



**Accelerated, prioritised and fast-track
asylum procedures**
Legal frameworks and practice in Europe

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Introduction*

The modalities of refugee status determination are highly illustrative of the diversity of asylum systems in Europe. The promise of a Common European Asylum System (CEAS), where all those fleeing persecution or serious harm would obtain equivalent protection across the European Union (EU), yields to the reality of widely disparate administrative traditions and procedures for examining claims depending on the capacity, needs and objectives of each country. The limits of procedural harmonisation in the area of asylum are implied in the design of the CEAS; that much is inferred by the notion of “common procedures” for the granting of protection in the Treaty on the Functioning of the European Union (TFEU)¹ and its implementing Directive.² In practice, European countries have developed sophisticated asylum systems and different procedural channels for examining applications: beyond the normal (“regular”) procedure, an asylum seeker may face admissibility procedures, border procedures, Dublin procedures, accelerated procedures, or even prioritised or otherwise fast-track procedures. In light of this, a better understanding of the workings of these different legal and administrative setups has been a core endeavour of the Asylum Information Database (AIDA).

The interplay between different asylum procedures in Europe becomes all the more important in the light of renewed efforts of harmonisation and standardisation of refugee status determination. As part of the latest reform of the CEAS, the European Commission has proposed a Regulation establishing a “common procedure for international protection in the Union”.³ The ostensible transformation from “procedures” to “procedure” appears highly ambitious, yet to be read carefully. The common procedure for international protection envisioned by the Commission still embodies separate channels, rules and deadlines for dealing with different categories of asylum seekers, which it purports to render mandatory in the aim of reducing disparities between national asylum systems. In that respect, rather than simplifying the processing of asylum applications, the reform could lead to further entrenchment of procedural complexity as a mandatory component of European asylum systems.⁴

This briefing focuses specifically on the concepts of acceleration, prioritisation and fast-tracking, through an overview of their practical application in selected European countries’ asylum procedures.⁵ It explores institutional and administrative arrangements set up for the purpose of managing caseloads, with examples drawn from recent “track” or “cluster” systems developed in different countries. The briefing also analyses the practice of nationality-based differentiation of treatment of asylum claimants, whether under the legal concept of “safe country of origin” or as a matter of administrative practice, and examines the applicable procedural safeguards and necessary guarantees for individuals undergoing accelerated, prioritised or fast-track procedures, with emphasis on time limits for the processing of the application, deadlines and suspensive effect of appeals, as well as legal assistance.

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¹ Article 78(2)(d) TFEU, OJ 2012 C326/77.

² 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) (hereafter “recast Asylum Procedures Directive”), OJ 2013 L180/60.

³ European Commission, *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* (hereafter “proposal for an Asylum Procedures Regulation”), COM(2016) 476, 13 July 2016.

⁴ See generally ECRE, *Comments on the Commission proposal for an Asylum Procedures Regulation*, November 2016, available at: <http://bit.ly/2g3R1LZ>.

⁵ Note that the briefing does not deal with specific arrangements set up for the examination of subsequent applications.

Acceleration / prioritisation / fast-tracking: is there a difference?

The 2005 Asylum Procedures Directive⁶ and its 2013 recast make provision for the possibility of applying special procedures to deal with specific caseloads which may warrant swifter decisions. Whereas the previous Asylum Procedures Directive drew no legal distinction between “prioritised procedures” or “accelerated procedures”,⁷ the recast Directive clearly draws a normative distinction between the two.⁸ As explained in the Preamble to the recast Asylum Procedures Directive, prioritised procedures entail a more rapid examination of claims “without derogating from normally applicable procedural time limits, principles and guarantees”,⁹ while accelerated procedures differ from regular procedural rules “in particular by introducing shorter, but reasonable time limits for certain procedural steps”.¹⁰ Accelerated procedures under EU law involve appeals subject to shorter time limits and which often have no (automatic) suspensive effect over removal decisions,¹¹ thereby exposing asylum seekers to the risk of deportation before their appeal is decided.

The recast Directive makes a more visible normative distinction between prioritisation and acceleration of processing applications in the asylum procedure. On the one hand, Member States are encouraged to *favourably* prioritise applications from persons with manifestly well-founded claims or vulnerabilities warranting special procedural guarantees. On the other, unfounded or manifestly unfounded applications can be accelerated under a *less protective procedural regime*, on the assumption that they will most likely be rejected.¹²

At national level, however, not all legal frameworks echo this distinction. The urgent procedure in **Spain** and the prioritised procedure in **Greece** are applicable to “manifestly well-founded” and “manifestly unfounded” caseloads alike,¹³ even though Greece also has a dedicated accelerated procedure for manifestly unfounded cases pursuant to Article 31(8) of the recast Asylum Procedures Directive.

In addition to accelerated and prioritised procedures foreseen by EU law, different Member States use fast-track procedures to speed up the processing of claims as a matter of administrative practice. These instances of fast-tracking may often fall outside the normative conceptual framework of “prioritising” well-founded claims or “accelerating” unfounded ones. For instance, **Greece** follows a specific process for nationalities with a rate below 25% on the Eastern Aegean islands: applicants from these countries are channelled into the fast-track border procedure without undergoing a prior admissibility assessment, contrary to other cases channelled therein. **Germany**, on the other hand, has established a dedicated “cluster” within the Federal Office for Migration and Refugees (BAMF) to deal with nationalities with a rate below 20%. Both practices are discussed further in this paper.

What is manifest well-foundedness or unfoundedness?

Different special procedures revolve around the manifest well-foundedness or unfoundedness of a claim. However, the ‘manifest’ character of a claim’s merits can equally be a complex and ambiguous notion. The Migration Court of Appeal of **Sweden** has consistently ruled that the requirement of “manifestly” unfounded involves the ability to make a clear assessment regarding the applicant’s right

⁶ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *OJ* 2005 L326/13.

⁷ Article 23(3)-(4) Directive 2005/85/EC.

⁸ Article 31(7)-(8) recast Asylum Procedures Directive.

⁹ Recital 19 recast Asylum Procedures Directive.

