and South Sardinia).²⁵

Switzerland introduced a new asylum procedure as of 1 March 2019, whereby persons applying for asylum at the airport are confined to the transit area systematically. They are provided access to free legal representation and authorised organisations can provide support to applicants.²⁶

Lastly, Poland may introduce a border procedure as proposed in the 2019 revised draft amendment to the Law on Protection. However, the draft amendment has not yet been finalised.²⁷

5. Selection of relevant case law

For interpretations of specific aspects related to safeguards which are applicable under the border procedure, especially concerning material reception conditions and detention at the border, please see the following selection of cases:²⁸

- **For airport transit areas:** Council of Europe, CoE: European Court of Human Rights [ECHR], *Z.A. (Iraq) and Others (Somalia, Palestine and Syria) vs Russia*, Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16, ECLI:CE:ECHR:2019:1121JUD006141115, 21 November 2019. Read more on [EASO Case Law Database](#).

²¹ UNHCR, [UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\)](#), April 2015, p. 6.

²² UNHCR, [UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation](#), April 2019, COM (2016) 467, p. 36.

²³ [EASO Annual Report on the Situation of Asylum in the EU 2018](#), June 2019, p. 18, 132-133.

²⁴ [EASO Annual Report on the Situation of Asylum in the EU 2018](#), June 2019, p. 18.

²⁵ [EASO Asylum Report 2020, Annual Report on the Situation of Asylum in the European Union](#), p. 131.

²⁶ [EASO Asylum Report 2020, Annual Report on the Situation of Asylum in the European Union](#), p. 131.

²⁷ [EASO Asylum Report 2020, Annual Report on the Situation of Asylum in the European Union](#), p. 131.

²⁸ For a selection of cases pronounced by the ECtHR see ECtHR, [Guide on the case-law of the European Convention on Human Rights – Immigration](#), updated on 30 April 2020.

- **For land border transit:** European Union, EU: Court of Justice of the European Union [CJEU], *FMS and Others vs Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, C-924/19 and C-925/19, ECLI:EU:C:2020:367, 14 May 2020. Read more on [EASO Case Law Database](#).

CJEU, [Opinion of Advocate General PIKAMÄE in European Commission vs Hungary](#), Case C-808/18, 25 June 2020.

Council of Europe, CoE: European Court of Human Rights [ECHR], *Ilias and Ahmed (Bangladesh) vs Hungary*, 21/11/2019, ECLI:CE:ECHR:2019:1121JUD004728715. Read more on [EASO Case Law Database](#).

- **On accessing asylum procedures at the border:** Council of Europe, CoE: European Court of Human Rights [ECHR], *M.K. and Others vs Poland*, Application Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020. Read more on [EASO Case Law Database](#).
- **On accessing border procedures (if available):** Council of Europe, CoE: European Court of Human Rights [ECHR], *N.D. and N.T. vs Spain*, 13/02/2020, ECLI:CE:ECHR:2020:0213JUD000867515. Read more on [EASO Case Law Database](#).

Council of Europe, CoE: European Court of Human Rights [ECHR], *Asady and Others vs Slovakia*, 24/03/2020, ECLI:CE:ECHR:2020:0324JUD002491715. Read more on [EASO Case Law Database](#).

Council of Europe, CoE: European Court of Human Rights [ECHR], *M.A. and Others (Russia) vs Lithuania*, 11/12/2018, ECLI:CE:ECHR:2018:1211JUD005979317. Read more on [EASO Case Law Database](#).

- **On providing access to a remedy with automatic suspensive effect:** Council of Europe, CoE: European Court of Human Rights [ECHR], *Gebremedhin (Eritrea) vs France*, 25389/05, 26 April 2007. Read more on [EASO Case Law Database](#).
- **National case law:** France, FR: Council of State [Conseil d'État], Applicant (Central African Republic), N° 440756, ECLI:FR:CECHS:2020:440756.20200708, 08 July 2020. Read more on [EASO Case Law Database](#).

Spain, ES: Supreme Court [Tribunal Supremo], *Graciela vs The State (Administración del Estado) [Decision of 05.04.2018 no. SAN 1677/2018]*, 27/05/2019, ECLI: ES:TS:2019:1682. Read more on [EASO Case Law Database](#).

6. Conclusions

Various types of border procedures have been in use in EU+ countries for a long time, often preceding the EU-level harmonised arrangements laid out in the respective directives (dating from 2005 and 2013). That testifies to the importance of the border procedure as an instrument in managing applications for international protection overall and specifically in improving the efficiency of the procedure (timewise and resource-wise) with regard to applicants who are already physically present at the border or in the transit zone where they are applying for international protection.

Border Procedures for Asylum Applications in EU+ Countries

At the same time, roughly one-half of analysed countries opted to include this solution in their national systems, while roughly one-half of countries have not.

Furthermore, for countries which do have a border procedure, its use is marked by specific national contexts and procedural solutions in each EU+ country. Therefore, comparison of experiences with border procedures by specific countries needs to be done with caution due to the diverse practices. The main clusters would be countries using a border procedure only in the airports, countries using it as an admissibility procedure and countries using it for full determination of the case.

Under the current EU framework of the recast APD, the use of border procedures is envisaged primarily in cases that, broadly speaking, appear to have less merit. The fact that cases channelled into the border procedure in most countries belong to categories less prone to receive protection may thus explain the relatively lower recognition rate in border procedures compared to regular procedures.

Annex. Border procedures in EU+ countries

Austria



Competent authority: The Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl* - BFA).

Legal grounds: [AsylG 2005](#) (Austrian Asylum Act), §§ 31-33. Austria applies an airport procedure for arrivals requesting international protection at the airport.²⁹



Decision: The person applying for international protection after arriving at an airport is transferred to an initial reception centre (EAST). The applicant may decide to leave Austria at any time during the airport procedure.³⁰ An initial reception centre operates at the Vienna International Airport Schwechat (EAST Flughafen). For other Austrian airports, the BFA must first allow entry and then present the applicant to an Initial Reception Centre on the Austrian territory.

The applicant undergoes a screening interview that follows the general rules of the regular asylum procedure. Interpretation is provided during the interview³¹ and free legal assistance is provided during the airport procedure.

On the basis of the interview, the BFA decides if the case is to be processed under the airport procedure or the regular procedure. If the case is processed in the airport procedure and the BFA intends to reject the application, the intended decision of first instance must be communicated to the UNHCR within one week. If this time limit is not met, the applicant is allowed entry into Austria and the application is analysed under the regular asylum procedure.

The application may only be rejected in the airport procedure on the following grounds:

1. There is no substantial evidence that the person should be granted international protection and:
 - The applicant tried to mislead the BFA regarding identity, nationality or authenticity of documents despite being informed about the consequences of such an act (AsylG 2005, §33(1) Z 1, implements the recast APD, Article 31 (8) c);
 - The applicant made clearly false representations regarding the reasons for persecution (AsylG 2005, §33(1) Z 2, implements the recast APD, Article 31 (8c);

²⁹ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §§ 31-33.

³⁰ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §§ 31-32.

³¹ AIDA Austria. (2020). Country Report: Austria—2019 Update. Edited by ECRE. Written by asylkoordination österreich. https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2019update.pdf, p. 53.

- The applicant has not raised any reasons for persecution in the country of origin; or
- The applicant comes from a safe country of origin (AsylG 2005, §33(1) Z 4, implements the recast APD, Article 31 (8b).

2. The application is inadmissible as the applicant can find protection in a safe third country.³²

Rejection on these grounds needs to be confirmed by UNHCR.³³



Appeal: The applicant can lodge an appeal within one week of the BFA decision.³⁴ Free legal assistance is provided³⁵ and the Federal Administrative Court (BVwG) decides within two weeks of the lodging of the appeal in the airport procedure.³⁶ The appeal has a suspensive effect and the decision to reject the application for asylum in the airport procedure may only be enforced after the decision has become final.³⁷



Detention: To implement negative decisions and secure return, rejected applicants are placed in *de facto* detention at the airport in the initial reception centre. The maximum duration for this measure is six weeks.³⁸



Challenges: According to the Federal Office for Immigration and Asylum, special measures relating to COVID-19 are currently the greatest challenge. In particular, this concerns the uncertainties in air traffic and the associated planning difficulties. In addition, contrary to previous years, applications from unaccompanied minors no longer occur. Finally, the airport procedure requires a high degree of flexibility from employees due to the short timeframe and working with many stakeholders (legal advice, basic services, border police, UNHCR and interpreters).

³² Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §33(1).

³³ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §33(2).

³⁴ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §33(3).

³⁵ AIDA Austria. (2020). Country Report: Austria—2019 Update. Edited by ECRE. Written by asylkoordination österreich. https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2019update.pdf, p. 54.

³⁶ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §33(4).

³⁷ Austria, Asylum Act ([Asylgesetz](#), 2005), as last amended by Federal Law Gazette I No. 56/2018, §33(5).

³⁸ AIDA Austria. (2020). Country Report: Austria—2019 Update. Edited by ECRE. Written by asylkoordination österreich. https://www.asylumineurope.org/sites/default/files/report-download/aida_at_2019update.pdf, p. 52.

Belgium



Competent authority: Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Border Police Section of the Federal Police and the Border Control Section of the Immigration Office.

Legal grounds: The Belgian Immigration Act, Articles 50 and 57/6/4 ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging an de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 december 2017).



Procedure: The border procedure is applied to persons without required travel documents who are refused entry into Belgium and for whom a decision of refoulement (removal) is taken. They may lodge an asylum application with the border police, in which case the removal decision is suspended and they are placed in detention until the CGRS takes a decision on the asylum application. Detention at the border is limited to four weeks, thus a decision must be issued within this time limit. Otherwise, the applicant shall have access to the territory until the decision is issued.³⁹



Personal interview: After lodging an application through the Immigration Office, the applicant is interviewed by a protection officer of the CGRS. For a subsequent application, there is only one day between the invitation and the personal interview.⁴⁰ The applicant is provided with interpretation⁴¹ and access to free legal assistance in a first instance application and on appeal.⁴²



Decision: The CGRS treats these cases with priority.⁴³ It examines the admissibility of the application and whether it can be treated under the accelerated procedure. If the application is admissible and it cannot be treated under the accelerated procedure, the CGRS examines the merits of the case and the applicant is allowed to enter the territory.⁴⁴ Otherwise, the applicant remains in border detention until the first instance decision of the CGRS. If the CGRS does not issue a decision within

³⁹ Belgium, Immigration Act, Article 57/6/4, ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging an de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

⁴⁰ CGRS, [Border procedure](#), accessed on 23 June 2020.

⁴¹ Belgium, Immigration Act, Article 51/4, ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging an de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

⁴² AIDA Belgium. (2020). Country Report: Belgium—2019 Update. Edited by ECRE. Written by Vluchtelingenwerk Vlaanderen. https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2019update.pdf, p. 53.

⁴³ Belgium, Immigration Act, Article 57/6(2)(1), ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging an de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

⁴⁴ Belgium, Immigration Act, Article 57/6/4, ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging an de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

28 days, the applicant is admitted to the territory and the application is examined according to the relevant procedure.⁴⁵ If the application is rejected, suspension of the removal decision is no longer effective and the person can be removed from Belgium.



Appeal: The applicant can lodge an appeal within 10 days (or within 5 days for inadmissible subsequent applications made from detention). This deadline is shorter than the 30 days for appeal in the regular procedure. The appeal has an automatic suspensive effect.⁴⁶ The Council for Alien Law Litigation (CALL) decides on appeals in the airport procedure.



Reception: Applicants are held in a detention centre near Brussels Airport (“Caricole”) or in a closed centre located within the national territory (although in the latter case legally they are considered not to have entered the Belgian territory).⁴⁷ Families with children are accommodated in open housing units adapted to their needs.



Data: According to AIDA data, in Belgium there were 868 asylum applications made at the border in 2019.⁴⁸

Bulgaria



The border procedure is not applied in Bulgaria.

Croatia



Competent authority: Ministry of the Interior, Directorate for Immigration, Citizenship and Administrative Affairs.

Legal grounds: [Act on International and Temporary Protection](#), Article 42 (Procedures at border crossings or in transit zones).

⁴⁵ Belgium, Immigration Act, Articles 57/6/4 and 74/5(4)(5), ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers](#) / [Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

⁴⁶ Belgium, Immigration Act, Article 39/70, ([Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers](#) / [Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen](#)), last amended by the Law of 17 December 2017 (Loi du 17 décembre 2017 / Wet van 17 December 2017).

⁴⁷ AIDA Belgium. (2020). Country Report: Belgium—2019 Update. Edited by ECRE. Written by Vluchtelingenwerk Vlaanderen. https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2019update.pdf, p. 52.

⁴⁸ AIDA Belgium. (2020). Country Report: Belgium—2019 Update. Edited by ECRE. Written by Vluchtelingenwerk Vlaanderen. https://www.asylumineurope.org/sites/default/files/report-download/aida_be_2019update.pdf, p. 53.



Procedure: Applications for international protection made at a border crossing or in the transit zone of an airport, seaport or inland water port are examined at the border crossing or in the transit zone, where the entire procedure is conducted.⁴⁹ On the basis of an agreement with the Ministry, organisations working in the field of asylum may provide legal counselling to applicants at border crossings or in transit zones in airports, seaports or inland water ports.⁵⁰



Decision: According to the law, a decision is rendered by the Ministry within 28 days from the day the application is lodged. If within this time limit no decision is rendered, the applicant is permitted to enter the Republic of Croatia so that the procedure for international protection can be conducted.⁵¹



Appeal: According to the [Act on International and Temporary Protection](#), Article 42(6), the decision of the Ministry cannot be appealed but a claim can be lodged before the Administrative Court within 5 days from the notification of the decision. The Ministry will provide the file within 8 days, and the court pronounces a judgment within 8 days from when it receives the file from the Ministry.



Reception: Reception conditions include accommodation in a reception centre, food and clothing provided in kind, remuneration of the cost of public transport for the purpose of the asylum procedure and financial assistance.⁵²

Cyprus



The border procedure is not applied in Cyprus.

Czechia



Competent authority: Ministry of the Interior.

Legal grounds: [Act of 11 November 1999 on Asylum](#), Section 73 (unified text - Official Journal no. 325/1999, as amended).

The procedure applies to individuals applying for international protection in the transit area of an international airport,⁵³ mainly at the Prague International Airport.

⁴⁹ Croatia, [Act on International and Temporary Protection](#), Article 42.

⁵⁰ Croatia, [Act on International and Temporary Protection](#), Article 42(2).

⁵¹ Croatia, [Act on International and Temporary Protection](#), Articles 42(4) and (5).

⁵² Croatia, [Act on International and Temporary Protection](#), Article 55.

⁵³ Czechia, [Act of 11 November 1999 on Asylum](#), Section 73 (unified text - Official Journal no. 325/1999, as amended).



Procedure: Applicants are accommodated in a reception centre at the international airport, unless there are grounds for detention. The applicant is informed of the fact that making an application for international protection does not entitle him/her to enter the territory and that he/she is required to remain in the reception centre at the international airport.⁵⁴ The applicant is provided with an interview “to establish the state of affairs beyond reasonable doubt” and a transcript of the interview is made available to the applicant.⁵⁵



Decision: Within 5 days from the lodging of an application, the Ministry of the Interior issues a decision allowing or refusing entry into the territory. Entry is denied if: “a) identity can be established or verified during detention; b) forged or altered identity documents have been presented and identity is otherwise unknown; or c) there is good reason to suspect the applicant poses a threat to state security, public health or public order.”⁵⁶ Access to the territory may also be denied if there is a risk of impeding the asylum proceedings, failing to provide necessary cooperation, risk of absconding or obstructing a possible Dublin transfer.

If the applicant is refused entry into the territory of Czechia, the applicant is obliged to stay in the reception facility at the international airport, where the asylum procedure will be conducted. In this case, the Ministry must issue the decision on the asylum application within 4 weeks after the application is lodged.⁵⁷



Appeal: The applicant may appeal the decision of the Ministry within 30 days from receipt of the decision. The appeal may be lodged before a regional administrative court, and the court must take a decision on the appeal within 7 working days from receiving the case file.⁵⁸

Denmark



Denmark is not bound by the recast APD. Furthermore, the border procedure is not applied in Denmark. Third country nationals who express their intention to apply for asylum at Danish borders continue the asylum procedure while accommodated at an asylum accommodation centre and their case is processed by the Danish Immigration Service and the Danish Refugee Appeals Board.⁵⁹

⁵⁴ Czechia, [Act of 11 November 1999 on Asylum](#), Sections 73(1) and (2) (unified text - Official Journal no. 325/1999, as amended).

