aida
Asylum Information Database

Country Report: Netherlands

2022
Update

VluchtelingenWerk Nederland

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European Council on Refugees and Exiles

Acknowledgements & Methodology

This report was written by Anna Chatelion Counet, Arno Pinxter, Barbara Bierhuizen, Eglantine Weijmans, Eva Berger, Lianne Hooijmans, Marieke van Zantvoort, Shane van Galen, Stefanie Pijnenburg and Wilma Klaassen, edited by Aya Younis at the Dutch Council for Refugees, and finally edited by ECRE. The temporary protection annex to the report was drafted by Angelina van Kampen and Merlijn Bothof, and finally edited by ECRE.

The information in this report is up-to-date as of 31 December 2022, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, and the United Kingdom). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.

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Glossary

Age inspection	Process by which officials of the Immigration and Naturalisation Service or the Royal Police assess whether the asylum seeker is evidently over or under the age of 18 based on appearance and discussion with him or her | Leeftijdsschouw
Extended asylum procedure	Procedure applicable where the Immigration and Naturalisation Service deems it impossible to take a decision within the deadlines of the short asylum procedure. The extended procedure lasts 6 months as a rule I Verlengde asielprocedure
Nova	New elements or circumstances in the examination of subsequent applications
Rest and preparation period	Lasting six days, the period allows the asylum seeker to rest and the authorities to start preliminary investigations I Rust- en Voorbereidingstijd
Short asylum procedure	The regular procedure applicable to asylum seekers, which lasts 6 working days as a rule I Algemene Asielprocedure
Tracks	Procedural modalities applied to different caseloads. 5 such tracks exist
Written intention	Written notification of the Immigration and Naturalisation Service stating its intention to reject the asylum application. The intention provides the ground for rejection | Voornemen
Written submission	Written submission of the lawyer in response to the written intention (*Voornemen*) of the Immigration and Naturalisation Service | Zienswijze
AC	Application Centre I Aanmeldcentrum
ACVZ	Advisory Council on Migration I Adviesraad Migratie
ALO	Alleenstaande Ouderkop - The ALO is a regulation of the Tax Authorities for single parents, which can lead to certain additional allocations or entitlements.
AVIM	Aliens Police - Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel (AVIM)
AZC	Centre for Asylum Seekers I Asielzoekerscentrum
BRP	Persons' Database | Basisregistratie Personen
CBS	Central Office of Statistics | Centraal Bureau voor de Statistiek
CNO	Crisis Emergency Location | Crisisnoodopvang
COA	Central Agency for the Reception of Asylum Seekers I Centraal Orgaan opvang Asielzoekers
COL	Central Reception Centre I Centraal Opvanglocatie,
CJEU	Court of Justice of the European Union
DA-AAR	Dutch Association of Age Assessment Researchers
DJI	Custodial Institutions Service | Dienst Justitiële Inrichtingen
DT&V	Repatriation and Departure Service of the Ministry of Security and Justice I Dienst Terugkeer en Vertrek
DUO	Education Executive Agency | Dienst Uitvoering Onderwijs
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
EUAA	European Union Agency for Asylum

FMMU	Forensic Medical Society Utrecht - Forensisch Medische Maatschappij Utrecht
GL	Family housing I Gezinslocatie
HTL	Enforcement and Surveillance Location | Handhaving en toezichtlocatie
iMMO	Institute for Human Rights and Medical Assessment | instituut voor Mensenrechten en Medisch Onderzoek, iMMO
Inspection of Justice and Security	Dutch government agency based in The Hague that carries out supervision for the Ministry of Justice and Security. Migration is one of its monitoring areas. The aim of the supervision is to improve the quality of implementation of government tasks.
IND	Immigration and Naturalisation Service I Immigratie- en Naturalisatiedienst
KMar	Royal Military Police I Koninklijke Marechaussee
LGBTQI+	Lesbian, gay, bisexual, transgender, queer and intersexed community
LOS	National Support Point for Undocumented Migrants - Landelijk Ongedocumenteerden Steunpunt
NFI	Dutch Forensic Institute | Nederlands Forensisch Instituut
Nidos	Independent guardianship and (family) supervision agency for refugee children
NO	Emergency Location | Noodopvang
NVVB	Dutch Association for Civil Affairs | Nederlandse Vereniging voor Burgerzaken
POL	Process Reception Centre | Proces Opvanglocatie
ROV	Regulation of Internal Order | Reglement Onthoudingen Verstrekkingen
SBB	Cooperation Organisation for Vocational Education, Training and the Labour Market | Stichting Samenwerking Beroepsonderwijs Bedrijfsleven
TP	Temporary Protection
TPD	Temporary Protection Directive
VBL	Freedom restricted location I Vrijheidsbeperkende locatie
VWN	Dutch Council for Refugees | VluchtelingenWerk Nederland
VIS	Visa Information System
WRR	Scientific Council for Government Policy | Wetenschappelijke Raad voor het Regeringsbeleid

Statistics

Overview of statistical practice

The Immigration and Naturalisation Service (IND) publishes Asylum Trends with statistics on asylum and family reunification applications on a monthly basis.[1] These do not indicate decisions on asylum applications, however. While this report provides some statistical information on the year 2022, various data was not made publicly available by the time of writing of this report.

Applications and granting of protection status at first instance: 2022

	Applicants in 2022 (1)	Pending at end 2022	Total decisions	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Sub. Prot. rate	Hum. Prot. rate	Rejection rate
Total	35,535	Not available	17,400	9,245	5,045	890	2,220	53,1%	29%	5,1%	12,8%
			Breakdown by countries of origin of the total numbers								
Syria Arabic Republic	12,648		6,360	3,790	2,280	75	215	59.6%	35,8%	1,2%	3,4%
Afghanistan	2,732		2,460	2,295	105	35	25	93,3%	4,2%	1,4%	1%
Türkiye	2,648		2,045	1,595	0	395	55	78%	0%	19,3%	2.7%
Yemen	2,428		1,245	45	1,180	5	10	3.6%	94.8%	0,4%	0.8%
Somalia	1,457		640	40	435	20	145	6.2%	68%	3,1%	22.6%
Eritrea	1,365		470	0	380	20	80	0%	80.9%	4,3%	17%
Algeria	1,206		90	0	0	0	90	0%	0%	0%	100%
Unknown	1,113		345	175	80	30	50	50.7%	23.1%	8,7%	14.5%
Ukraine	1,060		15			5	10	0%	0%	33,3%	66.7%

Source: Eurostat.
* Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.
* It should be noted that rejections include inadmissibility decisions.

(1) These numbers are first time applicants. The IND, in its publication on Asylum Trends for December 2022,[2] indicates that the total number of applicants was 47,991. It should be noted that the IND includes the number of applicants entering the asylum procedure because of family reunification in the total figure,

[1] IND, *Asylum trends*, available at: http://bit.ly/3YJwEXS.
[2] IND Asylum Trends for December 2022, available at: https://bit.ly/3lanW7u.

together with those of first-time and subsequent applicants. The 5 most represented countries of origin in 2022, including family reunification cases, were **Syria** (19,989), **Türkiye** (3.802), **Afghanistan** (2,945), **Yemen** (2,813) and **Eritrea** (1,939).

Gender/age breakdown of the total number of applicants:* 2022

	Number	Percentage
Total number of applicants	35,536	-
Men	27,498	77.3%
Women	8,000	22.5%
Children	2,498	7%
Unaccompanied children	4,207*	*

Source: IND Asylum Trends, December 2022, available at: https://bit.ly/3lanW7u.

* The IND does not include unaccompanied minors in the total number of applicants.

Comparison between first instance and appeal decision rates: 2022

National authorities did not provide detailed statistics on second instance decisions at the time of writing of the report.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title in English	Original Title (NL)	Abbreviation	Web Link
General Administrative Law Act	Algemene Wet Bestuursrecht (AWB)	GALA	https://bit.ly/2MsylJS (NL)
Aliens Act 2000	Vreemdelingenwet 2000 (Vw 2000)	Aliens Act	https://bit.ly/3qUN0MS (NL) http://bit.ly/1CPkXEI (EN)
Act of the Central Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	Reception Act	https://bit.ly/36cQane (NL)
Aliens Labour Act	Wet Arbeid Vreemdelingen (Wav)	Aliens Labour Act	https://bit.ly/3a8zONB (NL)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title in English	Original Title (NL)	Abbreviation	Web Link
Aliens Decree 2000	Vreemdelingenbesluit 2000 (Vb 2000)	Aliens Decree	https://bit.ly/3ccPTEJ (NL)
Aliens Circular 2000	Vreemdelingencirculaire 2000 (Vc 2000)	Aliens Circular	A:https://bit.ly/3sXEJtu B:https://bit.ly/3a5qFWi C:https://bit.ly/3pkVUCZ (NL)
Aliens Regulation 2000	Voorschrift Vreemdelingen 2000 (Vv 2000)	Aliens Regulation	https://bit.ly/3qUDYzz (NL)
Regulation on benefits for asylum seekers and other categories of foreigners 2005	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Rva 2005)	RVA	https://bit.ly/2Ma6hLw (NL)
Border Accommodation Regime Regulation	Reglement Regime Grenslogies (Rrg)	Border Regime Regulation	https://bit.ly/3ceEyE4 (NL)

Overview of the main changes since the previous report update

The report was previously updated in **April 2022**.

International protection

Asylum procedure

- **Key asylum statistics**: In 2022, a total of 35,535 first applications for international protection were lodged in the Netherlands, mainly by Syrian (12,648), Afghan (2,732) and Turkish (2,648) nationals. This is a considerable increase compared to 2021, when the number of first applications was 24,725. The overall recognition rate at first instance stood at 87.2% (53.1% refugee status, 29% subsidiary protection, and 5.1% humanitarian protection). It reached 99% for Afghans, 96.6% for Syrians, and 99.2% for Yemenites. Other nationalities, such as Algerians, received only negative decisions, with a rejection rate of 100% based on 1,206 applications. These statistics also partially explain the long procedures, as the number of first-time applications has increased by 43.7%, whereas the number of FTE at the IND have only increased by 8.2%.

- **Pre-registration:** Due to the high number of asylum applications and the ongoing capacity problems at the Immigration and Naturalisation Service (IND), a pre-registration procedure was implemented in the last quarter of 2022. Since 10 September 2022, it was not possible to directly submit an asylum application in **Ter Apel**. Instead, asylum seekers have their personal basic information registered, whereafter they are transferred to a temporary shelter location. This is called pre-registration. In practice, asylum seekers then have to wait for a period up to four months, until receiving an invitation for their official registration. Only at the moment of official registration the request for asylum is considered as officially lodged. At the moment it is unsure whether the moment of pre-registration or the moment of official registration will influence the (potential) starting date of the permit. From the end of 2022, the backlog of registrations was reduced, as a consequence, registration started to be once again realised in Ter Apel. On 1 March 2023, the temporary shelter location at **Zoutkamp** was closed, and asylum seekers are registered directly at Ter Apel, without being requested to travel to the temporary shelter location.

- **Legal penalties:** The Temporary Act on suspension of penalties for the IND was extended by another year on 11 July 2021; as a result, no judicial and administrative penalties would be forfeited in cases where the IND exceeded the time limit for deciding. On 30 November 2022, however, the Council of State ruled the law is partially incompatible with European Law. The Council of State established that abolishing the judicial penalty was in violation of European law. However, abolishing the administrative penalty was not deemed incompatible with European law. At the moment, in cases where the IND did not decide on the request for asylum, no administrative penalties will be forfeited, although there is the possibility of issuing a judicial penalty.

- **Extension of the time limit to issue an asylum decision:** At the end of September 2022, the IND decided to extend by nine months the time limit to decide on asylum requests. This means that, for any asylum request where the initial time limit of six months had not expired at the moment of this extension, the time limit for deciding was extended by nine months. Additionally, for any asylum application lodged after 27 September 2022, the time limit for deciding is set to 15 months. This also means that for certain asylum seekers, the IND can take the maximum time limit of 21 months for deciding on their requests for asylum. Three regional courts have so far adopted diverging opinions as to whether this extension is to be considered in line with European and national law. On 3 February 2023, another extension of the time limit for issuing an asylum decision was published, meaning that the time limit for the decision on asylum applications lodged between 1 January 2023 and 1 January 2024 will also be of 15 months.

- **Suspension of Dublin transfers:** On 13 April 2022, the Council of State ruled that the Secretary of State should conduct further research on the situation of asylum seekers transferred to Croatia under the Dublin Regulation. This is due to reports of frequent pushbacks (including of asylum seekers who have already reached Croatian territory), which may result in a violation of the principle of nonrefoulement.[3] On 30 May 2022, the Secretary of State announced that. until this research is concluded, no Dublin transfers to Croatia will be carried out. As of now, the research has not been finalized and there are no transfers to Croatia.[4] On 6 July 2022, the Council of State issued three judgments on indirect refoulement in Dublin cases in the event of differences in protection policies between Member States.[5] Two of these cases concerned Syrian nationals who argued that they would be at risk of refoulement, were they returned to Denmark, as in the country the province of Damascus is considered as a suitable internal protection alternative. The Council of State ruled that a difference in protection policy may mean that the Dublin transfer cannot be carried out. To this end, the applicant must demonstrate: 1) that there is a fundamental difference in protection policy between the Netherlands and the other Member State (whereby it is established that he would receive protection in the Netherlands and not in the other Member State); 2) that the highest national court in the other Member State does not disapprove of the policy applicable there. In the opinion of the Council of State, the applicants had fulfilled their burden of proof with regard to the Danish policy on Damascus and the level of judicial protection in Denmark.

- **Unaccompanied minors:** In the case of TQ (C-441/19) of 14 January 2021, the CJEU ruled that a Member State must ascertain - before adopting a return decision - that an unaccompanied minor will have access to adequate reception facilities upon return.[6] The Council of State ruled in the case of TQ on 8 June 2022.[7] After said judgement, there will only be three options for unaccompanied minors who do not qualify for an asylum permit. The first option is that it is established that there is adequate reception in the country of origin. In that case, a return decision is issued. If no adequate reception is available, the unaccompanied minor will receive a residence permit on national grounds. As a third option, it might be considered that additional research into the existance of adequate reception places is needed. This research should not, in principle, last longer than one year.[8]

- **Beneficiaries of international protection from Greece:** The Ministry of Foreign affairs investigated the situation of BIPs in Greece. The report was published on 24 June 2022. On 7 November 2022, the Secretary of State declared that, following the report, BIPs from Greece could no longer be sent back to the country. However, as the situation in Greece is changing rapidly, cases will still only be decided upon after the prolonged decision period has ended (using the general prolonging of decisions from WBV 2022/22). This means that BIPs from Greece applying for asylum in the Netherlands will have to wait 15 months before their asylum procedure starts. If the asylum procedure starts, the IND will not take in consideration that the person has already been recognized as a beneficiary of international protection in Greece.

- **Differential treatment of specific nationalities in the asylum procedure:** In 2022, Dutch authorities published, through the Aliens Circular, Country-specific policy documents on 35 countries of origin. These policy documents include, for example, which groups are considered to be at risk, in which areas an armed conflict is considered to reach the art. 15C QD standard, but also for which nationalities there is a Postponement of Decision and Departure in place.

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3 Council of State, ECLI:NL:RVS:2022:1042 and ECLI:NL:RVS:2022:1043, 13 April 2022.
4 Secretary of State, Letter to House of representatives, 30 May 2022. Available in Dutch at: https://bit.ly/3ZcaGyo.
5 Council of State, ECLI:NL:ABRVS:2022:1862; ECLI:NL:ABRVS:2022:1863 and ECLI:NL:ABRVS:2022:1864, 6 July 2022.
6 CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, C-441/19, 14 January 2021.
7 Council of State, ECLI:NL:RVS:2022:1530, 8 June 2022.
8 IND, IB 2022/74, 29 July 2022. Available in Dutch at: https://bit.ly/3igKEcI.

Reception conditions

- **Reception conditions**: The reception crisis started in 2021 continued throughout 2022. Approximately 20,000 asylum seekers have been estimated to be living in inhumane conditions, that do not meet minimum legal standards. Living conditions in (crisis)emergency reception centres for refugees and asylum seekers are seriously inadequate. Many locations do not provide for respect of basic needs such as privacy, security and warmth. There are also concerns about access to health care, education and other activities for children. Asylum seekers are also subjected to frequent moves from one centre to the other.

- **Ter Apel:** From May 2022, newly arrived asylum seekers waiting to register their application in **Ter Apel** reportedly had to sleep on chairs, on the floor or outdoors in front of the centre, for one or more days. By July, the number of asylum seekers sleeping in the open air had risen to 300. On 24 August 2022, 700 people slept outside in front of the **Ter Apel** centre. Although attempts were made to house them in crisis emergency locations, there were not always enough places available. Moreover, many asylum seekers felt compelled to stay in **Ter Apel** as they feared missing the possibility to register, a fear that actually concretised for some applicants. At the beginning of September, the Ministry of Defence opened a location at **Marnewaard** to temporarily house unregistered asylum seekers during their registration period at **Ter Apel**. From the opening of this 'waiting room', no more asylum seekers slept outside in **Ter Apel** – except for one night in some limited cases.

- **(Crisis) emergency locations:** Almost half of the people entitled to reception conditions were hosted in temporary emergency locations (managed by COA) or crisis emergency locations (managed by the municipalities) in 2022. These locations varied from sport halls, tents, boats, cruise ships, old office buildings and hotels, whose conditions were often extremely below acceptable standards, lacking privacy, protection from weather conditions and quiet spaces.

- **Reception of unaccompanied minors:** In 2022, UAMs were especially affected by the reception crisis. In the COL location in Ter Apel there is space and guidance for 55 UAMs. Throughout the year, this location hosted more than 200-300 UAMs. The Ombudsperson for Children raised concerns regarding their situation in Ter Apel multiple times. On her visit in October 2022, she reported encountering a group of around thirty boys and two girls who had been staying in the waiting room of the IND for three days. They indicated there was no place for them at the centre. They waited all day in their plastic chair and sleep in another identical waiting room at night on a stone floor or on a chair with a sheet and something that passes for a blanket. They looked grey with fatigue. They did not have a bed, nor were there sanitary facilities. They did not eat enough. They brushed their teeth with their fingers in the toilet and there is no shower.

- **Court proceedings on reception conditions**: On 7 July 2022, the Dutch Council for Refugees (VWN) formally announced that it holds the State and COA responsible for the current circumstances which violate the Reception Conditions Directive and that if the situation would not improve within a month, it would take the matter to court in a tort procedure. On 17 August 2022, the Dutch Council for Refugees (VWN) summoned COA and the State in front of the Court of the Hague. On 6 October 2022, the court of first instance confirmed that the State has an obligation of result to take appropriate measures to guarantee dignified reception facilities for asylum seekers (ECLI:NL:RBDHA:2022:10210). Especially the conditions for UAMs and vulnerable asylum seekers needed to be improved in a few weeks. The overall situation had to be improved within nine months. On 20 December 2022, the Court in appeal upheld the essence of the earlier ruling: the reception conditions for thousands of asylum seekers are harmful and do not meet minimum legal requirements (ECLI:NL:GHDHA:2022:2078). However, although the Court expects the State and COA to fulfil their legal obligations as soon as possible, the deadline given to the State to improve all reception conditions

has been revoked. The Court also ruled that the State treats displaced persons from Ukraine and asylum seekers from other countries unequally.

- **Enforcement and supervision location (HTL)**: In August 2022, the Inspection of the Ministry of Justice and Security paid an unannounced visit to the HTL following the report of a 'whistleblower' who notified eight incidents in the twenty days that he worked at the HTL. The Inspection established that the housing supervisors, who work for the COA and the DJI, used coercion and violence. For example, housing supervisors pushed, slapped or kicked asylum seekers and made unauthorized use of handcuffs. In his response, however, the Secretary of State indicated not having recognized any pattern of disproportionate violence on the HTL.

Detention of asylum seekers

- **Reasonable prospect of removal**: On 14 November 2022, the Council of State ruled that a reasonable prospect of removal towards Morocco can currently be considered existing (ECLI:NL:RVS:2022:3269). According to the Court, there is instead still no reasonable prospect of removal towards Algeria (ECLI:NL:RVS:2022:1276, 4 May 2022).

- **Legal review of its own motion / ex officio**: Answering preliminary questions of the Council of State and the Regional Court of Den Bosch, the CJEU ruled (C-704/20 and C-39/21 (C, B, X), 8 November 2022) that it follows from CEAS provisions on detention - which give concrete form to the right to effective judicial protection safeguarded in Article 47 of the Charter -, that Member States must provide for a 'speedy' judicial review, either ex officio or at the request of the person concerned, of the lawfulness of that detention.

Content of international protection

- **Family reunification:** A new integral assessment framework for rules on proving evidence of identity and family ties in family reunification cases was introduced following a judgment of the Council of State of 26 January 2022.[9] Currently, the Secretary of State has to make an integral assessment of all the documents submitted and statements made, as well as to take into account other relevant elements of the case like, such as the age and gender of the family member and the administrative practice in the country of origin. Differently from before, the INS has to make a motivated assessment whether there is reason to give the sponsor the benefit of the doubt. This means that a right to further investigation arises when there is substantial indicative evidence or plausible explanations about the lack of documents. Additional research like dna-research or interviews can also be offered, if needed under the principle of the benefit of the doubt. Another signficant development in 2022 was the measure adopted by the Cabinet on family reunification in response to the reception crisis.[10] This temporary measure entailed the introduction of a waiting period before family members of protection beneficiaries could obtain their visa at a consular service after a positive decision had been given by the IND. Several courts ruled that the measure was unlawful, but the State secretary persisted in holding on to the measure until the Council of State had expressed its position.[11] In February 2023, the Council of State ruled that the measure was indeed unlawful. The measure, which was already suspended since 11 January, was finally abolished.

Temporary protection

9 Council of State, Decision 202006519/1/V1, 26 January 2022.

10 KST 19637, nr. 2992, Letter Ministry of Justice and Safety about the reception crisis, available in Dutch at: http://bit.ly/3wSuWId.

11 Regional Court Haarlem, 22 December 2022, ECLI:NL:RBDHA:2022:14102; Regional Court Middelburg, 22 December 2022, ECLI:NL:RBDHA:2022:13902; Regional Court Haarlem, 22 December 2022, ECLI:NL:RBDHA:2022:14104; Regional Court Arnhem, 23 december 2022, NL22.20578; Regional Court Amsterdam, 23 December 2022, ECLI:NL:RBDHA:2022:14097.

The information given hereafter constitute a short summary of the annex on Temporary Protection in the Netherlands, for further information, see Temporary Protection Netherlands.

Temporary protection procedure

- **Scope and temporary protection procedure:** As a result of the Implementing Decision (EU) 2022/382), detailed national measures have been introduced. Persons who fall within the scope of the TPD and want to benefit from its provisions in the country have to apply for asylum; they will be considered as asylum seekers falling under a specific asylum regime. They do not obtain a residence permit. The persons who fall under the TPD will remain in the country as asylum seekers granted temporary protection. After arrival in the Netherlands, displaced persons from Ukraine are - after an initial assessment - registered by a municipal official in the Personal Records Database (Basisregistratie Personen, BRP). After the registration in the BRP, the Secretary of State (IND) reassess whether the displaced person is entitled to temporary protection. At the same time, the displaced person has to submit an asylum application with the IND, but the assessment of the application is on hold as long as the temporary protection is in force. Beneficiaires of temporary protection obtain a proof of residency.

- **Non-Ukrainian nationals:** Initially, non-Ukrainian nationals who were displaced and had a valid Ukrainian residence permit on 23 February 2022– regardless of whether this was a temporary or a permanent residence permit – were entitled to temporary protection. However, application of the TPD concerning non-UA nationals has changed. As of 19 July 2022, non-UA nationals who merely held a temporary residence permit in Ukraine no longer fall under the scope of the TPD in the Netherlands. Non-UA nationals who had already been registered by a municipality in the BRP before the policy change on 19 July 2022 benefit from temporary protection initially until 4 March 2023, but the Secretary of State of Justice & Security announced on 10 February 2023 that this will be extended until 4 September 2023. The IND started the assessment of asylum applications of people falling within this group.

Content of temporary protection

- **Reception:** Due to extraordinary circumstances, the Dutch government found itself unable to provide (emergency) accommodation to the displaced persons within the existing structure. This is the reason that the Dutch government activated, on 1 April 2022, the Relocation Population Act (Wet verplaatsing bevolking), which is state emergency law. As a result, the municipalities (mayors) are given the statutory duty (task) to provide for the reception of displaced persons from Ukraine. Furthermore, this task has been implemented in the Regulation for the Reception of Displaced Persons from Ukraine. Under this scheme, municipalities (mayors) must provide shelter, a monthly financial allowance for food, clothing and other personal expenses, recreational and educational activities, insurance against financial consequences of legal liability and the possible payment of extraordinary costs. To replace the Relocation Population Act a draft proposal was created: the Temporary Act on the Reception of Displaced Persons from Ukraine. Once this law has passed the responsibility for the municipalities to provide for the reception of displaced persons from Ukraine will be transferred from the Relocation and Population Act to the Temporary Act.

- **Proof of residency.** Once a displaced person has been registered in the BRP, they have to obtain proof of residency from the IND. At that moment, the IND reassesses whether the person concerned should be granted temporary protection, which means that the IND could refuse temporary protection (and the proof of residency). Complaints against the refusal could be made; in case of a refusal from the IND, the entitlement to rights arising from the TPD, such as the right to housing and to work, cease immediately, and the complaint has no suspensive effect, so that a regional court has to be requested to grant a provisional measure. Several judgments on requests to grant a provisional measure have

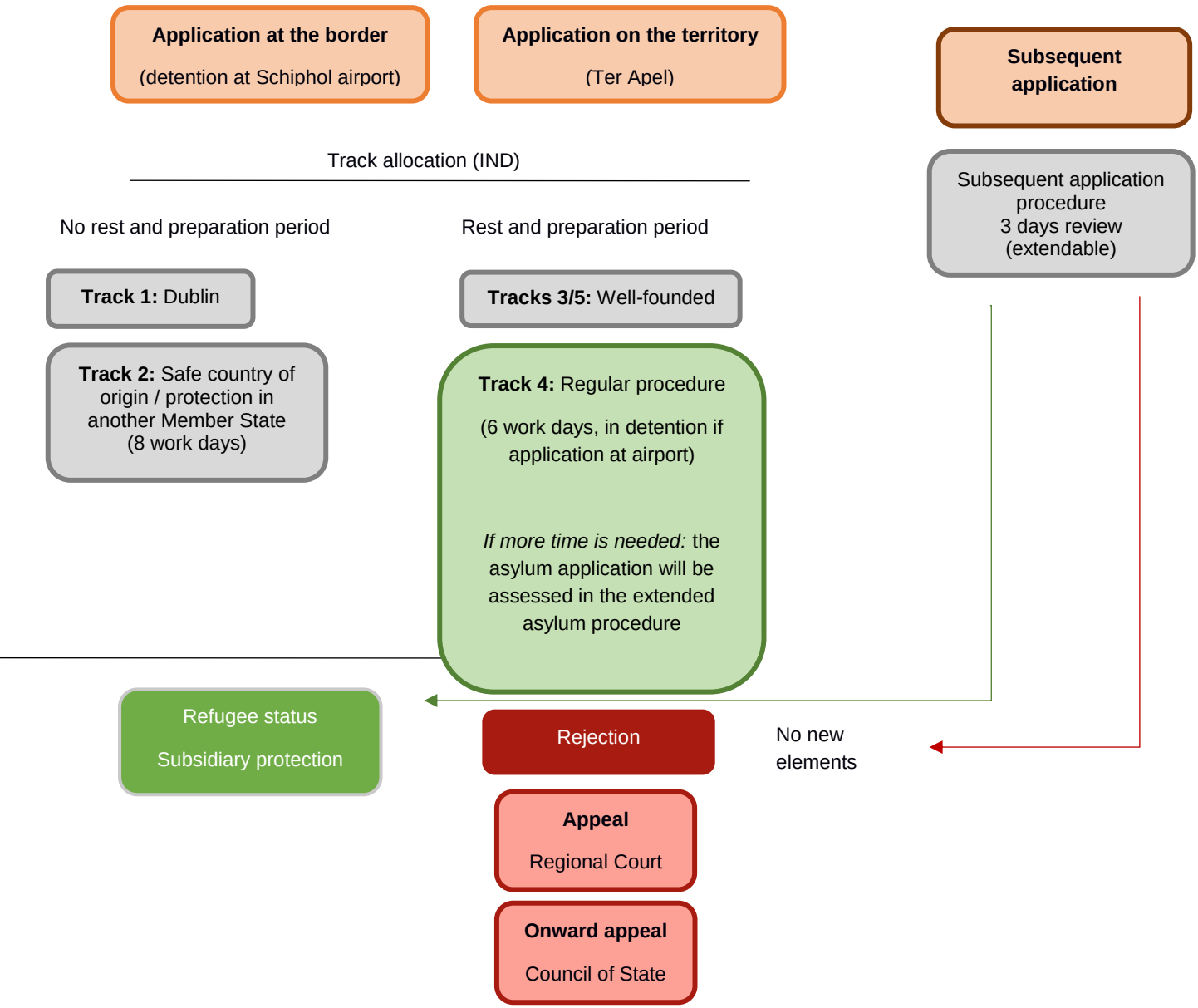
been issued. As far as known the Secretary of State (IND) has not issued any new decision on the written complaints yet.