¹⁰ Recital 20 recast Asylum Procedures Directive.

¹¹ Article 46(6) recast Asylum Procedures Directive.

¹² On this point, see also AIDA, *Common asylum system at a turning point: Refugees caught in Europe’s solidarity crisis*, September 2015, available at: <http://bit.ly/1UGoInU>.

¹³ Article 25 Spanish Asylum Law; Article 51(6) Greek Law 4375/2016.

to a residence permit without any further examination of the case.¹⁴ In a similar context relating to “clearly” unfounded cases, the **United Kingdom** Court of Appeal has found that the “draconian” power of certification of claims as clearly unfounded should only be exercised when applications are “bound to fail” after being assessed “at their highest, as if all the claimed historic events did occur”.¹⁵

As regards claims presumed to be manifestly *unfounded*, the recast Asylum Procedures Directive retains some degree of ambiguity: it does not define the concept itself but defers its determination to Member States by providing that a claim processed under the accelerated procedure of Article 31(8) may be declared manifestly unfounded where it is defined as such in national legislation.¹⁶

Article 31(8) of the Directive identifies ten grounds where the accelerated procedure may be applied, and thus where a Member State may reject a claim as manifestly unfounded. These concern cases where:

1. the applicant has only raised issues not relevant to refugee or subsidiary protection status
2. the applicant comes from a “safe country of origin”
3. the applicant has misled the authorities by presenting false documents or withholding relevant information relating to identity and nationality which could adversely affect the decision
4. it is likely that, in bad faith, he or she has destroyed or disposed of identity or travel documents
5. the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his or her claim unconvincing
6. the applicant has filed an admissible subsequent application
7. applicant entered or stayed irregularly in the territory and, without good reasons, did not present him or herself to the authorities to file an application as soon as possible
8. is making an application to delay or frustrate the enforcement of a return decision
9. the applicant is a danger to national security or has been expelled for reasons of public security and public order
10. the applicant refuses to be fingerprinted.

The assumption of manifest unfoundedness is questionable with respect to several grounds such as failure to make an application as soon as possible or refusal to be fingerprinted, as these circumstances have no bearing on the merits of an individual’s protection claim. If read against the legal tests elaborated by the courts in the **UK** or **Sweden**, these factual circumstances would not necessarily meet the criteria of “manifest” or “clear” unfoundedness. Therefore the design of the accelerated procedure under the recast Asylum Procedures Directive already seems to conflate the objective of treating “manifestly unfounded” cases with other policy considerations such as the enforcement of the Dublin and Eurodac Regulations.

In some cases, Member States’ designation of applications as manifestly unfounded even exceeds the cases envisaged by Article 31(8) of the Directive. **Ireland** (not bound by the Directive) deems the internal flight alternative as a ground for prioritisation with accelerated appeal under Section 43 of its new International Protection Act.¹⁷ A similar approach, albeit beyond the legal framework, has been witnessed throughout 2016 in **Hungary** which has rejected claims by Afghan nationals as manifestly unfounded under the accelerated procedure on the ground that the internal flight alternative was

¹⁴ Swedish Migration Court of Appeal, MIG 2006:7, UM 230-06, 31 October 2006; UM 2244-10, 22 December 2010.

¹⁵ UK Court of Appeal, *R (FR and KL) v Secretary of State for the Home Department* [2016] EWCA Civ 605, Judgment of 23 June 2016, EDAL summary available at: <http://bit.ly/2qqrqD6r>. The court adds: “only if, on that basis, the claim would admit of only one answer before an immigration tribunal, can the certification be given”.

¹⁶ Article 32(2) recast Asylum Procedures Directive.

¹⁷ AIDA, Country Report Ireland, 2016 Update, March 2017, available at: <http://bit.ly/2mttNU7>, 37.

applicable in their case, while mentioning that they would otherwise qualify for subsidiary protection.¹⁸ Both the Irish Refugee Council and the Hungarian Helsinki Committee have raised concerns as to the relevance of the internal flight alternative to the acceleration of caseloads in their respective countries. **Bulgaria** has also considered applications from Afghans as manifestly unfounded in 2016, although their claims have been rejected in the regular rather than the accelerated procedure.¹⁹

Accelerated, prioritised and fast-track procedures in numbers

The practical relevance of accelerated, prioritised or fast-track procedures in a national asylum system varies from one country to another. According to available figures for 2016, the use of such procedures could be described as an integral component of asylum systems in certain countries, while their use seems limited to non-existent in others:

France: According to Ministry of Interior estimates, an approximate 23,900 first applications were channelled into the accelerated procedure in 2016, representing 38.8% of the total caseload. The main countries of origin concerned were Albania, Sudan and Kosovo, two of which are designated as safe countries of origin and are automatically placed under accelerated procedures.²⁰ The pre-2015 reform predecessor of the accelerated procedure, the prioritised procedure, represented 28.4% of the total of asylum caseload in 2015, against 33.4% in 2014.²¹

Switzerland: Out of a total 27,207 applications in 2016, 4,555 cases were treated in the fast-track procedure and 1,630 in the 48-hour procedure, accounting together for 22.7% of the total caseload. Decisions in the two procedures were predominantly negative: only 19 persons were granted asylum in the fast-track procedure and 15 in the 48-hour procedure, while 33 persons were granted temporary protection in the fast-track procedure, 155 in the 48-hour procedure.²²

Croatia: 45 decisions were issued under the accelerated procedure i.e. 19.5% out of a total 230 decisions on merits in 2016. The majority concerned rejection decisions issued under the “safe country of origin” concept.²³

Germany: The accelerated procedure introduced in Section 30a of the Asylum Act in March 2016 can be carried out in branch offices of the BAMF which are assigned to a “special reception centre” (*Besondere Aufnahmeeinrichtung*). At the end of 2016, only two “special reception centres” existed, in Bamberg and Manching/Ingolstadt, and both were functioning as “special” and “regular” reception centres simultaneously. It should be noted that further types of centres exist in Germany, which are discussed below.