⁵⁵ Czechia, [Act of 11 November 1999 on Asylum](#), Section 23 (unified text - Official Journal no. 325/1999, as amended).

⁵⁶ Czechia, [Act of 11 November 1999 on Asylum](#), Section 73(3) (unified text - Official Journal no. 325/1999, as amended).

⁵⁷ Czechia, [Act of 11 November 1999 on Asylum](#), Section 73(10) (unified text - Official Journal no. 325/1999, as amended).

⁵⁸ Czechia, [Act of 11 November 1999 on Asylum](#), Section 73(6) (unified text - Official Journal no. 325/1999, as amended).

⁵⁹ Denmark, [Aliens \(Consolidation\) Act](#) No. 239 of 10 March 2019 (Aliens (Consolidation) Act of October 2019 only in Danish); <https://www.rodekors.dk/vores-arbejde/roede-kors-asyl/what-we-do-in-the-asylum-department>, <https://nyidanmark.dk/en-GB/You-want-to-apply/Asyl/Voksen-asylansøger>; <https://nyidanmark.dk/en-GB/You-are-waiting-for-an-answer/Asylum/Processing-of-an-asylum-case>, accessed on 21 July 2020.

Estonia



The border procedure is not applied in Estonia.

Finland



The border procedure is not applied in Finland.

France



Competent authority: Ministry of the Interior with opinion from the French Office for the Protection of Refugees and Stateless Persons (OFPRA).

Legal grounds: [CESEDA](#), Article L213-8-1 and R213-2 (*Code de l'entrée et du séjour des étrangers et du droit d'asile*).

The border procedure is applicable to persons arriving at airports, harbours or other arrival areas without fulfilling the necessary entry conditions.



Personal interview: OFPRA interviews applicants in their language of origin with free interpretation provided. The applicant is informed about the right to be assisted by a lawyer or representative during the personal interview. In addition, the applicant has the right to be provided with a copy of the interview transcript.⁶⁰



Decision: After interviewing the applicant, OFPRA provides an opinion to the Minister of the Interior on whether the application is inadmissible or manifestly unfounded. If the OFPRA decision is positive, it binds the Minister of the Interior. The motivated opinion should be provided within 2 days from the moment the intention of the applicant has been registered in writing by the Border Police.⁶¹

The decision of the Ministry of the Interior is limited to authorising entry into the French territory and it does not concern the merits of the application for international protection. There is no legal deadline for the decision of the Ministry of the Interior. However, the maximum duration in the waiting zone is limited to 4 days. This period can be extended, under the review of a judge, twice for 8 days, so for 20 days in total. If the decision authorises the applicant to enter the territory,

⁶⁰ France, [CESEDA](#), Article R213-4.

⁶¹ France, [CESEDA](#), Article R213-5.

the border police will issue an 8-day visa to the applicant during which time the applicant can register an application for asylum and OFPRA will process the application according to the applicable procedure and examine its merits. If the decision does not authorise the applicant to enter the territory, the applicant can appeal. If the appeal decision is negative, then the applicant is returned to the country of origin, except if for another ground the applicant is authorised to enter France.



Appeal: If the decision denies entry into the territory, the applicant can lodge an appeal within 48 hours from the notification of the decision. The competent administrative tribunal will consider the appeal and decide within 72 hours. This appeal has a suspensive effect.⁶² The applicant may be provided with free interpretation and legal assistance.



Reception: Applicants are accommodated in a waiting zone (*zone d'attente*) near arrival points, train stations, harbours or airports. The vulnerability of unaccompanied minors is taken into account; they benefit from specially-adapted reception conditions in the waiting zone, and the Public Prosecutor appoints a representative.

Germany



Competent authority: Federal Office for Migration and Refugees (BAMF).

Legal grounds: [Asylum Act](#), Section 18a (procedure in case of entry by air).



Procedure: This procedure applies only for entries by air (“airport procedure”), because in Germany there is no special procedure for entry by land. The airport procedure applies prior to granting entry when a third country national wishes to apply for asylum with the border authority and the person is unable to provide proof of identity with a valid travel document or the person comes from a safe country of origin.⁶³ Most of these procedures take place at the Frankfurt airport but they are also applied at the airports of Berlin Schönefeld, Hamburg and Munich.⁶⁴



Personal interview: BAMF carries out the interview following the standards of the regular procedure. Videoconference may also be used and generally no interviews take place via phone. Applicants have access to interpretation.⁶⁵



Decision: Applicants remain in the transit area for the period of the airport procedure. BAMF carries out the personal interview and decides within 2 days whether the applicant can enter the country, or the application is to be rejected as manifestly unfounded and access to legal remedies is to be granted. In practice, if the application

⁶² France, [CESEDA](#), Article L213-9.

⁶³ Germany, [Asylum Act](#), Section 18a(1).

⁶⁴ BAMF 2020.

⁶⁵ Germany, [Asylum Act](#), Section 17 and Section 18a(1).

is not rejected as manifestly unfounded, the BAMF usually grants entry to the territory so that the case can follow the regular procedure.⁶⁶



Appeal: In the case of rejection, applicants can lodge an appeal within 3 days with the competent administrative court and request a provisional measure.⁶⁷ The administrative court decides upon the request for an interim measure in a written procedure, without hearing the applicant, and for the duration of this procedure the denial of entry and the deportation are suspended. When the administrative court grants the provisional measure or when it does not rule within 14 days, the applicant can enter the territory of Germany.⁶⁸

The maximum duration of the airport procedure (including the decision on a request for preliminary legal protection) is 19 days.



Reception: Applicants are accommodated in the transit area of the airport.⁶⁹



Data:

Airport procedure according to the Asylum Act, Section 18a⁷⁰

Year	Applications	Entry granted (Section 18a(6))	Decisions within 2 days after application			
			Total	Successful or rejected as unfounded	Rejected as manifestly unfounded	Discontinued
2018	601	347	246	-	246	0
2019	489	240	231	-	231	0
2020 ⁷¹	88	39	50	-	50	0

Greece



Competent authority: Regional Asylum Office.

Legal grounds: [Law No. 4636/2019](#), Article 90 as amended by [Law No. 4686/2020](#), Article 19 and Ministerial Decision No. 1333 (Gov. Gazette B 4892/31-12-19).



Procedure: Greece applies two types of border procedures to applications for international protection submitted in transit zones of ports or airports in the country: a 'border procedure' (applied for applications made at the airport, usually the Athens International Airport) and an 'exceptional border procedure' (applied in the five Eastern Aegean islands with 'hotspots').⁷² Border procedures apply to

⁶⁶ Germany, [Asylum Act](#), Section 18a.

⁶⁷ Germany, [Asylum Act](#), Section 18a(4).

⁶⁸ Germany, [Asylum Act](#), Section 18a(6).

⁶⁹ Germany, [Asylum Act](#), Section 18a(1).

⁷⁰ Data provided by BAMF, 2020. The values can be subject to changes due to subsequent corrections.

⁷¹ First half of 2020.

⁷² AIDA Greece. (2020). Country Report: Greece—2019 Update. Edited by ECRE. Written by Greek Refugee Council. https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2019update.pdf, pp. 86 and 139.

applications for international protection submitted in transit zones of ports or airports in the country.⁷³



Decision: All third country nationals and stateless persons who enter the country illegally are subject to the procedures of reception and identification. These persons are immediately transferred to the Reception and Identification Centres, under the responsibility of the police or border/port authorities. The transfer may be carried out with the care of the Reception and Identification Service, to assist the competent police or border/port authorities/armed forces to identify and swiftly transfer vulnerable persons.⁷⁴ A decision is taken within 28 days.