- **Access to asylum:** Ukrainian nationals who do not fall under the scope of the Temporary Protection Directive in the Netherlands and who have submitted an asylum application at the application centre in Ter Apel the following applies. From 28 February 2022, the State Secretary (IND) does not have to take a decision on Ukrainians' asylum applications on the grounds that a suspension on decisions on Ukrainian asylum applications applies. This means that, as a rule, the IND has 18 months (with a maximum of 21 months) for taking a decision on new and pending asylum applications of Ukrainian nationals. This is based on Article 43 of the Aliens Act. Recently, this measure was prolonged until (at least) 28 August 2023. Rejected asylum seekers from Ukraine initially were not forced to return to Ukraine, but the measure regarding the suspension on forced returns has not been extended, as the maximum duration of this suspension is one year. This is based on Article 45 (4) of the Aliens Act.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- ❖ Regular procedure: ☒ Yes ☐ No
- ❖ Prioritised examination:[12] ☐ Yes ☒ No
- ❖ Fast-track processing:[13] ☐ Yes ☒ No
- ❖ Dublin procedure: ☒ Yes ☐ No
- ❖ Admissibility procedure: ☐ Yes ☒ No
- ❖ Border procedure: ☒ Yes ☐ No
- ❖ Accelerated procedure:[14] ☒ Yes ☐ No Other: Extended procedure

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (NL)
Registration at the border	Royal Military Police (KMar)	Koninklijke Marechaussee (KMar)
Registration on the territory	Aliens Police	Vreemdelingenpolitie (AVIM)
Application at the border	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)
Application on the territory	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)
Dublin (responsibility assessment)	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)
Refugee status determination	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)
Appeal	Regional Court	Rechtbank
Onward appeal	Council of State	Afdeling Bestuursrechtspraak Raad van State (ABRvS)
Subsequent application (admissibility)	Immigration and Naturalisation Service (IND)	Immigratie en Naturalisatiedienst (IND)
Repatriation and return	Service Return and Departure	Dienst Terugkeer en Vertrek (DT&V)

4. Number of staff and nature of the determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Immigration and Naturalisation Service (IND)	4,458[15]	Ministry of Security and Justice	☒ Yes ☐ No

12 For applications likely to be well founded or made by vulnerable applicants. See Article 31(7) APD.
13 Accelerating the processing of specific caseloads as part of the regular procedure.
14 Labelled as "accelerated procedure" in national law. See Article 31(8) APD.
15 IND, Jaarcijfers 2022, available in Dutch at: https://bit.ly/3UacE0f.

The Immigration and Naturalisation Service (IND) is responsible for examining applications for international protection and competent to take decisions at first instance. The work instructions applied by caseworkers are published in Dutch on the IND's website. This includes procedural instructions on, *inter alia*, interviews; subsequent applications; age assessments; border procedures; the use of country of origin information. Additionally, it provides information on how to work with an interpreter; how to handle medical advice; how to decide in cases in which sexual orientation and gender identity issues are brought up as grounds for asylum; or how to conduct child-friendly interviews.[16]

In addition to the staff of the IND, there will most probably also be a number of the European Union Agency for Asylum (EUAA) personnel present on Dutch territory in 2023. Because of the ongoing shelter crisis, on 21 December 2021 the then Minister for Migration addressed a letter to the EUAA requesting support in dealing with this crisis. In the rapid needs assessment conducted over the following months, it was concluded that the EUAA would provide up to 160 temporary containers and 7 staff members in support to reception activities.

In May 2022, the EUAA signed its first operational plan with the Netherlands, to help with first operational response to address temporary reception needs, as well as operational collaboration int he field of reception.[17] In December 2022, the EUAA and the Netherlands signed a new operating plan for 2022-2023, focused on the first objective of helping with first operational response to address temporary reception needs.[18]

Throughout 2022, the EUAA deployed 5 different experts to the Netherlands:[19] 3 EUAA staff members and 2 external experts. 3 were roving team members and 2 were junior asylum information provision experts.[20]
The same personnel remained deployed in the Netherlands as of 20 December 2022.[21]

5. Short overview of the asylum procedure

Registration

Expressing the wish to apply for asylum does not mean that the request for asylum has officially been lodged. Asylum applications can be lodged at the border or on Dutch territory. Any person arriving in the Netherlands and wishing to apply for asylum must report to the IND. Asylum seekers from a non-Schengen country, arriving in the Netherlands by plane or boat, are refused entry to the Netherlands and are detained. In this case, the asylum seeker needs to apply for asylum immediately before crossing the Dutch (Schengen) external border, at the Application Centre at **Schiphol Amsterdam airport** (*Aanmeldcentrum Schiphol*, AC).

When an asylum seeker enters the Netherlands by land, or is already present on the territory, they have to report immediately to the Central Reception Centre (*Centrale Ontvangstlocatie*, COL) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands), where registration takes place (fingerprints, travel- and identity documents are examined). After registration activities in the COL have been concluded the asylum seeker is transferred to a Process Reception Centre (*Proces Opvanglocatie*, POL). Third country nationals who are detained in an aliens' detention centre can apply for asylum at the detention centre.

The application/registration procedure in the COL takes three days. During this procedure the asylum seeker has to complete an extensive application form, fingerprints are taken and he or she is interviewed

16 IND, Work instructions, available in Dutch at: https://bit.ly/2MtP0f7.
17 EUAA, *Operational Plan 2022 agreed with the European Union Agency for Asylum and the Netherlands*, 6 May 2022, available at: https://bit.ly/3ypVNMJ, Annex 1.
18 EUAA, *Operational Plan 2022-2023 agreed with the European Union Agency for Asylum and the Netherlands*, December 2022, available at: https://bit.ly/3FenQ5x, Annex 1.
19 EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.
20 Information provided by the EUAA, 28 February 2023.
21 Information provided by the EUAA, 28 February 2023.

regarding his or her identity, family members, travel route and profession. Data from Eurodac and the Visa Information System (VIS) are consulted. From all this information the IND may conclude that, according to the Dublin Regulation, another Member State is responsible for examining the asylum application. In case of a "hit" in Eurodac the IND can already submit a request to another Member State to assume responsibility for the asylum application under the Dublin Regulation.

However, due to the high number of asylum applications and the ongoing capacity problems at the IND, said procedure has not been followed recently. Instead, an alternative procedure has been introduced. Since 10 September 2022, submitting an asylum application in **Ter Apel** cannot be done immediately. Instead, once the asylum seeker reaches the centre **Ter Apel,** an IND employee will register their basic information such as their identity, nationality and origin. This is called the pre-registration (Dutch: '*voorregistratie*') and is not yet considered an official asylum application. After pre-registration, asylum seekers are divided into four groups: (1) first applications, (2) unaccompanied children (*AMV's*), (3) family members eligible for family reunification, and (4) others. Only those applying for asylum for the first time are transported to a temporary shelter location (*tijdelijke opvanglocatie*) in **Zoutkamp** (in the North-West of Groningen). The other groups will be accommodated at **Ter Apel**. Having arrived at **Zoutkamp**, asylum seekers will have to wait for the confirmation of their appointment for registration in either **Ter Apel** or **Budel**. This waiting period can in some instances take four months.

After receiving confirmation of their appointment, an asylum seeker will travel from **Zoutkamp** to either **Ter Apel** or **Budel**, where identification and registration will take place. The AVIM will register the asylum seeker by taking their fingerprints and taking a photo. The asylum seeker will sign their asylum application and the application is officially lodged. After the registration the asylum seeker will be transported to a reception centre elsewhere in the Netherlands. Within three months, the asylum seeker will receive an invitation for their first interview.[22]

At the beginning of 2023, asylum seekers arriving at **Ter Apel** were once again registered according to the regular registration procedure, meaning they do not have to travel to the temporary shelter location at **Zoutkamp**. However, in February 2023 many people were only pre-registered again, and had to travel to **Zoutkamp** for accommodation and to wait for official registrationIn March 2023, the **Zoutkamp** location was closed, meaning all asylum seekers arriving at **Ter Apel** will be officially registered again the moment the asylum application is lodged.

Procedural tracks

The IND applies a "Five Tracks" policy, whereby asylum seekers are channelled to a specific procedure track (*spoor*) depending on the circumstances of their case.[23] Track 1 and 4 had always been part of the IND's practice. Track 2 has been applied since 1 March 2016 and tracks 3 and 5 have not been applied (yet). The tracks are only applicable when the asylum application has been lodged on the territory, not when it was lodged at the border.

Track 1 Dublin Procedure. The asylum seeker is not entitled to a rest and preparation period nor a medical examination executed by MediFirst.[24]

Track 2 Procedure for applicants from a Safe Country of Origin and applicants who have already received international protection in another Member State. The IND considers it unlikely that these applications will be granted. The assessment takes place in a fast-track procedure, which takes place within a maximum of 8 days. The asylum seeker is not

22 IND, Aanmeldproces Ter Apel: informatie voor hulpverleningsorganisaties, available in Dutch at https://bit.ly/3i48kRz.

23 Decree WBV 2016/4 of 26 February 2016 amending the Aliens Circular 2000, available in Dutch at: http://bit.ly/2fp4K0z.

24 Article 3.109c Aliens Decree.

entitled to a rest and preparation period or a medical examination executed by MediFirst.[25]

Track 3 Fast-track procedure for applications which are considered likely to be granted. The procedure is linked to Track 5, but neither track has been applied yet.

Track 4 Regular Procedure *(Algemene asielprocedure)* of 6 days, with the possibility to extend this time limit by 6, 8 or 14 days.[26] In case the application cannot be thoroughly assessed within the Regular Procedure, there is a possibility of assessing the application in the Extended Procedure *(Verlengde asielprocedure)* within a time limit of 6 months.

Track 5 Procedure for applications starting in Track 3 and likely to be granted, but where additional research must take place regarding identity and/or nationality. Like Track 3, Track 5 has not been applied so far.

Amendments Aliens Decree regarding regular asylum procedure ("Track 4")

In September 2020, the Secretary of State proposed an amendment of the Aliens Decree regarding the regular asylum procedure.[27] This was followed by an actual amendment of the Decree, which entered into force on 25 June 2021.[28] The amendment of the asylum procedure entails the following:
(1) the registration procedure is formally laid down in the Aliens Decree;
(2) during the registration interview the asylum seeker is briefly questioned about his/her reasons for fleeing his/her country of origin;
(3) cancellation of the first (verification) interview at day 1 of the regular asylum procedure, which results into a shortening of the regular asylum procedure from 8 to 6 working days;
(4) more grounds for extending the regular asylum procedure.

Rest and preparation period
With the exception of Tracks 1 and 2, the asylum seeker is granted a rest and preparation period starting when the registration phase has ended.[29] The rest and preparation period grants first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.[30]

The rest and preparation period takes at least 6 days. It is intended to offer the asylum seeker time to rest and to provide the different organisations involved with the time needed to undertake several preparatory actions and investigations. The main activities during the rest and preparation period are:

- Investigation of documents conducted by the Royal Military Police (*Koninklijke Marechaussee*, KMar);
- Medical examination by an independent medical agency (MediFirst[31]) which provides medical advice on whether the asylum seeker is physically and psychologically capable to be interviewed by the IND;
- Counselling by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*); and

25 Article 3.109ca Aliens Decree.
26 Article 3.115 (3) Aliens Decree.
27 Dutch Parliament, 10 September 2020, 2019/20, 19637, nr. 2652, available in Dutch at: https://bit.ly/3GkxjXn.
28 Amendment of the Aliens Decree, *In verband met het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250, 25 June 2021, available in Dutch at http://bit.ly/3yxsSpU.
29 When it is assumed that the asylum application will be rejected in accordance with the Dublin Regulation (Article 3.109c Aliens Decree) due to the fact that the safe country of origin concept applies or if the asylum seeker already received international protection in a Member State of the European Union (Article 3.109ca Aliens Decree), the asylum seeker will not be granted a rest and preparation period, including the medical examination by MediFirst.
30 Article 3.109 Aliens Decree.
31 In 2021, MediFirst substituted the Forensic Medical Society Utrecht (FMMU).

- Appointment of a lawyer and substantive preparation for the asylum procedure.

After the rest and preparation period, the actual asylum procedure starts. At first instance, asylum seekers are channelled into the so-called Regular Procedure (*Algemene asielprocedure*) which is, as a rule, designed to last 6 working days. The regular asylum procedure could be extended if more time is needed.

If it becomes clear on the fourth day of the short asylum procedure that the IND will not be able to take a well-founded decision on the asylum application within these eight days, the application is further assessed in the Extended Procedure (*Verlengde asielprocedure*). In this extended asylum procedure the IND has to take a decision on the application within 6 months. This time limit can be extended by 9 months, and another 3 months.[32]

There is only one asylum status in the Netherlands. However, there are two different grounds on which this asylum status may be granted (besides family reunification).[33] These two grounds are: refugee status (A-status); and subsidiary protection (B-status). In addition to the grounds of Article 15 of the recast Qualification Directive, trauma suffered in the country of origin, as a result of which it is not reasonable to require the asylum seeker to return to his country of origin, falls within the scope of Article 29(1)(b) of the Aliens Act (B-status).[34]

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether they should be granted subsidiary protection.[35] This means that an asylum seeker may only qualify for subsidiary protection in case he or she does not qualify as a refugee under Article 1A of the Refugee Convention. In case an asylum seeker is granted subsidiary protection, he or she cannot appeal in order to obtain refugee status.[36] This is because, regardless of the ground on which the permit is granted, the asylum permit entitles the status holder to the same rights regarding social security (see Content of International Protection).

Return decision

In the Netherlands, a negative asylum decision is in general automatically accompanied by a return decision.[37] A (new) return decision is not issued if, for example:
1. A return decision had already been issued and the asylum seeker has not yet fulfilled the obligation following from that return decision;
2. The asylum seeker has already received international protection in another EU Member State.[38]
The obligations following from a return decision are suspended when an (onward) appeal at a regional court or Council of State has suspensive effect.[39]

Appeal

Asylum seekers whose application is rejected may appeal this decision at a Regional Court (*Rechtbank*). In the procedures of Track 4, as well as Tracks 1 and 2, this appeal should be submitted within one week of the negative decision. The appeal has automatic suspensive effect, except for cases falling in Tracks 1 and 2 or cases in Track 4 in which the IND discontinues to examine the asylum application

32 See Article 42(4)(5) Aliens Act, which derives from Article 31 (3) of the Asylum Procedures Directive.
33 Article 29 Aliens Act.
34 The trauma policy used to have its own ground: Article 29(1)(c) Aliens Act (C-status) before 1 January 2014. Nowadays the policy is set out in: Previous confrontation with atrocities ("*Eerdere confrontatie met wandaden*"). Former specific groups which qualified for a residence permit under the 'c-ground' (e.g. Unaccompanied Afghan women) are now eligible for international protection under Article 29(1)(b) of the Aliens Act. Other groups, like Westernised Afghan school girls, can attain a regular residence permit instead of a permit under Article 29(1)(c) as was the case before.
35 Paragraph C2/2 Aliens Circular.
36 Council of State, Decision No 20010591481, 28 March 2002.
37 Article 45(1) (2) Aliens Act.
38 Article 62a(1) Aliens Act.
39 Article 45(3) Aliens Act.

because, for example, the asylum seeker lacks to provide (sufficient) relevant information according to the IND.[40] This means that the asylum seeker can be expelled before the court's decision. To prevent expulsion the legal representative (or in theory the asylum seeker) should request a provisional measure to suspend removal pending the appeal. This must be done immediately after the rejection in order to prevent possible expulsion from the Netherlands. After a rejection of the asylum request in the short asylum procedure the asylum seeker is, as a rule, entitled to accommodation for a period of four weeks regardless of whether he or she lodges an appeal and whether this appeal has suspensive effect due to a granted provisional measure.[41] Depending on the grounds for refusal, an appeal against a negative decision in the "extended procedure" can have automatic suspensive effect. Also depending on the grounds, the appeal must be submitted within one or four weeks.[42] The asylum seeker is entitled to accommodation during this appeal.

Following the decision of the CJEU answering the questions of the Council of State and the *Gnandi* judgment of the CJEU, the Council of State concluded that an asylum seeker has the right to remain legally in the Netherlands during the period of the appeal regarding a case in which the asylum application was rejected as manifestly unfounded. The Secretary of State also stated that Dutch national law is in general in accordance with European Union law.[43]

Both the asylum seeker and the IND may lodge an appeal against the decision of the Regional Court to the Council of State (*Afdeling Bestuursrechtspraak Raad van State*, ABRvS). This procedure does not have suspensive effect, unless the Council of State issues a provisional measure. In case the Council of State denies this provisional measure, the asylum seeker is no longer entitled to accommodation. In September 2018, the CJEU ruled that an onward appeal does not have a suspensive effect in itself.[44] Following this judgment the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.[45]

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☐ Yes ☒ No
2. Is there a border monitoring system in place? ☒ Yes ☐ No

- If so, who is responsible for border monitoring? ☒ National authorities ☐ NGOs ☐ Other
- If so, how often is border monitoring carried out? ☒Frequently ☐Rarely ☐Never

There is border control at the external borders of the Netherlands at the European external border at airports, in seaports and along the coast. Mobile Security Supervision (MTV) is the supervision of persons travelling to the Netherlands from another Schengen country at the Belgian and German borders. The checks take place on roads, in trains, on water and in air traffic. In the area immediately behind the border, the Royal Netherlands Marechaussee checks travel documents on a random basis.

Migration control dogs help the Marechaussee detect hidden persons (stowaways) in - for example - trucks, coaches and buses that cross the borders. In the ports of IJmuiden and Hoek van Holland, dogs are also used to search ships, containers, and vehicles traveling to and from the United Kingdom via ferry.

40 Article 30c Aliens Act.
41 Article 82(2) Aliens Act.
42 Article 69(1) (2) Aliens Act.
43 CJEU, Case C-269/18, Staatssecretaris van Veiligheid en Justitie v C and J and S v Staatssecretaris van Veiligheid en Justitie, 5 July 2018; CJEU, Case C-181/16, Sadikou Gnandi vs Belgium, 19 June 2018.
44 CJEU, Case C-175/17, *X v Belastingdienst/ Toeslagen*, 26 September 2018.
45 Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.

For asylum seekers requesting asylum at the border, KMar is the organisation responsible for the initial care.[46]

There are no reports of pushbacks at the Dutch borders.

Legal access to the territory

Resettled refugees

The Netherlands take part in the UNHCR resettlement program; prior to 2021, it aimed at resettling 500 refugees per year. The new Dutch government announced in its Coalition Agreement for 2021 until 2025 the will to increase the number of resettled refugees from 500 to 900 per year.[47] In 2022, 717 refugees were resettled in the Netherlands, 437 of which came from Syria.[48] After arriving in the Netherlands, resettled refugees formally lodge an asylum application at the application centre at Schiphol Airport. They will go through a three-day registration procedure and will be granted a temporary asylum residence permit.

Short stay visa

As a rule, people coming from non-EU countries willing to stay in the Netherlands for a maximum of 90 days need a visa. A short stay visa can be issued on the grounds of family visits, touristic or business reasons. A short stay visa allows the holder to travel to the Schengen countries and Switzerland.[49]
A visa could be refused when Dutch authorities evaluate that the third-country national does not have sufficient reasons to return to his or her country of origin. For example, if the person concerned does not have a job, school-aged children or a house of their own property in said country.
In view of these considerations, obtaining a short stay visa might prove difficult for persons coming from countries where the general safety situation is critical or deteriorating. No policy regulating the issuance of humanitarian visas according to Article 25 (1) of the Visa Code is in place,[50] nor does the Dutch Council for Refugees possess any information regarding persons having been granted a humanitarian visa.
Some third country nationals are exempted from a Schengen visa, such as Ukrainians who hold a biometric passport. For more info regarding Ukrainians benefiting from Temporary Protection, see Section on Ukraine.

Afghan nationals

The Dutch government committed to assisting certain groups of Afghan nationals in being repatriated or transferred from Afghanistan to the Netherlands. This includes the following categories of Afghan nationals and their core family members (spouse and children up to the age of 25 who are unmarried and living in the house of their parents):[51]
(1) Interpreters who worked for the Netherlands in the context of an international military or police mission;
(2) Persons belonging to risk groups (such as NGO personnel, journalists and human rights defenders) who were previously included in evacuation lists, but were not able to reach the airport during the evacuation operation carried out in August;

46 Ministry of Defence, Grenstoezicht, available in Dutch at: https://bit.ly/2kMGU1b.
47 Coalition Agreement (*Regeerakkoord*) 2021 – 2025: *Omzien naar elkaar, vooruitkijken naar de toekomst,* available in Dutch at: http://bit.ly/3mPnSdX.
48 IND, Asieltrends, available in English at: https://bit.ly/3Pv16Cb.
49 IND, Information about short stay visa, available in Dutch at: https://bit.ly/3L9fei1.
50 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).
51 Dutch Parliament, 14 September 2021, 27925-808, *Stand van zaken in Afghanistan*, available in Dutch at: https://bit.ly/3B0IaUU and Dutch Parliament, 11 October 2021, *Kamerbrief ontwikkelingen Afghanistan* available in Dutch at: https://bit.ly/3L9Z5sF.

(3) Employees of NGOs working in projects directly financed by the Dutch government and were working since January 1, 2018, who contributed structurally and substantially to the projects for at least one year in a public and visible position;
(4) people who worked for at least one year in a structural and substantial way in a public and visible position for Dutch military troops or EUPOL.

The Dutch government left Afghanistan on Thursday 26 August 2021 and since then evacuation flights with military aircraft stopped. From 26 Augustus 2021 to 6 December 2022, a total of 2,591 people were evacuated from Afghanistan to the Netherlands. 156 persons were still considered for evacuation to the Netherlands, but their transfer was deemed exceedingly difficult due to (most of) them not possessing a valid travel document.[52] In 2022, with Pakistan's support, it was made possible that some hundreds of Afghans on the evacuation list (also people without passports) could cross the land border. They received visa and plane tickets for the Netherlands at the Dutch embassy in Pakistan It is not yet clear if another evacuation round via Pakistan will be possible.

The most recent evacuation flight destined for the Netherlands was on 3 December 2021.[53] On 12 December 2021, a message appeared that the Taliban suspended cooperation on evacuation flights.[54] Regardless, on 27 January 2022 evacuation flights to Qatar were resumed.[55] From 26 Augustus 2021 to 6 December 2022, a total of 2,591 people were evacuated from Afghanistan to the Netherlands. 156 persons were still considered for evacuation to the Netherlands, but their transfer was deemed exceedingly difficult due to (most of) them not possessing a valid travel document.[56]

On 9 December 2021, 15 EU Member States pledged 40,000 resettlement places for Afghan nationals by the end of 2022. Out of this number, the Dutch government agreed to resettle 3,159 Afghans.[57] According to the Dutch government these numbers included the people who were already on the evacuation lists, no new persons.[58]

On 14 December 2021, 2,000 evacuated Afghans had successfully gone through an accelerated asylum procedure and received a residence permit. 150 more were waiting for a final decision regarding their asylum application.[59]

For other Afghan nationals, on 25 August 2021, the Secretary of State decided to install a decision and departure moratorium for Afghan nationals for six months until 25 February 2022. On 23 February 2022, it was extended. During this moratorium no decisions were taken on asylum applications lodged by Afghan nationals (except for evacuated Afghans). Those that had received a negative decision on their asylum application were not returned to Afghanistan. On 21 July 2022, a new country police document WBV 2019/22[60] and an IND Information Message 2022/71 about Afghanistan were published and the moratorium was stopped. Because of the worrying security and human rights situation in Afghanistan, the IND stated that many Afghans will receive the benefit of the doubt, leading to a high chance of the

52 Central government, *Kamerbrief over voortgang overbrengingen Afghanistan*, 15 August 2022, available in Dutch at: https://bit.ly/3OwjWL0; Central government, *Kamerbrief over stand van zaken overbrengingen van personen uit Afghanistan*, 17 October 2022, available in Dutch at: https://bit.ly/43074kw.
53 Dutch news, NOS, 'Franse evacuatievlucht uit Afghanistan, 60 Nederlanders aan boord', 3 December 2021, available in Dutch at: https://bit.ly/3rrnz8Z.
54 Pakistan Aviation, not dated, *Taliban stop all evacuation flights from Afghanistan*, available in English at: https://bit.ly/34iFzcH.
55 Reuters, 'Qatar resumes Afghan evacuation flights after two-month halt', 27 January 2022, available in English at: https://reut.rs/3rscd4E.
56 Ministry of Foreign Affairs, Brief Voortgang overbrengingen uit Afghanistan, available in Dutch at: https://bit.ly/3GNumS9.
57 Euractiv, 'EU Member States agree to take in 40,000 Afghans', 10 December 2021, available in English at: https://bit.ly/3orThkm.
58 Government answer in Parliament, *32 317 JBZ Raad, Nr 738*, available in Dutch at: https://bit.ly/3pZxlB1.
59 IND, Residence permit for well over 2,000 Afghan evacuees, available in English at: https://bit.ly/3Ge5h0W.
60 *Besluit van de Staatssecretaris van Justitie en Veiligheid van 13 juli 2022, nummer WBV 2022/19, houdende wijziging van de Vreemdelingencirculaire 2000*, available in Dutch at: https://bit.ly/3BKSGk3.

applications being accepted.[61]

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? ☒ Yes ☐ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No
5. Can an application be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

2.1. Making and registering the application

If an asylum seeker enters the Netherlands by land, he or she has to lodge their asylum request at the Central Reception Centre (*Centrale Ontvangstlocatie*, COL) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands), where the registration takes place. The Aliens Police (*Vreemdelingenpolitie*, AVIM) takes note of personal data such as name, date of birth and country of origin. Data from Eurodac and the Visa Information System (VIS) are consulted and AVIM registers the application in Eurodac. The asylum application is formally lodged at the Immigration and Naturalisation Service (IND).

If an asylum seeker from a non-Schengen country arrives in the Netherlands by airplane or boat, the application for asylum is to be made *before* crossing the Dutch external (Schengen) border, at the Application Centre at **Schiphol Airport** (AC). The Royal Military Police (KMar) is primarily responsible for the registration of those persons who apply for asylum at the international airport.[62] The KMar refuses the asylum seeker entry to the Netherlands if he or she does not fulfil the necessary conditions, and the asylum seeker will be detained in the Border Detention Centre (*Justitieel Complex Schiphol*, JCS).[63] In recent years, no problems have been reported by asylum seekers as regards the fact that the KMar did not recognise their claim for international protection as an asylum request.

The IND takes care of the transfer of the asylum seeker to the AC, where further registration of the asylum application takes place. The AC is a closed centre. It sometimes happens that an application cannot be registered immediately, for instance when no interpreters are available. In this situation, an asylum seeker can be detained in the JCS.

If an asylum seeker is already on Dutch territory, he or she is expected to express the wish for asylum to the authorities as soon as possible after arrival in the Netherlands, which is, according to jurisprudence, preferably within 48 hours.[64]

As a rule, after registration at the AC, asylum seekers immediately go to the COL. After the registration procedure in the COL, they are transferred to a Process Reception Centre (*Proces Opvanglocatie*, POL).

In January 2019, the Secretary of State of Justice introduced a new policy, that requires every asylum seeker to complete an extensive form at the start of the registration procedure, containing questions on their (1) identity; (2) place and date of birth; (3) nationality, religious and ethnic background; (4) date of leaving the country of origin; (5) arrival date in the Netherlands; (6) remains/stay in one or more third countries when appropriate; (7) identity cards or passport; (8) itinerary; (9) schooling/education; (10)

61 IND, Information Message 2022/71, Beslissen op Afghaanse asielaanvragen, available in Dutch at: https://bit.ly/3Cx3L9d.
62 IND, *Voordat jouw asielprocedure begint – AMV*, August 2015, available in Dutch at: http://bit.ly/2DChVcO.
63 Article 3(3) Aliens Act.
64 Council of State, Decision ABKort 1999.551, 20 September 1999.

military services; (11) work/profession; and (12) living environment and family.[65]

The completed form is followed by a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked about identity, nationality, travel route and family members. Additionally, the IND briefly questions the asylum seeker as to their reasons for requesting asylum, in order to judge the complexity of the case, to better prepare for subsequent steps to be taken during the rest of the procedure, and to assess whether the asylum seeker is in need of specific procedural guarantees.[66]

The Aliens Decree on the Regular Asylum Procedure ("Track 4") was amended and entered into force on 25 June 2021.[67] Consequently, amongst other changes, the registration procedure, including the registration interview, is formally laid down in the Aliens Decree. Since the amendment, the immigration officer explicitly questions the asylum seeker, during the registration interview, about the reasons for fleeing their country of origin. This also applies to unaccompanied minors. This change was criticised by the Dutch Council for Refugees, given that during the registration procedure, the asylum seeker does not benefit from legal assistance and is not entitled to obtain individualized information. As a result, the asylum seeker will not be informed about the impact of their statements regarding reasons for fleeing his country of origin. It should be noted that asylum seekers receive a brochure from the IND at the start of the registration procedure; however, the brochure just provides general information about the asylum procedure in the Netherlands, and cannot be considered as a substitute for individualised assistance. On 25 February 2022, the Regional Court of Zwolle agreed with the asylum seeker that due to their explicit request for legal assistance at the start of the application procedure not being addressed, the Secretary of State had violated the principle of due care.[68]

Due to the extensiveness of the registration form and its follow up registration interview, the first (verification) interview on day 1 of the regular asylum procedure has been abolished.