No figures have been provided by the authorities as to how many accelerated procedures had been carried out in these centres. At the end of January 2017, the facility at Bamberg had 482 asylum seekers accommodated in its “special reception centre” and 794 in its “regular” reception centre, which shows that more regular procedures were taking place in this location than accelerated ones. By and large, it can be concluded that introduction of the accelerated procedure has only had little impact on asylum procedures in general at the end of 2016.²⁴

This can be contrasted with the frequent use of more recently introduced procedural concepts in German law. The concept of inadmissibility decision, introduced in the Asylum Act in August 2016, has

¹⁸ AIDA, Country Report Hungary, 2016 Update, February 2017, available at: <http://bit.ly/2k3zGE9>, 41.

¹⁹ AIDA, Country Report Bulgaria, 2016 Update, February 2017, available at: <http://bit.ly/2lw71fy>, 42.

²⁰ OFPRA, *2016 Activity report*, 7 April 2017, available in French at: <http://bit.ly/2pHqMI7>, 39.

²¹ AIDA, Country Report France, 2016 Update, February 2017, available at: <http://bit.ly/2IPwbCv>, 53.

²² AIDA, Country Report Switzerland, 2016 Update, February 2017, available at: <http://bit.ly/2kE4LCH>, 20.

²³ AIDA, Country Report Croatia, 2016 Update, March 2017, available at: <http://bit.ly/2n45FJn>, 6, 36.

²⁴ AIDA, Country Report Germany, 2016 Update, March 2017, available at: <http://bit.ly/2mRjN2L>, 39.

been used in 19,599 cases between August and December 2016. This includes 10,121 inadmissibility decisions on Dublin grounds, 6,721 on subsequent applications, 1,476 on secondary applications (applications lodged by applicants who previously have unsuccessfully applied in another EU Member State), and 1,281 on protection in another Member State.²⁵

United Kingdom: The Non-Suspensive Appeal (NSA) procedure, for cases certified as clearly unfounded, was applied in 2,805 cases in 2016, or 11.2% of the total number of decisions (24,984). The main nationalities concerned by this procedure were Albania, India, Nigeria and Pakistan.²⁶

Poland: The number of cases processed in the accelerated procedure in 2016 was 228, less than 2% of the total caseload of 12,321 applications. Most cases (197) concerned applications raising grounds unrelated to international protection.²⁷

Greece: The Syria fast-track procedure applicable to Syrians and stateless persons ex Syria since September 2014 dealt with 1,000 applications in 2016, out of which 913 received positive decisions.²⁸ Compared to the total number of applicants (51,091) in 2016, however, the use of this procedure remains considerably limited, representing less than 2% of the total caseload. Conversely, other procedures such as the fast-track border procedure applicable on the islands, discussed below, are systematically used.

Beyond these examples of less frequently used procedures, countries such as **Malta** and **Cyprus** maintain accelerated procedures in law but do not use them in practice.²⁹

As indicated from figures on certain countries such as **Croatia** and **Switzerland**, there seems to be an understandable link between the application of the accelerated procedure and high rejection rates. Although statistics are not available for every country, this is also illustrated in figures made available by the European Asylum Support Office (EASO) for 2015: out of 34,585 decisions taken in accelerated procedures, 31,088 (89.9%) were negative. Conversely, out of 500,427 decisions taken in regular procedures, 238,454 (47.6%) were negative.³⁰

Institutional and administrative framework of special procedures

The fragmentation of refugee status determination modalities has taken more concrete form through the use of procedural “track” or “cluster” approaches in different Member States such as the **Netherlands**, **Sweden** and **Germany**.

The Dutch Immigration and Naturalisation Service (IND) and Swedish Migration Agency have set up specific “tracks” (5 and 7 respectively) to deal with different caseloads as a general policy.³¹ Conversely, the “cluster” system in **Germany** only applies to the 24 – out of about 65 – branch offices of the BAMF which are designated as “arrival centres” (*Ankunftscentren*). Arrival centres were introduced in December 2015 with the aim of fast-tracking procedures, without specific legal basis.³²

²⁵ *Ibid*, 33.

²⁶ AIDA, Country Report UK, 2016 Update, February 2017, available at: <http://bit.ly/2mLD1wl>, 38.

²⁷ AIDA, Country Report Poland, 2016 Update, February 2017, available at: <http://bit.ly/2mM3Fp8>, 31.

²⁸ AIDA, Country Report Greece, 2016 Update, March 2017, available at: <http://bit.ly/2nwd9nA>, 32.

²⁹ AIDA, Country Report Malta, 2016 Update, February 2017, available at: <http://bit.ly/2n5RU95>, 28; Country Report Cyprus, 2016 Update, March 2017, available at: <http://bit.ly/2mEU8zB>, 32.

³⁰ EASO, *Annual report on the situation of asylum in the EU 2015*, July 2016, 96.

³¹ See Dutch Secretary of State Decision 2016/4, 29 February 2016; Swedish Migration Agency, *Skyddsprocess*, 1.4.3 – 2016-193808.

³² The notion of “arrival centre” stems mainly from business consultants under the heading “integrated refugee management”: AIDA, Country Report Germany, 20.

The Netherlands

The Dutch track procedure was established in March 2016 and channels asylum applications into five different tracks:

Description of tracks in the Dutch asylum procedure	
Track	Caseload
1	Dublin cases
2	Applications from asylum seekers from “safe countries of origin” or asylum seekers who already receive international protection in another Member State
3	Applications of asylum seekers which are in advance considered likely to be granted
4	Standard asylum procedure
5	Asylum applications that could not be assessed in Track 3, due to the fact that nationality/identity documents have not been submitted

The designation of the relevant track has significant consequences for the applicant’s procedural safeguards. In Track 1 and Track 2 cases, neither the rest and preparation period of 6 days nor the vulnerability assessment available in the standard asylum procedure are available,³³ while appeals are not automatically suspensive. In Dublin (“Track 1”) cases, access to free legal assistance is only available when there is a (written) intention to reject the application. A legal representative is not assigned at an earlier stage of the procedure.