Personal interview: In principle, legislation provides for the interview to be conducted in person. Interviews may also be held through recorded videoconference.⁷⁵



Appeals: Appeals are examined by the Independent Appeals Committees (quasi-judicial body) established under the Appeals Authority on first appeal instance. The appeal is submitted at the Regional Asylum Office (RAO) or at the Autonomous Asylum Unit (AAU) which has issued the contested decision, unless the applicant resides in a different place. In this case the applicant files the appeal at the nearest RAO/AAU, which communicates the submission of the appeal to the RAO/AAU that has issued the initial decision.⁷⁶ The same procedure applies to detainees, with appeals filed before the detention authority which then communicates the appeal to the RAO/AAU that has issued the initial decision.⁷⁷ An appeal may be filed within 10 days of the notification of the first instance decision or since the applicant has taken knowledge of the decision according to Law No. 4636/19, Articles 82(4) and 82(5).⁷⁸

In compliance with Law No. 4636/19, Article 46(9), as amended by Law No. 4686/20, Article 3, it should be noted that, for applicants under detention, filing an appeal is a reason for accelerating the appeal examination. For applicants in this category, the Appeals Authority Director is notified immediately, who defines by absolute priority the examination of the appeal (Article 95 (2c)), meaning within a maximum of 5 days.⁷⁹ Applicants are informed on the same day of filing the appeal about the date and time of a hearing. Memos can be submitted up to the previous day of the hearing.⁸⁰

A final decision must be issued and notified to the applicant within 10 days from the examination of the appeal⁸¹ when the applicant is in detention. By exception, the appeal decision is issued within 15 days when the appeal examination is under priority (Law No. 4636/19, Article 101) if applicable for border procedures.

⁷³ Greece, [Law 4636/2019](#), Article 90, para. 1.

⁷⁴ Greece, [Law 4636/2019](#), Article 39 as amended by [Law 4686/2020](#), Article 21.

⁷⁵ Greece, [Law 4636/2019](#), Article 77, para. 13.

⁷⁶ Greece, [Law 4636/2019](#), Article 94 as amended by [Law 4686/2020](#), Article 21.

⁷⁷ Greece, [Law 4636/2019](#), Article 94 as amended by [Law 4686/2020](#), Article 21.

⁷⁸ Greece, [Law 4636/2019](#), Article 92 para. 1 as amended by [Law 4686/2020](#), Article 19.

⁷⁹ Greece, [Law 4636/2019](#), Article 95 para. 2C as amended by [Law 4686/2020](#), Article 22.

⁸⁰ Greece, [Law 4636/2019](#), Article 99.

⁸¹ Greece, [Law 4636/2019](#), Article 101 as amended by [Law 4686/2020](#), Article 25.

The notification of the decisions is processed according to Law No. 4636/19, Article 82, as amended by Law No. 4686/20, Article 14.

For cases under the scope of Article 90(3), the time limits change as follows:

- Time limit of 10 days after the notification of first instance decision for filing an appeal;
- The hearing of the appeal is defined obligatorily within 4 days;
- Time limit of 1 day to notify the applicant in case of an oral examination and submission of memos after the hearing; and
- Final decision must be issued within 7 days from the hearing.⁸²

Appeals that have been submitted after the deadlines of Law No. 4636/19, Article 92(1), as amended by Law No. 4686/20, Article 20, are examined under priority by decision act of the Appeals Authority Director, within 10 days from the date of filing the appeal.⁸³

For cases that the appeal filing is related to first instance decisions examined by absolute priority or priority, the Director of Appeals issues an act of decision and appeal discussion is taking place immediately within 15 days.⁸⁴

In addition, applicants for international protection have the right to apply for the annulment of a decision of the Independent Appeals Committees to the locally competent Administrative Court (Law No. 4636/19, Article 110) for:

- 1) Applications for annulment on final decisions of border procedures should be discussed obligatorily within 10 days from the date of the annulment submission;
- 2) Applications for annulment on final decisions (appeals filed out of the defined deadlines of the appeals filing) procedures should be discussed obligatorily within 30 days from the date of the annulment submission.

The annulment decision for both categories should be issued within 1 month.



Exceptional border procedure in case of a mass influx of third country nationals (Law 4636/2019, Article 90 paragraph 3)

When there is a large number of third country nationals or stateless persons arriving and applying for international protection at the border or at airport/port transit zones, or while they remain in Reception and Identification Centres or in other points near the borders or the transit zone, upon a Ministerial decision the following apply:

⁸² Greece, [Law 4636/2019](#), Article 90 as amended by [Law 4686/2020](#), Article 19.

⁸³ Greece, [Law 4636/2019](#), Article 95 para. 8.

⁸⁴ Greece, [Law 4636/2019](#), Article 95 para. 8.

- Registration of applications, notification of decisions and other procedural documents including receiving appeals may be conducted by the Hellenic Police or, if not sufficient, by the Armed Forces;⁸⁵
- Interviews may be conducted by Greek-speaking⁸⁶ staff deployed by EASO or other authorities, for example, the Hellenic Police or, if not sufficient, the Armed Forces in particularly urgent circumstances, on the condition that they have received basic training on international law on human rights, the EU acquis on asylum and interview techniques.

This exceptional procedure applies to third country nationals in Reception and Identification Centres at the Eastern Aegean Sea islands: Lesbos, Chios, Samos, Leros and Kos⁸⁷ until 31 December 2020.⁸⁸ The decision is to be issued within 7 days, which can be appealed within 10 days. The appeal should be discussed within 4 days and the decision is to be issued within 7 days⁸⁹ (please also refer to appeals section above).

According to Law No. 4636/19, Article 75(7), applications for international protection of unaccompanied minors under the age of 15, as well as children under 18 who have been victims of trafficking, torture, rape or other forms of serious psychological, physical or sexual violence, are always examined under the regular procedure. However, asylum applications by unaccompanied minors can also be processed under the procedure of Law No. 4636/19, Article 90, only if the unaccompanied minor:

- Comes from a safe country of origin according to Law No. 4636/19, Article 87(5);⁹⁰
- Has submitted a subsequent application;
- Due to serious grounds, the applicant is considered a danger to the national security or the public order or has been forcibly expelled;
- There are substantial grounds to consider a country as a safe third country according to Law No. 4636/19, Article 86, based on an assessment of best interests; or
- The unaccompanied minor misled the authorities by submitting false documents or maliciously destroyed or lost identity document or travel documents that would help identify or establish nationality in order to avoid extradition, provided that the applicant or the representative had the opportunity to state the reasons for doing so.

⁸⁵ The qualifications of staff are defined in the Joint Ministerial Decision of Minister of Citizens Protection and Minister of National Defence No. 1333 ([Gov.Gaz. 4892 B'/31.12.2019](#)) on the implementation of provisions of Law 4636/2019, Articles 90(3) and 90(5).

⁸⁶ Ibid, Article 2, para. 2.

⁸⁷ Ibid, Article 1.

⁸⁸ Ibid, Article 4.

⁸⁹ Greece, [Law 4636/2019](#), Articles 90 as amended by [Law 4686/2020](#), Article 19.

⁹⁰ List adopted on 31 December 2019 - Joint Ministerial [Decision 1302 adopting National List of countries of origin classified as safe according to article 87 par. 5 of law 4636/2019](#), Gov. Gaz. 4907 B'/31.12.2019.



Reception and identification procedure at the border: According to Law 4636/2019, Article 39, reception and identification procedures are divided into five stages: (a) Information; (b) Induction; (c) Registration and Medical Examination; (d) Referral to a procedure for international protection; and (e) Further referral and relocation.



Information: Persons are informed by the information team of the Reception and Identification Centre or, in case of mass arrivals by the Hellenic Police, the Hellenic Coast Guard or the Armed Forces and the Asylum Service (all competent and determining authorities) in a language they presumably understand about: their rights and obligations; transfer to other accommodation, the reasons for the transfer and its consequences; the possibility to apply for international protection; their rights and obligations during the examination procedure; and the possibility of voluntary return.



Induction: At this stage, third countries nationals or stateless persons are subject to the Reception and Identification Procedures. They are also subject to a medical check to identify anyone suffering from an epidemic disease that poses a risk to public health. Their medical records are handled confidentiality.⁹¹ Persons are also subject to a restriction of their liberty within the centre, imposed by a decision issued within 5 days of entry.

If these procedures have not been completed by the expiration of the 5-day period, the Head of the Centre may decide to extend the restriction on liberty (justified in fact and in law) until the completion of the procedures for an additional period not exceeding a total of 25 days after entering the Centre. After the expiration of this period, if the examination of the application has not been completed, the restriction of liberty should be removed. Special care is taken for the persons who belong to vulnerable groups and unaccompanied minors. For serious health reasons, the Commander may grant a temporary exit permit.