At the beginning of 2023, asylum seekers arriving at **Ter Apel** were once again registered according to the regular registration procedure, meaning they do not have to travel to the temporary shelter location at **Zoutkamp**. However, in February 2023 many people were only pre-registered again, and had to travel to **Zoutkamp** for accommodation and to wait for official registration. On 1 March 2023, the **Zoutkamp** location was closed, meaning all asylum seekers arriving at **Ter Apel** will once more be officially registered at the moment the asylum application is lodged.

2.2. The rest and preparation period

Exclusively in Track 4, the asylum seeker is granted a rest and preparation period. This starts when the registration interview has taken place and the registration procedure has ended.[69] The rest and preparation period is designed to give first time asylum applicants some days to cope with the stress of fleeing their country of origin and the journey to the Netherlands.

The rest and preparation period takes at least 6 days.[70] It is primarily designed to provide the asylum seeker some time to rest. Additionally it provides the organisations involved time to undertake several preparatory actions and investigations. The main activities during the rest and preparation period are:

- Investigation of documents conducted by the KMar;
- Medical examination by an independent medical agency (MediFirst) which provides medical advice on whether the asylum seeker is physically and psychologically capable to be interviewed by the IND;

65 Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2018/15 Aanmeldgehoren en Verificatie eerste gehoren.
66 IND, Working Instruction 2021/8, *Aanmeldgehoren,* available in Dutch at: https://bit.ly/3vFivz8.
67 Amendment Aliens Decree, *In verband met het regelen van de aanmeldfase en het vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250, available in Dutch at: https://bit.ly/3rb1rhJ.
68 Regional Court of Zwolle, Decision No NL21.19915, 25 February 2022.
69 Article 3.109 Aliens Decree.
70 This occurs from practice and is not regulated by the law.

- Counselling by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*); and
- Appointment of a lawyer and substantive preparation for the asylum procedure.

The rest and preparation period is not available to asylum seekers following the Dublin procedure (Track 1) or those coming from a safe country of origin or who receive protection in another EU Member State (Track 2). Furthermore, there is no rest and preparation period in the following situations:

- The asylum seeker constitutes a threat to public order or national security;[71]
- The asylum seeker causes nuisance in the reception centre;[72]
- The asylum seeker is detained on the basis of Article 59b Aliens Act;[73]
- The application is a subsequent application for asylum.[74]

The rest and preparation period takes at least six days, while no maximum number of days is indicated. During the entire rest and preparation period, asylum seekers have access to reception and medical aid. From 2018 onwards, this period has been considerably extended due to the IND's delays.

In March 2020, 15,350 asylum applications lodged before 1 April 2020 were passed on to a newly established Task Force, with the aim of clearing the backlogs before the end of 2020. The Task Force has not succeeded in doing so. A new aim was to clear the backlog by mid-2021. In October 2021, there were 500 applications still to be assessed.[75] The Task Force used the following measures: (1) interviews via videoconference, (2) written interviews, (3) recruitment of (around) 250 new employees mainly from employment agencies and (4) outsourcing activities.[76] In June 2021, the Task Force was dissolved; afterwards, the remaining 1,520 cases were transferred to another department.[77]

The Dutch Council for Refugees has monitored the activities of the Task Force and the measures, which were created to clear the backlog. At the end of 2020, a first analysis was realised and the findings were published in November 2020,[78] while a follow up to the monitoring report was published in July 2021.[79] One of the main findings was that the new employees of the Task Force, mainly recruited by employment agencies, lacked the expertise necessary to conduct detailed interviews and assess complex asylum cases (e.g. regarding LGBTI and religious conversion claims). In these complex cases, a process was introduced to overcome this problem: more experienced immigration officers of the IND became involved and more applications were referred to the extended asylum procedure.[80] Another relevant point addressed in the report was that the written intentions to reject an application and the decisions, which were taken by the Task Force, lacked quality. In case the IND decides to reject an asylum application, it will issue a written intention providing the grounds and reasons for a possible rejection. The written intention is sent to the lawyer and/or handed over to the applicant. Furthermore, an observation was that the written interviews did not help speed up the processing time of the applications. The applications were still referred to the extended procedure.

The Inspector of the Ministry of Justice & Security who monitored the Task Force also concluded that the new caseworkers lacked expertise and that the decisions taken by the Task Force lacked quality. Processing time was more important than the quality and due diligence of the procedure.[81]

Although the Task Force took over the backlog from the IND, due to an increase of applications, a new backlog of 6,400 applications originated in the last months of 2021. The objective to clear it during the

71 Article 3.109(7)a Aliens Decree.
72 Article 3.109(7)a Aliens Decree, for the definition of 'nuisance' see paragraph C1/2.2 Aliens Circular.
73 Article 3.109(7)a Aliens Decree.
74 Article 3.118b Aliens Decree.
75 Dutch Parliament, No 35476 H, 16 November 2021, available in Dutch at: https://bit.ly/3qlvzIc.
76 Dutch Parliament, No 19637 2650, 7 September 2020, available in Dutch at: https://bit.ly/3foazKd.
77 AEF, *Leren van de Taskforce Dwangsommen, toekomstgerichte evaluatie*, 18 February 2022, available in Dutch at: https://bit.ly/3XfjoKB.
78 Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: https://bit.ly/39P1yH5.
79 Dutch Council for Refugees, *Monitor Taskforce*, 1 July 2021, available in Dutch at: https://bit.ly/3zPJvx2.
80 Dutch Parliament, No 35476, nr H, 16 November 2021, available in Dutch at: https://bit.ly/3qlvzIc.
81 Secretary of State, 7 January 2021, information available in Dutch at: https://bit.ly/3zX8ZIT.

first quarter of 2022 was not met, and the backlog continues to grow.[82] The IND has prognosed that the number of asylum seekers waiting for a decision is 31,400 at the start of 2023.[83] In March 2023, the numbers of the processing time show that it takes 43 weeks when the Regular asylum procedure starts before a decision is taken. When the application is referred to the extended procedure, on average, 48 weeks pass before a decision is taken.[84]

Legal penalties

The IND was obliged to pay a large sum in legal penalties (*dwangsommen*)[85] to asylum seekers whose application had not been decided upon within the legal time frame of 6 months.[86] The regular asylum procedure in 2019 took on average 27 weeks to assess the asylum claim, while in the extended asylum procedure it took 44.5 weeks.[87] Therefore, the 'Temporary Act on suspension of penalties for the IND (*Tijdelijke wet opschorting dwangsommen IND*)' was passed by the Dutch Parliament and entered into force on 11 July 2020.[88] Under the Temporary act, asylum seekers were excluded from giving the IND a notice of default,[89] going to the regional court and receiving a legal penalty in cases where the IND does not decide upon their application in time. The Temporary Act did not apply to cases in which the legal time frame had already passed and the IND had been given notice of default by the asylum seeker. On 11 July 2021, one year after its entry into force, the Temporary Act expired. However, one of the Act's articles stipulated that if a proposal for a new act was submitted before the expiration of the Temporary Act, that would entail its extension for the duration of one year.[90] Under the Temporary Act that entered into force on 11 July 2022 the possibility of receiving legal penalties was still suspended.

However, on 30 November 2022 the Council of State ruled, in two separate cases, that the Temporary Act was partially not in accordance with European Law.[91] Regarding the judicial penalty (*rechterlijke dwangsom)*, the Council of State judged that by suspending the ability of receiving judicial penalties, asylum seekers did not have an effective way of forcing the IND to take a decision regarding their asylum application. Therefore, the Temporary Act was deemed incompatible with the right to an effective remedy stemming from article 47 of the Charter of Fundamental Rights of the European Union, preventing asylum seekers from being able to effectuate their rights.[92] Following this judgment, the IND published a new Information Message outlining the new policy that for any ongoing and future cases, judicial penalties would be forfeited.[93]

Regarding the administrative penalty (*bestuurlijke dwangsom)*, which is automatically forfeited after two weeks from the submission of the notion of default, the Council of State evaluated that its abolition under the Temporary Act conformed to the existing legal framework. The main reasoning for this is the administrative penalty is a measure that goes beyond the minimal rules dictated by the recast Asylum Procedures Directive. Considering that asylum seekers would still be able to enjoy their rights by receiving only the corresponding amount from a judicial penalty, abolishing the administrative penalty in

82 Dutch Parliament, no 35476, nr H, 16 November 2021, available in Dutch at: https://bit.ly/3FiageD.
83 IND, *Aantal asielaanvragen neemt ook in 2023 toe,* 4 November 2022, available in Dutch at https://bit.ly/3Xfl5Yt.
84 IND, *Doorlooptijden asielaanvraag)*, 4 January 2023, available in Dutch at: https://bit.ly/3vH7HQX.
85 The Penalty Payments and Appeals for Failure to Make a Timely Decision Act, provides that a citizen can go to court when an administrative body does not take a timely decision and request a penalty payment. The Act entered into force in 2009, and has been applicable to the IND since October 2012. It foresees that an asylum seeker can receive a penalty payment following a non-timely decision.
86 Article 4:17 GALA, Regional Court Arnhem, decision no NL19.22847, 14 November 2019, Regional Court Amsterdam, decision no NL19.18215, 13 September 2019.
87 IND, *Doorlooptijden per asielspoor over 2019, Maart – December 2019 (data available per track on a monthly basis)*, available in Dutch at: https://bit.ly/34fTznw.
88 Tijdelijke wet opschorting dwangsommen IND, available in Dutch at: https://bit.ly/3bQlRql.
89 This means that the lawyer concerned has to inform (in writing) the IND that it has exceeded the time limit of 6 months and has to request the IND to issue a decision within a maximum period of 2 weeks.
90 Tijdelijke wet opschorting dwangsommen IND Article 4, available in Dutch at: https://bit.ly/3bQlRql.
91 Council of State, case number 202203068/1 and 202203066/1, 30 November 2022.
92 Council of State, case number 202203068/1, 30 November 2022.
93 IND, Information Message 2022/107 Afdelingsuitspraken d.d. 30 november 2022 inzake de Tijdelijke Wet dwangsom (3), 2 December 2022, available in Dutch at: https://bit.ly/3Gm24N8.

asylum cases was deemed possible.[94] As a result, in ongoing and future asylum cases, no administrative penalties will be forfeited.

Due to the large number of cases received over the last year and the arrival of a large number of asylum seekers from Afghanistan and people fleeing from Ukraine, in September 2022 the IND decided to extend the time limit for deciding with 9 months in all cases where the 6-months time limit had not yet expired on 27 September 2022. In addition, for all asylum applications lodged after 27 September 2022, the time limit was pre-emptively extended by 9 months, meaning that the IND can take a maximum of 15 months to decide on asylum applications lodged after 27 September and before 1 January 2023.[95] At the start of January 2023, it was uncertain whether this general extension of the decision-making period would be prolonged for asylum applications lodged after 1 January 2023. For some asylum seekers, this means that the IND can take the maximum number of months (21) to decide on their asylum application. On 3 February 2023, it was announced that this measure would also be in place for asylum requestions lodged between 1 January 2023 and 1 January 2024.[96]

On 23 November 2022, the Regional Court of Den Bosch ruled in favour of the general extension of the time limit for deciding.[97] On the contrary, on 6 January 2023, the Regional Court of Amsterdam issued a judgement declaring the time limit extension unlawful.[98] The IND argued that, due to the numerous new arrivals – especially regarding Afghan and Ukrainan nationals, but also many individuals later channelled into the Dublin procedure - it was impossible to manage the existing caseload. Despite this, the Court maintained that, even though there was an increase in the amount of asylum applications, it was not of such magnitude that the threshold included in art. 42(4)(b) Aliens Act was reached. As such, it is to be seen in coming months what the effect of this and other cases will be on the extension of the time limit for deciding. The Secretary of State submitted an onward appeal with regards to the judgment of the Regional Court of Amsterdam.

C. Procedures

Since March 2016, the IND has implemented a “Five Tracks” policy whereby asylum seekers are channelled to a specific procedure depending on the circumstances of their case. Beyond the regular asylum procedure (“Track 4”), the policy foresees specific tracks for manifestly well-founded cases (“Tracks 3 and 5”), applicants coming from a safe country of origin or receiving protection in another Member State (“Track 2”) and Dublin cases (“Track 1”).

While the Netherlands has transposed the recast Asylum Procedures Directive, it should be noted that the “Five Tracks” policy does not fully follow the structure of the Directive in terms of regular procedure, prioritised procedure and accelerated procedure. The different sections below refer to the applicable track in each case.

94 Council of State, case number 202203066/1, 30 November 2022.
95 Amendment Aliens Circular, Besluit van de staatssecretaris van Justitie en Veiligheid, 26 September 2022,Staatscourant 2022, No 25775, available in Dutch at: https://bit.ly/3CsTDyj.
96 IND, Information Message 2023/10 ‘Verlengen beslistermijn asiel’, available in Dutch at: https://bit.ly/3XLhL6U.
97 Regional Court of Den Bosch, Decision No. NL22.21366, 23 November 2022.
98 Regional Court of Amsterdam, Decision No. NL22.21969, 6 January 2023.

1. Regular procedure ("Track 4")

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to decide on the asylum application at first instance:
   - ❖ Short procedure: 6 working days
   - ❖ Extended procedure: 6 months

2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No

3. Backlog of pending cases at first instance as of 31 December 2022: 26,620[99]

4. Average length of the first instance procedure in 2022: Regular procedure: 31 weeks
   Extended procedure: 45 weeks[100]

The general asylum procedure (Track 4) is divided into a Regular Procedure (*Algemene Asielprocedure)* of 8 days and an Extended Procedure (*Verlengde Asielprocedure*). The assessment of each asylum application starts in the short asylum procedure. During this procedure, the IND can decide to refer the case to the Extended Procedure.

Regular Asylum Procedure (*Algemene Asielprocedure)*

A decision on an asylum application in the Regular Procedure currently has to be issued within 6 working days.[101] This deadline may be extended.

In January 2019, the Secretary of State of Justice introduced a new policy. It established that, at the start of the registration procedure, every asylum seeker has to complete an extensive form containing questions about their (1) identity; (2) place and date of birth; (3) nationality, religious and ethnic background; (4) date of leaving the country of origin; (5) arrival date in the Netherlands; (6) remains/stay in one or more third countries when appropriate; (7) identity cards or passport; (8) itinerary; (9) schooling/education; (10) military services; (11) work/profession; and (12) living environment and family.[102]

The completed form is followed by a registration interview (*Aanmeldgehoor*). During the registration interview, questions can be asked about identity, nationality, travel route and family members. Since the formal introduction of the registration interview on 25 June 2021, the IND will also inquire about the reasons for seeking asylum. The completed form and interview play an essential part in the asylum procedure. During the registration procedure, the asylum seeker does not benefit from legal assistance and does not obtain (individualised) information from the Dutch Council for Refugees. As a result, the asylum seeker will not be informed about the impact of his statements regarding reasons for fleeing his country of origin or other statements he makes, for example regarding his identity and/or nationality. As Amnesty International concluded in its report *'Bewijsnood, Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden'*, once the Secretary of State (IND) establishes that the identity or nationality of the asylum seeker is not credible, it will be very difficult for them to refute this evaluation.[103] In addition, failure to provide sufficient evidence of the nationality and/or identity can lead to the IND not

99 IND, *Tijdigheid voorraad eerste asielaanvragen,* available in Dutch at: https://bit.ly/3xEVNZ1.
100 IND, *Doorlooptijden per asielspoor over 2022 (information per track on a monthly basis)*, available in Dutch at: https://bit.ly/3ZcpA7V.
101 Article 3.110(1) Aliens Decree.
102 Article 3.109 Aliens Decree, paragraph C1/2.1 Aliens Circular and IND Work instruction 2021/8, available in Dutch at: https://bit.ly/3rfMfji.
103 Amnesty International, *Bewijsnood, Wanneer nationaliteit en identiteit ongeloofwaardig worden bevonden*, 19 November 2020, available in Dutch at: https://bit.ly/34zOlCW.

to assess the need for protection itself.[104] The Council of State has consequently judged that this practice is permitted, as the motives for requesting asylum only hold value against the background of the identity, nationality and origin of a person.[105]

Seeing the extensiveness of the form and its follow up registration interview, the verification interview, which was taken on the first day of the short asylum procedure, has been abolished since the amendment of the Aliens Decree regarding the regular asylum procedure.[106]

For a clear understanding of the current Regular Procedure, it is important to indicate what happens during these six days. In short, on the odd days the asylum seeker has contact with the IND and on the even days with their legal advisor / counsellor:[107]

Day 1	Start of the actual asylum procedure with detailed interview (*Nader gehoor*)	In this extensive interview the asylum seeker is questioned by the IND about his or her reasons for seeking asylum.[108] After the interview is taken the IND could decide to refer the case to the extended procedure in case they estimate that more time is needed to make a proper decision.
Day 2	Review of the detailed interview	The asylum seeker and the appointed lawyer review the detailed interview after which corrections and additions thereto may be submitted. This generally happens due to interpretation problems, where a misunderstanding easily occurs.
Day 3	The intention to reject the asylum application (Voornemen)	In case the IND decides to reject the asylum application, it will issue a written intention. The intention to reject provides the grounds and reasons for a possible rejection. At this stage, the IND can also grant the asylum seeker an asylum permit.
Day 4	Submission of the view by the lawyer (*Zienswijze*)	After the IND has issued a written intention to reject the asylum application, the lawyer submits his or her view in writing concerning the written intention on behalf of the asylum seeker.
Day 5/6	The decision of the IND (*Beschikking*)	After the submission of the lawyer's view in writing, the IND may decide to either grant or refuse asylum. The IND may also decide to continue the examination of the asylum application in the Extended Procedure.

104 ACVZ, *Naar een gelijker speelveld bij vaststelling nationaliteit en identiteit van migranten,* 11 April 2022, available in Dutch at: https://bit.ly/3jPH7T9.
105 Council of State, Decision No 201407487/1, ECLI:NL:RVS:2015:4061, 24 December 2015.
106 Amendment Aliens Decree, *In verband met het regelen van de aanmeldfase en vervallen van het eerste gehoor in de algemene asielprocedure*, Staatsblad 2021, 250 available in Dutch at: https://bit.ly/3ra1ZEH.
107 Article 3.112-3.115 Aliens Decree.
108 See also Work instruction 2021/13, *Nader gehoor,* available in Dutch at: https://bit.ly/3tu11FM.

The IND takes a decision based on the information stemming from the registration interview and the detailed interview and information from official reports and other country information. A decision to reject the asylum application must be motivated and take into account the lawyer's view in writing.[109]

Extension of the regular Asylum Procedure

In the past, the regular Asylum Procedure could be extended during the procedure up to 14, 16 or 22 days. Since 25 June 2021, when the amendments to the Aliens Decree regarding the regular asylum procedure came into force, the 6 days of the asylum procedure can be extended before the start of the procedure or during the procedure. When the IND decides to extend the procedure before its start, for example due to medical reasons, if the asylum seeker is not able to be interviewed or there are indications that the assessment of the asylum claim cannot take place within the 6 days of the regular procedure, the procedure is extended by 3 days.[110] In these cases, the regular asylum procedure takes 9 days.[111]

When the IND decides to extend the regular asylum procedure during the regular procedure, for example when more time is needed to assess the identity or nationality of the asylum seeker or the asylum seeker did not show up for his detailed interview the regular procedure can be extended by 12, 14 or 20 days.[112]

When there is a combination of grounds from Article 3.115(1) and (2) then the regular procedure could be extended *up to* 21, 23 or 29 days.[113]

Extended Procedure (Verlengde asielprocedure)

When the IND is not able to assess the asylum claim and issue a decision within the time frame of the (extended) regular asylum procedure, it has to refer the case to the extended procedure. Cases of minors under the age of 12 years and cases of asylum seekers who, due to medical reasons, cannot be interviewed are also referred to the extended procedure.[114] When the case is referred to the extended procedure, the asylum seeker is relocated from a POL to a centre for asylum seekers (*Asielzoekerscentrum*, AZC).

In general, the detailed interview takes place in the regular asylum procedure, but both the detailed interview and an additional interview can also take place in the extended procedure. If there is an intention to reject the claim during the extended procedure, the asylum seeker and his or her lawyer are given 4 or 6 weeks to submit an opinion on the intention to reject.[115] The IND has to issue a new intention to reject the asylum application if it changes its grounds for rejecting the claim substantially from the written intention in the regular asylum procedure.[116]

If an asylum application is examined in the Extended Procedure, the maximum time limit for deciding is 6 months. According to Article 42(4) of the Aliens Act, transposing Article 31(3) of the recast Asylum Procedures Directive, this time limit can be prolonged by 9 months if, for example, the case is complex or there is an increased number of asylum applications at the same time. In addition to the 9-month prolongation, the time limit can be extended by another 3 months according to Article 42(5) of the Aliens Act. In no case may the maximum time limit of 21 months be exceeded.[117]

Due to the pandemic outbreak, in May 2020, the statutory decision period for asylum applications was

109 Article 42(3) Aliens Act.
110 Article 3.115 (1) Aliens Decree.
111 Article 3.115 (1) and Article 3.115 (3) Aliens Decree.
112 Article 3.115 (2) and Article 3.115 (3) Aliens Decree.
113 Article 3.115 (3) Aliens Decree.
114 Article 3.113 (7) and Article 3.113 (8) Aliens Decree.
115 Article 3.116 (2) Aliens Decree.
116 Article 3.119 Aliens Decree.
117 Article 43 (1) Aliens Act.

extended by six months.[118] The Secretary of State referred to the European Commission's Guidance, which mentioned that Article 31(3)(b) of the Asylum Procedures Directive allows Member States to extend the six months period for concluding the examination of applications.[119] On 16 December 2020, the Council of State ruled that this extension was not unreasonable, nor in violation of EU law.[120] In 2022, a decision for applications assessed within the regular asylum procedure were assessed in 30 weeks on average. For applications referred to the extended procedure, on average, 45 weeks were needed.[121]

1.2. Prioritised examination and fast-track processing ("Tracks 3 and 5")

Track 3 foresees a fast-track procedure for applicants who are *prima facie* likely to be granted protection, for instance nationalities such as Syria and Yemen. Track 5 applies to the same cases, where nationality or identity documents have not been submitted. There is no prioritised examination and fast-tracking processing in practice, as neither Track 3 nor Track 5 have been applied in previous years.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No
   - ❖ If so, is this applied in practice, for interviews? ☒ Yes ☐ No

The law requires the IND to organise a personal interview for all asylum seekers.[122] Every asylum seeker undergoes a detailed interview with the exception of applications dealt with in the Dublin Procedure (Track 1) and the Accelerated Procedure (Track 2). The registration interview interview is designed to clarify nationality, identity and travel route. It has become less exhaustive in 2019 following the introduction of an extensive form and a follow-up interview at registration stage. In the detailed interview, the asylum seeker is able to explain the reasons for fleeing his or her country of origin.[123]

Interpretation

The asylum seeker is to be interviewed in a language that they may reasonably be assumed to understand.[124] This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.[125] The IND may only use certified interpreters by law.[126] However, in certain circumstances the IND may derogate from this rule, for example, when in urgent situations there is a need for an interpreter or if an asylum seeker speaks a very rare dialect.[127] Interpreters are obliged

118 Dutch Parliament, 19637-2605, 15 May 2020, *Gevolgen richtsnoeren Europese Commissie voor beslistermijnen IND*, available in Dutch at: https://bit.ly/2LD9OSD.
119 European Commission, Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, 17 April 2020, available at: https://bit.ly/35T5DIY.
120 Council of State, Decision No 202005098/1, ECLI:NL: RVS:2020:3020, 16 December 2020.
121 IND, *Doorlooptijden per asielspoor over 2022 (information per track on a monthly basis)*, available in Dutch at: https://bit.ly/3ZcpA7V.
122 Article 3.112 Aliens Decree.
123 Article 3.113 Aliens Decree.
124 Article 38 Aliens Act.
125 IND, *Toelichting inzet tolken*, March 2021, available in Dutch at: https://bit.ly/3qnP8PK and Work instruction 2020/5, (Samen) werken met een tolk, available in Dutch at: https://bit.ly/33gEmCd.
126 Article 28(1) Law on Sworn Interpreters and Translators.
127 Article 28(3) Law on Sworn Interpreters and Translators.

to perform their duties honestly, conscientiously and must render an oath.[128] The IND uses its own code of conduct, which is primarily based on the general code of conduct for interpreters.[129] The Legal Aid Board takes the necessary step to ensure the presence of an interpreter facilitating the communication between asylum seekers and their lawyer. They are allowed to make use of the "interpreter telephone", through which interpretation is provided by phone instead of in person. This service is provided by AVB Vertaaldiensten and Global Talk and paid for by the Legal Aid Board.[130]

Gender and sexual orientation

The asylum seeker can express the wish to be interviewed by an employee of the IND of his or her own gender; this includes interpreters as well. This may make it easier for an asylum seeker to present claims related to sensitive issues, such as sexual violence.[131]

In the past, there have been concerns about the questions asked during interviews conducted with persons persecuted due to their sexual orientation. These persons had been questioned, for example, on their sexual behaviours and their personal feelings.[132] In a judgment of 2 December 2014, the CJEU clarified the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for international protection.[133] As a result, the Council of State established that the fact that asylum seekers cannot showcase sufficient proof regarding their connection to the LGBT+ community (be it in the Netherlands or in their country of origin) cannot be considered as a decisive element to determine the lack of credibility of their asylum claim.[134]

The IND's work instruction 2015/9 was followed by new IND work instructions: 2018/9 and 2019/17. Work instruction 2019/17 is currently in force and lays down the elements that have to be taken into account while assessing the credibility of one's sexual orientation. These include the following: the private life of the asylum seeker; their current and previous relationships and contacts with LGBT communities in their country of origin and in the Netherlands, and discrimination, repression and persecution in the country of origin. The emphasis is put on the personal experiences of the asylum seeker. However, the Secretary of State stressed that the new work instructions 2018/9 and 2019/17 do not entail a new assessment framework compared to work instruction 2015/9. This is also followed by judgments of the Council of State.[135]

Recording

The National Ombudsman made recommendations in 2014 concerning the possibilities for civilians to record conversations with governmental institutions.[136] The Ombudsman recommended, *inter alia*, that a governmental institution should not refuse the wish of a civilian to record a hearing or conversation with a governmental institution. Said recommendation is also explicitly applicable in relation to asylum seekers and the IND. The Dutch Council for Refugees started a pilot project on 1 December 2016 at **AC Zevenaar**, providing asylum seekers with the opportunity to record the interview. Since 2017, the possibility to record interviews is provided to all asylum seekers on all applications centres. Asylum seekers must give notice of the wish to record the interview in advance. In practice, however, interviews are rarely recorded.

On day 2 and 4 of the regular asylum procedure, the asylum seeker and his or her lawyer have the possibility to submit any corrections and additions they wish to make regarding the interview that took

128 Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken*, Raad voor de Rechtsbijstand, Nijmegen 2012, 38.
129 IND, *Toelichting inzet tolken*, March 2021, available in Dutch at: https://bit.ly/3qnP8PK.
130 Legal Aid Board, information on interpretation services, available in Dutch at: https://bit.ly/33vxctO.
131 Paragraph C1/2.11. Aliens Circular.
132 Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers),* available in Dutch at: http://bit.ly/1MyMHfE.
133 CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 *A, B and C*, Judgment of 2 December 2014.
134 Council of State, Decisions No 201208550/1**,** No 201110141/1 and No 201210441/1, 8 July 2015.
135 See: Council of State, Decision No 201807042/1, ECLI:NL:RVS:2020:1885, 12 August 2020.
136 Ombudsman, Report 2014/166, November 2014.

place the day before. On day 6, after and if the IND has issued a written intention to reject the asylum application, the lawyer submits his or her view in writing with regards to the written intention on behalf of the asylum seeker. If the lawyer's view is not submitted on time (i.e. by day 6 of the general asylum procedure), the IND may decide without considering that view.[137] However, if the view is received by the IND prior to the publication of the decision, the IND has to consider it in their decision.[138]

Written interview

In March 2020, 15,350 asylum applications were passed on to a newly established IND Task Force, with the aim of clearing the IND's backlogs. At the end of 2021, the backlog had almost been cleared, and the work of the Task Force ended.

Written interviews were introduced at the same time, as a measure to accelerate the backlog clearing. Asylum seekers were asked to personally fill in a form at the IND. The written interview was limited to asylum seekers with the following nationalities: Syrian, Yemenite, Eritrean, Turkish and Iranian, as they are considered as more likely to be granted international protection. The forms contained the following sections:[139] (1) reasons for the asylum application (asylum account); (2) reasons for the asylum application; (3) questions on an application for family reunification (only for Syrian, Turkish, Yemenite and Eritrean nationals); (4) information on documents presented to sustain their asylum claim or other documents; and (5) a criminal record certificate. After filling in the form, the applicants had the possibility to make corrections and additions to the filled in form. Nationals from Iran still were (briefly) interviewed after they had filled in the form. Unaccompanied minors were excluded from the written interviews, as well as asylum seekers with medical issues and illiterate asylum seekers.[140] Important to note is that the IND carried out in-person interviews in the cases in which a positive decision on the asylum application could not be taken on the basis of the written interview. It was not mandatory to participate in the written interview: asylum seekers who did want to fill in the form, were entitled to a regular interview.[141] In practice, however, many asylum seekers agreed to the written interview in fear of having to wait even longer.[142] Through the monitoring of the Task Force's activities, it clearly emerged that the use of written interviews did not help to speed up the processing time of the applications.[143] The applications were still referred to the extended procedure.