On the other hand, Tracks 3 and 5 have not been applied in 2016 in an effort on the part of the authorities to deter new arrivals in the Netherlands that would be encouraged to apply for asylum and obtain a quick positive decision. In practice, the IND prioritises the operation of Track 2.

The Dutch tracks system also has an impact on the reception of asylum seekers, as well as the availability of legal assistance, given that asylum seekers may be required to relocate to a different residence depending on the track they are assigned to.

Sweden

The Swedish Migration Agency has developed a new way of organising its caseload during 2016. On the basis of a draft shared with stakeholders and amended following their contributions, the Migration Agency has set out the following tracks:

Description of tracks in the Swedish asylum procedure	
Track	Caseload
1	Claims presumed to be successful, where the identity of the person is established and no other major processing steps are needed
2	Cases that require more processing steps or more extensive oral investigation than the cases handled in Track 1, where there is a presumption that the claim will be successful but the applicant has not submitted any identity documents or made his or her identity

³³ The rest and preparation period of 6 days starts from the moment an asylum application is lodged and grants asylum seekers time to cope with the stress of fleeing their country and arriving in the Netherlands, on the one hand, and to undertake several preparatory actions on the other. These include: investigation of documents, a medical examination by an independent agency (FMMU) to assess vulnerability, counselling by the Dutch Council for Refugees and preparation for the asylum procedure by a lawyer: AIDA, Country Report Netherlands, 2016 Update, March 2017, 14-15.

	likely through the documents submitted, or the applicant on initial assessment has established his or her identity but there is no presumption of a successful claim
3	Cases in which the need for comprehensive investigation measures is identified. This track is reserved for cases where: (a) exclusion grounds are raised; (b) potential security risks may arise; (c) there is a suspicion of false identity; (d) where there is a need for language analysis; (f) concerning unaccompanied minors, the issue of orderly reception requires extensive investigative measures; (g) concerning unaccompanied minors, a medical age assessment is needed; (h) there are indications of human trafficking, (i) there are indications of honour-based violence and oppression; (j) LGBT competence is required; (k) DNA tests are required; (l) a torture investigation is to be carried out; (m) cases involve the revocation of a residence permit or status declaration
4A	Cases where an application for asylum is considered to be potentially manifestly unfounded. These cases are not forwarded to the distribution function of the Migration Agency.
4B	Cases involving foreigners seeking protection from countries with generally high rejection rates, where rapid enforcement is possible and the matter does not require extensive processing steps. The nationalities concerned include countries with a recognition rate below 20%: Ivory Coast, Kyrgyzstan, Morocco, Tunisia, Venezuela, Belarus, Vietnam, Albania, Bosnia-Herzegovina, FYROM, Kosovo, Montenegro and Serbia. The list is to be revised every three months.
5	Cases concerning the Dublin Regulation or applicants who have obtained protection from another Dublin State
6	This is a new track that was elaborated within the context of the Act 2016:752, concerning temporary restrictions on the ability to obtain a residence permit in Sweden. This track is temporary and aims at expanding the protection process in Sweden. Here, cases where the extension of the previous permit is requested are dealt with in this track. This track also includes the extension of the temporary residence permit granted under the Aliens Act.
7	Relocation cases

The Swedish track system rests on administrative practice rather than a specific legal basis. Individuals are accommodated according to track, although this translates into housing all the presumably unfounded and Dublin applicants (Tracks 4 and 5) near an airport. Access to information is a significant challenge, as individuals are not clearly informed about the procedure or track they are subject to.

Germany

Since the end of 2015, the BAMF operates a cluster procedure in “arrival centres”, where procedures are conducted rapidly in different clusters:

Description of clusters in the German “arrival centres”	
Cluster	Caseload
A	Countries of origin with a high protection rate from 50% upwards
B	Countries of origin with a low protection rate up to 20%. The threshold of low protection rates was initially set at 3%, before being raised to 20% in the summer of 2016.
C	Complex cases
D	Dublin cases

The procedure in “arrival centres” involves the conduct of all steps in the same location, including a medical examination, the registration of personal data and fingerprinting, the Dublin interview, the

substantive interview, the decision on the asylum application, as well as employment advice from the local labour agency. It differs from the accelerated procedure codified in the Asylum Act and implemented in “special reception centres”, as described above.

It should also be mentioned that, beyond arrival centres, **Germany** foresees further types of BAMF offices, including “decision-making centres” and “interview centres”. The idea underlying these centres is a clear division of labour between officials interviewing asylum seekers and officials taking a decision on applications *sur dossier* (i.e. the decisions are not taken by the BAMF staff member who has conducted the interview but by a decision-maker in a remote location). According to government statistics, more than two thirds of BAMF decisions were taken in decision-making centres by officials who had not had any direct contact with the individuals concerned.³⁴ This has raised particular concerns by civil society organisations vis-à-vis the quality of first instance decisions issued in 2016.³⁵

Rapid decision-making has raised quality concerns even where asylum applications are granted international protection in Germany. The appropriateness of international protection status awarded to asylum seekers is particularly important given its implications on rights attached thereto, and has received particular attention in 2016.³⁶ Following a reform suspending family reunification rights for subsidiary protection holders in March 2016, the BAMF changed its policies with regard to protection grants to nationalities such as Syria and has increasingly granted subsidiary protection instead of refugee status. Syrians, who had a mere 0.06% subsidiary protection rate in 2015,³⁷ witnessed a subsidiary protection rate of 42% in 2016 and 66% in the first quarter of 2017.³⁸ This has led to increasing “upgrade appeals” by subsidiary protection holders against refusals of refugee status, more than 75% of which have been allowed by courts.³⁹

Nationality-based differentiation

The increasing use of “safe country of origin” concepts

The concept of “safe countries of origin” has been a controversial part of the CEAS ever since its establishment as a part of the EU asylum *acquis*.⁴⁰ The 2015 Commission proposal for a common EU list of safe countries of origin, designating Albania, Bosnia-Herzegovina, FYROM, Kosovo, Montenegro, Serbia and Turkey had entered ‘trilogue’ negotiations under the Slovak Presidency of the Council but these have now been terminated as no agreement could be found in particular on the co-existence of national lists and the EU common list and the right to an effective remedy in such cases. However, the common list of safe countries of origin / EU designation of safe third countries is under discussion as part of the proposed Asylum Procedures Regulation.