The decision to extend the restriction of liberty can be challenged before the Administrative Court of First Instance, in whose district the Centre operates (the provisions of Law No. 3386/2005 (A '212), Articles 76(4) and 76(5) apply accordingly).



Registration and medical examination include: recording personal data and registration of fingerprints for applicants older than 14 years; verification of identity and citizenship; a medical examination and provision of necessary care and psychosocial support, especially for vulnerable groups (minors, direct relatives of those killed in shipwrecks, persons with disabilities, the elderly, pregnant women, single-parent families with minor children, victims of human trafficking, people with serious illnesses, people with mental and emotional disabilities and victims of torture, rape or other serious forms of psychological, physical or sexual violence,

⁹¹ Greece, [Law 4636/2019](#), Article 50 transposing Directive 2013/33/EU, Article 13.

such as victims of genital mutilation); coverage of particular reception needs; and a referral for an age assessment.



Referral to international protection procedure: Persons wishing to lodge an application for international protection are referred to the local Regional or Autonomous Asylum Unit in order to lodge their application.

Further referral and movement: Considering the principle of family unity and the best interests of the child, persons may be referred to reception and identification centres in the mainland or other appropriate structures in order to continue the reception and identification process.

Persons whose applications for international protection have been rejected in the first instance while they remain in the centre and have no right to reside in the country are referred to the competent services for re-admission, return or deportation.



Reception facilities at the Eastern Aegean Sea: A full overview of the types of facilities managed by different authorities is provided in the [National Situational Picture Regarding the Islands at Eastern Aegean Sea](#), which is updated daily by the [General Secretary for Information and Communication](#).



Challenges: According to the Greek Asylum Service, the key challenges faced by the authorities arise from the combination of high numbers of third country nationals reaching the Greek islands hotspots and the imposition of a geographical restriction on these third country nationals in light of the implementation of the EU-Turkey Statement (considering the current interpretation of the statement, processing can only take place on islands with a hotspot if returns to Turkey under the statement are to take place). According to the Greek Asylum Service, the combination of a high influx and geographical restrictions leads to a high number of third country nationals residing in hotspots, which in turn creates disproportionate pressure on the asylum process vis-à-vis the relevant RAOs.

Hungary



The border procedure is not applied in Hungary. After the CJEU judgment in Joint Cases [C-924/19 and C-925/19](#), which declared accommodation in the Hungarian transit zone at the border of Serbia as unlawful detention,⁹² the Hungarian Government adopted [Decree 233/2020](#), then the Parliament released Act LVIII of 2020 providing that, after 26 May 2020, persons at border crossing points who wish to apply for international protection, temporarily, until 31 December 2020, will be directed to submit a declaration of intent to the Embassy of Hungary in Kyiv, Ukraine or to the Embassy of Hungary in Belgrade, Serbia.⁹³

⁹² European Union, EU: Court of Justice of the European Union [CJEU], *FMS and Others vs Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, C-924/19 and C-925/19, ECLI:EU:C:2020:367, 14 May 2020. Read more on [EASO Case Law Database](#).

⁹³ Hungary, the National Directorate-General for Aliens Policing, [Conditions for lodging an application for asylum](#), 22 June 2020.

Iceland



Iceland is not bound by the recast APD. An application for international protection can only be made once the person is in Iceland at the border or within the territory. The application can be submitted with the police who will refer it for examination to the Directorate of Immigration.⁹⁴

Ireland



Ireland has opted out of the recast APD. A person who presents at the Irish border and indicates the wish to apply for asylum is interviewed by an officer of the Ministry or an immigration officer, with the assistance of an interpreter if necessary, in order to take initial information on the application.⁹⁵ A record of the preliminary interview is kept by the officer and a copy is provided to the applicant.⁹⁶

According to the International Protection Act, Sections 15-16, the person is given permission to enter and remain in the country and is referred to the International Protection Office for further examination. According to the International Protection Act, Section 14(1)(2), if the person seeking to make an application for international protection is an unaccompanied minor, the immigration officer shall notify the Child and Family Agency.

Italy



Competent authority: Territorial Commissions for the Recognition of International Protection.

Legal grounds: [Legislative Decree No. 25/2008](#), Article 28-bis, Procedure Decree (Decreto Legislativo No. 25, “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”), as amended by [Decree Law 113/2018](#), implemented by Law No. 132/2018.



Procedure: The law specifies that applications made at borders or transit zones should be examined by one of the prefectures identified by a Ministry of the Interior decree (which was issued on 5 August 2019 and published on 7 September 2019) and should follow a timeframe similar to the accelerated procedure. In particular, the prefectures in which applications at the borders are processed are:

- Trieste, Gorizia;
- Crotone, Cosenza, Matera, Taranto, Lecce, Brindisi;
- Caltanissetta, Ragusa, Siracusa, Catania, Messina;
- Trapani, Agrigento; and
- Città Metropolitana di Cagliari, Sud Sardegna.

⁹⁴ Iceland, the Directorate of Immigration, Application process, available at <https://www.utl.is/index.php/en/application-process>, accessed on 19 June 2020.

⁹⁵ Ireland, [International Protection Act](#) 2015, Article 13.

⁹⁶ Ireland, [International Protection Act](#) 2015, Article 13 (4).

The procedure applies to:

- Applications submitted at the border or in a transit zone after the person is apprehended for evading or attempting to evade border controls; and
- Applicants coming from a safe country of origin.



Personal interview: Applicants are interviewed within 7 days of the receipt of the documentation by the Territorial Commission from the Police Office (*Questura*). They may benefit from legal assistance and representation at their own expense, though this is usually financed by NGOs.⁹⁷



Decision: An application is examined in full, both on the admissibility and substance.⁹⁸ A decision is issued in principle within 2 days from the interview and within a maximum of 9 days from the receipt of the documentation by the Territorial Commission. Nonetheless, the duration of the procedure may last for a maximum of 6 months.⁹⁹



Appeal: The standard time limit to lodge an appeal is 30 days¹⁰⁰ and there is no automatic suspensive effect.¹⁰¹

Latvia



Competent authority: Office of Citizenship and Migration Affairs.

Legal grounds: [Asylum Law](#) as amended on [10 May 2017](#).

The procedure applies to asylum applications submitted at a border crossing point or in the border crossing transit zone.



Procedure: The State Border Guard carries out a negotiation with the applicant in order to obtain information necessary to determine the responsible Member State under the Dublin III Regulation and an initial interview with the applicant in order to obtain “information regarding his or her individual situation and circumstances, which is necessary in order to take a decision to accept the application for examination or to leave without examination, and basic information regarding the motives for requesting international protection”.¹⁰²

⁹⁷ AIDA Italy. (2020). Country Report: Italy—2019 Update. http://www.asylumineurope.org/sites/default/files/report-download/aida_it_2019update.pdf, p. 51.

⁹⁸ Italy, Procedure Decree, Article 28-bis(1-ter).

⁹⁹ Italy, Procedure Decree, Article 27(3) and (3-bis) and Article 28-bis(3).

¹⁰⁰ Italy, Procedure Decree, Article 35-bis(2) as amended by Decree Law 13/2017, Article 6 and Law No. 46/2017

¹⁰¹ Italy, Procedure Decree, Article 35-bis(3) as amended by Decree Law 13/2017, Article 6 and Law No. 46/2017, as amended by Decree Law 113/2018, Article 9 and Law No. 132/2018.

¹⁰² Latvia, [Asylum Law](#), Section 23(1).



Decision: Within 2 working days, the State Border Guard submits the application and all information obtained in the negotiation and the initial interview to the Office of Citizenship and Migration Affairs.¹⁰³ A decision to accept the application for examination or to leave it without examination is taken by the Office of Citizenship and Migration Affairs within 5 working days upon receipt of the case file from the State Border Guard.¹⁰⁴

If the application has been submitted at a border crossing point or in the border crossing transit zone and the issue regarding acceptance of the application for examination or leaving without examination is being decided, the State Border Guard ensures corresponding and appropriate support to an asylum applicant who has special procedural or reception needs.¹⁰⁵

If a country which is not a Member State is regarded as a safe third country for the applicant, an asylum application of an unaccompanied minor may be left without examination if it conforms with the best interests of the minor.¹⁰⁶



Appeal: A decision to leave the application without examination may be appealed before the competent district administrative court within 5 working days from the day when the decision has entered into effect. A decision should be pronounced within 5 working days.¹⁰⁷

Lithuania



Lithuania does not provide for a border procedure in its national legal framework. However, asylum applications at the border crossing points are analysed in accelerated procedures and all aspects of border procedure are applicable.