After the conclusion of the pilot project 'written interviews' (*schriftelijk horen)*, in October 2022 the IND started with a further pilot, offering written interviews to Syrian, Turkish and Yemenite nationals. The pilot involves nationals of the above mentioned countries based on the likelihood of receiving protection. This has been named the 'Paper & Ink procedure', or PIP. The invitation to partake in a written interview was sent one week before the start of the written interview, which was deemed insufficient by lawyers. The IND is planning to extend this period to four weeks. The IND currently estimates that 9,000 cases are eligible for being assessed in the PIP. To determine who is eligible for the PIP, the IND screens asylum seekers and excludes asylum seekers that are illiterate, in need of special medical guarantees, or people suspected of being a danger to public order and security. At the time of writing, 1400 cases have been assessed through the PIP. The goal is to have 250 applications per week be assessed through the PIP. Originally, these applications were to be decided upon within seven weeks.[144] Because of delays, currently asylum seekers will receive a decision within ten weeks. If based on the written interview the IND cannot take a positive decision on the asylum application, the asylum seeker will be referred to the regular asylum procedure.[145] The asylum seeker has the option to partake in the PIP or follow the regular

137 Article 3.114 Aliens Regulation.
138 Article 3.114 (5) Aliens Regulation.
139 IND, *Written interview*, not dated, available in English at: https://bit.ly/35YxVC3.
140 IND, *Written interview,* not dated, available in English at: https://bit.ly/35YxVC3.
141 IND, *Written interview,* not dated, available in English at: https://bit.ly/35YxVC3.
142 Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: https://bit.ly/39P1yH5.
143 Dutch Council for Refugees, *Quickscan Taskforce*, 19 November 2020, available in Dutch at: https://bit.ly/39P1yH5 and Dutch Council for Refugees, Monitor Taskforce, 1 July 2021, available in Dutch at: https://bit.ly/3zPJvx2.
144 Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 15 2022, 16 December 2022.
145 IND, Asiel: Laatste ontwikkelingen, available in Dutch at: https://bit.ly/3VIITCH.

procedure. However, in practice many asylum seekers choose to partake in the PIP regardless, because they are worried that otherwise it will take even longer for an interview to take place. After 2,500 cases have been processed through the PIP, an evaluation will take place and a decision will be taken as to whether this procedure ~~is~~ will officially be adopted in official policy.

COVID-19: interviews via videoconference

In order to minimise physical contact during the COVID-19 pandemic, the IND started conducting videoconference interviews in April 2020. The interviews by videoconference take place via a secure link for video conferencing. Via this link, the asylum seeker is able to speak with the IND staff members working from Zevenaar, Den Bosch, Schiphol or Ter Apel. Lawyers can use these facilities, too. Unaccompanied minors and asylum seekers with medical problems are excluded from videoconference interviews.[146] Initially, videoconference interviews were used for nationals of Syria, Türkiye and Yemen. This was later extended to nationals of other countries.[147]

Only in one case, an asylum seeker explicitly argued that he was put at a procedural disadvantage because of the use of a videoconference interview instead of a physically attended interview. According to the Regional Court of Utrecht, the Secretary of State (IND) gave sufficient reasons as to why he could suffice with a video interview instead of an interview in person. The fact that this way of conducting an interview is different from the usual way - because of the lack of direct contact - does not mean that this method does not meet the (minimum) requirements, according to the Court. Nor has it emerged that the third-country national would have made other statements during an interview in person than during an interview via video connection. The Court has also not found that the third-country national did not understand the interpreter and / or the person who conducted the interview.[148]

In a recent case, an asylum seeker stated that the Secretary of State did not take into account his medical situation during his interview via videoconference. The Regional Court of The Hague expressed the opinion that, in this case, the Secretary of State had not sufficiently taken into account the medical advice from FMMU.[149]

Since the resumption of in-person interviews due the end of the pandemic, interviews via videoconference have not been used frequently. In April 2021, the IND evaluated the use of interviews via videoconference, and stated they were looking into the possibility of further application of the instrument to future procedures.[150] However, at the moment no additional documents have been published and it is uncertain whether any steps are being taken in view of a more extensive use of remote interviews.

Interviews at location

In 2022, the IND started interviewing certain asylum seekers at their accommodation, as opposed to the asylum seekers making an appointment and visiting the IND themselves.[151] This instrument has been introduced informally, and there is no official IND policy as regards to where these interviews are conducted. The IND has so far conducted interviews at different locations, mainly the emergency shelter locations such as boats which are not regularly used as accommodation, but because of the ongoing reception crisis many different places have been used to provide temporary shelter (see Reception, 'Emergency Locations' for more information). Due to the lack of an official policy on this matter, it is difficult to make sure all necessary steps in the procedure – regarding, for example, the provision of healthcare and legal support - are being followed. In addition, the IND only interviewed people of certain nationalities, which led to a high level of uncertainty for applicants, who could not know when they would

146 IND, *Procesbeschrijving Telehoren,* 14 July 2020, available in Dutch at: https://bit.ly/3c36IIH which was followed up by IND, *Procesbeschrijving Telehoren*, 1 June 2021, available in Dutch at: https://bit.ly/3rffN0J.
147 EASO, Asylum Report 2021, page 119, https://bit.ly/3HUKfDS.
148 Regional Court of Utrecht, Decision No NL20.13775, 5 January 2021.
149 Regional Court of Den Haag, Decision No NL21.19215, 10 January 2022.
150 IND, Vreemdelingenvisie 29, 22 April 2021, avalaible in Dutch at: https://bit.ly/3lLdRha.
151 IND, Vreemdelingenvisue 37, 29 November 2022, available in Dutch at: https://bit.ly/3Zlt4oB.

be interviewed. It is to be seen whether this procedure continues to be applied and whether guidelines will be established to regulate the process.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive Depending on decision

2. Average processing time for the appeal body to make a decision: Not available

1.4.1. Appeal before the Regional Court

In the **regular asylum procedure**, an asylum seeker whose application for asylum is rejected on the merits within the framework of the regular asylum procedure has one week to lodge an appeal before the Regional Court (*Rechtbank*).[152] In the **extended asylum procedure,** an appeal after a rejection of the asylum claim has to be – depending on the grounds for rejection – lodged within 1 or 4 week(s). Applications rejected as manifestly unfounded, dismissed as inadmissible, or rejected following implicit withdrawal or abandonment have to be lodged within one week.

The appeal against a negative in-merit decision in the regular or extended asylum procedure has automatic suspensive effect, except for situations where the claim is deemed manifestly unfounded for reasons other than irregular presence, unlawful extension of residence or not promptly reporting to the authorities.[153]

The concept of "manifestly unfounded" (*kennelijk ongegrond*) application is defined in Article 30b(1) of the Aliens Act as encompassing the following situations:

a. The applicant has raised issues unrelated to international protection;
b. The applicant comes from a safe country of origin;
c. The applicant has misled the Minister by providing false information or documents about his or her identity or nationality or by withholding relevant documents which could have a negative impact on the application;
d. The applicant has likely in bad faith destroyed an identity or travel document;
e. The applicant has presented manifestly inconsistent and contradictory statements or false information, rendering the claim clearly unconvincing;
f. The applicant has lodged an application only to postpone or delay the execution of a removal order;
g. The applicant has lodged an admissible subsequent application;
h. The applicant has irregularly entered or resided in the Netherlands and has not reported to the authorities as soon as possible to apply for international protection, without valid reason;
i. The applicant refuses to be fingerprinted;
j. There are serious grounds to consider that the applicant poses a risk to national security or public order;
k. The applicant has been expelled for serious reasons of public security or public order.

In cases where the appeal has no automatic suspensive effect, a provisional measure has to be requested. In case the request for a provisional measure is granted the appeal has suspensive effect, which means that the right to accommodation is retained and the asylum seeker may remain in Central Agency for the Reception of Asylum Seekers (COA) accommodation.

152 Article 69(2) Aliens Act.
153 Article 82(2)(c) Aliens Act, citing Article 30b(1)(h).

The judgment of the EU Court of Justice of 19 June 2018 in the case Gnandi has led to a major discussion in Dutch case law regarding the suspensive effect of appeals in asylum cases.[154] In the Netherlands, the judgment of the Court is especially relevant for cases in which the appeal does not have suspensive effect. In those cases, the asylum seeker can request a provisional measure, but while a decision on this request has not yet been made, the asylum seeker may be placed in detention on the basis of Article 59, first paragraph, under a, of the Aliens Act. Additionally, the asylum seeker is not entitled to visitors once the departure period has expired.

According to the Council of State, detention was no longer possible on the basis of Article 59, first paragraph, under a of the Aliens Act in cases where the asylum seeker is awaiting a decision on the request for a provisional measure.[155] The Council of State concluded in this case that an asylum seeker could legally remain in the Netherlands during the period for lodging an appeal and during the appeal itself.[156] The asylum seeker concerned had been detained in a removal detention centre after his asylum application was rejected as manifestly unfounded. The removal detention was subsequently considered illegal and the measure was lifted. Previously, the Council of State had put preliminary questions to the CJEU.[157] The CJEU indicated that Directives 2008/115 and 2013/32 should be interpreted as precluding an asylum seeker, whose application has been rejected as manifestly unfounded, from being held in detention for the purpose of expulsion while he legally remains in the Netherlands until judgment is given on his request for a provisional measure.[158] Should the Secretary of State want to detain asylum seekers during this period, which is only possible based on the provisions of the Reception Directive, the law will have to be amended.

It was initially unclear whether the Gnandi judgment was applicable in cases in which an asylum seeker makes a second or subsequent application. However, the Council of State concluded that, in a case involving a fourth asylum application with the asylum seeker having been placed in detention, the Gnandi judgment did apply.[159] As a result, the legal effects of the return decision were suspended.

According to the Council of State the Gnandi judgment is also applicable in case the asylum application was rejected in the border procedure.[160]

The Aliens Act, in particular Article 82, has still not been adjusted to the Gnandi judgment.

Scope and intensity of review

The intensity of the judicial review conducted by Regional Courts (administrative judges) changed in 2016. According to the Council of State's judgment of 13 April 2016, Article 46(3) of the recast Asylum Procedures Directive does not impose a general intensity of judicial review under administrative law in asylum cases and thus not in cases regarding the credibility of an asylum seeker's statements in particular. In the Dutch context, the Regional Court is not allowed to examine the overall credibility of the statements of the asylum seeker intensively (full review). This is, according to the Council of State, due to the fact that the IND has specific expertise to verify statements of the asylum seeker and is therefore in general in a better position to examine the credibility of the claim. An administrative judge can never substitute their own opinion on the credibility of the asylum seeker's statements to the authorities'. Where the asylum seeker makes contradictory or inconsistent statements, the review can be more intensive. Before 2016, the other elements – not the credibility of the statements – for assessing whether the asylum seeker qualifies for international protection (*de zwaarwegendheid*) had always been reviewed intensively by Regional Courts.

154 CJEU, C-181/16, 19 June 2018.
155 Council of State, Decision no 201710445/2/V3, 27 August 2018.
156 Council of State, Decisions No 201710445/2/V3 and 201805258/1/V3, 27 August 2018.
157 Council of State, Decision No 201703937/1, 19 April 2018.
158 CJEU, C-269/18, 5 July 2018.
159 Council of State, Decision no 201903236/1, 29 January 2020.
160 Council of State, Decision no 201808923/1, 5 June 2019.

Regional courts thus rule whether the grounds of a decision of the IND is valid, taking into account the grounds for appeal from the asylum seeker and the arguments of the IND. When the grounds are not valid, the IND has to take a new decision.

Furthermore, when assessing the appeal, the Regional Court takes into consideration all new facts and circumstances which appear after the decision issued by the IND. This is the so-called *ex nunc* examination of the appeal.[161]

1.4.2. Onward appeal before the Council of State

After the Regional Court issues a judgment on the decision from national asylum authorities, both the asylum seeker and/or the IND may appeal against the decision of the Regional court to the Council of State.[162] The IND makes use of this possibility especially in matters of principle, for example if a court evaluates that a particular minority is systematically subjected to a violation of Article 3 ECHR. The Council of State carries out a marginal *ex tunc* review of the (judicial) judgment of the Regional Court and does not examine the facts of the case.[163]

In April 2017, the Council of State referred preliminary questions to the CJEU on whether an onward appeal in asylum cases should have automatic suspensive effect. The Council of State in doing so referred to the Return Directive, the Asylum Procedures Directive and Article 47 of the EU Charter on the right to an effective remedy. On 26 September 2018, the CJEU ruled that it cannot be derived from the Asylum Procedures Directive, Return Directive and the EU Charter that an onward appeal in asylum cases has automatic suspensive effect.[164] Following this judgment, the Council of State ruled on 20 February 2019 that an onward appeal does not have automatic suspensive effect.[165] As a result, a provisional measure from the President of the Council of State is needed to prevent expulsion.

Initially, a provisional measure could only be requested in case of urgency, such as imminent deportation, detention or termination of reception, but this condition no longer applies. The Council of State changed its course as a result of the ECtHR judgment in *A.M v. The Netherlands* of 5 July 2016.[166] According to the EctHR, onward appeal to the Council of State, in its existing form, did not qualify as an effective remedy. The Council of State made clear that it is no longer necessary to wait for an expulsion date has been set, an asylum seeker can now submit a request for a provisional measure at the time of appeal.[167] The Council of State also made clear that a request for a provisional measure preventing expulsion will be granted if the asylum request is considered to have an arguable claim in the sense of Article 3 of the European Convention on Human Rights (ECHR).[168] If granted, a provisional measure allows for reception facilities.

All decisions of the appeal body are public and some are published.[169] There are no obstacles in practice with regard to the appeals in asylum cases. However, asylum seekers are not generally informed about their possibility to appeal, time limits etc. but if they have specific questions they can address them to the Dutch Council for Refugees. The representatives of the asylum seekers are responsible for the submission of the appeal.

161 Article 83 Aliens Act.
162 Article 70(1) Aliens Act.
163 Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedure Directive*, Vergaderjaar 34 088, number. 3, 2014–2015, 22 and Chapter 8.5 GALA.
164 CJEU, Case C-175/17 and C-180/17, *X and Y v. Staatssecretaris van Veiligheid en Justitie*, 26 September 2018.
165 Council of State, Decision No 201609659/1/V2 and 201609659/4/V2, 20 February 2019.
166 ECtHR, no. 29094/09, 5 July 2016.
167 Council of State, Decision no. 201609138/3, 20 December 2016.
168 Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.
169 Decisions of the Regional Courts and Council of State may be found at: https://www.rechtspraak.nl/.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☒ Representation in interview
     ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

Every asylum seeker is entitled to free legal assistance.[170] To ensure this right, the following system was designed:

1.5.1. Free legal assistance at first instance

To register the actual asylum application the asylum seeker has to reach an Application Centre. At the Application Centres there are lists where asylum lawyers note their availability for that day. For instance, if five asylum lawyers are scheduled on a Monday they are responsible for all the asylum requests that are made that day. Those lawyers are also physically present at the centre all day. The Legal Aid Board (*Raad voor de Rechtsbijstand*), a state-funded organisation, is responsible for defining timetables and making sure that sufficient lawyers are available on a particular day. In this way, every asylum seeker is assigned a lawyer from the start of their procedure. On the other hand, in case a great number of applications are presented on one day, it may also happen that lawyers are forced to accept an excessive number of cases. The Legal Aid Board schedules a certain number of lawyers to handle the asylum requests that come in that day, to a maximum of three cases per day they are present at the Application Centre.[171]

An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. However, an asylum seeker may choose a lawyer independently. If the Legal Aid Board recognises the self-appointed lawyer as an official asylum lawyer, it will pay for the costs. This happens in the vast majority of cases. There are no limitations to the scope of the assistance of the lawyer as long as they are paid. Lawyers are paid for eight hours during the procedure at first instance. The Dutch Council for Refugees has criticised the fact that the contact hours between lawyers and their clients are limited under this system.

The Dutch Council for Refugees also provides legal assistance. During the rest and preparation period (see Registration), the Dutch Council for Refugees offers asylum seekers information about the asylum procedure. Asylum seekers are informed about their rights and obligations, as well as what can be expected during the asylum procedure. Counselling may be given either individually or collectively. During the official procedure, asylum seekers may always contact the Dutch Council for Refugees, in order to receive counselling and advice on various issues. In addition, representatives of the Dutch Council for Refugees may be present during both interviews at the request of the asylum seeker or his or her lawyer. The Dutch Council for Refugees has offices in most of the reception centres.

1.5.2. Free legal assistance on appeal

At the appeal stage of the asylum procedure, asylum seekers continue to have access to free legal assistance and no merits test applies.[172] Every asylum seeker has access to free legal assistance under the same conditions. However, the lawyer can decide not to submit any written opinion – on day 6 of

170 Article 10 Aliens Act.
171 J. Nijland and K. Geertsema, *Wat verdeint een sociale vreemdelingenadvocaat?,* A&MR 2020, nr. 6-7, 361-370.
172 Circular on payments legal aid in the new asylum procedure, 1 July 2010, available in Dutch at: http://bit.ly/1HS8gek.

the short asylum procedure – if they think the appeal is likely to be unsuccessful. In this scenario, the lawyer has to report to the Legal Aid Board and the asylum seeker can request a "second opinion", meaning that another lawyer takes over the case.[173] This only happens in exceptional cases. On the one hand, the intention of the legislator is that the same lawyer will represent the asylum seeker during the whole procedure. On the other hand, if the lawyer does not submit a written opinion, this would be considered as 'malpractice' because submitting a written viewpoint is part of the core of the lawyer's job during the whole procedure. Even if the lawyer is strongly of the opinion that a written viewpoint will not be of any use, this may not be the case in future circumstances, for example in case of a subsequent application. Only after several recognised 'malpractices' can an asylum lawyer be penalised. The gravest penalisation is disbarment.

Limited financial compensation for lawyers who represent asylum seekers can be an obstacle, as some lawyers consider insufficient the compensation they obtain in exchange for the time spent preparing a caset. This means that some lawyers are underpaid in comparison to the time spent on a case, or that some cases are not prepared with sufficient care. Alongside this, due to the economic crisis, more cutbacks had to be made within the state-funded legal aid system. As a result, over the last two years, asylum lawyers' salaries decreased, leading to a structural problem of underpayment. To counter this, the Dutch government is raising the amount received per point that an asylum lawyer receives after the completion of a case.[174] A point corresponds to the amount of time allocated to a specific case, meaning that for more difficult and time-intensive cases, a lawyer will receive more money, corresponding to the amount of time spent on the case.

2. Dublin ("Track 1")

2.1. General

Dublin statistics for the full year 2022 were not available by the time of publication of the report.

2.1.1. Application of the Dublin criteria

As a result of the answers of the CJEU in the case of *H. and R.*[175], the Council of State concluded that an asylum seeker cannot rely on a Chapter III-criterion in case of take backs.[176] The exception to this rule is the situation described in Article 20(5) of the Dublin Regulation.[177] This means that the IND only looks at the responsibility criteria of Chapter III of the Dublin Regulation in take charge and Article 20(5)-situations.

Out of the total of 5,669 outgoing requests in 2021 (latest data available at the moment of publication of the report), only 1,781 requests were take charge requests. All other requests were tack back requests in which the criteria of Chapter III are, in principle, not applied following the ruling in H. and R.

Eurodac and prior applications

According to the Council of State, the Secretary of State may rely on the information in Eurodac when establishing which Member State is responsible for handling the asylum request.[178] It is up to the asylum seeker to demonstrate that the registration is incorrect. In addition to a match in the Eurodac system or a prior application, other information, such as an original visa supplied by another Member State or

173 Article 12 Legal Aid Act.
174 J. Nijland and K. Geertsema, *Wat verdeint een sociale vreemdelingenadvocaat?,* A&MR 2020, nr. 6-7, 361-370.
175 CJEU, C-582/17 and 583/17, *Staatssecretaris van Veiligheid en Justitie v. H. And R*., 2 April 2019.
176 Council of State, ECLI:NL: RVS:2019:3672, 31 October 2019.
177 Regulation (EU) No 604/2013 of the European Parliament and the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-Country National or a Stateless Person (recast) [2013] OJ L 180/31 (Dublin Regulation).
178 Council of State, ECLI:NL: RVS:2016:2441, Council of State, ECLI:NL: RVS:2015:3012.

statements from the asylum seeker regarding family members or their travel route, may result in a Dublin claim.

Guarantees for) minors: Article 6 and 8 Dublin Regulation

Unaccompanied children who have already applied for asylum in another Member State and who do not have any family members legally residing in the EU will not receive a Dublin claim. The current practice is therefore in line with the CJEU's judgement in the case of *MA and Others*.[179]

In cases where an unaccompanied minor has a family member in another Member State or travels with a family member, the IND may not transfer the unaccompanied minor without investigating whether transfer would be in the best interest of the child. This follows from several judgements by the Council of State.[180] The Regional Court of Amsterdam has ruled that the best interest of the child should also be taken into account in cases where not the child, but their family member, receives a Dublin claim.[181] The IND has not yet appointed an agency to carry out best interest of the child assessments in Dublin cases, because of this the best interest assessment does not take place in practice.

For more information on age assessment, see section on Age Assessment.

Family unity: Article 9 and 10 Dublin Regulation

Dutch policy only clarifies how family links are assessed with regard to unaccompanied children. In such cases, where possible, the IND uses DNA tests. If this option is not available, for example due to family links not being biological, the IND assesses family ties with identifying questions. When an applicant does not mention their family members during the interview conducted at the start of the asylum procedure, this can be used against the family members when they wish to invoke the family unity criteria in Articles 8-11 of the Regulation.[182] In general, jurisprudence shows that documents are required in order for the IND to establish a family relationship or a marital bond. However, even without official documents having been produced, there may be cause for the Secretary of State to should have investigate whether family unity and a stable relationship exist.[183] Family unity can also be established from circumstantial evidence.[184]

As to the question of whether there is a stable relationship within the meaning of the Dublin Regulation the Council of State ruled that this must also be seen in the light of the circumstances under which the applicants were able to give substance to their relationship in their country of origin.[185] According to the Council of State, in view of the difficult position of the LGBTI community in Russia, the Secretary of State should have asked more questions regarding the sustainability of the relationship between the asylum seeker and her female partner.

Out of the total of 1,781 outgoing take charge requests, only 5 were on the basis of articles 9 and 10 of the Dublin Regulation.[186] There were 40 incoming requests, with 20 people actually transferred to the Netherlands.

Residence documents or visas: Article 12 Dublin Regulation

As to the application of Article 12(4) of the Dublin Regulation, the Council of State ruled on the interpretation of the phrase "one or more visas which have expired". It stated that Regulation 810/2009

179 CJEU, C-648/11, *MA and Others v Secretary of State for the Home Department,* 6 June 2013.
180 Council of State, ECLI:NL: RVS:2020:1281, 27 May 2020; Council of State, ECLI:NL: RVS:2020:3043, 21 December 2020.
181 Regional Court of Amsterdam, NL22.19633 and NL22.19634, 28 October 2022.
182 Regional Court, The Hague, Decisions No 17/591 and NL.1428, 17 August 2017.
183 Regional Court Amsterdam, NL19.30086, 12 February 2020.
184 Regional Court Middelburg, NL19.28911, 9 January 2020.
185 Council of State, ECLI:NL: RVS:2020:2261, 21 September 2020.
186 Source: Eurostat. Not accounting for transfers labelled as 'legal provision unknown'.

(Visa code) differentiates between the duration, the permitted length of stay and the number of entries permitted by a visa. The Council of State concludes that phrase refers to the duration of a visa.[187] According to the Council of State, there is no reason to submit preliminary questions on this matter to the CJEU.

On 25 August 2021, the Council of State decided to refer prejudicial questions to the CJEU in the case of applicants who received diplomatic cards from the Ministry of Foreign Affairs of another Member State. The IND claimed the Member State issuing the diplomatic card would be responsible on the basis of Article 12 Dublin Regulation. The Council of State asks whether a diplomatic card issued by a Member State under the Vienna Convention on Diplomatic Relations is a residence document within the meaning of Article 2(1) Dublin Regulation.[188] The case is still pending at the moment of writing. The AG has concluded that the diplomatic card must be seen as a residence document within the meaning of Article 2.

2.1.2. The dependent persons and discretionary clauses

Dependent persons: Article 16 Dublin Regulation

The burden of proof in showing that a situation of dependency exists lies with the asylum seeker, but the IND has to motivate every case in which it refuses to apply Article 16.[189] It is settled case law that the applicant has to demonstrate that a situation of dependency exists between them and their family member, with objective documents demonstrating what concrete assistance their family member offers or receives.[190]

The IND typically only applies Article 16 of the Dublin Regulation in situations of 'exclusive dependence', meaning that the asylum seeker has to demonstrate they receive or provide care that no other person could facilitate. The Council of State has approved this strict framework. In 2020, the Council of State ruled that Article 16 did not apply to the situation in which the asylum seeker was dependent on intensive informal care, mainly provided by her son.[191] According to the Council of State, it had not been shown that it was impossible, or very difficult, to replace her son as a care provider nor had they shown that the presence of her son was necessary for the treatment to be successful. Similarly, in 2019, the Council of State ruled that the asylum seeker had failed to show that she was the only person capable of caring for her seriously ill mother, as her brothers were also present and there is the option of home care.[192] In the case of an asylum seeker who claimed that a situation of dependency existed between him, his mother and his mentally impaired brother, the Council of State ruled that a statement of a family doctor - indicating that the asylum seeker's presence is indispensable to his mother and his brother – was not sufficient to demonstrate the existence of exclusive dependency.[193]

Both the Regional Court of Den Bosch and the Regional Court of Haarlem recently held that the strict interpretation of Article 16 employed by the IND and Council of State conflicts with Union law.[194]

On 30 November 2021, the Regional Court of Zwolle decided to refer prejudicial questions on the scope of Article 16 to the CJEU. The case concerns a woman, who married shortly after her arrival in the Netherlands, whose husband resides lawfully in the Netherlands. At the time the IND issued a transfer decision, the woman was pregnant with their child. The Regional Court requested the CJEU whether

187 Council of State, ECLI:NL: RVS:2019:2508, 23 July 2019; Council of State, ECLI:NL: RVS:2019:2486, 23 July 2019.
188 Council of State, ECLI:NL:RVS:2021:1873, 25 August 2021; CJEU case number C- 568/21.
189 Council of State, Decision No 201701137/1, 20 March 2017; see also Regional Court Middelburg, Decision No 17/540, 30 January 2017.
190 Council of State, Decision No 201403670/1, 5 February 2015.
191 Council of State, ECLI:NL:RVS:2020:2296, 30 September 2020.
192 Council of State, ECLI:NL: RVS:2019:834, 13 March 2019.
193 Council of State, Decision No 201706799/1/V3, 8 October 2018.
194 Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10025, 14 September 2020; Regional Court Haarlem, ECLI:NL:RBDHA:2020:8698, 3 September 2020.

Union law precludes national legislation that takes into account the best interests of an unborn child and whether Article 16(1) of the Dublin III Regulation applies to the relationship between the unborn child and the father of that unborn child who is lawfully residing in the Member State.[195] The CJEU has concluded that Article 16 of the Dublin Regulation does not apply to a dependency link either between an applicant for international protection and that applicant's spouse who is legally resident in the Member State in which the application was lodged, or between the unborn child of that applicant and the spouse who is also the father of that child. However, Article 17 of the Regulation does not preclude the legislation of a Member State from requiring competent national authorities, on the sole ground of the best interests of the child, to examine an application for international protection lodged by a third-country national where she was pregnant at the time her application was lodged, even though the criteria set out in Articles 7 to 15 of the Regulation indicate that another Member State is responsible for that application.

Sovereignty clause: Article 17(1) Dublin Regulation

The IND is reticent regarding the application of Article 17 of the Dublin III Regulation in taking responsibility for handling an asylum request. This is a result of the principle of mutual trust between Member States. Paragraph C2/5 of the Aliens Circular stipulates in which case Article 17(1) of the Dublin III Regulation will be applied:

- Where there are concrete indications that the Member State responsible for handling the asylum request does not respect international obligations;
- Where the transfer of the asylum seeker to the responsible Member State is of disproportionate harshness, due to special individual circumstances;
- Where the IND finds that the application of Article 17 of the Dublin III Regulation may better serve process control, in particular when the asylum seeker originates from a safe country of origin, and a return to the country of origin is guaranteed in the foreseeable future (after the procedure has been processed).

The Council of State already ruled in 2018 that the Court shall only minimally review the application of the discretionary clause of Article 17 of the Dublin III Regulation. The Regional Court cannot overrule the IND's decision to apply Article 17 of the Dublin III Regulation and replace that decision with its own judgment.[196] Again, in 2020 the Council of State ruled that as to the application of Article 17 of the Dublin Regulation, the Courts should limit themselves to testing the decision-making by the Secretary of State against the requirements set by the law. The Courts should refrain from substituting their own judgment for that of the Secretary of State.[197]

The Council of State ruled in 2016 that there is no obligation for the IND to protect family relations other than those mentioned in the Dublin III Regulation.[198] For example, the relationship between the asylum seeker and his wife, who has been naturalised and is pregnant with his child is not, according to the Council of State, a special, individual circumstance that obliges the IND to apply Article 17 of the Dublin III Regulation.[199] The interests of the child and respect for family life are enshrined in the Dublin III Regulation in various binding criteria for identifying the responsible Member State, according to the Council of State.[200] Although Article 6 of the Dublin Regulation does not oblige the Secretary of State to assume responsibility on the basis of Article 17(1) of the Dublin Regulation, the best interests of the child should be taken into account.[201]

While enjoying a large margin of discretion in applying Article 17, the IND must state reasons for refraining from applying the discretionary clause if the applicant appeals to this clause. The Council of State ruled that the IND had not stated sufficient reasons not to apply Article 17 in the case of two

195 Regional Court Zwolle, ECLI:NL:RBDHA:2021:13167, 30 November 2021; CJEU case number C-725/21.
196 Council of State, Decision No 201806712/1, 10 October 2018.
197 Council of State, ECLI:NL: RVS:2020:545.
198 Council of State, Decision No 201507801/1, 9 August 2016.
199 Council of State, Decision No 201505706/1, 19 February 2016.
200 Council of State, Decision No 201505706/1, 19 February 2016.
201 Council of State, Decision No ECLI:NL:RVS:2022:1671, 13 June 2022.

brothers who had been actively searching for each other for the past 16 years.[202] Similarly, the Council of State ruled that the IND had to state reasons for refraining from applying Article 17 in the case of an asylum seeker who supported her seriously ill sister in the Netherlands[203] and in the case of a woman and her children who had already been staying in the Netherlands for multiple years.[204]

Humanitarian clause: Article 17(2) Dublin Regulation

The IND is equally reticent with regard to the application of Article 17(2) of the Dublin III Regulation in requesting another Member State to undertake responsibility for an asylum application. Reasons for using the clause can be family reunification or cultural grounds, although there have to be special individual circumstances that would result in the asylum seeker facing disproportionate hardship if he or she is not reunited with his or her family.[205]

The IND does not register the grounds most commonly accepted for using the "humanitarian clause" or the number of cases in which it is used. This practice has not changed in 2022.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications? ☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available.