Even before its adoption, however, the idea of an EU list seems to have encouraged Member States to further develop the use of the concept in domestic law. In 2016, **Hungary** amended its recently adopted list to insert Turkey as a safe country of origin, while **Croatia** established a list containing the seven countries included by the Commission proposal, plus Algeria, Morocco and Tunisia.⁴¹ These three

³⁴ AIDA, Country Report Germany, 22.

³⁵ *Ibid.* See also Memorandum Alliance of 12 German NGOs, *Memorandum für faire und sorgfältige Asylverfahren in Deutschland: Standards zur Gewährleistung der asylrechtlichen Verfahrensgarantien*, November 2016, available in German at: <http://bit.ly/2gZGhBq>.

³⁶ For a comparative analysis, see AIDA, *Refugee rights subsiding? Europe’s two-tier protection regime and its impact on the rights of beneficiaries*, March 2017, available at: <http://bit.ly/2p9JC0u>.

³⁷ BAMF, *Asylum statistics: December 2015*, available in German at: <http://bit.ly/2l2irDZ>.

³⁸ BAMF, *Asylum statistics: March 2017*, available in German at: <http://bit.ly/2pyMRn1>.

³⁹ AIDA, Country Report Germany, 53.

⁴⁰ For a detailed discussion, see ECRE, *Safe countries of origin: A safe concept?* AIDA Legal Briefing No 3, September 2015, available at: <http://bit.ly/2dW2Zql>.

⁴¹ AIDA, Country Report Croatia, 46.

countries were also added to the list of safe countries of origin in **Austria** in 2016,⁴² while a proposal for their designation as safe countries of origin in **Germany** was rejected by the *Bundesrat* in early 2017.⁴³ On the other hand, the Secretary of State for Asylum and Migration in **Belgium** has announced the inclusion of Morocco, Algeria and Tunisia in its national list. This was done even though the Commissioner-General for Refugees and Stateless Persons (CGRS) had issued non-binding advice against such an inclusion.⁴⁴

The Commission proposal has also had an impact on the judicial scrutiny of national lists of safe countries of origin. Following the partial annulment of the French list in late 2014, the Council of State of **France** upheld the validity of the current list of safe countries of origin at the end of December 2016.⁴⁵ When upholding the legality of the reintroduction of Kosovo in the list, the Council of State took into account the fact that the country has been inserted in the Commission proposal for an EU list of safe countries of origin.⁴⁶

Nationality-based differentiation beyond safe country concepts

The “safe country of origin” concept is far from uncontroversial a tool for asylum caseload management due to its discriminatory approach and protection risks. At the same time, its practical value is further called into question by increasing tendencies on the part of certain administrations to bypass their established legal framework when accelerating the processing of specific cases.

The aforementioned emergence of “cluster” / “track” policies in certain Member States such as **Germany** and **Sweden** has enabled asylum authorities to accelerate the processing of claims by certain nationalities in such a way as to circumvent the legal framework and procedural guarantees of the “safe country of origin” concept. Though the impact of these administrative arrangements remains to be seen in the future, this seems partly due to the uneasy ‘fit’ of such “tracks” within the categories of procedures foreseen by the recast Asylum Procedures Directive. It remains unclear whether some of the “tracks” or “clusters” described above are to be considered *stricto sensu* accelerated procedures pursuant to Article 31(8) of the Directive or not.

Germany foresees a specific procedural cluster in arrival centres, “Cluster B”, applicable to countries of origin with a recognition rate of 20% or less.⁴⁷ This cluster was expanded from nationalities with a rate of 3% to a rate of 20%.⁴⁸ This means that this cluster now encompasses many countries which are not included in the national list of safe countries of origin, the expansion of which has recently been resisted by the *Bundesrat*.⁴⁹

In **Sweden**, which does not have a list of safe countries of origin, “Track 4B” concerns cases involving foreigners seeking protection from countries with a recognition rate below 20%, where rapid enforcement is possible and the matter does not require extensive processing steps.⁵⁰ Currently, the manifestly unfounded procedure is applied as a rule to all nationalities with a rate below 20%: Albania, Bosnia-Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Ivory Coast, Kyrgyzstan, Morocco, Tunisia, Venezuela, Belarus and Vietnam. The list of countries concerned is revised on a quarterly basis by the Migration Agency but has no basis in domestic law.

⁴² AIDA, Country Report Austria, 58. The amendment also added Georgia and Mongolia.

⁴³ AIDA, Country Report Germany, 47.

⁴⁴ Le Soir, ‘Theo Francken veut inscrire six nouveaux États sur la liste des pays sûrs’, 16 November 2016, available in French at: <http://bit.ly/2pAilru>.

⁴⁵ AIDA, Country Report France, 67.

⁴⁶ *Ibid.*

⁴⁷ AIDA, Country Report Germany, 20.

⁴⁸ Johannes Moll, ‘Das verkürzte Asylverfahren im Ankunftscenter Heidelberg’, *Asylmagazin* 12/2016 412, 414.

⁴⁹ *Ibid.*, 47, concerning the inclusion of Morocco, Algeria and Tunisia.

⁵⁰ AIDA, Country Report Sweden, 19.