According to the [Law of the Republic of Lithuania on the Legal Status of Aliens](#), Article 67, applications for asylum can be made at border crossing points to the State Border Protection Service (SBPS). An initial screening takes place within 24 hours from the lodging of the asylum application. The officer of the SBPS collects all available documents and travelling tickets from the applicant, carries out an inspection of the applicant and his/her personal belongings, questions the applicant, takes fingerprints and pictures of the applicant, conducts primary interview and primary vulnerability assessment.¹⁰⁸

After the initial screening, the officer transmits the application via electronic communication to the Migration Department which decides, within 48 hours from the lodging of the application, on admissibility and on the applicable procedure. Applicants are accommodated at a state border crossing point or, upon decision of

¹⁰³ Latvia, [Asylum Law](#), Section 23(6)(2).

¹⁰⁴ Latvia, [Asylum Law](#), Section 29(1).

¹⁰⁵ Latvia, [Asylum Law](#), Section 30(2).

¹⁰⁶ Latvia, [Asylum Law](#), Section 30(3).

¹⁰⁷ Latvia, [Asylum Law](#), Section 48(4)(2) and Article 49(2).

¹⁰⁸ Lithuania, [Law of the Republic of Lithuania on the Legal Status of Aliens](#), Article 69.

the Migration Department, in the reception centres. However, in this latter case the border procedure is no longer applicable. In addition, applicants benefit from free interpretation and access to legal assistance.¹⁰⁹

Luxembourg



The border procedure is not applied in Luxembourg. However, Luxembourg has an airport procedure applied only at the Luxembourg International Airport.

Applications may be presented to police officers of the Airport Control Service, and the registration of the application takes place within 6 working days following the presentation of the application.¹¹⁰ The application is referred to the Directorate of Immigration and it is within the competence of the Minister in charge of asylum to decide on how the application will be processed and whether it will follow an accelerated or a normal procedure with the respective applicable deadlines (2 months with possibility to further extend the examination in the accelerated procedure and a maximum of 21 months in the normal procedure).

If the applicant is a person in need of special procedural guarantees and adequate support cannot be provided, the application is not examined in the framework of an accelerated procedure, in particular for applicants who are victims of torture, rape or other forms of severe violence.¹¹¹

The law also provides that organisations or persons approved by the Minister to provide advice and guidance to applicants for international protection have access to persons at border crossing points, including transit zones, at external borders, provided they meet the conditions of access to the Luxembourg airport and submit to the applicable security checks.¹¹²

The decision of the Minister responsible for asylum can be appealed before the administrative tribunal within one month from the notification of the decision.¹¹³

Applicants are accommodated in a reception centre, where they will remain until a final decision is issued.

According to research carried out on asylum applicants in Luxembourg, most of them arrive in Luxembourg by bus or train and it is estimated that approximately less than 10 applicants arrive every year by airplane.¹¹⁴

¹⁰⁹ Lithuania, [Law of the Republic of Lithuania on the Legal Status of Aliens](#), Article 71.

¹¹⁰ Luxembourg, Law A255 of 18 December 2015 on International and Temporary Protection, et al., Article 4(1) ([Loi A255 du 18 Décembre 2015 relative à la protection internationale et à la protection temporaire, et al.](#)).

¹¹¹ Luxembourg, Law A255 of 18 December 2015 on International and Temporary Protection, et al., Article 19(3) ([Loi A255 du 18 Décembre 2015 relative à la protection internationale et à la protection temporaire, et al.](#)).

¹¹² Luxembourg, Law A255 of 18 December 2015 on International and Temporary Protection, et al., Article 8(2) ([Loi A255 du 18 Décembre 2015 relative à la protection internationale et à la protection temporaire, et al.](#)).

¹¹³ Luxembourg, Law A255 of 18 December 2015 on International and Temporary Protection, et al., Article 35 ([Loi A255 du 18 Décembre 2015 relative à la protection internationale et à la protection temporaire, et al.](#)).

¹¹⁴ C. Paraschivescu, B. Nienaber, and L. Oesch, 'Borders and the Mobility of Migrants in Luxembourg', CEASEVAL RESEARCH ON THE COMMON EUROPEAN ASYLUM SYSTEM (30), Chemnitz, August 2019, pp. 6 and 10, available at http://ceaseval.eu/publications/30_WP4_Luxembourg.pdf.

Malta



The border procedure is not applied in Malta. Third country nationals or stateless persons who express their wish to apply for international protection at the border are referred to the Maltese Determining Authority, the International Protection Agency, so that the application can be registered and lodged.¹¹⁵ When an application is made at the border, the Immigration Police carry out an assessment in order to establish if detention is required in line with the recast Reception Conditions Directive.¹¹⁶

Netherlands



Competent authority: Immigration and Naturalisation Service (IND), the Royal Marechaussée and Seaport Police.

Legal grounds: [Aliens Act 2000](#), Articles 3 and 6; [Aliens Decree 2000](#), [Aliens Circular 2000](#).



Procedure: The border procedure is available to asylum applicants at airports (application centre at the Schiphol airport) and seaports. However, the border procedure is not applied in the case of:

- Unaccompanied children;¹¹⁷
- Families with minor children;¹¹⁸
- Applicants for whom detention is disproportionately burdensome;¹¹⁹ and
- Applicants in need of special procedural guarantees (victims of torture, rape or other serious forms of psychological, physical and sexual violence) when adequate support cannot be provided under the border procedure.



Personal interview (same as regular procedure):

- Day 1. Initial interview. This stage includes an interview with an officer of the IND about the identity, nationality and journey to the Netherlands. However, during this interview the applicant will not be asked about the reasons for applying for asylum. This interview will be in Dutch with the presence of an interpreter.
- Day 2. Preparation for the detailed interview. The applicant will have the possibility to prepare for the next interview with a lawyer and an interpreter (if needed). The lawyer can send a letter to the IND if information was missing in the first interview.

¹¹⁵ Jesuit Refugee Service, Malta. [Asylum Procedure in Malta](#). Accessed on 2 July 2020.

¹¹⁶ EMN (European Migration Network), [Ad-hoc query on asylum applications submitted at the border or transit zones](#), April 2019.

¹¹⁷ The Netherlands, [Aliens Decree 2000](#), Article 3.109b (7).

¹¹⁸ The Netherlands, [Aliens Circular 2000](#), Article A1/7.3.

¹¹⁹ The Netherlands, [Aliens Decree 2000](#), Article 5.1a (3).

- Day 3. Detailed interview. This interview is also with an officer of the IND. During this interview, the applicant can explain the reasons for applying for asylum. An interpreter is provided and the applicant can also request the presence of someone from the Dutch Council for Refugees. The applicant will receive a copy of the report after the interview.
- Day 4. The lawyer can make comments and/or provide clarifications on the transcript of the personal interview.¹²⁰

IND-accredited interpreters will be present in any communication between the IND officer and the applicant.¹²¹ Free legal assistance is provided, including legal representation and advice on first instance applications and on appeal.

The applicant is provided with a medical examination and his/her nationality, identity and documents submitted are checked.



Decision: A decision is adopted within 8 days, although if further investigation is needed this period could last up to 28 days and the applicant remains in detention. The IND may reject the claim if the country is not responsible according to the Dublin III Regulation, if it is inadmissible or manifestly unfounded. The maximum duration of the border procedure is 4 weeks.¹²² If the examination takes longer than 4 weeks, the applicant can enter the Netherlands and the case is processed according to the applicable provisions.



Appeal: An appeal can be lodged within one week before the competent regional court (*Rechtbank*). The appeal has an automatic suspensive effect with the exception of applications deemed inadmissible (except for the application of the safe third country concept), manifestly unfounded (except for irregular entry or stay), Dublin decisions or a subsequent application without new aspects.¹²³ If the appeal had no suspensive effect the applicant can apply for a provisional measure precluding his/her removal (temporary legal protection).