Immediately after the request for asylum has been filed, during the application procedure, the IND starts investigating whether another Member State is responsible for examining the asylum application. All asylum seekers are systematically fingerprinted and checked in Eurodac and EUVis.[206] Refusal to be fingerprinted can be considered as lack of sufficient cooperation during the procedure. If the application is rejected, the refusal to be fingerprinted can lead to a rejection as 'manifestly unfounded' instead of 'unfounded', which entails that an entry ban (of two years) would also be imposed to the applicant.

The IND, in cooperation with the Dutch Council for Refugees, has drafted brochures that provide asylum seekers information on the Dublin procedure in 12 languages. These brochures are available in Arabic, Chinese, Dari, Dutch, English, Farsi, French, Mongolian, Russian, Servo-Croatian, Somali and Tigrinya.

In case the IND presumes that another Member State is responsible for examining the asylum request on its merits, the application will be assessed in "Track 1" as explained in the Overview of the Procedure. In this procedure, the asylum seeker is not granted a rest and preparation period and is not medically examined by MediFirst.[207] There is one case in which the Regional Court of Rotterdam has ruled that the asylum seeker should have been examined by FMMU/Medifirst, even though the application was dealt with in Track 1.[208]

Within a few days after filing the application, the asylum seeker takes part in a registration interview with the IND (see below for more information). After the interview, the IND decides whether another Member State is indeed responsible for examining the asylum request on its merits. If that is the case, the asylum request is rejected and processed in the Dublin procedure.[209] In 2022, there have been issues relating to the formal registration and the registration interview, because of the chaotic situation in Ter Apel (for

202 Council of State, Decision No 20181004/1, 13 May 2019.
203 Council of State, ECLI:NL:RVS:2020:2455, 16 October 2020.
204 Council of State, ECLI:NL:RVS:2021:1256, 17 June 2021.
205 Paragraph C2/5 Aliens Circular.
206 Paragraph A2/10.1 Aliens Circular.
207 Article 3.109c(1) Aliens Decree.
208 Regional Court of Rotterdam, ECLI:NL:RBDHA:2021:4036, 20 April 2021.
209 Paragraph C2/5 Aliens Circular.

more information, see: Reception Conditions). Because of this, asylum seekers had to wait up to several months after filing their application until they had their reporting interview.

The IND files a Dublin request as soon as it has good reason to assume that another Member State is responsible for examining the asylum application according to the criteria set out in the Dublin III Regulation. The IND does not wait for a response from the other Member State before the next step in the Dublin procedure is taken in Track 1. The negative decision on the asylum request, however, is only taken after the Dublin request has been expressly or tacitly accepted by the other Member State. Normally, the asylum seeker will be notified that their application will be handled in the Dublin-track relatively soon after registration. However, the procedure has taken much longer than usual in 2022. For comparison: in 2019 it took al average of 14-15 weeks from the moment of registration to the moment of a Dublin decision. In 2022, the average time increased to 20-28 weeks.[210]

An asylum seeker whose request has been rejected because another Member State is responsible for handling the asylum request may, under certain conditions, be detained. Article 28 of the Dublin III Regulation is interpreted in a way that allows detention in many cases (see section on Detention of Asylum Seekers). The Regional Court compensated an asylum seeker who had been detained before being transferred to another Member State, as the IND's explanation of the reasons for having postponed the transfer were considered to be insufficient.[211]

In principle, the asylum seeker has the option to either travel to the responsible Member State voluntarily or under escort. When the applicant chooses to leave voluntarily, they have 4 weeks to do so.[212] On the other hand, the Council of State has ruled in 2017 that the IND may withhold this possibility, especially when the responsible Member State does not agree to a voluntary transfer.[213]

General remarks concerning video/audio recording, interpreters, accessibility and quality of the interview also apply to the Dublin procedure.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

During the application procedure, the IND conducts a registration interview that focuses on the asylum seeker's identity, nationality and travel route. The aim of this interview is to determine whether another Member State is responsible for examining the asylum request on its merits. During this interview, the asylum seeker is informed that the Netherlands may or already has sent a "take back" or "take charge" request to another Member State. The asylum seeker may present arguments as to why the transfer should not take place and why the Netherlands should deal with his or her asylum application. As a result of the CJEU's ruling in *Ghezelbash* in 2016, the asylum seeker can claim a wrongful application of the Dublin criteria as well as state circumstances and facts demonstrating that a transfer would result in a violation of Article 3 ECHR.[214]

210 IND, Asylum processing times, available at: https://bit.ly/3IJt8rW.
211 Regional Court Amsterdam, Decision NL18.8386, 8 June 2018.
212 Article 62c(1) Aliens Act.
213 Council of State, Decision 201701623/1/V3, 10 August 2017.
214 CJEU, Case C-63/15 *Ghezelbash,* Judgment of 7 June 2016.

In the case of an asylum seeker who, during the registration interview had declared to have entered the EU via Italy, but later on claimed these statements were incorrect, the Council of State ruled that the IND was not compelled to inform Italian authorities about these corrections.[215]

2.4. Appeal

Indicators: Dublin: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

In case an asylum application is rejected because another Member State is responsible for examining the asylum application according to the IND, the asylum request "shall not be considered".[216] The asylum seeker may appeal this decision before the Regional Court.[217] The appeal must be filed within a week after the decision not to handle the asylum application.[218] As the appeal has no automatic suspensive effect, the applicant must file a separate request to suspend the transfer.

At the beginning of January 2021, a request for a preliminary ruling was made by the Regional Court of Haarlem.[219] The court was faced with the question of whether an unaccompanied minor has the right to bring an effective legal remedy against the rejection to take charge of their case based on Article 8, second paragraph, of the Dublin Regulation. The CJEU concludes that an unaccompanied minor applicant must be able to exercise a judicial remedy, under Article 27(1) of the Dublin Regulation, not only where the requesting Member State adopts a transfer decision, but also where the requested Member State refuses to take charge of the person concerned, in order to be able to plead an infringement of the right conferred by Article 8(2) of that regulation.[220]

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

In Dublin cases ("Track 1"), the right to free legal assistance differs from the regular procedure ("Track 4"). Instead of being referred to a lawyer once they register their asylum application, asylum seekers subject to the Dublin procedure are assigned a legal representative only at the point when the IND issues a written intention to reject the application.[221]

Numerous cases have been reported where this has caused problems concerning the obligation, or even the possibility, for a legal counsel to represent the asylum seeker. In those cases, no contact was

215 Council of State, Decision No 201700595/1, 6 July 2018.
216 Article 30(1) Aliens Act.
217 Article 62(c) Aliens Act.
218 Articles 69(2)(b) and 82(2)(a) Aliens Act.
219 Regional Court Haarlem, ECLI:NL:RBDHA:2020:12927, 17 January 2021; CJEU case number C-19/21.
220 CJEU, Case C-19/21, 1 August 2022.
221 Article 3.109c(1) Aliens Act. This is due to the lack of a rest and preparation period.

established between the applicant and his or her lawyer due to the fact that the applicant would abscond after receiving the IND's written intention to reject the application. The Legal Aid Board has published guidelines on how to deal with this situation on 20 September 2019.[222] Essentially, the lawyer informs the Legal Aid Board and withdraws him- or herself from the case.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☒ Yes ☐ No
   - ❖ If yes, to which country or countries? Hungary

Dutch case law and practice on the subject of suspension of Dublin transfers is worth mentioning more extensively, referring in particular to some specific Member States.

Italy: Following the ECtHR judgement in the case of *M.T. v the Netherlands*[223], establishing that a Dublin transfer to Italy of a single mother and two children would not violate Article 3 ECHR, the Dutch Council of State has also confirmed that the principle of mutual trust applies to Italy for particularly vulnerable applicants.[224]
A more detailed description of the case law regarding Dublin Italy cases over the years 2015 – 2021 can be found in the AIDA report: Netherlands update 2021.

On 5 December 2022, the Italian authorities issued a circular letter asking the other Dublin Units to temporarily halt all Dublin transfers to Italy due to a lack of reception facilities for Dublin returnees. The IND emphasizes that this is a temporary transfer impediment and that this does not mean that Italy can no longer be regarded as the responsible Member State. Some Regional Courts have agreed with this assessment,[225] while others concluded that this cannot be seen as a temporary issue and must rather be seen as a possible structural issue with Italian reception conditions.[226] There are multiple onward appeals pending in front of the Council of State.

At the time of writing this report, no Dublin transfers had been carried out to Italy since the circular letter.

Greece: The Netherlands suspended all Dublin transfers to Greece after the ECtHR's ruling in *M.S.S. v. Belgium and Greece*. The Aliens Circular incorporates the *M.S.S.* jurisprudence as interpreted by the Council of State.[227] However, following the recommendation of the European Commission of 8 December 2016, the Dutch government expressed the wish to recommence Dublin transfers to Greece, with the exception of transfers of vulnerable asylum seekers.[228] In 2019, the Dutch Secretary of State tried to transfer several applicants to Greece on the basis of these reccomendations by the EC Guarantees were required from the Greek authorities, i.e. that reception conditions are suitable and that the asylum seeker will be treated in accordance with European standards. Dutch authorities further asked whether Greece has an "accommodation model" that may be regarded as suitable in general, probably in order to obtain a general guarantee for future cases. However, the Council of State ruled that transfer to Greece would result in a violation of Article 3 ECHR, unless the asylum seeker is guaranteed legal assistance during the asylum procedure by the Greek authorities.[229] Until now, the Secretary of State has not issued any transfer decisions for Dublin transfers to Greece.

222 Legal Aid Board (Raad voor Rechtsbijstand), AC Signalering nr. 17 2019, 20 September 2019.
223 ECtHR, 23 March and amended on 15 April 2021, M.T. v the Netherlands, appl. no. 46595/19, ECLI:CE:ECHR:2021:0323DEC004659519.
224 Council of State, Case No. 202107185/1, 29 November 2021.
225 See, for example: Regional Court of Arnhem, NL22.25014, 23 January 2023; Regional Court Den Haag, NL22.25592, 12 January 2023.
226 See, for example: Regional Court of Utrecht, NL22.25746, 13 January 2023; Regional Court Roermond, ECLI:NL:RBDHA:2023:1082, 3 February 2023.
227 Paragraph C2/5.1 Aliens Circular. See also Council of State, Decision No 201009278/1/V3, 14 July 2011.
228 Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, available at: https://bit.ly/2kLKs1L.
229 Council of State, Decision No 201904035/1/V3, 23 October 2019; Council of state, Decision No 201904044/1/V3, 23 October 2019.

Malta: On 15 December 2021, the Council of State ruled that the Secretary of State must conduct further research on the situation for asylum seekers in Malta.[230] The Council of State comes to this conclusion based on recent information from the Maltese NGO aditus foundation, which shows that asylum seekers who are deported to Malta on the basis of the Dublin Regulation will be detained upon arrival. Several reports also show that detention conditions in Malta are very poor and that access to legal aid has deteriorated. According to the Council of State, the Secretary of State has provided inadequate reasons that there is no real risk for Dublin claimants of a violation of Article 3 of the ECHR or Article 4 of the EU Charter if they are detained after arrival in Malta. The conclusions of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT report) of 10 March 2021 show that living conditions in the various detention centres are completely inadequate and Malta's response to the report does not reflect the extent to which these shortcomings have actually improved since its publication.[231] Additionally, the Council of State referred to the AIDA Malta country report, indicating that NGOs have not observed any improvements in detention conditions, nor have they sufficient access to detention centres, inferring that no adequate control on detention conditions can be exercised. There have not been any claims or transfers to Malta since this judgement.

Denmark: On 6 July 2022, the Council of State issued three judgments on indirect refoulement in Dublin cases in the event of differences in protection policies between Member States.[232] Two of these cases concerned Syrian nationals who argued that would be at risk of refoulement in case of being returned to Denmark, as in the country the province of Damascus is considered safe enough to return to. The Council ruled that a difference in protection policy may be a reason to suspend the Dublin transfer. To this end, the applicant must demonstrate: 1) that there is a fundamental difference in protection policy between the Netherlands and the other Member State (whereby it is established that he would receive protection in the Netherlands and not in the other Member State), 2) that the highest national court in the other Member State does not disapprove of the policy applicable there. In the opinion of the Council of State, the applicants had fulfilled their burden of proof with regard to the Danish policy on Damascus and the level of judicial protection in Denmark.

Hungary: Following a Council of State ruling in November 2015,[233] the "sovereignty" clause is applied in cases where it has been established that Hungary is the responsible Member State. As a result, to our knowledge, no asylum seekers have been transferred to Hungary.
There were differences of opinion between the Dutch and Hungarian authorities concerning the interpretation of the Regulation. This concerns two categories of cases:

(1) asylum seekers who travel through Hungary and apply for asylum for the first time in the Netherlands;

(2) asylum seekers who have applied for asylum in Hungary and applied for a second time in the Netherlands.

According to Dutch authorities, Hungary is responsible for the asylum application in both situations, but the Hungarian authorities generally refused these requests. Therefore, the Dutch Secretary of State initiated a conciliation procedure with the European Commission.[234] In a letter to the House of Representatives of 22 March 2018, the Secretary of State made clear that Hungary refuses to participate in a conciliation procedure.[235] As the Secretary of State has no other means to resolve the differences of interpretation between the Hungarian and Dutch authorities, he informed the House of Representatives that Dublin claims to Hungary are suspended.[236] This was still the case in 2022.

230 Council of State, ECLI:NL: RVS:2021:2791, 15 December 2021.
231 European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), Report to the Maltese Government, 10 March 2021, available via: https://bit.ly/3Jv7sgz.
232 Council of State, ECLI:NL:ABRVS:2022:1862; ECLI:NL:ABRVS:2022:1863 and ECLI:NL:ABRVS:2022:1864, 6 July 2022.
233 Council of State, Decision No 201507248/1, 26 November 2015.
234 Secretary of State, Letter TK 2017-2018, 19 637, No 2355, 27 November 2017.
235 KST 19637, No. 2374, 22 March 2018.
236 KST 19637, No 2374, 22 March 2018.

Poland: According to a 2020 decision of the Regional Court Haarlem, there is a fundamental lack of independence of the courts of Poland. However, according to the court, it cannot be inferred that there are compelling and factual grounds to believe that every asylum seeker runs a real risk that their fundamental right to an effective remedy will be violated. The court found that the principle of mutual trust regarding Poland still stands.[237] In 2021, the Regional Courts of Amsterdam,[238] Groningen,[239] and Den Bosch[240] have ruled that the principle of mutual trust does not apply to Dublin transfers to Poland concerning applicants who are part of the LGBTQIA+ community.

The Regional Court of Den Bosch has referred prejudicial questions to the CJEU on the on the scope and purport of the principle of mutual trust in the context of the transfer of the applicant to the Member State responsible. The Court made specific reference to cases in which said Member State allegedly infringed fundamental rights with respect to the applicant and third-country nationals generally, in the form of, *inter alia*, pushbacks and detention. The Court also asked questions relating to the evidence the applicant has at their disposal and the standard of proof that applies when they claim that transfer should be prohibited under Article 3(2) of the Dublin Regulation.[241] Because the decision in that case has been withdrawn, the questions have also been withdrawn and there will be no judgment from the CJEU in that case. However, the questions have been asked again in a case about Dublin transfer to Poland.242 The Council of State has held a hearing on Dublin-Poland cases on 12 December 2022 and has decided to wait for the CJEU case before issuing a judgment on the matter.

Romania: In a case regarding a Dublin transfer to Romania, the applicant stated that he was detained and mistreated by Romanian authorities. The Council of State, however, ruled that the principle of mutual trust still applies to Romania. The statements and country of origin information brought forward by the applicant did not lead the Council to conclude otherwise.[243]

Croatia: On 13 April 2022, the Council of State ruled that the Secretary of State must conduct further research on the situation of asylum seekers being transferred to Croatia under the Dublin Regulation. This is due to reports of frequent pushbacks (including of asylum seekers who have already reached Croatian territory), which may result in a violation of the principle of nonrefoulement.[244] On 20 January 2023, the Secretary of State announced that Dublin transfers to Croatia would be resumed.[245] The Croatian authorities had responded to answers put forward by the Dutch authorities and had assured that they will act in line with international obligations, according to the Secretary of State.

Bulgaria: In a judgment of 28 August 2019, the Council of state confirmed that the principle of mutual trust applies to Bulgaria. Recently, various Regional Courts have made reference to the Council of State judgement regarding pushbacks in Croatia (see above) and have ruled that the widespread practice of pushbacks in Bulgaria also stand in the way of Dublin transfers to that Member State.[246]

Cyprus: Several Regional Courts have ruled that Dublin transfers to Cyprus can no longer be carried out, due to a lack of reception facility in Cyprus.[247] There are currently cases pending in front of the Council of State.

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237 Regional Court Haarlem, 12 November 2020, ECLI:NL: RBDHA:2020:11769.
238 Regional Court Amsterdam, ECLI:NL:RBDHA:2021:11115, 29 July 2021.
239 Regional Court Groningen, NL21.1431, 28 April 2021.
240 Regional Court Den Bosch, NL.21.2550, 1 October 2021.
241 Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10735, 4 October 2021; CJEU case number: C-614/21.
242 Regional Court Den Bosch, ECLI:NL:RBDHA:2022:5724, 15 June 2022.
243 Council of State, ECLI:NL:RVS:2021:1645, 29 July 2021.
244 Council of State, ECLI:NL:RVS:2022:1042 and ECLI:NL:RVS:2022:1043, 13 April 2022.
245 Secretary of State, Letter to the House or representatives no. 19673 3061, 20 January 2023, available in Dutch at: https://bit.ly/3XOwka8.
246 Regional court of Utrecht, NL22.7820 and NL22.7821, 15 May 2022; Regional Court Haarlem, NL22.12598, 29 July 2022.
247 Regional Court of Zwolle, NL22.3233 and NL22.3236, 5 March 2022, ; Regional Court of Amsterdam, NL22.3404, 15 March 2022; Regional Court of Amsterdam, ECLI:NL:RBDHA:2021:14245, 15 December 2021; Regional Courts of Haarlem, NL21.2036, 31 March 2021.

Belgium: On 20 February 2023, the Regional Court of Rotterdam ruled that it is not clear whether the applicant will have access to reception facilities upon return to Belgium. It concluded that the applicant provided concrete indications of his risk of being treated contrary to Article 3 ECHR or Article 4 EU Charter if returned to Belgium. Consequently, the Court annulled the decision and requested the Netherlands to justify its reliance on the principle of mutual trust.[248] The Secretary of State did not appeal this judgement.

COVID-19

In 2020 and 2021, COVID-19 had a large influence on Dublin cases (for more information see the AIDA reports on the Netherlands updates 2020 and 2021). Since August 2022, Member States no longer require a negative PCR test or proof of vaccination prior to a Dublin transfer.[249] Therefore, Dublin transfers were not influenced by the pandemic in 2022 as much as in previous years.

The Secretary of State has acknowledged that the Dublin Regulation does not allow for suspension of the time limits for transfers based on exceptional circumstances such as the COVID-19 pandemic.[250]

Suspension of transfers due to the war in Ukraine

In a letter to parliament dated 17 March 2022, the Secretary of State stated that Poland, Slovakia, the Czech Republic and Romania had suspended all incoming Dublin transfers due to the influx of Ukrainian refugees.[251] This suspension lasted only until summer; around August 2022, the Secretary of State reprised Dublin transfers to these countries.

Time limits for transfer under the Dublin Regulation and suspensive effect

In line with Article 29, first paragraph of the Dublin Regulation, the Dutch authorities must carry out the transfer of an asylum seeker to the responsible Member State as soon as practically possible, and at the latest within six months after the take back/take over request was accepted by the responsible Member State or within six months after the final decision on the (onward) appeal against the decision not to handle the asylum request if suspensive effect was granted in the (onward) appeal stage.

A request for a provisional measure that has been granted during a procedure challenging the way the actual transfer will be carried out,[252] is a request that falls under Article 27, third paragraph of the Dublin Regulation.[253] In those cases, the transfer period is suspended and will restart after the court ruling.

In the course of 2021, the Council of State referred multiple prejudicial questions about suspensive effect in Dublin cases to the CJEU. These questions concern whether the so-called 'chain rule' applies to Dublin III (cases C-323/21, C-324/21 and C-325/21);[254] whether the suspensive effect granted as a result of an application for residence in the Netherlands on regular grounds can also be regarded as suspensive effect in accordance with Article 27, third paragraph of the Dublin Regulation (case C-338/21);[255] and whether the Secretary of State can request suspensive effect in the onward appeal stage (case C-556/21).[256]

248 Regional Court of Rotterdam, ECLI:NL:RBDHA:2023:1853, 20 February 2023.
249 Secretary of State, Letter to the House of Representatives no. 19673 3010, 24 November 2022, available in Dutch at: https://bit.ly/3VLCtTx.
250 Secretary of State, Letter to the House of Representatives no. 19637 2690, 8 January 2021, available in Dutch at: https://bit.ly/3td58WS.
251 Secretary of State, Letter to the House of Representatives no. 19637 2834, 17 March 2022, available in Dutch at: https://bit.ly/3GfnQC6.
252 Article 72, third paragraph, Aliens Act.
253 Council of state, Decision No. 201907936, 24 February 2020.
254 Council of State, ECLI:NL:RVS:2021:983; ECLI:NL:RVS:2021:984; ECLI:NL:RVS:2021:985, 19 May 2021.
255 Council of State, ECLI:NL:RVS:2021:1124, 26 May 2021.
256 Council of State, ECLI:NL:RVS:2021:1929, 1 September 2021.

On 12 January 2023, the CJEU ruled that the 'chain rule' does not apply to Dublin cases. On 30 March 2023, the CJEU answered the preliminary questions about the transfer period and suspensive effect in Dublin cases.

In the case *of E.N., S.S. and J.Y. v. The Netherlands* (C-556/21), the CJEU considers that the Secretary of State can only request suspensive effect in the onward appeal stage if the first appeal had suspensive effect. In practice, this means that the Secretary of State can only request to suspend the transfer deadline in Dublin cases when presenting an appeal against a judgment of the Council of State, if the first instance court had granted suspensive effect per request of the asylum seeker.

In the case of *S.S. and N.Z v. Netherlands* (C-338/21), the CJEU considers that suspensive effect that was granted in a procedure for a residence permit on regular grounds (in this case: a residence permit as a victim of human trafficking) does not lead to suspension of the Dublin transfer period.

Extension of time limits in case of absconding (Article 29, second paragraph Dublin Regulation)

With reference to the ruling of the CJEU in the Jawo case,[257] the Secretary of State clarified Dutch policy on the interpretation of Article 29, second paragraph, of the Dublin Regulation.[258] The Secretary of State made clear in which two situations it may in any case be assumed that the asylum seeker absconds, resulting in an extension of the transfer period to eighteen months:

- in case the asylum seeker leaves without informing authorities as to their destination, or
- in case the asylum seeker does not appear at the time of transfer

The Council of State has ruled that a person only 'absconds' in the sense of the *Jawo* case when he deliberately remains physically out of reach of the authorities.[259]

Asylum seekers with medical problems

Asylum seekers with serious medical problems, who need medical care, are transferred to the responsible Member State in accordance with Article 32 of the Dublin III Regulation (Exchange of health data before a transfer is carried out).[260] If the asylum seeker considers the mere exchange of medical information to be insufficient, he may request the IND to obtain additional guarantees from the other Member State. It is for the asylum seeker to demonstrate that, without these additional guarantees, he will not have access to adequate care and reception.[261] In the case of a family with six children, with one child suffering from severe psychological problems as a result of PTSD, the Council of State considered that no additional guarantees were required from the Italian authorities as it had not been established that adequate care could not be accessed.[262]

In the case of *C.K. and others*, the CJEU stated that even if there are no serious grounds for believing that there are systemic failures in the asylum procedure and the conditions for the reception of applicants for asylum, a transfer in itself can entail a real risk of inhuman or degrading treatment within the meaning of Article 4 Charter of Fundamental Rights of the European Union (CFR). According to the CJEU, this is notably the case in circumstances where the transfer of an asylum seeker, with a particularly serious mental or physical condition, leads to the applicant's health significantly deteriorating.[263] This CJEU judgment has been invoked several times. The Council of State has made clear that not only does the asylum seeker need to mention his medical condition and (the need for) medical treatment, but also the consequences of a transfer in itself. Moreover, a medical practitioner should have declared there is an

257 CJEU, ECLI:EU:C:2019:21, 19 March 2019.
258 WBV 2020/22, 27 October 2020.
259 Council of State, ECLI:NL:RVS:2022:3630, 14 December 2022.
260 Council of State, ECLI:NL: RVS:2018:4131, 19 December 2018.
261 Council of State, ECLI:NL: RVS:2019:2792, 19 July 2019; Council of State, ECLI:NL: RVS:2019:2042, 27 June 2019; Council of State, Decision No 201410601/1, 17 April 2015.
262 Council of State, ECLI:NL: RVS:2019:3138, 12 September 2019.
263 CJEU, Case C-578/16, *C. K. and Others v Republika Slovenija*, 16 February 2017.

actual danger or high risk of suicide and decompensation. Only then is the IND expected to investigate further.[264]

2.7. The situation of Dublin returnees

If an asylum seeker is transferred to the Netherlands under the Dublin Regulation, Dutch authorities are responsible for examining the asylum request and will follow the standard asylum procedure.

In the Netherlands, the IND is responsible for all asylum applications, including asylum applications lodged by asylum seekers who are transferred (back) to the Netherlands. The asylum seeker can request asylum in the Netherlands at the COL in Ter Apel or at the AC of Schiphol airport (see Border Procedure).

In the case of a "take back" (*terugname*) procedure where the asylum seeker has previously lodged an application in the Netherlands, the asylum seeker may file a new request if there are new circumstances. This is dealt with as a subsequent application, with the exception of previous applications that were implicitly withdrawn. In "take charge" (*overname*) procedures the asylum seeker has to apply for asylum if they want international protection.

As mentioned in this report, there have been significant issues with Registration and reception of asylum seekers throughout 2022. Many of these problems still remain. When an asylum seekers is transferred (back) to the Netherlands on the basis of the Dublin Regulation, they will encounter the same problems all other asylum seekers in the Netherlands encounter.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

There is no separate admissibility procedure in the Netherlands. Having said that, the outcome of the asylum procedure may be that an asylum request is rejected as inadmissible.

According to Article 30a of the Aliens Act, an application may be declared inadmissible where the asylum seeker:

- Enjoys international protection in another EU Member State;
- Comes from a "first country of asylum" i.e. is recognised as a refugee or otherwise enjoys sufficient protection in a third country;
- Comes from a "safe third country";
- Has submitted a subsequent application with no new elements;
- Has already been granted a residence permit.

This examination is carried out in the asylum procedure as described in the Regular Procedure ("Track 4") for most cases. Applications from persons who are presumed to have already received international protection in another EU Member State, are subjected to an Accelerated Procedure ("Track 2").[265]

There are no statistics available on the number of applications dismissed as inadmissible in 2022.

264 Council of State, Decision 201901380/1, 22 August 2019; Council of State, Decision 201709136/1, 16 January 2019.

265 Article 3.109ca(1) Aliens Decree.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview
☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to identity, nationality, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The same procedure as in the regular asylum procedure is followed, with the exception of persons who have already received international protection in another EU Member State.[266] Therefore, the same remarks are applicable concerning the interview (see Regular Procedure: Personal Interview).

3.3. Appeal

Indicators: Admissibility Procedure: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?
   ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive

- Safe third country ☒ Yes ☐ No
- Other grounds ☐ Yes ☒ No

The asylum seeker has one week to lodge an appeal against the decision to reject the asylum application as inadmissible.[267] This appeal has no automatic suspensive effect, except in the case of the "safe third country" concept.[268]

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

The same procedure as in the regular asylum procedure is followed, with the exception of persons who have already received international protection in another EU Member State.[269] Therefore the same remarks are applicable concerning legal assistance (see Regular Procedure: Legal Assistance).