Beyond the specific examples of track policies, more countries seem to sidestep the legal framework of “safe country of origin” concepts by *de facto* accelerating the treatment of specific nationalities. **Switzerland** has a list of safe countries of origin where its 48-hour procedure applies, yet a fast-track procedure is applied to (other) countries with a low recognition rate.⁵¹

Conversely, **Italy** has no list of safe countries of origin but has dismissed applications from nationals of Gambia, Mali, Senegal and Ghana as manifestly unfounded without formally admitting them to its accelerated procedure. Due to this, applicants have been obliged to leave reception centres as they had not been made aware of the applicability of the shorter (15-day) time limit for lodging an appeal.⁵²

Finally, the impact of the EU-Turkey statement on **Greece** remains a prime example of *de facto* accelerated processing for certain nationalities through disregard of formal rules. Since July 2016, applications from nationalities with a recognition rate below 25% such as Pakistan, Bangladesh, Morocco, Algeria or Tunisia are examined on the merits under the fast-track border procedure, without prior admissibility assessment.⁵³ Channelling these nationalities into the fast-track border procedure violates Article 43 of the recast Asylum Procedures Directive, given that Greece does not have a list of safe countries of origin and does not apply an accelerated procedure in the sense of Article 31(8) of the Directive in such cases. Since the beginning of 2017, further differentiation is applied to nationals of Pakistan, Albania and Georgia, whose applications are handled by dedicated Asylum Units in the mainland and whose asylum seeker cards are only valid for two months instead of six.⁵⁴

Procedural safeguards

Accelerated procedures at first and second instance								
Maximum duration deadlines for lodging appeals suspensive effect								
*	Name of procedure	First instance		Lodging an appeal			Second instance	
		Days	Calculation	Days	Calculation	Susp.	Days	Calculation
AT	Accelerated procedure	150	Calendar	Varies	Varies	x	90	Calendar
BE	Accelerated procedure	60	Calendar	Varies	Varies	Varies	Varies	Varies
BE	Super-accelerated procedure	15	Calendar	Varies	Varies	Varies	Varies	Varies
BG	Accelerated procedure	10	Working	7	Calendar	√	:	:
CY	Accelerated procedure	30	Calendar	10	Working	√	15	Calendar
DE	Accelerated procedure	7	Calendar	7	Calendar	x	None	None
ES	Urgent procedure	90	Calendar	60	Calendar	x	None	None
FR	Accelerated procedure	15	Calendar	30	Calendar	√	35	Calendar
GR	Accelerated procedure	90	Calendar	15	Calendar	√	60	Calendar
GR	Fast-track border procedure	3	Calendar	5	Calendar	√	3	Calendar
HR	Accelerated procedure	60	Calendar	8	Calendar	x	:	:
HU	Accelerated procedure	15	Calendar	7	Calendar	x	8	Calendar
IT	Accelerated procedure	9	Calendar	15	Calendar	x	:	:
MT	Accelerated procedure	6	Working	N/A	N/A	N/A	:	:
NL	Track 2 procedure	8	Steps not days	7	Calendar	x	:	:
PL	Accelerated procedure	30	Calendar	7	Calendar	√	:	:

⁵¹ AIDA, Country Report Switzerland, 20.

⁵² AIDA, Country Report Italy, 42.

⁵³ AIDA, Country Report Greece, 60.

⁵⁴ AIDA, Country Report Greece, 28, 30; Decision oik. 4199/2017 of the Asylum Service Director, Gov. Gazette B'881/16.03.2017, available in Greek at: <http://bit.ly/2pAG76N>.

SE	Manifestly unfounded procedure	90	Calendar	21	Calendar	x	:	:
CH	Testphase procedure	10	Working	10	Calendar	√	:	:
CH	Fast-track procedure	20	Calendar	30	Calendar	√	:	:
CH	48-hour procedure	2	Calendar	5	Working	√	:	:
TR	Accelerated procedure	8	Calendar	15	Calendar	√	15	Calendar

Source: AIDA, Country Reports, 2016 Update.

Timeframe for the completion of the first instance procedure

Time limits for the examination of asylum applications at first instance vary substantially from one country to another, or even between different procedures in the same country. In some countries, the accelerated / fast-track procedure is foreseen to last no more than two or three days. This deadline creates considerable tension with procedural rights, given the extremely short timeframe left to asylum seekers to prepare their case or to gather and submit additional evidence, including to rebut safety presumptions. The absence of effective legal assistance is also a relevant factor in this regard. From the authorities' side, truncated procedures may hinder appropriate collection and assessment of evidence to prepare quality decisions.

Nevertheless, it should be noted that failure to comply with the time limit foreseen in the accelerated procedure bears no procedural consequences in most countries. **Germany, Sweden and Turkey** are exceptions, where the authorities are required to process the application under the regular procedure if the time limit of the accelerated procedure is not respected.⁵⁵ In the **Netherlands**, on the other hand, the IND is required to pay a fine if procedural time limits are extended.⁵⁶

Through the proposal for an Asylum Procedures Regulation, the European Commission has sought to regulate the duration of accelerated procedures at EU level by introducing specific time limits for first instance decision-making. The accelerated procedure would have to be conducted within a deadline of two months, subject to a stricter deadline of 8 working days in cases concerning asylum applications made for the sole purpose of frustrating a return procedure.⁵⁷ The two-month deadline for completing the accelerated examination of claims would be more generous compared to the rules introduced in most countries using such a procedure, with the exception of **Spain, Greece, Sweden and Austria**.

Deadline for appealing a decision

France, Sweden and Spain provide the same deadline for lodging appeals in both regular and accelerated procedures.

Other countries provide more truncated appeal deadlines, which can be as short as 5 days in some cases. The reasonableness of time limits for appealing decisions in the accelerated procedure was examined by the Court of Justice of the European Union (CJEU) in *Diouf*, which held that a two-week time limit could be considered reasonable in a procedure aimed at processing manifestly unfounded cases.⁵⁸ At the national level, courts have also scrutinised the timeframe within which individuals are required to appeal a negative asylum decision. In **Austria**, where deadlines for appeal depend on the type of decision challenged, the Constitutional Court found in 2016 that the previous one-week deadline for submitting non-suspensive appeals against inadmissibility and return decisions was

⁵⁵ ECRE, *The length of asylum procedures in Europe*, AIDA Legal Briefing No 7, October 2016, available at: <http://bit.ly/2cUC948>, 8.

⁵⁶ Dutch Work instruction 2013/17 (AUA, 5 September 2013), available at: <http://bit.ly/1lrwsdK>.