Reception: Asylum applicants who enter the Netherlands via airplane or boat are placed in detention and the procedure (border procedure, appeal phase and removal procedure) takes place in detention. They have access to reduced material conditions and can move freely within the border accommodation and receive visitors, letters and calls.¹²⁴



Challenges: According to the IND, the time limit of 4 weeks to examine the application is sometimes too short and leaves no space for flexibility. The IND considers that it should be possible to extend the four week period in cases where it can be attributed to the applicant (e.g. fraud, national security, public order, Article 1F of the Geneva Convention) that the procedure cannot be concluded within four weeks.

¹²⁰ The Netherlands, [Aliens Decree 2000](#), Articles 3.112, 3.113, 3.114.

¹²¹ The Netherlands, [Aliens Decree 2000](#), Article 3.109a (1).

¹²² The Netherlands, [Aliens Act 2000](#), Article 3(6).

¹²³ The Netherlands, [Aliens Act 2000](#), Article 82(2).

¹²⁴ AIDA Netherlands. (2020). Country Report: Netherlands—2019 Update. Edited by ECRE. Written by Dutch Council for Refugees. https://www.asylumineurope.org/sites/default/files/report-download/aida_nl_2019update.pdf.

Norway



The border procedure is not applied in Norway.

Poland



The border procedure is not applied in Poland.

Portugal



Competent authority: National Director of Immigration and Border Service (SEF).

Legal grounds: [Asylum Act](#), Article 23 (Act No. 27/2008 of 30 June 2008 establishing the conditions for granting asylum or subsidiary protection, transposing Directives 2004/83/EC and 2005/85/EC) amended by the [Immigration Act](#) (Act No. 26/2014 of 5 May 2014 amending Act No. 27/2008, transposing Directives 2011/95, 2013/32/EU and 2013/33/EU).

Vulnerable applicants (victims of torture, rape or other serious forms of psychological, physical or sexual violence) may be exempted from the border procedure.¹²⁵



Detention: The law provides for the detention of applicants for the duration of the admissibility stage.¹²⁶ Applicants remain in the international area of the port or airport while awaiting a decision on Stage I of the asylum procedure, while unaccompanied or separated minors are provided special conditions.



Personal interview: Applicants are interviewed and have access to an interpreter and free legal assistance.



Decision: A reasoned decision on the admissibility or on the merits is issued and notified to the applicant within a maximum of 7 days.¹²⁷ The decision may allow entry to the territory and concerns only Stage I of the procedure, sending the

¹²⁵ Portugal, [Asylum Act](#), Article 17-A(4).

¹²⁶ Portugal, [Asylum Act](#), Articles 26(1) and 35-A(3)(a).

¹²⁷ Portugal, [Asylum Act](#), Article 24(4).

applicant for further inquiry on the merits or it may decide on the merits of the application.



Appeal: A decision may be appealed in the administrative courts within 72 hours with a suspensive effect.¹²⁸ If a final decision is not reached within 60 days, the applicant is provided access to the territory.¹²⁹



Data: In 2019, most border procedures were conducted at Lisbon Airport.¹³⁰



Challenges: According to the Portuguese Immigration and Border Service, the improvement of physical reception conditions at border posts is one of the challenges and concerns of the Portuguese State, which is why improvements have recently been made at Lisbon Airport, in order to enhance and create the capacity for welcoming and installing applicants for international protection at the main Portuguese border post.

Romania



Competent authority: The General Inspectorate for Immigration (GII).

Legal grounds: [Law 122/2006](#), Articles 82-87.¹³¹

In Romania, the border procedure is applicable at state border crossing points, e.g. airports, sea and land borders. The procedure is not applicable to vulnerable applicants, with the exception of applicants considered to be a danger to public order or national security. In these cases, applicants are channelled through the regular procedure.¹³²



Personal interview: The applicant is interviewed in the border procedure and may be provided, if necessary and requested, free interpretation and free legal assistance during first instance and appeal proceedings. Applicants are informed about their rights during the border procedure, about the possibilities for appeal and the right to request free legal aid in a language they understand. If the application is subsequent, the decision is taken based on the written submission and the evidence submitted by the applicant, together with country of origin information and other relevant information without conducting an interview.¹³³



Decision: Decisions taken within the border procedure concern admissibility and merits. The time limit for taking the decision is 3 days from the submission of the application.¹³⁴ The GII decides whether: a) the applicant is granted a form of international protection and access to the territory; b) the applicant is granted

¹²⁸ Portugal, [Asylum Act](#), Article 25(1).

¹²⁹ Portugal, [Immigration Act](#), Article 21(2) and (3).

¹³⁰ AIDA Portugal. (2020). Country Report: Portugal—2019 Update. Edited by ECRE. Written by Portuguese Refugee Council (CPR). https://www.asylumineurope.org/sites/default/files/report-download/aida_pt_2019update.pdf, p. 52.

¹³¹ Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania.

¹³² Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania, Article 84.

¹³³ Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania, Article 83(4).

¹³⁴ Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania, Article 82.

access to the territory and to the ordinary procedure (if the application cannot be considered as manifestly unfounded or another Member State is responsible or one of the following concepts could be applied: first country of asylum, safe third country or safe third European country); c) the application is rejected as manifestly unfounded and access to the territory is refused.

If the application is subsequent, the GII grants access to the territory and to a new ordinary asylum procedure or rejects the subsequent application as inadmissible and refuses access to the territory.



Appeal: Appeals can be lodged within 7 days from the notification of the decision to the applicant. The competent district/administrative court renders a decision within 5 days.¹³⁵



Reception: The asylum applicant remains in the transit area of the state border checkpoint until a decision to allow entry to the territory is pronounced or until the refusal decision is final, but not longer than 20 days from the entry into the transit area.¹³⁶

Slovakia



Slovakia does not have specific border procedures as prescribed in the recast APD. If an application is made in a transit zone of an international airport, the applicant is placed in a reception centre in the transit area or in a dedicated area of a reception facility. A decision is made on whether to allow entry into the territory within 7 days from an initial interview. This decision can be appealed within 20 to 30 days before a regional court which will decide within 30 days.¹³⁷

Slovenia



Competent authority: Ministry of the Interior, International Protection Procedures Division.

Legal grounds: [International Protection Act](#), Article 43.



Procedure: In 2016, the border procedure was introduced in national legislation following implementation of Directive 2013/32/EU. According to the law, for an application for international protection made in the transit area of an airport or

¹³⁵ Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania, Article 85-86.

¹³⁶ Romania, [Law No. 122](#) of 4 May 2006 on asylum in Romania, Article 87.

¹³⁷ Slovakia, [Act No. 480/2002 of 20 June 2002](#) on asylum and on changes and amendments of some other acts.

aboard a ship, anchored in a harbour or seaport, the competent authority will decide in the shortest time possible and not later than 14 days.¹³⁸



Decision: Until there is a final decision in an accelerated procedure or the order issued as part of the procedure pursuant to Regulation 604/2013/EU for determining the responsible Member State, the procedure of a safe third country or a safe European third country or the country of first asylum, the person shall remain at the border or in the transit area of an airport or seaport. If it is considered that the application should be examined in a regular procedure, the applicant is transferred to the Asylum Home in Ljubljana and the regular procedure is then applied.¹³⁹

However, according to research conducted by AIDA, the border procedure is not applied in practice.¹⁴⁰



Appeal: An appeal may be lodged against a decision or order of the competent authority before the Administrative Court within 8 days from the decision. A decision on appeal should be adopted within 7 days.



Reception: Until a decision is made, the applicant remains at the border or in a transit area of the airport or seaport. If a decision is not taken within 14 days or if the application is examined in the regular procedure, the applicant is accommodated in the asylum centre.¹⁴¹

If it is not possible to make a decision during the border procedures due to the arrival of a large number of applicants, these persons may be accommodated near the border where they are provided with material care.¹⁴²

Spain



Competent authority: Ministry of the Interior (Border Police and Office of Asylum and Refugee and Alien's Office).

Legal grounds: Asylum Law, Article 21 ([Law 12/2009 of 30 October 2009 regulating the right of asylum and subsidiary protection](#)).



Procedure: The border procedure is applied to all applicants who request international protection at airports, maritime ports and land borders, as well as in migrant detention centres.¹⁴³ In these cases, the applicant has not formally entered

¹³⁸ Slovenia, [International Protection Act](#), Article 43.