266 Article 3.109ca(1) Aliens Decree.
267 Article 69(2)(c) Aliens Act.
268 Article 82(2)(b) Aliens Act.
269 Article 3.109ca(1) Aliens Decree.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☒ Air border ☐ Land border ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for border procedures laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit? 4 weeks

5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

The Netherlands has a border procedure applicable to asylum seekers applying at airports and ports.[270] The border procedure in the Netherlands proceeds as follows: the decision on refusal or entry to the Netherlands is suspended for a maximum of 4 weeks and the asylum seeker stays in detention (see Detention of Asylum Seekers). During this period, the IND may reject the claim as:[271]

- ❖ Not considered, due to the application of the Dublin Regulation;[272]
- ❖ Inadmissible;[273] or
- ❖ Manifestly unfounded.[274]

If the IND is not able to stay within the time limits prescribed by the short asylum procedure i.e. 6 days, it can continue the border procedure if it suspects it can reject the asylum application based on the Dublin III Regulation, or declare it inadmissible or manifestly unfounded.[275] The maximum duration of the border procedure is 4 weeks.[276] However, if the examination takes longer than 4 weeks or another ground of rejection is applicable, the detention measure is lifted, the asylum seeker is allowed to enter the Netherlands and is continued in the regular procedure.[277]

A number of assessments take place prior to the actual start of the asylum procedure, including a medical examination, a nationality and identity check and an authenticity check of submitted documents. The legal aid provider prepares the asylum seeker for the entire procedure. These investigations and the preparation take place prior to the start of the asylum procedure. The AC at **Schiphol Airport** is a closed centre. The asylum seeker is subjected to border detention to prevent him or her entering the country *de jure*. During the first steps of the asylum procedure, the asylum seeker remains in the closed AC at **Schiphol**.

In these stages, the border procedure more or less follows the steps of the short asylum procedure described in the section on Regular Procedure. One example of a difference between the regular procedure and the border procedure is the possibility for the decision-making authorities to shorten the rest and preparation period.[278] As previously mentioned, the Dutch Aliens Decree was amended on 25

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270 IND, Work Instruction 2021/10, available in Dutch at: https://bit.ly/3dCOkj8. It was issued in June 2021 and entails instructions concerning the border procedure. It covers the information, which is mentioned in this report.

271 Article 3.109b(1) Aliens Decree. See also IND, Work Instruction 2017/1 Border procedure, 11 January 2017, available in Dutch at: http://bit.ly/2wa4v3o, 7.

272 Article 30 Aliens Act.

273 Article 30a Aliens Act.

274 Article 30b Aliens Act.

275 Article 3.109b(1) Aliens Decree.

276 Article 3(7) Aliens Act.

277 Articles 3 and 6 Aliens Act. See also IND, Work Instruction 2017/1 Border procedure, 6.

278 Article 3.109b(2) Aliens Decree.

May 2021, which has altered certain aspects of the asylum procedure and has abolished the first interview. One of the most significant changes concerns the registration interview. During this interview, the asylum seeker will now also be asked to state the grounds for asylum.[279] These procedural changes are discussed more in detail in the section on the Regular Procedure.

The following groups are exempted from the border procedure; they follow the general asylum procedure without being subjected to detentive measures:

- Unaccompanied children;[280]
- Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible,[281] as the Netherlands does not detain families with children at the border.[282] Instead of being put in border detention, families seeking asylum at Amsterdam **Schiphol Airport** are now redirected to the application centre in Ter Apel where they can await their asylum procedure in liberty. If further research needs to be done as to the relationship between the child and the grown-up they will be redirected to a closed family reception centre in **Zeist** (see Detention of Vulnerable Applicants);
- Persons for whose individual circumstances border detention is disproportionately burdensome;[283]
- Persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured.[284]

In the following situations the IND will, after the first hearing, conclude that the application cannot be handled in the border procedure and therefore has to be channelled into the regular asylum procedure:[285]

- If, after the registration interview, the identity, nationality and origin of the asylum seeker has been sufficiently established and the asylum seeker is likely to fall under a temporary "suspension of decisions on asylum applications and reception conditions for rejected asylum seekers" (*Besluit en vertrekmoratorium*);
- If, after the registration interview the identity, nationality and origin of the asylum seeker has been sufficiently established and the asylum seeker originates from an area where an exceptional situation as referred to in Article 15(c) of the recast Qualification Directive is applicable;
- If, after the registration interview, the identity, nationality and origin of the asylum seeker has been sufficiently established and there are other reasons to grant an asylum permit.

The Dutch Council for Refugees strongly objects to the use of the border procedure in light of the individual interests of the asylum seeker.[286] According to the Committee, the detention of all asylum seekers at the border without weighing the interest of the individual asylum seeker in relation to the interests of the state is not in line with European regulations and human rights standards.

During 2019, 920 asylum seekers filed applications at the border. In 2020, only 550 asylum seekers filed application at the border. The 40% decline compared to 2019 was due to the corona restrictions. In 2021, 1,120 asylum seekers filed an application at the border.[287] No statistics on applications of 2022 at the border were available at the moment of publication of the report.

279 Article 3.108d(4) Aliens Decree.
280 Article 3.109b(7) Aliens Decree.
281 Paragraph A1/7.3 Aliens Circular.
282 Paragraph A1/7.3 Aliens Circular.
283 Article 5.1a(3) Aliens Decree.
284 Article 3.108 Aliens Decree.
285 Paragraph C1/2 Aliens Circular.
286 Dutch Council for Refugees, *Standpunt: asielprocedure*available in Dutch at: https://bit.ly/3joFDin.
287 Ministry of Security and Justice, De Staat van Migratie 2022, available in Dutch at: https://bit.ly/3hLODxJ.

4.2. Personal interview

The same rules and obstacles as in the Regular Procedure: Personal Interview are applicable.

4.3. Appeal

Indicators: Border Procedure: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
   ☒ Yes ☐ No
   - If yes, is it ☒ Judicial ☐ Administrative
   - If yes, is it suspensive Depending on decision

In the border procedure, the IND may reject an asylum application on the basis of the Dublin Regulation or as inadmissible or manifestly unfounded. Depending on the type of decision issued, the rules described in the Dublin Procedure: Appeal, Admissibility Procedure: Appeal or Regular Procedure: Appeal apply.

On 5 June 2019, the Council of State ruled that the border detention of asylum seekers who appealed their decision was not in line with EU-law as clarified in the *Gnandi*-case.[288] In response to this decision, a bill was presented to adjust the basis for detention of asylum seekers at the border in the Aliens Act. Detention of asylum seekers who have appealed the rejection of their asylum request will be based on the Reception Conditions Directive (article 8 (3)(c) RCD) instead of the Return Directive (article 6(3) Aliens Act).[289] This bill came into effect on 22 April 2020.[290]

4.4. Legal assistance

Exactly the same rules and obstacles as in the Regular Procedure: Legal Assistance are applicable to the border procedure.

5. Accelerated procedure ("Track 2")

5.1. General (scope, grounds for accelerated procedures, time limits)

There is no accelerated procedure defined as such in the law. However, since 2016 a specific "simplified procedure"[291] ("Track 2") has been established by Article 3.109ca of the Aliens Decree for applicants who are presumed to:

- Come from a Safe Country of Origin;
- Benefit from international protection in another EU Member State.

In these cases, the procedure in practice is conducted in less than 8 working days. The procedure is not applied to unaccompanied children in practice, although this is not regulated by law.

From 1 January to 1 October 2019, 1,800 applications were processed under Track 2.[292] In 2020, 1,504 applications were processed under Track 2.[293] In 2021, approximately 1,486 applications were processed under Track 2.[294] Statistics for 2022 are not yet available.

288 Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.
289 Explanatory Memorandum, KST 35 271, nr. 3.
290 Stb. 2020, nr. 136.
291 The term "simplified procedure" is used by the IND in the relevant information leaflet, available at: http://bit.ly/2w3lOiW.
292 Antwoord op vragen begroting Kamerstuk 35300 VI (Parliamentary questions), nr. 23, available in Dutch at https://bit.ly/3843usH.
293 Rijksoverheid, Staat van Migratie 2021, available in Dutch at: https://bit.ly/3AikpHs.
294 Rijksoverheid, Staat van Migratie 2022, available in Dutch at: https://bit.ly/3jXYyRe.

5.2. Personal interview

The same rules and obstacles as in the Regular Procedure: Personal Interview are applicable.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

Applications falling under the accelerated procedure may be rejected either as inadmissible or manifestly unfounded. Therefore, an appeal before the Regional Court must be lodged within one week and has no automatic suspensive effect.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

Contrary to the regular procedure, asylum seekers channelled under the accelerated procedure ("Track 2") are not appointed a lawyer from the outset of the procedure. The lawyer is appointed when the IND issued the intention to reject. As a result, there is not much time for the lawyer to get to know the applicant's case.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied children

2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

There is no definition of "vulnerability" in Dutch law. In order to meet the obligations arising from Article 24 of the recast Asylum Procedures Directive and Article 29 of its preamble, Article 3.108b of the Aliens Decree provides that the IND shall examine from the start of the asylum procedure whether the individual applicant needs special procedural guarantees. However, unaccompanied children are generally considered as a vulnerable group in policy.

1.1. Screening of vulnerability

Before the start of the General asylum procedure in Track 4, therefore not in Tracks 1 and 2, a medical examiner from MediFirst examines every asylum seeker, to assess whether they are mentally and physically able to be interviewed (see Registration). MediFirst is a private company working on behalf of the IND to provide medical advice in asylum procedures. In 2021, MediFirst took over this role from the FMMU. MediFirst's medical advices forms an important element in the decision as to how the asylum application will be handled. However, it should be noted that the organisation is not an agency that identifies vulnerable asylum seekers as such; it solely gives advice to the IND as to whether the asylum seeker can be interviewed and, if so, what special needs he or she needs in order to be interviewed. MediFirst cannot be seen as a 'product' of the Istanbul Protocol, because its examination is solely limited as to whether the asylum seeker is physically and mentally able to be interviewed based on physical and/or mental limitations. The purpose of the medical advice is to:

- Identify any functional limitations which arise from medical problems that could impede the applicant from giving accurate, coherent statements regarding their asylum story;
- Advise the IND on how to address these limitations during the hearing and throughout the decision-making process on asylum applications.

Participation of the asylum seeker with MediFirst's role as an advisory body is on a voluntary basis. Even though the IND is not obliged to offer the possibility to obtain medical advice by Medifirst to asylum seekers other than the ones in track 4, the possibility to receive it in case of need exists but is offered in limited cases and the question whether or not an asylum seeker outside of track 4 should have received a medical advice due to the overall signs of need, can be subject of litigation.

From the start of the asylum procedure, until the end of the decision-making process, the IND will have to keep examining whether the asylum seeker is vulnerable and in need of special care. In order to meet the obligations of Article 24 of the recast Asylum Procedures Directive, the Secretary of State has implemented this provision in the Aliens Decree.[295]

The IND decides whether the way the interview is conducted for regular cases should be adapted based on MediFirst advice and remarks. The IND bases its decision to conduct and how to conduct a further interview on the medical advice from MediFirst itself, its own observations and those of the lawyer, the legal aid worker and the asylum seeker him or herself. Important documents in this context are the IND Work Instructions 2010/13 and 2015/8.[296] Work Instruction 2015/8 contains a list of indications, based on which it may be concluded that the asylum seeker is a vulnerable person. This list is divided in several categories, for instance physical problems (e.g. pregnancy; being blind, deaf or handicapped) or psychological problems (traumatised, depressed or confused). It is explicitly noted that this is not an exhaustive list. Work Instructions 2021/9, on 'special procedural guarantees'[297] and instruction 2021/12 on the issue of 'existing medical problems relating to the question of being able to conduct the interview and being able to take a decision' were introduced in 2021.[298] They mark a confirmation and continuation of the previous Work Instructions above-mentioned that have been into effect for several years.

1.2. Age assessment of unaccompanied children

There is no EU-wide practice in the field of age determination. Partly because of the differences between Member States in the implementation of age determination, the EU Commission requested the European Asylum Office (EASO) to update the guidelines in the context of age determination. In March 2018, EASO produced a practical manual containing guidelines, key recommendations and tools for the

295 Article 3.108b Aliens Decree.

296 IND Work Instruction 2010/13 Treatment of medical advice, 29 October 2010, available in Dutch at: http://bit.ly/1NANE76; IND Work Instruction 2015/8 Procedural guarantees, 20 July 2015, available in Dutch at: http://bit.ly/1S0RQAU.

297 IND Work instruction 2021/9 on '*special procedural guarantees'*, 25 June 2021.

298 IND Work instruction 2021/12 on '*existing medical problems relating to the question of being able to conduct the interview and being able to take a decision',* 25 June 2021.

implementation of the best interests of the child in age assessment from a multidisciplinary and holistic approach.[299] The manual is not legally binding, but can be regarded as a reference tool for the interpretation and implementation of the EU acquis. The report contains information about the different methods used in the EU Member States and new methods that are being investigated. EASO recommends that age assessment should have a multidisciplinary approach, as there is (as yet) no scientific method to determine the exact age of a person.

The age assessment procedure is governed by Paragraph C1/2.1 and C1/2.2 of the Aliens Circular and elaborated on in IND Work Instruction 2018/19 300. The procedure starts with an age inspection.

Age inspection (*leeftijdsschouw*)

If an asylum seeker, who claims to be an unaccompanied minor and does not have documents to support this claim, lodges an asylum application in the Netherlands, the Royal Police (KMar) and/or the IND always conduct an age inspection (*leeftijdsschouw*).[301] This means that officers from the KMar, the immigration police (AVIM) and/or the IND assessing whether the asylum seeker is evidently over or under the age of 18 or assessing the given age when there are reasons to doubt it and ability to conduct a conversation.
The age inspection is conduted in two sessions:

- One session with one Kmar/AVIM official and one session with two IND employees, or;
- One session with two Kmar/AVIM officials and one session with one IND employee.

This means that the employees mentioned above see the asylum seeker separately from each other and draw their own conclusion. To guarantee the independence of both parties involved, it is not possible in the governmental electronic systems for one party to read the official report of the other party before conducting their own age inspection.

The following aspects about the asylum seeker should be evaluated in the age inspection of the applicant:

- Appearance;
- Behavior;
- Statements;
- Any other relevant circumstances.

The age inspector also includes external/physical characteristics in the age inspection report, which may – among other factors - include the presence or absence of:

- Wrinkles (around eyes, forehead, corners of the mouth, hands);
- Receding hairline;
- Aboundant facial/body hair;
- Grey hair;
- Visible Adam's apple.

The conclusion of the Kmar/AVIM employees is noted in an official report, the conclusion of the IND is included in the report of the IND Application Interview. As described in the Work Instruction 2018/19, it is not sufficient to conclude that someone is clearly over or under the age of 18, or that there are doubts. The official report and the report of the IND Application Hearing must also contain the reasons behind the decision. There must ultimately be a unanimous judgment to reach a conclusion regarding the obvious majority or minority of age of the applicant. In addition, officials cannot establish that the person

299 EASO. Practical guide on age assessment, second edition, March 9, 2018.
300 IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: https://bit.ly/3bSuErL
301 IND Work Instruction 2018/19 Age assessment, 13 December 2018, available in Dutch at: https://bit.ly/3bSuErL

is an adult solely based on appearance.[302] If there is no unanimity, by definition then there is doubt and probably further assessment needed.

If there is still doubt regarding the age of the (alleged) minor, further investigation will take place. In practice, this investigation is often carried out by the Dublin Unit and consists, that carries out research of (age) registrations in other EU Member States. In case of an Eurodac or EU-Vis 'hit' in which the (alleged) minor is registered as an adult in another Member State, the (alleged) minor will be registered as an adult by the IND and/or AVIM. In a report published on 30 November 2020, the Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ) argued that this practice makes it near impossible for (alleged) minors to prove their minority in case another Member State has registered them as an adult.[303] In April 2022 the ACVZ presented a report on 'the human dimension in migration policy'. [304]. It dealt with imbalance in the possibility to present evidence – for migrants and the government respectively – useful to determine the nationality and identity (including age) in relation to the principle of 'equality of arms'. In concrete terms, this means, according to the ACVZ, there should be some form of a balance between the parties in regarding the possibility to provide evidence.

Case law of the Dutch highest Administrative Court, the Council of State, has shown over the years that, even in cases in which an asylum seeker was registered in a Member State as both a minor and an adult, the IND may consider this asylum seeker to be an adult.[305] Often it is virtually impossible to refute a majority of age registration in a Member State, as both the Secretary of State and Council of State require an ´official identifying document´ to prove that the asylum seeker is a minor. Most of the presented documents in Dublin cases, such as baptism certificates or school records, are not regarded as ´official identifying documents´. The burden of proof rests entirely with the asylum seeker.[306]

In recent case law however, the Council of State adopted a more nuanced approach, which might open to the possibility of evaluating whether the decision establishing the majority of age without motivating on the accuracy of age registration in another Member State harms the individual concerned. This consideration implies that an unmotivated choice regarding the date of birth – determining whether the applicant is considered to be an adult or a minor - will no longer be accepted by the Council of State. In particular, the court questioned whether the current practice in dealing with age registration in Member States, in which indicative evidence and statements by the parties are not taken into account, is in line with EU law.[307]

For the moment, however, no pre-judicial questions on whether the current practice with accepting the age registration in the other Member State, disregarding indicative evidence and declarations is in line with EU law were submitted to the EU Court of Justice. In June 2022, the lower District Court of Den Bosch rrequested the EU Court whether in Dublin-cases the 'duty of cooperation between the State and the asylum seeker' as stated in Article 4 of the Qualification Directive would be in place. [308] This Court had presented similar questions before, but they had to be withdrawn in March 2022 as the IND withdrew the contested decision in the main proceeding.. The outcome of these questions can be extremely relevant for Dublin cases in which age assessment plays a major role, but it is yet to be seen if the CJEU will rule on the matter.[309]

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302 Tweede Kamer, Reply by the Secretary of State for Security and Justice to a parliamentary question on age assessment of unaccompanied children, 7 November 2016, available in Dutch at: http://bit.ly/2gIbqMT. See also Paragraph C1/2.2, *ad b* Aliens Circular.

303 Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Nadeel van de Twijfel,* 30 November 2020, available in Dutch at: https://bit.ly/2LFImUh.

304 Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), N*aar een gelijker speelveld bij vaststelling van nationaliteit en identiteit bij migranten*, 11 April, 2022

305 ABRvS, 29 April 2019, 201901525/1.

306 ABRvS, 26 november 2021, 202101306/1, ECLI:NL:RVS:2021:2659.

307 ABRvS, 4 June 2021, 202000445/1, ECLI:NL:RVS:2021:1184.

308 MK Rb Den Bosch, 15 June 2022, NL22.6989, ECLI:NL:RBDHA:2022:5724

309 MK Rb Den Bosch, 4 October 2021, ECLI:NL:RBDHA:2021:10735.

On 2 November 2022 the Council of State[310] ruled in favour of the Secretary of State's policy on the choice of a specific date of birth at multiple minor and adult age registrations in other EU Member States. Based on the 'interstate trust principle, the 'Secretary of State can assume age registrations in other Member States to be correct if the Dutch age registration does not give an unequivocal answer as to whether the foreign national is clearly over or under the age of 18. The Council of State highlighted however that an exception should be made in the case of multiple age registrations in a member state; for such cases, the Secretary of State must research whether there are certain age registrations where identifying source documents were used. The Secretary of State may, in case of different age registrations, accept the registration of the applicant as an adult, if taken into account how the other state had come to the conclusion, providing provided the registration has taken place in a careful manner, which can be subject to litigation.

Medical age assessment

If the officers from IND, AVIM or KMar cannot conclude that the asylum seeker is evidently over 18 years of age, they cannot prove their minority of age, and there is no EU-Vis or Eurodac 'hit', a medical age assessment can take place.[311] This can be done also when the result is relevant for the evaluation of which Member State is responsible for examining the application for a fixed-term asylum residence permit or the question whether the foreign national is eligible for reception conditions of the COA.
Article 25 (5) from the EU Procedures Directive states that, if there is any doubt about the age of an unaccompanied minor foreign national, the Member States can determine the age by means of a medical examination. This article in the Procedures Directive obliges Member States to guarantee additional procedural guarantees when it comes to an unaccompanied minor

The age assessment is carried out according to the 'Protocol Age Assessment',[312] in which the entire procedure and technique can be read. This medical examination carried out on the basis of X-rays of the clavicle, the hand and wrist.[313] Two radiologists examine if the clavicle is closed. If that is the case, the asylum seeker is considered to be at least 20 years old according to some scientific experts. A recent literature review by the Netherlands Forensic Institute (NFI) has shown that the youngest individuals with a fully matured collarbone are all at least 18 years old, where previously it was considered to be 20 years. With a mature collarbone, a bottom age of 18 years is now assumed as of 1 October 2022.[314]

It is the responsibility of the IND to ensure the examination has been conducted by certified professionals and is carefully performed.[315] The age assessment has to be signed by the radiologist. The whole process is described in Work Instruction 2018/19. The age examination is carried out on behalf of the IND by the Netherlands Forensic Institute (NFI), the X-rays are made at the company 'Diagnostiek voor U'(*Diagnostics for you*).

It should be noted that the methods used in the medical age assessment process are still considered as controversial,[316] which is also illustrated by the – at times very technical - discussions among radiologists referred to in the case law over the years.[317] Two radiologists, independently from each other, examine the X-rays. When one radiologist considers that the clavicle is not closed, the IND has to follow the declared age of the asylum seeker.[318] This method is criticised by the temporary Dutch Association of Age Assessment Researchers (DA-AAR). These researchers conclude that it is undesirable to base age assessment exclusively on four X-ray images; especially as various researchers have expressed serious doubts about these images that have not yet been the subject of

310 ABRvS, 2 November 2022, ECLI:NL:RVS:2022:3147
311 Article 3.109d(2) Aliens Decree.
312 Protocol leeftijdsonderzoek, IND, 16 november 2019
313 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: http://bit.ly/2xlFvky, 7.
314 WBV 2022/23, 1 October 2022
315 Article 3.2 GALA.
316 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 7.
317 See e.g. Regional Court Amsterdam, Decision No 10/14112, 18 December 2012. See also the pending case before the ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17.
318 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 16.

public scientific discussion. If age assessment is necessary, it should at least be performed by a multidisciplinary team using various methods, under the leadership of an independent child development expert.[319]

Until 2016 a special commission, the Medico-ethical Commission (*Medisch-ethische Commissie*) supervised the practice of age assessment. Afterwards, such role was assigned to the governmental Inspectorate for Security and Justice (*Inspectie voor Veiligheid en Justitie)*. Furthermore, the Authority for Nuclear Safety and Radiation Protection supervises the use of ionizing radiation (without medical purpose).

A medical age assessment should be seen as a tool of last resort, in order to minimize the exposure of possible minors to X-rays. Possible minors should also be well informed, with the help of an interpreter, about the method, purpose, consequences, risks and the procedures of the age assessment. The information should be provided in a manner appropriate to the level of age and developmental background of the possible minor, in a language that they have indicated understanding or which it can reasonably be assumed they understand, and in such a way that ultimately there is a situation of informed consent on the part of the possible minor.

The possible minor must also be informed of the possibility of any refusal to cooperate in this investigation and its consequences. Member States may not base the rejection of the application for asylum solely on the fact that the possible minor has not cooperated in the age assessment. If the individual involved agrees, they must give written permission for the investigation.[320]

Minors are represented by their legal guardians, like the organisation NIDOS. Their guardianship only ends if the outcome of the age assessment is that the applicant is evidently of age. If the subject of the age assessment disagrees with its outcome, presenting a counter report realised by an expert is possible, but very difficult to arrange in practice. First of all, it is the asylum seeker's responsibility to contact a counter expert. When the asylum seeker calls in a counter expert, the IND will temporarily make the CD-ROM with X-ray images available to the counter expert.

Case law made clear over the years that not every counter-expert assisting the asylum seeker will be recognised as suitable for the role. The question arose whether there are sufficient counter-experts to be found in Dutch practice who have the required specific radiological expertise to act as a counter-expert in a legal proceeding. In 2016, parliamentary questions were put to the then Secretary of State about the possibility of having a counter-expertise carried out in age assessment procedures. The Secretary of State replied that the State is in consultation with the National Forensic Institute (NFI) and the IND to ensure that the actual availability and willingness of counter-experts is sufficiently guaranteed. To date, the outcome of these consultations is not known to the authors of the report.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied minors; Families with children; Victims of torture or violence

2.1. Adequate support during the interview

Article 3.108b of the Aliens Decree sets out the obligation to provide adequate support to the applicant where he or she needs procedural guarantees as per Article 24 of the recast Asylum Procedures

319 Temporary Dutch Association of Age Assessment Researchers (DA-AAR), *Age assessment of unaccompanied minor asylum seekers in the Netherlands, radiological examination of the medial clavicular epiphysis*, May 2013.

320 Article 25 (5)(c) Asylum Procedures Directive and Article 3.109d(3) Aliens Decree.

Directive and Article 29 of its preamble. The notion of "adequate support" (*passende steun*) is further elaborated in the IND Work Instruction 2015/8, also citing Work Instruction 2010/13, which provides a non-exhaustive list of special guarantees such as:[321]

- Attendance of a person of confidence or family members in the interview;[322]
- Attendance of the lawyer in the interview;
- Additional breaks during interviews, including splitting the interview in several days;
- Additional explanation about the interview;
- The opportunity for an applicant with physical impairment such as back aches to walk in the interviewing room during the interview;
- Leniency from the interviewing officer on small inconsistencies and contradictions;
- Postponement of the interview to a later date.

Further adjustments to the interview could be that a female employee of the IND will conduct the interview in cases of a female asylum seeker who has suffered sexual violence.

In 2021, two new Work Instructions came into effect, WI 2021/09 and WI 2021/12,[323] dealing with the issue of 'special procedural guarantees' and with 'medical issues concerning the interview and decision-making process in asylum cases'. They are a conformation and continuation of the previous Working Instructions mentioned in the previous chapter, which had been into effect for several years.

According to preamble Article 29 and Article 24 of the recast Asylum Procedures Directive, some applicants may be in need of special procedural guarantees on the grounds of, inter alia, their age, sex, sexual orientation, gender identity, disability, serious illness, mental illness or as a result of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to recognise applicants with those special procedural guarantees as such before a decision is taken at first instance.

The IND did not establish specialised units dealing with vulnerable groups. However, since 2012, every caseworker has to follow the EUAA training module on Interviewing Vulnerable Persons.[324] In cases in which many new IND hearing and decision officers were recruited and involved for the first time in the interviewing and decision process, it was observed by either local volunteers of the DCR assisting asylum seekers with their procedure, or by their legal representatives in individual cases, that IND caseworkers often lacked the required training to deal with asylum seekers with special needs. When there are clear signs that the special procedural guarantees that have to be granted in asylum interviews have not been met, this can be used as a legal argument to appeal the negative outcome of the asylum decision by the IND in court. However, a certain threshold need to be met in order for courts to recognize the wrongdoings and impose a sanction. The Work Instruction 2021/13 on the asylum interview establishes that every IND hearing and decision officer is obliged to take several EUAA training courses,[325] such as the above-mentioned training on interviewing vulnerable persons. The Council of State had ruled, on 3 October 2017,[326] that the sole circumstance that a hearing officer did not follow the relevant course, does not automatically mean that the interview did not meet due diligence requirements.

The asylum seeker cannot appeal the refusal to recognise their right to special procedural guarantees, as the refusal is not considered as a decision that can be subjected to an appeal. Instead, the asylum seeker can object being denied such right in the appeal against the negative decision on the asylum application.

In a 2020 judgment, the Council of State confirmed that the Secretary of State should have investigated

321 IND Work Instruction 2015/ Special procedural guarantees, 20 July 2015, 6.
322 This was confirmed as a form of adequate support in Council of State, Decision No 201609551/1, 3 August 2017.
323 IND Work instructions, 2021/9, 25 June 2021 and IND Work instruction 2021/12, 25 June 2021
324 Tweede Kamer, 2013-2014, Aanhangsel 636.
325 IND Work Instruction 2021/13, 25 June 2021.
326 Council of State, ECLI:NL:RVS:2017:2692, 201702787/1, 3 October 2017.

appropriate forms of information gathering, taking into account the medical history of the asylum seeker. The file showed that the asylum seeker could not be interviewed by the IND for medical reasons, which should have led the Secretary of State to involve the Medical Advice Office *(Bureau Medische Advisering)*. The Secretary of State could not fulfil its obligations simply asking the asylum seeker to demonstrate his need for international protection in an alternative manner.[327]

2.2. Exemption from special procedures

In the regular procedure ("Track 4"), all asylum seekers are channelled in the short asylum procedure. This implies that even asylum seekers who are victims of rape, torture or other serious forms of psychological, physical or sexual violence, will initially access this procedure, regardless of the fact that in most of these cases more investigation is needed (for example, a medical report had yet to be prepared). In such cases, the application will be referred to the extended procedure which could last up to 6 months before a decision in first instance needs to be taken.

The Accelerated Procedure ("Track 2") is not applicable to unaccompanied minors. This was not regulated in the Aliens Decree or Circular. The implementation of Work Instruction 2021/14 (as of 25 June 2021),[328] however, excludes underage unaccompanied minors from the Track 2 procedure, in what can be described as a good practice.

Track 2 is primarily intended for asylum seekers who have limited chances of being granted international protection in the country, as in the case of asylum seekers from safe countries of origin, asylum seekers that have already received international protection in another European country or are EU citizens. In practice, the aspect of being an underage unaccompanied minor takes precedence over the other Track 2 elements.

From 20 July 2015, the Netherlands introduced a border procedure in the national asylum legislation. The border procedure concerns – briefly said – the procedure at the border (or in a transit zone) in which decisions are taken on the asylum application from a foreign national who expressed at the 'Schengen external EU border' a wish
to submit an asylum application and does not meet the conditions for granting access to the Netherlands.