⁵⁷ Article 40(2) proposal for an Asylum Procedures Regulation.

⁵⁸ CJEU, Case C-69/10 *Samba Diouf*, Judgment of 28 July 2011, para 67.

unconstitutional. The appeal deadline has now been raised to two weeks for inadmissibility or return decisions, and to four weeks for decisions on the merits of an asylum claim.⁵⁹

Automatic suspensive effect of appeals

The provision of suspensive effect has been recalled by the European Court of Human Rights (ECtHR) as a crucial procedural guarantee, especially in the context of accelerated procedures, in cases such as *I.M. v. France* and *A.C. v. Spain*.⁶⁰

France, Greece, Bulgaria, Spain, Switzerland, Poland, Cyprus and in most cases **Belgium** award automatic suspensive effect to appeals lodged against decisions taken in accelerated, prioritised or fast-track procedures. The provision of automatic suspensive effect was introduced in July 2015 in **France**.⁶¹

Conversely, countries such as **Germany, Sweden, Italy, the Netherlands, Croatia** or **Hungary** do not allow automatic suspensive effect in such procedures. It should be mentioned that decisions rejecting a claim as “manifestly unfounded” in the regular procedure can also lead to non-suspensive appeals. This is the case in **Germany**, as well as in certified refusals in the **United Kingdom**.

Timeframe and modalities of the second-instance procedure

Not all countries have laid down specific time limits to be followed by second-instance decision-making authorities. Nevertheless, available information illustrates wide discrepancies in the duration of appeal procedures, from 3 days in the fast-track border procedure in **Greece** to 3 months in the accelerated procedure in **Austria**. Non-compliance with those time-frames by the appeal authorities does not entail any consequences.

In addition, some countries apply different appeal modalities in the accelerated procedure compared to the regular procedure. In **France**, appeals in the accelerated procedure are examined by a single judge (*juge unique*) of the National Court of Asylum (CNDA), usually without a hearing, as opposed to a collegial formation.⁶² Although stakeholders had expressed concerns as to the quality of single-judge hearings during the adoption of the 2015 reform, the success rate of appeals examined by a single judge seems to be the same as in the regular procedure.⁶³ A similar rule is implemented in **Poland**, where appeals under the accelerated appeal are examined by a single Refugee Board member instead of three.⁶⁴

In **Hungary**, the accelerated procedure presents several challenges. The modalities of the appeal differ with regard to the right to be heard, given that an oral hearing is not mandatory. More importantly, a substantial challenge is posed by the *ex tunc* nature of the review in the accelerated procedure: new facts or circumstances cannot be raised by the appellant, including country of origin information that

⁵⁹ Austrian Constitutional Court, Decisions G 589/2015-6, G 653/2015-4, G 9/2016-4, 23 February 2016, available in German at: <http://bit.ly/2jwOISx>.

⁶⁰ ECtHR, *I.M. v. France*, Application No 9152/09, Judgment of 2 May 2012; *A.C. v. Spain*, Application No 6258/11, Judgment of 24 April 2014.

⁶¹ A transitory regime has been implemented regarding asylum claims registered in between 20 July 2015 and 1 November 2015. During this period, it could be possible, even if the reform law had been adopted and the deadline for transposition of the directive had expired, to register asylum claims under prioritised procedures and then, to refuse the suspensive effect of an appeal to the CNDA. The Administrative Court of Lyon held in 30 May 2016 that this transitory regime was unlawful and that all the procedural guarantees had to be applied to asylum claims registered during this period: AIDA, Country Report France, 52.

⁶² AIDA, Country Report France, 54.

⁶³ *Ibid*, 16.

⁶⁴ AIDA, Country Report Poland, 32.

was not raised during the first-instance procedure. Finally, second-instance decisions in the accelerated procedure may be taken by a court secretary (clerk) instead of a judge.⁶⁵

In **Bulgaria**, on the other hand, decisions taken in the accelerated procedure can only be appealed before one judicial instance, as opposed to two in the regular procedure.⁶⁶

Right to information

The wording of Article 31(8) of the recast Asylum Procedures Directive implies a clear administrative division between the regular procedure and the accelerated procedure, which should be communicated to the asylum seeker to ensure transparency and predictability. This distinction, however, does not always seem to be comprehensibly drawn in practice.

An illustrative example of the lack of communication of the applicable procedure is drawn from practice in **Italy**. In some regions, the Association for Legal Studies on Immigration (ASGI) has reported that asylum seekers whose application has been rejected as “manifestly unfounded” come to know that they have been involved in an accelerated procedure, and that they have half the time available (15 days instead of 30) to appeal against the decision, only when they are notified of the rejection by the *Questura*. In several cases, even if the law does not provide it, the rejection of an asylum request as “manifestly unfounded” has been automatically connected with the accelerated procedure, therefore applying the shorter appeal deadline of 15 days. During 2016, the Caserta Territorial Commission has rejected many asylum requests as “manifestly unfounded”, and most of the appeals were considered inadmissible by the Court of Naples because they were not lodged within the ostensible 15-day deadline.⁶⁷

Access to legal assistance

The backdrop of truncated procedures at first and second instance, as well as limited appeal rights attached thereto in some European countries, renders the balance between ‘efficiency’ and quality of refugee status determination particularly delicate. Expecting asylum seekers to navigate complex procedures shortly after arriving in a new country without appropriate assistance is liable to create incomprehensible asylum procedures, creating little if any incentive for compliance with decisions.

Any acceleration or fast-tracking of case processing must be accompanied by frontloaded information and legal assistance to ensure that individuals fully understand and are able to participate in the (speedy) process. Free legal assistance from the start of the procedure is foreseen in the **Netherlands**, although the introduction of the tracks policy has had an adverse impact on asylum seekers’ access to a legal representative. As mentioned above, the rest and preparation period given before the start of the examination of the claim is not available to applicants channelled in Track 1 procedures concerning the Dublin Regulation and Track 2 procedures applicable to safe country of origin cases or applicants with a protection status in another EU Member State.⁶⁸ At the same time, the Netherlands is testing a new approach to limiting legal assistance in appeals against negative decisions in Track 2 cases, whereby the applicant would be excluded from legal aid if two legal representatives have refused to undertake the case.