¹³⁹ Slovenia, [International Protection Act](#), Article 43.

¹⁴⁰ AIDA Slovenia. (2020). Country Report: Slovenia—2019 Update. Edited by ECRE. Written by Legal Informational Centre for NGOs (PIC). https://www.asylumineurope.org/sites/default/files/report-download/aida_si_2019update.pdf, p. 35.

¹⁴¹ Slovenia, [International Protection Act](#), Article 43 (1).

¹⁴² Slovenia, [International Protection Act](#), Article 43 (2).

¹⁴³ In Spain, detention centres are called CIEs (*Centro the Internamiento de Extranjeros*). Currently, there are 7 detention facilities in Spain located in: Madrid, Barcelona, Valencia, Murcia, Algeciras, Las Palmas de Gran Canaria, and Santa Cruz de Tenerife.

the Spanish territory. Regarding land borders, applicants may request international protection at Melilla border post, where the border procedure is applied. However, as explained in a 2017 decision of the Audiencia Nacional, applications submitted in Migrant Temporary Stay Centres (*Centros de Estancia Temporal para Immigrants, CETI*) in Ceuta and Melilla, will be considered to be made on the Spanish territory and will be processed through the regular procedure.¹⁴⁴



Personal interview: A personal interview is carried out by police officers. Based on this first interview, case workers can examine the case and take a decision. However, a second interview can also be requested by the Asylum Office if there are doubts or contradictions. Videoconferencing is rarely used, and questions are not limited to identity, nationality and travel route.

The same procedural safeguards are provided as in the regular procedure (e.g. privacy and confidentiality during the personal interview). Interpreters are present during the personal interview¹⁴⁵ and legal assistance is mandatory for applications lodged at the border and in detention.¹⁴⁶ As in the regular procedure, free legal assistance is provided during the personal interview and on appeal.



Decision: A decision is made on the admissibility or inadmissibility of the application. According to a 2017 decision of the Audiencia Nacional, in a border procedure, an asylum application cannot be rejected on the merits, unless it is manifestly unfounded. An application is not manifestly unfounded where it is not contradicted by country of origin information or where UNHCR issued a report in which it supports the granting of protection.¹⁴⁷ If the application is allowed, the person can enter the territory and the application is analysed through an urgent procedure (3 months) where the application has been lodged at a migrant detention centre, and through the ordinary procedure (6 months) if the application has been lodged at a border post.

Applications lodged at the border can be rejected as manifestly unfounded if:

- i) The facts presented by the applicant do not have any relation with the recognition of refugee status;
- ii) The applicant comes from a safe third country;
- iii) The applicant falls under the criteria for denial or exclusion under the Asylum Act, Articles 8, 9, 11 and 12;
- iv) The applicant made inconsistent, contradictory, improbable, insufficient declarations, or that contradict sufficiently reliable country of origin information or of habitual residence, in a manner that clearly shows that the request is unfounded.¹⁴⁸

¹⁴⁴ Spain, Audiencia Nacional, Decision SAN 1780/2017, 24 April 2017.

¹⁴⁵ Spain, [Asylum Law](#), Article 18.

¹⁴⁶ Spain, [Asylum Law](#), Article 16.

¹⁴⁷ Spain, Audiencia Nacional, Decision SAN 1179/2017, 17 March 2017. On the importance of UNHCR reports, see also Supreme Court, Decision STS 3571/2016, 18 July 2016; Audiencia Nacional, Decision SAN 335/2017, 3 February 2017.

¹⁴⁸ Spain, [Asylum Law](#), Article 21.2(b).



Time limits: The decision of admissibility must be issued within 96 hours from the lodging of the application. When the time limit is not respected, the person will be admitted to the territory and the application will be processed according to the applicable provisions.



Appeal: If the application was denied or not admitted, the applicant can request a re-examination within 48 hours from the notification of the decision. This administrative appeal has an automatic suspensive effect¹⁴⁹ and a decision on the re-examination is to be notified to the applicant within 48 hours.¹⁵⁰ During the appeal, it is possible to incorporate new arguments and documentation, apart from clarifications. In case of rejection or an inadmissibility decision, the decision can be appealed before the National High Court (*Audiencia Nacional*).

In 2017, the National High Court (*Audiencia Nacional*) ruled in several judgments that time limits should be computed as hours from the moment the application is lodged and not based on working days.¹⁵¹



Reception: Once the person has lodged an application and during the time a decision of admissibility is issued, the applicant stays in a detention facility.



Data: According to the Ministry of the Interior, in 2019 a total of 9 184 people applied for international protection at the borders (7 020 people at the border and 2 164 people in detention).¹⁵² In 2018, 6 494 asylum applicants, nearly 12 % of the total number of applicants in Spain, made applications at borders and transit zones. According to the Office of Asylum and Refuge (OAR), in 2018, 6 514 applications were processed under a border procedure.

Sweden



The border procedure is not applied in Sweden.

¹⁴⁹ Spain, [Asylum Law](#), Article 21.4.

¹⁵⁰ Spain, [Asylum Law](#), Article 21.4.

¹⁵¹ For instance, Audiencia Nacional, Decision SAN 66/2017, 24 January 2017; Audiencia Nacional, Decision SAN 2366/2017, 5 June 2017; Supreme Court, Decision STS 498/2017, 16 February 2017.

¹⁵² Spain, Ministry of Interior, [Avance de solicitudes de protección internacional: Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2019](#).

Switzerland



Competent authority: State Secretariat for Migration (SEM).

Legal grounds: [Asylum Act](#) (AsyIA), Articles 21, 22, 23 (13, 17.3A, 19, 102 and 108.4).



Procedure: An initial interview takes place to check whether Switzerland is the responsible state under the Dublin III Regulation and to verify the identity, nationality, reasons for leaving the country of origin, the route that was followed and any other relevant aspect for determining the responsible Dublin state.¹⁵³ The airport police conduct this interview in Zurich, while the SEM carries it out in Geneva.¹⁵⁴



Decision: The SEM categorises cases based on this interview and allows entry into the territory if Switzerland is the responsible Dublin state and if the applicant appears to be at risk of persecution in the country of origin. Free legal assistance is provided to persons who lodge an asylum application at the airport.¹⁵⁵

If the SEM refuses entry into the territory, it notifies the refusal to the applicant and informs the applicant about the legal remedies available to challenge the refusal. The SEM must inform the applicant about the refusal within 2 days from the lodging of the application. The SEM assigns the applicant to an accommodation covered by the state and may confine the applicant for a maximum of 60 days.¹⁵⁶ If the applicant is detained for the purpose of removal on the basis of a final decision, the applicant can be held in a detention centre.¹⁵⁷

If the SEM cannot reach a decision within 20 days from the submission of the application, the applicant is granted the authorisation to enter the territory of Switzerland.¹⁵⁸

If the case is deemed to be within the responsibility of Switzerland, interviews on merits may take place in the airport procedure or in accordance with another asylum procedure.

¹⁵³ Switzerland, [AsyIA](#), Article 22.

¹⁵⁴ AIDA Switzerland. (2020). Country Report: Switzerland—2019 Update. Edited by ECRE. Written by Swiss Refugee Council. https://www.asylumineurope.org/sites/default/files/report-download/aida_ch_2019update.pdf, p. 48; Switzerland, SEM (State Secretariat for Migration), Asylum and return manual, C2 The airport procedure (in [German](#) and [French](#)), p. 6.

¹⁵⁵ Switzerland, [AsyIA](#), Article 22.

¹⁵⁶ Switzerland, [AsyIA](#), Article 22 (5).

¹⁵⁷ Switzerland, [AsyIA](#), Article 22.

¹⁵⁸ Switzerland, [AsyIA](#), Article 23 (2).



Appeal: The applicant can lodge an appeal in the airport procedure to the Federal Administrative Court within 5 working days and a decision should be issued within 5 working days.¹⁵⁹



Reception: Applicants are confined in a reception centre within the transit zones of the Geneva and Zurich airports for a maximum of 60 days.¹⁶⁰

¹⁵⁹ Switzerland, [AsylA](#), Article 108(3) and Article 23(1).

¹⁶⁰ Switzerland, [AsylA](#), Article 22 (5).

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