Given that it takes place in detention, the Border Procedure is not applicable to:

- Unaccompanied children (minors);[329]
- Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;[330]
- Persons for whose individual circumstances border detention is disproportionately burdensome;[331]
- Persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured.[332]

For the cases of applicants in need of special procedural guarantees or for whom detention at the border would be disproportionately burdensome, the new IND Work Instruction 2022/15 clarifies that vulnerability does not automatically mean that the applicant will not and can not be detained at the border.[333] The central issue remains whether detention results into a disproportionately burdensome situation for the asylum seeker as mentioned in Article 5.1a (3) of the Aliens Decree in view of his or her "special individual circumstances". Whether there are such "special individual circumstances" must be

327 Council of State, Decision No 202001510/1, ECLI:NL:RVS:2020:2057, 26 August 2020.
328 IND Work instruction, 2021/14, 25 June 2021.
329 Article 3.109b(7) Aliens Decree.
330 Paragraph A1/7.3 Aliens Circular.
331 Article 5.1a(3) Aliens Decree.
332 Article 3.108 Aliens Decree.
333 IND Work Instruction 2022/15, 22 July 2022.

assessed on a case-by-case basis and can be derived for instance from a (MediFirst) medical report or from a 'signalinglist' handed it by the aliens lawyer when there are clear signs of physical or psychological burdens. The previous IND Work Instruction provides two examples of such circumstances: where a medical situation of an asylum seeker leads to sudden hospitalisation for a longer duration, or where the asylum seeker suffers from a serious mental disorder.[334]

The decision establishing detention at the border has to list the reasons for which the IND, while taking into account the individual and special circumstances produced by the asylum seeker, is of the opinion that the asylum seeker can be detained; for example, where the IND is of the opinion that the border security interest should prevail over individual circumstances.

If during detention at the border special circumstances arise which are disproportionately burdensome for the asylum seeker concerned, the detention will end and the asylum seeker will be placed in a regular reception centre (see examples under Detention of vulnerable applicants). The insurgence of such circumstances should thus be monitored. However, given the fact that, from the perspective of national authorities, granting easy access to the country's territory could undermine internal security and public order interests, even in cases of vulnerable people requiring special procedural guarantees this opportunity is generally not granted. Incidentally, it is possible for the State to transfer the foreign national to a specialised psychiatric institution ('Veldzicht') during the border procedure, without them being considered as having gained legal access to Dutch territory.

Human trafficking victims

Special measures, not limited to the asylum procedure, also exist for victims of human trafficking. Trafficking in human beings is intended as the recruitment, transport, transfer, reception or housing of people, with the use of coercion (in a broad sense) and with the aim of exploiting those people. It does not have to happen across borders. The (intended) exploitation is the core of human trafficking. It is therefore a regarded as a crime against the person. The Human Trafficking Coordination Centre and the Health Coordinator are the entities that are responsible for a safe reception and daily accompaniment of these victims.[335] The IND employees are also trained to recognise victims of human trafficking.[336]

In short, the Residence Scheme for Trafficking in Human Beings consists of a possibility to stay on temporary and on non-temporary humanitarian grounds. The conditions for granting stay are described in 3.48 Vb (Aliens Decree) jo. B8 and B9 Vc (Aliens Circular). These are all regular, non-asylum, residence permits, the applications of which are processed by the so-called 'gender units' of the IND. This application procedure can run in parallel with the asylum procedure.

Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular non-asylum ground. During a reflection period of 3 months, the asylum seeker has to consider whether he/she reports a crime and/or wishes to cooperate with the authorities trying to prosecute the trafficker. During the reflection period, a victim has the right to receive a social security contribution, health insurance, legal support and housing, for example. After reporting the crime, if further prosecution is halted, or cooperation with the investigating authorities stopped, the temporary residence permit on regular grounds will be revoked. While a prosecution is being filed or in a lengthy criminal trial (>3 years), the victim of trafficking becomes eligible for a residence permit on non-temporary grounds.

In 2021, a new Working Instruction dealing with human trafficking in asylum cases (WI 2021/16)[337] was adopted. Human trafficking is considered as a serious crime and the IND contributes to tackling it. Being

334 IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5.
335 Section B/9 Aliens Circular.
336 IND, Work Instruction 2007/16 Victims of human trafficking in the asylum procedure, 18 December 2007, available in Dutch at: http://bit.ly/1MjGx5i.
337 IND, Work Instruction 2021/16, *Human trafficking in the asylum procedure*, 14 July 2021, available in Dutch at: https://bit.ly/3KQIARi.

a victim of human trafficking can also be presented as the core of an asylum claim. In that context, apart from signalling, IND caseworkers have an additional role to play, namely the assessment of whether that motive is grounds for granting an asylum residence permit. In addition, an *ex officio* test of victimization from human trafficking is carried out in asylum cases.
In theory, being a victim of human trafficking can lead to being recognised as a refugee or being granted subsidiary protection status. However, for it to be the case, exploitation has to reach the (high) level of an act of persecution and be related to race, nationality, religion or political conviction of the foreign national. It is important to note that victims of human trafficking are in principle not seen as a 'social group' within the meaning of the Refugee Convention. In practise, not many asylum seekers are granted protection on the ground of being a victim of human trafficking.

Victims of human trafficking may also be eligible for subsidiary protection. In that case, there must be a real risk of serious harm upon return to the country of origin, combined with a lack of access to adequate protection. That might be the case when criminal trafficking networks against which the authorities cannot provide protection are active in the country of origin. However, applicants are not often granted subsidiary protection in such cases.

A new Work Instruction (2021/18, 12 October 2021) on the 'assessment of the plausibility of the human trafficking account' came into effect.[338] The Work Instruction is a manual for the assessment of applications for a humanitarian non-temporary residence permit based on special individual circumstances (after residence as a victim or victim-declarant of human trafficking).

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

Every asylum seeker under the general asylum procedure ("Track 4") is invited by the IND to be seen by MediFirst prior to the interviews with the IND. This in order to assess whether he or she can be interviewed with or without special precautions (see Identification),[339] and to see if there are limitations in one person's ability to give a full, coherent and consistent account of ones asylum story that needs to be taken into account when hearing an asylum seeker and when deciding on an asylum request. Besides that, the IND has, since the implementation date of the recast Asylum Procedures Directive in 2015, the legal obligation under article 18 (1) to medically examine asylum seekers in connection to their reasons for requesting protection if they consider it 'relevant' for the decision making process. Obviously, the qualification of its relevancy has been subject to many litigation whereas the asylum seeker claims that a forensic medical examination by the government was 'relevant', and the government argues that it was not relevant because the non-credibility of the asylum story could be based on other factors. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law and policy, it is legitimate to claim the Dutch authorities already had this obligation due to rulings of the ECtHR,[340] and/or the UN Committee Against Torture (CAT).

According to Paragraph C1/4.4.4 of the Aliens Circular, the following criteria are taken into consideration by the IND when making this assessment under article 18(1) of the directive:

- Whether a 'positive' examination can in any way lead to an asylum permit;

338 IND, Work Instruction 2021/18 *'assessment of the plausibility of the human trafficking account',* 12 October 2021.
339 Article 3.109 Aliens Decree.
340 For example: ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010 and ECtHR, R.J. v France, Application No. 10466/11, Judgment of 19 September 2013.

- ❖ The explanations of the asylum seeker on the presence of significant physical and/or psychological traces;
- ❖ Submitted medical documents in which reference is made to significant physical and/or psychological traces;
- ❖ The presence of other evidence in support of the proposition that return to the country of origin would lead to persecution or serious harm;
- ❖ The explanations of the asylum seeker on the cause of physical and/or psychological traces in relation to public available information about the country of origin;
- ❖ Indications of the presence of scars, physical complaints and/or psychological symptoms coming from: (a) the MediFirst medical advice 'to hear and to decide'; (b) the reports of the interviews; and (c) other medical documents.

So, national legislation guarantees the possibility to use a (forensic) medical report as supportive evidence.[341] That had not always been the case. Till around 2005 - 2010 the general legal perception was that medical supportive evidence only had a very limited role to play in the decision making process due to the fact that the outcome of such supporting evidence could not give a 100% certain answer about the who, when, why and where questions that could be asked.

As written above, the Dutch law and policy provides that a forensic medical examination has to be done but only if the IND finds this relevant for the outcome of the examination of the asylum application. If this is the case, the IND asks an independent third party, namely the Dutch Forensic Institute (*Nederlands Forensisch Instituut*, NFI) or the Dutch Institute for Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie, NIFP*), to conduct the examination.[342] The IND bears the costs of this examination. Previous AIDA reports indicated that annually, approximately between 15-20 times, these organisations were asked by the State to perform a medical examination and to establish a medico-legal report. In 2022 it became clear, some journalist investigations brought to light the fact that only a handful of such medico legal reports were written annually. That leads to the conclusion that the Dutch government is not fully fulfilling its obligation under article 18(1) of the recast Asylum Procedures Directive.

If the asylum seeker is of the opinion that a forensic medical examination needs to be conducted, without the IND supporting this view, the asylum seeker can according to article 18(2) from the same Directive, seek one on his or her own initiative and costs. The objective of such medico legal report is to establish the likelihood that the physical effects or psychological complaints reported by the asylum seeker actually stem from the facts as detailed in their asylum claim. Another objective can be to examine whether the physical and psychological situation of the asylum seeker might have affected a persons' ability to detail their asylum claim in a complete, consistent and coherent manner in front of the IND.

An NGO, called iMMO (Institute for Human Rights and Medical Assessment (*instituut voor Mensenrechten en Medisch Onderzoek*)[343] has the specific expertise to medically examine asylum seekers (physically and psychologically) at their request resulting in a forensic medico-legal report.iMMO is not funded by the government, but by other NGOs such as DCR and Amnesty International, among others. IMMO, founded in 2012, operates independently. It started as a very small organisation that mainly relied on free-lance professionals – especially physicians and psychologists – who have the required knowledge and expertise, who commit themselves on a voluntary basis and who are not bound to iMMO by an employment contract. These assessors are trained by iMMO and perform assessments working independently within the framework of their professional responsibility. In the last two years, the balance between paid professional staff and unpaid professional volunteers shifted towards having more paid staff. Both the staff and the volunteers from iMMO perform medical forensic examinations They do not charge the asylum seeker or their legal representatives,, although the legal representative of the

341 Article 3.109e Aliens Decree.

342 IND, Work Instruction 2016/4 Forensic medical examination for supporting evidence, 1 July 2016, available in Dutch at: https://ind.nl/Documents/WI_2016-4.pdf.

343 See: http://bit.ly/3Lkmyd3/.

asylum seeker is obligated to try to get the expenses for the examination and the writing of a report reimbursed by the state.[344]

iMMO's role is 'codified' in the Aliens Circular and the Council of State has accepted its authority as being an expert in its field.[345] What makes iMMO unique is its working method. Medico legal reports are realised as a result of the combined effort of medical doctors and psychologists/psychiatrists.

Besides forensic medical assessments, iMMO offers advice and consultation to professionals having questions regarding medical aspects of (amongst other) the asylum procedure. iMMO also provides training and education, e.g. with regard to the early recognition of victims of torture or inhumane treatment. iMMO participates in an international community of institutions specialized in the reception, assessment and treatment of victims of torture and inhumane treatment.

iMMO conducts a lengthy and thorough examination on the applicants' physical and psychological signs and symptoms and assesses the correlation of these with the asylum seekers own account, using the qualifications of the Istanbul Protocol. In its report, iMMO also comments on whether the physical and psychological situation of the asylum seeker might have affected their ability to tell his/her story in a complete, consistent and coherent manner, both in the past and in the present.

Every year, iMMO, issues around 100 Forensic Medical Reports. In 2020, this number decreased significantly due to the Corona limitations. In 2020 and in 2021, iMMO conducted around 55 medical examinations a year, and around 50 in 2022. Some of these reports were delivered long after the interviews had taken place, especially in the case of repeated asylum claims. Because of this time-lapse, the Council of State first considered that iMMO was not able to conduct a proper assessment years later and that their reports were not relevant. In its landmark judgment of 27 June 2018, the Council of State changed its previous orientation and ruled that the iMMO reports could be relevant when assessing the question whether or not physical or psychological limitations were in place in the past, preventing the applicant from telling a coherent, complete and consistent asylum story, when the assessment/report is based on medical documents and medical information which were issued by the time the interviews took place.[346]

From 2016, the Dutch Government did express a clear vision on the implementation of the Istanbul Protocol.[347] In the past, certain members of the government stated that the practice of the Dutch asylum system was in accordance with this Protocol, without specifying on which points. Amnesty International, the Dutch Council for Refugees and Pharos started a project in 2006 to promote the implementation of the Istanbul Protocol in the Dutch legislation, which resulted, *inter alia*, in a major publication on the issue.[348] This publication has been an inspiration for the national and European policy makers in asylum-related affairs. One of the recommendations from the publication was to provide more awareness to vulnerable groups of asylum seekers prior to the processing of their asylum applications, which has been an important issue in the recast proposals of the Reception Conditions Directive and Asylum Procedures Directive. Another recommendation was to use medical evidence as supporting evidence in asylum procedures, which has been addressed by Article 18 of the recast Asylum Procedures Directive.[349]

344 Regional Court of The Hague, Decision No 14/3855, 11 March 2014 ruled that, as a provisional measure, the IND had to reimburse the expenses of this iMMO report. See also Regional Court Haarlem, Decision No 14/1945, 6 February 2015.

345 Paragraph C1/4.4.4 Aliens Circular. See Council of State, Decision No 201211436/1, 31 July 2013.

346 Council of State, Decision No 201607367/1, 27 June 2018, available in Dutch at: https://bit.ly/2TxB2ZB.

347 Work Instruction 2016/4 refers to the Istanbul Protocol.

348 René Bruin, Marcelle Reneman and Evert Bloemen, 'Care Full, Medico-legal reports and the Istanbul Protocol in asylum procedures' (2008) 21:1 Journal of Refugee Studies, 134.

349 No explicit reference is made, however, in the explanatory notes on the implementation of Article 18 recast Asylum Procedures Directive: Tweede Kamer, Explanatory notes on the implementation of the recast Asylum Procedures Directive, Vergaderjaar 34 088, number. 3, 2014-2015.

The main legal questions at this moment concerning the value of medico legal reports in the Dutch asylum procedure are:

- How does such a report need to be weighed and addressed by the State?
- When is there an obligation for the State to start and conduct such a medical investigation or a follow up medical investigation?
- What exactly is the legal meaning of the word 'relevant' (concerning the question for the State whether or not starting a medical investigation by itself)
- Does a State have to wait with deciding an asylum request upon the completion of a medical report by a third party (for example by iMMO)?
- Can a medical legal report make an incredible asylum story become credible?
- When should an asylum seeker be given the benefit of the doubt?
- The State assumes that when the possibility for the applicant to give full, coherent, consistent and complete statements is limited by assessed limitations, a medico legal report should be able to distinguish to what elements of the story the limitations are in place and to what elements they are not. Does the medical scientific community accept this assumption by the State?
- How does national case law set by the national courts and the national immigration services relates to the international case law as laid out by the ECtHR and the CAT?

Outcomes of cases evaluated by lower courts tacking these questions have varied significantly, mostly based on the story of the individual asylum seeker and legal arguments brought forward by their legal representative. Additionally, the highest judicial body, the Council of State seldomly issues fully motivated verdicts and even the motivated verdicts can be interpret differently.

In 2022, the DCR has analysed around 100 new public decisions by lower courts and the Council of State dealing with medical support evidence, iMMO and MediFirst. Around 90 of them where decisions by lower courts, while 6 were issued by the Council of State. 2022 also saw 2 complaints presented before the European Courts of Human Rights and the Anti-Torture Committee to be deemed inadmissible (without motivation)
In around 60 out of 90 decisions by lower courts, the foreign national successfully appealed the negative decision from the IND. The success rate to appeal a negative IND decision had been higher in 2022 compared to previous years. Whether or not it is the question if the state should have initiated its own forensic medical report or not, whether the vulnerable asylum seeker were given the proper care or whether an iMMO report should have been taken into account when dealing with the credibility issues, more and more court decisions appear to be critical towards the policy and practises of the Secretary of State in this domain.

One judgment by the Council of State should be highlighted here. On 7 December 2022, the Council of State ruled in its judgment that the so called 'component requirement' was no longer tenable.[350] The 'component requirement' means that if in a forensic medico-legal report the examiner (for instance iMMO) has come to the conclusion that the physical and psychological situation of the asylum seeker might have affected (heavily) their ability to tell his/her asylum story in a complete, consistent and coherent manner during the interviews with the IND, the examiner should be able to pinpoint directly on which components of the asylum story the assumed limited ability had its effect. The component rule has been laid down by the Council of State in its landmark ruling from 27 June 2018, as mentioned earlier. Since, both the IND and many lower courts did not accept the view from iMMO that from a medical scientific point of view the component requirement could not be met in a way satisfactory for the IND and the legal courts. Since 2020, you've seen a tipping point in case law. More and more courts adopted the view expressed by iMMO, leading to the above-mentioned judgment in which the council of State abandoned the view adopted in 2018. This judgment is an important one, strengthening the position and value of medico-legal reports in the Dutch asylum procedure. It is our assumption that in 2023 many decisions by the Secretary of State and lower courts will be overturned due to this ruling.

350 ABRvS, 7 December 2022, ECLI:NL:RVS:2022:3615.

4. Legal representation of unaccompanied children

4.1. General

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

Children are considered to be unaccompanied if they travel without their parents or their guardian and their parents or guardian are not already present in the Netherlands. One is considered as a "child" (underage) when under the age of 18. However, an underage mother aged 16 or more can request the Juvenile Court to be emancipated in order to raise and care for one's child.[351]

In principle, the same conditions apply to unaccompanied children and adults when it comes to eligibility for a residence permit. However, unaccompanied minors seeking asylum are considered as particularly vulnerable compared to adult asylum seekers and therefore specific guarantees apply. As a general rule, unaccompanied asylum-seeking minors are interviewed by employees of the IND who are familiar with their special needs.[352]

Unaccompanied children may lodge an asylum application themselves. However, in the case of unaccompanied children younger than the age of 12, their legal representative or their guardian has to sign the asylum application form on their behalf.

A guardian is assigned to every unaccompanied child. Nidos, the independent guardianship and (family) supervision agency, is responsible for the appointment of guardians for unaccompanied asylum seeking children in a reception location.[353] Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).[354] For unaccompanied children, Nidos will request to be appointed as guardian by the juvenile court.[355] Even though formal guardianship is assigned to the organisation, individual professionals, called "youth protectors", carry out the tasks.

There is no time limit for the appointment of a legal guardian to an unaccompanied child.

The guardian takes important decisions on behalf of the child, with consideration to their future, *inter alia*, regarding their education, where the unaccompanied child can find the best housing and what medical care is necessary. Thus, the purpose of guardianship can be divided into legal and pedagogical.

On their arrival in the Netherlands, children under the age of 15 are placed in a foster family, which provides initial reception. After a few days, the child and the guardian go to **Ter Apel** to lodge the asylum application. While the child is staying with this first family, Nidos looks for a permanent home for them. Children over the age of 15 years old live in small-scale housing units with other children.
Campus reception is only advised if the child is able to live independently in a large-scale setting. Children who arrive at **Schiphol airport** are transferred to the application centre in **Ter Apel** and are not detained in **AC Schiphol**.

Normally, unaccompanied children do not stay in Ter Apel for a long period of time after lodging their application for international protection. In 2022, however, there have been several instances where children had to stay in Ter Apel for multiple days or even weeks. The conditions in Ter Apel were harrowing: children staying there had to sleep on plastic chairs and did not have access to sanitary facilities.[356] The Ombudsman for Children has raised concerns on multiple occasions, stating that the

351 Articles 1.233 and 1.253ha, Dutch Civil Code.
352 Section C1/2.11 Aliens Circular.
353 Article 1. 302 (2) Dutch Civil Code.
354 Article 1.245 Dutch Civil Code.
355 Article 1.256 (1) Civil Code.
356 NOS, 'Situatie alleenstaande kinderen verslechterd', 10 October. Available in Dutch at: https://bit.ly/3ZeiwaU.

situation in Ter Apel constitutes a severe violation of children's rights. They further stated: 'Almost all of these children receive a residence permit, so the way we receive them in our society is harmful. You can destroy so much in the weeks that you let these children languish.'[357] The situation for children in Ter Apel had become so worrisome that Nidos decided to evacuate 150 of them, even though it was not their legal obligation to provide shelter for the children. At that point, some of the unaccompanied minors had not eaten for multiple days and felt very unsafe due to the living conditions they were subjected to.[358]

4.2. Age assessment

In case the IND doubts whether an asylum seeker is a child and the child is unable to prove its identity, an age assessment examination can be initiated. Within the scope of age assessment, two officers from the Immigration Service and the Border Police will assess the physical characteristics and the behaviour of an asylum seeker who claims to be a minor.[359] These officers indicate whether they can conclude the asylum seeker is evidently a minor or evidently an adult. Such an assessment does not take place, however, in case of an EU-VIS hit. The Immigration Service will also conduct a search in Eurodac. Already in September 2016, taking into account the principle of mutual trust, the Council of State ruled that the registration in another Member State is assumed to be accurate. Only when the asylum seeker has made plausible that they are a minor, the IND may be compelled to execute an age assessment. In general, authentic papers of identification are required. Supporting documents, such as a birth certificate, are considered insufficient proof of minority.[360] In a report published on 30 November 2020, the Dutch Advisory Committee on Migration Affairs (*Adviescommissie voor Vreemdelingenzaken*, ACVZ) argues that it this practice makes it nearly impossible for (alleged) minors to prove they are minors in case another Member State has registered them as an adult.[361] On 2 November 2022, the Council of State ruled that the Secretary of State's policy regarding age registration is not unreasonable.[362] The Council of State emphasises that the Secretary of State does not simply rely on the principle of interstate trust when referring to the age that is registered in another Member State, but also takes into account documents, statements and the way the other Member State came to the conclusion that the asylum seeker is an adult.[363] In practice, however, the age often appears to have been determined on the basis of declarations in the other Member State.[364]

One of the issues that unaccompanied minors face when they are registered as an adult in another Member State, is that they will be transferred to a reception centre for adults when the immigration service changes their age based on the registration in the other Member State. On 4 November 2022, the Regional Court of Den Bosch ruled that a minor could not be transferred to an adult reception centre until the age of the applicant was properly examined.[365] Furthermore, according to the Council of State, the principle of mutual trust does not imply an obligation for the Immigration Service to adhere to the registration realised in another Member State.[366]

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357 Kinderombudsman, 'Nog steeds sprake van kinderrechtenschendingen Ter Apel', 7 November 2022. Available in Dutch at: https://bit.ly/3Za7bZg.

358 Nidos, 'Nidos regelt buiten Ter Apel minimaal 150 plekken voor jongeren', 2 September 2022. Available in Dutch at: https://bit.ly/3VSgLwR. BNNVARA, 'Minderjarige asielzoekers geëvacueerd uit Ter Apel, sommige kinderen al dagen zonder eten', 2 September 2022. Available in Dutch at: https://bit.ly/3VLcQSD.

359 Work Instruction 2018/19, 13 December 2018.

360 Council of State, ECLI:NL: RVS:2019:653, 27 February 2019.

361 Dutch Advisory Committee on Migration Affairs (Adviescommissie voor Vreemdelingenzaken, ACVZ), *Nadeel van de Twijfel,* 30 November 2020, available in Dutch at: https://bit.ly/2LFImUh.

362 Council of State, ECLI:NL:RVS:2022:3147, 2 November 2022.

363 Council of State, ECLI:NL:RVS:2022:3147, 2 November 2022, paragraph. 4.

364 See, for example: Regional Court of Roermond, ECLI:NL:RBDHA:2023:1535, 13 February 2023; Regional Court of Groningen, NL22.25237, 10 January 2023; Regional Court of Zwolle, NL22.16781, 20 December 2022; District Court of Den Bosch, NL22.2820, 6 December 2022.

365 Regional Court of Den Bosch, ECLI:NL:RBDHA:2022:11809, 4 November 2022.

366 Council of State, Decision No 201807010/1, 30 April 2019.

4.3. Return decisions for unaccompanied minors

On 14 January 2021, the CJEU published its landmark judgment in the case of TQ *v Staatssecretaris van Justitie en Veiligheid* (C-441/19*).*[367] The case concerned a minor (TQ) who applied for asylum in the Netherlands when he was 15 years old. The IND rejected his asylum request, a decision that automatically entails a return decision in accordance with Dutch law. TQ appealed the decision and argued that he does not know where his family lives and that he would not be able to recognize his parents upon return to Guinea. The IND followed Dutch policy, which stipulates that minors who are over 15 years of age at the date of their asylum request receive a return decision without examining whether there are adequate reception facilities in the country of return. For minors under 15 years of age, there is the option of granting a special residence permit in case there are no adequate reception facilities.[368] The Regional Court of Den Bosch referred prejudicial questions to the CJEU concerning the case of TQ The Regional Court submitted various questions: whether a return decision could be taken against a minor without investigating if there are adequate reception facilities. Whether a Member State is permitted to make distinctions on the basis of the age of a minor (15-/15+), and whether it is permitted under Union law to adopt a return decision against a minor, but not undertake any action to remove the applicant until he turns 18.[369]

The CJEU ruled that a Member State must ascertain - before adopting a return decision - that an unaccompanied minor returns to adequate reception facilities. Furthermore, a Member State may not differentiate based on the age of the minor and once the Member State adopts a return decision, the return must actually be carried out. The CJEU also makes it very clear that Member States are under the obligation to apply the principle of the best interests of the child at all stages of the procedure. This ruling shows that the Dutch policy relating to unaccompanied children who receive a return decision is not in line with EU law.

The Regional Court of Den Bosch delivered its final judgement in the case of *TQ* on 15 March 2021.[370] The Secretary of State appealed the judgement, and the Council of State published its ruling on this onward appeal on 8 June 2022.[371]
The Council of State established that there are three possible situations for unaccompanied minors who do not qualify for an asylum permit:

1. There is adequate reception in the county of return. A return decision is issued.
2. There is no adequate reception. The unaccompanied minor must be granted a residence permit on national grounds.
3. Further research is needed. The unaccompanied minor will receive a rejection on the merit of the asylum claim; the decision also includes and explanation as to why extra time is needed to investigate adequate reception and how long the investigation will take. The asylum decision and the return decision are therefore separated. In this situation, the unaccompanied minor retains lawful residence on the basis of Article 8, preamble and under f, Aliens Act. The investigation can lead to two conclusions: either there is adequate reception, so that a return decision can be issued, or there is no adequate reception and the unaccompanied minor receives a residence permit on national grounds. The unaccompanied minor can appeal the decision stating that further research is needed.

The Council of State further rules that the fact that the applicant is not a minor anymore does not mean that the Secretary of State can refrain from investigating whether they should have been granted a permit based on national grounds.

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367 CJEU, TQ v Staatssecretaris van Justitie en Veiligheid, C-441/19, 14 January 2021.
368 However, this permit is rarely granted. The Council for Refugees approximates that the permit has been granted in less than 10 cases since the introduction of the permit in 2012. Conditions are laid down in Section B8/6 Aliens Circular.
369 Regional Court Den Bosch, ECLI:NL:RBDHA:2019:5967, 12 June 2019; CJEU case number C-441/19.
370 Regional Court Den Bosch, ECLI:NL:RBDHA:2021:2376, 15 March 2021.
371 Council of State, ECLI:NL:RVS:2022:1530, 8 June 2022.

Following the Council of State judgment, the IND issued an internal information message in which it is stated that the period for further research into adequate reception will, in principle, be of one year. This period can be extended if the unaccompanied minor does not cooperate with the research.[372] At the time of writing this report, it is early to evaluate how the research into adequate reception is carried out and how many unaccompanied minors will receive permits on national grounds.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage ☐ Yes ☒ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage ☐ Yes ☒ No

After a final rejection of the asylum application, the asylum seeker is able to lodge a subsequent asylum application (*Opvolgende asielaanvraag*) with the IND. This follows from the *non-refoulement* principles, codified in Article 33 of the Refugee Convention and Article 3 ECHR. The Aliens Circular stipulates how subsequent asylum applications are examined.[373]

The assessment of subsequent asylum application takes place in the so-called "one-day review" (*de eendagstoets, EDT*).[374]

In July 2019, a new procedure regarding lodging and assessing subsequent asylum applications was introduced, amending the Aliens Circular and putting in place a new IND Work Instruction.[375] Following such procedure, it has to be examined whether the asylum seeker has filled in a fully completed subsequent asylum application form (M35-O) and whether the IND will not continue to examine the subsequent application because the asylum seeker does not provide the relevant information according to the IND. Another relevant change is that an interview does not always take place when assessing a subsequent asylum application.