The test phase procedure in **Switzerland**, which will serve as the model for a nationwide restructuring of the Swiss asylum procedure by 2019,⁶⁹ also offers interesting findings in this regard. The test phase

⁶⁵ AIDA, Country Report Hungary, 33-35, 42.

⁶⁶ AIDA, Country Report Bulgaria, 33.

⁶⁷ AIDA, Country Report Italy, 2016 Update, February 2017, available at: <http://bit.ly/2maTfMw>, 41-42.

⁶⁸ AIDA, Country Report Netherlands, 16 and 24-25.

⁶⁹ AIDA, Country Report Switzerland, 42.

foresees a rapid procedure (*Taktenphase*) for the examination of the application by the State Secretariat for Migration (SEM) within 8 to 10 working days but entails an initial preparatory phase of 21 days and free legal assistance from the start and throughout the entire asylum procedure.⁷⁰ In practice, the duration of the examination procedure ranges from 21 days for Dublin cases to 28 days for other cases.

An evaluation of the test phase showed that on average, the asylum procedure could be accelerated by 39%.⁷¹ Furthermore, the provision of legal advice and legal representation supports fair and correct procedures, which were found to have a positive effect on the quality of decisions and to improve acceptance of the decisions by the asylum seekers. The appeal rate was 33% lower than in the ordinary procedure.⁷² Nevertheless, civil society organisations do not share all findings of the evaluation, namely vis-à-vis compliance with negative decisions.

Beyond the timely provision of free legal assistance, ensuring full scope of assistance and representation to asylum seekers regardless of the procedure in which they are channelled has also been stressed in national case law as a crucial guarantee. The Constitutional Court of **Austria** ruled in 2016 that a differentiation in the scope of legal advice according to the type of procedure (asylum, reception, return) is discriminatory and therefore unconstitutional.⁷³ Austria amended its legislation in October 2016 to clarify that legal advisors during appeal procedures are under the obligation to participate in hearings before the Federal Administrative Court and to represent applicants during the proceedings, if the asylum seeker so wishes.⁷⁴

Furthermore, the normative connotation of channelling a claim under the accelerated procedure may have important repercussions on asylum seekers' access to legal assistance. Given that Article 20(3) of the recast Asylum Procedures Directive permits Member States to condition legal aid upon "merits testing", thereby excluding cases that have "no tangible prospect of success", accessing free legal assistance under a procedure designed to filter out "manifestly unfounded" claims may become particularly difficult in practice. Access to legal aid has been interpreted restrictively – and often on the basis of nationality – in 2016, with illustrative examples from **Italy**. The Bar Councils of Milan and Trieste rejected almost all requests for legal aid as manifestly unfounded and, disregarding the scope of ASGI's intervention, the Trieste Bar Council only changed its approach to accept requests for Pakistani and Nigerian nationals, while continuing to reject all other nationalities.⁷⁵

Concluding remarks

The diversity of procedural models, tools and concepts across national systems in Europe speaks to the complexity of setting up an 'efficient' asylum process. On the one hand, the notions of prioritisation, acceleration and fast-tracking seem to have different meaning and objectives from one asylum system to another. Beyond the aim of rapid processing of applications, evident in several countries' "track" or "cluster" systems to filter asylum applications, deterrence considerations such as rejection of applications or lowering of the level of protection granted seem to underpin such procedures. On the other hand, new ways of managing caseloads under specific procedures, in particular through nationality-based differentiation, tend to run in parallel to, or exceed, the applicable legal framework. This has a direct impact on the transparency and predictability of the procedure, as well as essential safeguards for the individuals navigating it.

⁷⁰ *Ibid*, 40.

⁷¹ Swiss Centre for Expertise in Human Rights, *External evaluation of the Testphase for the restructuring of asylum*, 17 November 2015, available in German at: <http://bit.ly/2p0304Q>.

⁷² AIDA, Country Report Switzerland, 40.

⁷³ Austrian Constitutional Court, Decision G 447-4W49/2015-13, 9 March 2016, available in German at: <http://bit.ly/2jR9OMi>.

⁷⁴ Article 52(2) Austrian BFA Procedures Act. See also AIDA, Country Report Austria, 12.

⁷⁵ AIDA, Country Report Italy, 34.

These considerations should inform the negotiations on the proposal for an Asylum Procedures Regulation, which envisions a substantial transformation of European asylum procedures in the name of further harmonisation and efficiency. The lessons from Europe's fragmented procedural landscape are crucial to a better understanding of the challenges at hand: speedy decision-making can only be a realistic target where asylum procedures are straightforward, transparent, easily comprehensible and navigated with appropriate support and legal assistance from the outset.

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database](#) is a database containing information on asylum procedures, reception conditions, detention and content of international protection across 20 European countries. This includes 17 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Sweden, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

❖ **Country reports**

AIDA contains [national reports](#) documenting asylum procedures, reception conditions, detention and content of international protection in 20 countries.

❖ **Comparative reports**

Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in [2013](#), [2014](#) and [2015](#). Since then, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on [reception](#) (March 2016), [asylum procedures](#) (September 2016) and [content of protection](#) (March 2017).

❖ **Comparator**

The [Comparator](#) allows users to compare legal frameworks and practice between the countries covered by the database in relation to the core themes covered: asylum procedure, reception, detention, and soon content of protection. The different sections of the Comparator define key concepts of the EU asylum *acquis* and outline their implementation in practice.

❖ **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in [Greece](#), [Hungary](#), [Austria](#) and [Croatia](#).

❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Nine [briefings](#) have been published so far, covering legality of detention of asylum seekers under the Dublin Regulation; key problems in the collection and provision of asylum statistics in the EU, the concept of "safe country of origin"; the way the examination of asylum claims in detention impacts on procedural rights and their effectiveness; age assessment of unaccompanied children; duration and review of international protection; length of asylum procedures; travel documents; and a statistical update on the Dublin system.

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