1. New facts and findings (*nova*)

When a subsequent asylum application form is fully completed and the IND continues to examine the application, an EDT ("one-day review") takes place. If that is the case, the IND shall declare a subsequent application inadmissible in case there are no new elements or findings.[376] The term "new facts and findings" is derived from the recast Asylum Procedures Directive.[377] According to the Secretary of State,[378] and case law,[379] this terminology must be interpreted exactly the same as the former terminology of "new elements or circumstances". Therefore, all the old jurisprudence and policy before

372 IND, IB 2022/74, 29 July 2022. Available in Dutch at: https://bit.ly/3igKEcI.
373 Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.
374 The "one-day review" means that on the first day of the procedure it is assessed whether the asylum seeker has a document, which is not an asylum procedure. The whole administrative procedure regarding assessing the subsequent application as a rule takes three days, with a possibility for extension.
375 Article 3.118b Aliens Decree; Paragraph C1/2.9 Aliens Circular and IND Work Instruction 2019/9. Procedure herhaalde aanvragen, available in Dutch at: https://bit.ly/3Gp77Lh.
376 Article 30b(1)(d) Aliens Act.
377 Article 33(1)(d) Aliens Act.
378 Dutch Parliament, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014-2015, 12.
379 Council of State, Decision No 201113489/1/V4, 28 June 2012.

the transposition of the recast Directive is still applicable.[380] From here on, "new elements or circumstances" will be referred to as "*nova*".

In the Dutch context the *nova* criterion has always been interpreted strictly. In case of nova, there will be a substantive examination of the subsequent asylum application. According to Paragraph C1/4.6 of the Aliens Circular, the circumstances and facts are considered 'new' if they are dated after the previous decision of the IND. According to established law and policy, in some circumstances, certain facts which could have been known at the time of the previous asylum application are nevertheless being considered 'new' if it would be unreasonable to decide otherwise. This is the case, for example, if the asylum seeker gets hold of relevant documents that pre-date their initial asylum application(s), provided that the documents came into possession of the asylum seeker after receiving the previous decision. The basic principle is that the asylum seeker must submit all the information and documents known to them in the initial (first) asylum procedure. In case of having experienced traumatic circumstances, the asylum seeker is also allowed to mention them.

CJEU, L.H. v. Staatssecretaris van Justitie

The strict interpretation of the *nova* criterion can also be applied in cases in which new documents form the basis of a subsequent application. According to the established case law of the Council of State, (original) documents of which the authenticity cannot be established, or whose source could not be verified, cannot be regarded as new facts or elements.[381]

On 16 December 2019, the Regional Court of Den Bosch referred preliminary questions to the CJEU about this matter in the case *LH*.

On 10 June 2021, the CJEU ruled that a document submitted by an applicant for international protection in support of a subsequent application could not automatically be excluded from being considered a 'new element or finding', within the meaning of Article 40 APD, when the authenticity of that document cannot be established or its source objectively verified.[382]

The evaluation concerning whether new elements could be considered 'new' is comprised of two stages. The first one is related to the admissibility of the application and entails the following steps:
Step 1. Article 40(2) of Directive 2013/32 provides that, for the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d) of the Directive, a subsequent application for international protection will be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95.[383]

Step 2. Only if such new elements or findings exist, as compared to the first application for international protection, the examination of the admissibility of the subsequent application continues, pursuant to Article 40(3) of the directive, in order to ascertain whether those new elements and findings add significantly to the likelihood of the applicant qualifies as beneficiary of international protection.[384]

On 15 September 2022, the Council of State ruled that the practice after the ruling in *LH* had been incorrect.[385] Article 40(3) of the APD stipulates that Member States can examine subsequent applications where the *nova* add significantly to the likelihood of the applicant qualifying as a beneficiary of international protection. However, this provision has not been transposed into Dutch law, which means that determining whether subsequent applications are deemed admissible should not be based on article 40(3) of the APD, but Article 30a(1)(d) of the Aliens Act, which only stipulates that *nova* must

380 Article 4.6 GALA.
381 See, for example: Council of State, Decision No 200304202/1, 25 September 2003.
382 CJEU, C-921/19, 10 June 2021, EASO Case Law Database, available at: https://bit.ly/3njwlDD.
383 CJEU, C-921/19, 10 June 2021, paragraph 36.
384 CJEU, C-921/19, 10 June 2021, paragraph 37.
385 Council of State, Decision No 202006762/1, 15 September 2022.

be relevant in order for the subsequent application to be considered. In accordance with this judgement, the IND changed their policy, and only determines whether new documents or elements are relevant for examining the subsequent application.[386] The IND is examining whether it is necessary to change national laws to better reflect the rules laid down in the APD.

The second stage relates to the examination of the substance of such applications.[387]

Furthermore, the CJEU ruled that according to Article 40 APD read together with Article 4(1) and (2) of the Qualification Directive, the assessment of evidence submitted in support of a subsequent application is the same as the assessment of evidence supporting a first application.[388]

The Regional Court of Den Bosch, who referred the preliminary questions to the CJEU in the case *L.H.,* ruled in its final decision that the threshold to establish 'new' elements and findings should be set at a lower bar.[389] The examination whether an element or finding is 'new' according to Article 40 APD does not entail a substantive research. According to the Regional Court of Den Bosch an element which has not been assessed yet in a previous asylum procedure and has any relation with the asylum account is considered to be 'new'. As the CJEU ruled, accordingly to Article 4(1) and (2) of the Qualification Directive, that the assessment to establish the existence of new elements or findings must be realised in active cooperation with the applicant. The Regional Court additionally established that in every subsequent asylum procedure the asylum seeker should be interviewed.[390]

The Council of State, partially confirming the Regional Court of Den Bosch's decision, ruled that its established case law on the assessment of new elements and findings, in particular concerning documents of which the authenticity cannot be established, had to be revised. The Council of State also ruled that, in order to ascertain whether the new elements and findings add significantly to the likelihood of the applicant qualifying for international protection (first stage, second step), more substantive research is required.[391] In accordance with Article 4(1) and (2) the Secretary of State could, for example, examine new documents in relation to previous statements of the applicant or country of origin information.
In the same judgement however, the Council of State established that, according to Article 42 (2) (b) of the APD, the Secretary of State does not automatically have to interview each asylum seeker lodging a subsequent application, provided that the decision includes a justification for the exclusion of the subsequent applicant from the personal interview.

The Secretary of State responded to the judgment of the CJEU and stated that it did not have strong implications regarding the assessment of a subsequent application.[392] In the Dutch Council for Refugees' opinion, Dutch policy has only partially been adjusted to the Judgment of the CJEU, specifically regarding cases of exemption from an interview regarding subsequent applications.[393] On 1 July 2022, the IND published a new Work Instruction 2022/13 outlining their policy regarding subsequent applications, including the situations in which an interview will not be conducted.[394]

In this regard, Article 40(4) of the APD states that Member States may provide that a subsequent application will only be further examined if the asylum seeker concerned presents new elements or findings, which could, through no fault of their own, not have been presented in a previous procedure. This is the so-called "*verwijtbaarheidstoets*" ('culpability test'). This Article is not explicitly and separately

386 IB 2022/91 Niet-ontvankelijkheid opvolgende aanvragen, available here: https://bit.ly/3PynACy.
387 CJEU, C-921/19, 10 June 2021, paragraphs 34 and 53.
388 See also EASO Case Law Database, https://bit.ly/3K4LsdJ.
389 Regional Court Den Bosch, Decision No NL19.20920, 7 July 2021.
390 Council of State, Decision No 202104524/1, 26 January 2022.
391 Council of State, Decision No 202104524/1, 26 January 2022, paragraph 5.4.7.
392 Secretary of State, 8 July 2021, *Reactie op het bericht 'Nederland kan honderden nieuwe asielprocessen verwachten na uitspraak Europees Hof*', available in Dutch at: https://bit.ly/33rsFbR.
393 Amendment Aliens Circular, Besluit van de staatssecretaris van Justitie en Veiligheid, 23 September 2021,Staatscourant 2021, No 41948, available in Dutch at: https://bit.ly/3HZlXc4.
394 IND, Work Instruction 2022/13 Opvolgende asielaanvragen, 1 July 2022, available in Dutch at https://bit.ly/3X07gwF.

transposed into Dutch law, leading to a debate in case law as to whether this was necessary. The Council of State ruled in 2017 that it was not. The principle of Article 40(4) of the Directive was already incorporated in Article 33(2)(d) of the Aliens Act, while Article 40 (2) and (3) of the Directive are explicitly transposed in the Aliens Act.[395] This means that new elements or findings will only be further examined when they have not been presented in a previous procedure due to no fault of the applicant.

On 9 September 2021, the CJEU ruled in the case *X.Y. v. Austria* that if a Member State has not implemented the optional stipulation of Article 40(4) of APD, in which the culpability test is laid down, the Member State cannot bring up this objection in assessing the new elements and findings.[396] The Netherlands did not transpose the optional stipulation laid down in Article 40(4) APD in national law. On 15 September 2022, the Council of State ruled in accordance with the CJEU, stipulating that the Secretary of State could not declare a subsequent application non-admissible if new elements and findings could have been submitted in a previous application.[397] In the Information Message published in response to this ruling, the IND did not mention the considerations by the Council of State regarding the culpability test.[398]

2. Subsequent application procedure

In June 2018, the Council of State ruled that asylum seekers who file a subsequent asylum application by filling in the form (M35-O) have a right to accommodation. As a result, many people completed the form without substantiating their subsequent asylum claim and the IND decided to disregard many asylum applications.[399] The Council of State concluded that the Secretary of State of Justice (IND) could give its viewpoint just in the written intention that the subsequent asylum application lacks (sufficient) relevant information and could give the asylum seeker the opportunity to provide more information. The Secretary of State was not obliged to do this before issuing the written intention to reject the application.[400]

As a result, in July 2019 the Secretary of State introduced a new procedure regarding lodging and assessing subsequent asylum applications. The main changes, compared to the previous rules governing the matter, are as follow:

1. Lodging the asylum application:

Asylum seekers (or their legal representative) have to lodge their asylum application in person at the application centre in **Ter Apel** (ACTA) with a completed subsequent application form (M35-0).

2. Completed application form:

If the application form is not completed the IND could take the viewpoint that the application lacks relevant information, hence the application is rejected according to article 30c (1)(a) Aliens Act (in Dutch: *'buitenbehandelingstelling van de asielaanvraag'*). The Council of State issued numerous decisions regarding the matter whether the asylum seeker provided sufficient relevant information while submitting a subsequent asylum application.[401]

3. Fully completed application without interview:

When a fully completed subsequent asylum application form has been submitted, an asylum seeker will not automatically be interviewed. According to Article 3.118b (3) Aliens Decree an interview only takes

395 Council of State, Decision No 201604251/1, 6 October 2017.
396 CJEU, C-18/20, *XY versus Austria,* 9 September 2021.
397 Council of State, Decision No 202006762/1, 22 September 2021.
398 IB 2022/91 Niet-ontvankelijkheid opvolgende aanvragen, available here: https://bit.ly/3PynACy.
399 The subsequent claims are refused according to Article 30c (1)(a) of the Aliens Act.
400 Council of State, decision no 201810080/1/V2, 21 February 2019.
401 For example Council of State, Decision No 202103833/1, 17 November 2021; Council of State, 201904869/1, 23 September 2020; Council of State, Decision No 201905226/1, 12 August 2020.

place when it is relevant for a diligent assessment of the application. This is presented in more detail in Paragraph C1/2.9 of the Aliens Circular, where several , categories are mentioned in which the IND can decide not to conduct an interview. A lawyer will not automatically be appointed, but an asylum seeker can look for a lawyer himself (also free legal assistance). A "one day review" (Dutch: *'de eendagstoets', EDT*) will take place.

On 31 August 2020, the Regional Court of Utrecht ruled that the Secretary of State (IND) had not given sufficient reasons as to why no interview had been conducted after the asylum seeker's subsequent application.[402] Similarly, the Regional Court of Rotterdam held that the asylum seeker should have been interviewed on his subsequent application in a judgement dating 13 February 2019.[403]

In its final judgment after the ruling of the CJEU in the case *L.H.*, the Regional Court of Den Bosch was of the opinion that every asylum seeker who lodges a subsequent asylum application should be interviewed. Additionally, the court ruled that Article 3.118b (3) Aliens Decree in which is stipulated that asylum seekers not always have to be interviewed (worked out in more detail in Paragraph C1/2.9) should be annulled. As previously mentioned, however, the Council of State ruled that according to Article 42 (2) (b) APD an asylum seeker who lodges a subsequent application does not always have to be interviewed.[404]

4. Fully completed application with interview:

When a fully completed subsequent asylum application has been lodged and the IND is of the opinion that an interview should take place, a lawyer will be appointed and the EDT will take place.

When an interview takes place, it does not consist of a complete review of the asylum request and statements. The IND will solely address the question as to whether new facts or circumstances exist on the basis of which a new asylum application would be justifiable.

After the interview, on the same day, the IND decides whether status will be granted, the asylum application will be rejected or if further research is required.
Three scenarios are possible:

- **The application is granted** (refugee protection or subsidiary protection): On the same day the application is granted, the asylum seeker receives a report of the interview and the positive decision;
- **The application is rejected**: On the same day (day 1) the application is rejected; the asylum seeker receives a report of the interview and the intention to reject his or her asylum application. The asylum seeker discusses the report of the interview and the written intention the next day (day 2) with his or her lawyer. The lawyer will draft an opinion on the intended decision and will also submit further information. On the third day (day 3) the asylum seeker will receive an answer from the IND as to whether the application is rejected, approved or requires further research;
- **Further research**: if further research is required, the application will be assessed in a 6-day procedure (day 1: interview; day 2: review of the interview and corrections and additions; day 3: written intention to reject the asylum application; day 4: submission of the view by the lawyer; day 5: delivery of decision and day 6: distribution of decision). If necessary the procedure can be extended up to 20 days.

When the asylum seeker receives a decision that his or her subsequent asylum application has been rejected, the asylum seeker can be expelled. The asylum seeker could, under certain conditions, be expelled even at the moment the written intention to reject the subsequent application is taken.

402 Regional Court of Utrecht, Decision No NL20.9117, 31 August 2020.
403 Regional Court of Rotterdam, Decision No NL18,24121, 13 February 2019.
404 Council of State, decision number 202104524/1/V1, 26 January 2022.

An appeal before the Regional Court can be lodged against a negative decision on the subsequent asylum application. However, lodging an appeal does not automatically have suspensive effect for the asylum seeker to remain lawfully in the Netherlands, which means he or she may be expelled during the appeal. To prevent this, the asylum seeker has to request for a provisional measure with the Regional Court.[405] The appeal has to be lodged within one week after the rejection.[406] The court mainly examines if the elements and findings are 'new' in the sense of the Aliens Act (and Aliens Circular) and the General Administrative Law Act (GALA).[407] After the decision of the Regional Court the asylum seeker can lodge an onward appeal with the Council of State. As a result of the *Gnandi* judgment of the CJEU, divergent national case law has been delivered on the matter in which cases an appeal has automatic suspensive effect, also regarding to an appeal to the refusal of a subsequent asylum application. However, in a judgment of 29 January 2020 in a case involving a fourth asylum application and in which the third-country national was placed in detention, the Council of State ruled that the *Gnandi* judgment did apply.[408] The legal effects of the return decision were thus suspended. In view of this judgment, it therefore seems that the *Gnandi* judgment applies to a subsequent application.

A problem arises when an asylum seeker with a re-entry ban of more than five years (*zwaar inreisverbod)*,[409] issued on the ground of being considered a serious threat to public policy, public security or national security,[410] lodges a subsequent asylum application. In such a case, their asylum application would be assessed by the IND, but an appeal against the rejection of the asylum application will be considered inadmissible by the Regional Court.[411] The asylum seeker has to request for cancellation/revocation of the re-entry ban.

In 2022, the number of subsequent asylum applications was 1,529.

Subsequent applicants in the Netherlands by top 10 countries of origin: 2022	
Country of origin	Number
Iran	218
Nigeria	151
Iraq	132
Syria	103
Afghanistan	54
Algeria	54
Morocco	54
Pakistan	49
Eritrea	43
Somalia	42

Source: Asylum Trends,. December 2022, available at: https://bit.ly/3vViYgz.

405 Article 82(2)(b) Aliens Act.
406 Article 69(2) Aliens Act.
407 Article 30a(1)(d) Aliens Act and Paragraph C1/2.7 Aliens Circular.
408 Council of State, Decision No 201903236/1, 29 January 2020.
409 Article 66a(7) Aliens Act.
410 Article 11(2) Return Directive and Article 6.5a(5) Aliens Decree.
411 Council of State, Decision No 201207041/1, 19 December 2013.

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national law allow for the use of "safe country of origin" concept? ☒ Yes ☐ No
   - ❖ Is there a national list of safe countries of origin? ☒ Yes ☐ No
   - ❖ Is the safe country of origin concept used in practice? ☒ Yes ☐ No
2. Does national law allow for the use of "safe third country" concept? ☒ Yes ☐ No
   - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No
3. Does national law allow for the use of "first country of asylum" concept? ☒ Yes ☐ No

1. First country of asylum

1.1. Third countries

An asylum application can be declared inadmissible when the asylum seeker has been recognised as refugee in a third country and can still receive protection in that country, or can enjoy sufficient protection in that country, including protection from *refoulement*, and will be re-admitted to the territory of that particular third country (Article 30a(1)(b) Aliens Act).[412] This inadmissibility clause is an implementation of Article 33(2)(b) and Article 35 Procedure Directive.

As stipulated in Paragraph C2/6.2 of the Aliens Circular, the IND assumes that the asylum seeker will be re-admitted in the third country in case:

- ❖ The asylum seeker still has a valid permit for international protection in the third country;
- ❖ The asylum seeker has a valid permit or visa and he or she can obtain international protection;
- ❖ There is information from the third country from which it can be deduced that the asylum seeker already has been granted international protection or that he or she is eligible for international protection;
- ❖ Statements of the asylum seeker that he or she has already been granted protection in a third country and this information has been confirmed by the third country.

In the situations mentioned above, the IND assumes that the asylum seeker will be re-admitted to the third country, unless the asylum seeker can substantiate (make it plausible) that he or she will not be re-admitted to the third country. The first country of asylum concept is scarcely used in practice. Often, the (general) third country concept (see under 2. Safe third country) is used. In 2021, there was only one case about a first country of asylum concerning Peru.[413] Regional Court Amsterdam decided that the IND should further investigate the residential status of the Yemeni asylum seeker in Peru. Following the decision, the asylum seeker got another interview after which he received a residence permit.

In 2022, just one case of application of the first country of asylum (concerning Costa Rica) was brought in front of a court. The Regional Court of Middelburg decided that when the 'first country of asylum' concept is used, the IND should investigate whether this country is 'safe' using the same sources as with the investigation of 'safe third countries'.[414]
Moreover, the IND has used the 'first country of asylum' concept inconsistently in a few cases concerning BIPs from Denmark. The regional court of Rotterdam decided that the IND should have motivated why it inconsistently used this ground for inadmissibility and not the 'EU Member States'-ground.[415]

1.2. EU Member States

An asylum application will be declared inadmissible if the asylum seeker has international protection in another EU Member State (Article 30a (1) under a of the Aliens Act). Even if the residence permit has

412 Article 30a(1)(b) Aliens Act.
413 Regional Court Amsterdam, Decision Number NL21.18983, 24 December 2021.
414 Regional Court Middelburg, ECLI:NL:RBDHA:2022:10443, 6 October 2022.
415 Regional Court Rotterdam, Decision Number NL22.1573, 8 November 2022.

expired, the asylum application will be declared inadmissible.[416] This is because it is assumed that the international protection status can only be actively withdrawn and cannot simply expire.

Asylum seekers have often argued that their return to another Member State would be contrary to Article 3 ECHR. However, Courts have this is hardly ever accepted by the courts. Since the *Ibrahim* judgment,[417] the focus of the general situation in the Member State seems to have shifted to the particular vulnerability of the beneficiary of protection. However, case law with regard to the particular vulnerability is also very strict. For example, the Council of State does not automatically recognise families, single parents and status holders with PTSD as particularly vulnerable.[418] In an internal information message of the IND, it is stated that for particular vulnerability it is important to assess whether someone is self-sufficient.[419] Moreover, that individual guarantees should be requested for particular vulnerable beneficiaries of protection from Greece, Bulgaria and Hungary, given that protection beneficiaries returned to these Member States are in principle assumed to be at risk of facing a situation of extreme material poverty, as stated in the *Ibrahim* ruling.

Greece: Most EU-status holders that apply for asylum in the Netherlands come from **Greece**. On 7 november 2022, the Secretary of State communicated there were 1,000 cases pending at the IND.[420] On 11 December 2020, an article in the *Volkskrant* mentioned some 'unexpected statuses' from Greece.[421] The article reported on the cases of many asylum seekers that reached the Netherlands after their entrance in the EU from Greece, where they did not receive a status, being instead only registered as asylum seekers in the country. Upon request by the IND many of these asylum seekers had been granted a status in Greece, without being informed, while residing in the Netherlands. In such a case, the IND still declares the application inadmissible. This practice is particularly interesting when looking at the blocking of Dublin transfers to Greece by the Council of State (see Dublin ("Track 1")).

On 28 July 2021, the Council of State finally ruled that protection beneficiaries from Greece cannot be sent back without the Secretary of State motivating better that there is no breach of Article 3 ECHR upon their return.[422] In response, the Secretary of State announced that it would start an investigation into the situation of beneficiaries of international protection in Greece, thereby extending the decision term for 9 months for these cases of BIPs as of 1 October 2021 on the ground of being a complex factual and legal matter.[423] Cases in which the decision term had already expired by 1 October were handled in the national procedure without declaring the requests inadmissible.

The announced investigation was carried out by the Ministry of Foreign Affairs. The report was published on 24 June 2022.[424] On 14 September 2022, the Secretary of State announced that it needed more time to study the report, which meant that decision-making in cases of BIPs from Greece would still be suspended.[425] Finally, on 7 November 2022 the Secretary of State said that following the report, BIPs from Greece could no longer be sent back to the country. However, as the situation in Greece is changing rapidly, cases will still only be decided upon after the prolonged decision period has ended (using the general prolonging of decision from WBV 2022/22, see section Legal Penalties).[426] This means that BIPs from Greece applying for asylum in the Netherlands will have to wait 15 months before

416 Council of State, ECLI:NL:RVS:2017:1253, 7 December 2017.
417 CJEU, C-297/17, C-318/17, C-319/17 en C-438/17, 19 March 2020.
418 Council of State, ECLI:NL:RVS:2020:1102, 22 April 2020 (single parents are not particularly vulnerable), Regional Court Middelburg, Decision No NL20.15979, 24 November 2020 (PTSD on its own does not lead to particular vulnerability).
419 IB 2021/56 asielverzoeken van bijzonder kwetsbare statushouders, available in Dutch at: https://bit.ly/3hCLBf6.
420 KST 30573, nr. 195, 7 November 2022, available in Dutch at: https://bit.ly/3BKuHC5.
421 Irene de Zwaan, *Onrust onder asielzoekers die onverwacht een status in Griekenland hebben gekregen*, 11 December 2020, Volkskrant, available in Dutch at: https://bit.ly/2XXL35W.
422 Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021.
423 KST 32317, No 719, 30 September 2019. The extension of the decision term is done by declaring the cases on to be of a complex factual and legal matter (Article 42(4)(a) Aliens Law 2000).
424 Ministry of Foreign Affairs, 'Verslag feitenonderzoek naar statushouders in Griekenland juni 2022', 24 June 2022, available in Dutch at: https://bit.ly/3HOcBD0.
425 IB 2022/84 Griekse statushouders, available in Dutch at: https://bit.ly/3WwmFor.
426 KST 30573, nr. 195, 7 November 2022, available in Dutch at: https://bit.ly/3BKuHC5.

their asylum procedure starts. However, one exception has been made. The asylum requests of BIPs who can be regarded as 'self-reliant' because they have received the social security numbers needed for work and have access to accommodation they could return to if returned to Greece, will be declared inadmissible. The few cases, but that were (about to be) declared inadmissible based on the 'self-reliance' were all cancelled or dismissed in court,[427] with just one exception.[428]

For a short period of time during 2022, the IND also exempted unaccompanied minors with a status in Greece from the suspension of decision-making. In a few cases, the IND asked the Greek authorities for individual guarantees on reception of the minor. Some of these cases are still pending, but individual guarantees are no longer requested.[429]

Whether the IND is allowed to treat asylum seekers who are BIPs from Greece (but cannot be sent back to Greece) as first-time applicants, is still up for discussion. There are three cases pending at the Council of State on this matter, relating to the question on the importance and weight of the recognition as beneficial of international protection by Greece.[430]

Hungary: The Council of State ruled in 2020 that the Secretary of State must provide further reasons why a BIP and her minor children, due to their special vulnerability, would not end up in a state of material deprivation as described in the *Ibrahim* judgment, in violation of Article 3 ECHR after their return to Hungary. The country information included by the Council of State showed that conditions in Hungary are extremely difficult for status holders. The Council also considered that the Hungarian authorities have not been willing to assist status holders and even actively oppose them.[431] As far as known to the authors of the report, there were no cases on BIPs from Hungary registered in 2022.

Bulgaria: At the end of 2021, the Council of State ruled that the situation for protection beneficiaries in Bulgaria, while difficult, does not meet the threshold of the *Ibrahim* judgment;[432] as such, the Secretary of state does not need to further investigate their situation in the country. Since then, case law has been varying.[433] Positive rulings from the Regional Court of Den Bosch concerned Bulgarian cessation law stating that BIPs who do not renew their identity card and/or residence permit within the set period, will be confronted with the withdrawal or termination upon return to Bulgaria.[434] This cessation clause is in not in line with the QD and might lead to risk of inhumane treatment upon return to Bulgaria. However, the Secretary of State appealed this ruling, therefore the case is still pending.

In February 2021, the CJEU answered prejudicial questions of the Council of State about the detention of EU status holders.[435] The question was whether the Return Directive prevents BIPs recognized in other EU member states from being detained on national grounds, given that they do not receive a return decision, but merely an order to leave for the territory of the other Member State. The Court ruled that the Return Directive does not preclude a Member State from placing a protection beneficiary residing illegally on its territory in administrative detention, in order to carry out the forced transfer to the Member State in which that person holds a protection status. That applies for cases in which the person refused

427 Regional Court Haarlem, Decision Number NL22.20556, 11 November 2022. VluchtelingenWerk knows of two other cases in which the IND intended to declare the asylum request inadmissible but decided not after the view of the asylum lawyer.
428 Regional Court Roermond, ECLI:NL:RBDHA:2022:3491, 12 April 2022.
429 This is derived from the internal information message IB 2022/84 Griekse statushouders, available in Dutch at: https://bit.ly/3CrqMKO.
430 This concerns the onward appeal in the following cases: Regional Court Zwolle, ECLI:NL:RBDHA:2022:10014, 6 September 2022, Regional Court Arnhem, ECLI:NL:RBDHA:2022:3293, 11 April 2022, Regional Court Den Bosch, ECLI:NL:RBDHA:2022:3044, 5 April 2022.
431 Council of State, ECLI:NL:RVS:2020:1088, 22 April 2020.
432 Council of State, ECLI:NL:RVS:2021:2857, 16 December 2021.
433 Some negative rulings following the ruling of the Council of State: Regional Court The Hague, NL22.21684, 1 December 2022, Regional Court Middelburg, ECLI:NL:RBDHA:2022:12279, 14 November 2022, Regional Court Haarlem, ECLI:NL:RBDHA:2022:13310, 31 October 2022.
434 Regional Court of Den Bosch, ECLI:NL:RBDHA:2022:11120 and ECLI:NL:RBDHA:2022:11129, 16 October 2022. Followed by Regional Court Middelburg, ECLI:NL:RBDHA:2022:11615, 2 November 2022.
435 CJEU, C-673/19 (M.), 24 February 2021.

to comply with the order to move to the Member State having issued their status, and it is not possible to issue a return decision.

2. Safe third country

An asylum application can be declared inadmissible in case a third country is regarded as a safe third country for the asylum seeker.[436] There is no list of safe third countries. However, the IND published some *internal information messages* on the safe third country concept. These internal documents list a number of third countries either as 'safe' or 'not safe'.[437] The concept is applied on a case-by-case basis. There are three criteria that have to be fulfilled regarding safety, connection and admission. From the *internal information message* 'Assessment of safe third countries in the asylum procedure - burden of proof and country information' (IB 2021/8) states that in principle, asylum seekers will only be countered with a safe third country by the IND if their asylum request is likely to be granted, and that otherwise preference is given to a substantive rejection of the asylum request.

Rated as a safe third country according to *internal information messages*:

- Argentina
- Armenia
- Brazil
- Canada
- Chile
- Costa Rica
- Ecuador
- Gambia
- Georgia
- Morocco
- Nigeria
- Peru
- Philippines
- Rwanda
- South Africa
- South Korea
- Suriname
- Uganda
- United Kingdom
- United States of America
- Uruguay

Not rated as a safe third country according to *internal information messages*:

- Albania
- Algeria
- Australia
- Azerbaijan
- Bahrain
- Belarus
- Bosnia and Herzegovina
- Cambodia
- Colombia
- Egypt
- Haiti
- Honduras
- India
- Indonesia
- Iran
- Iraq
- Israel
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kosovo
- Kyrgyzstan
- Lebanon
- Malawi
- Malaysia
- Maldives
- Mexico
- Moldova
- North Macedonia
- Oman
- Panama
- Qatar
- Russia
- Saint Kitts and Nevis
- Saudi Arabia
- Sierra Leone
- Somalia
- Sudan
- Thailand
- Tunisia
- Türkiye

436 Article 30a(1)(c) Aliens Act.
437 All internal information messages are published at: https://www.ShouldIStayorShouldIgo.nl.

- Ukraine
- United Arab Emirates
- Uzbekistan

2.1. Safety criteria

Article 3.106a(1) of the Aliens Decree provides the criteria for a country to be considered a safe third country. This is an implementation of Article 38 of the Asylum Procedures Directive. Article 3.37e of the Aliens Regulation provides that the Secretary of State's assessment as to whether a third country can be considered to be safe should be based on a number of sources of information, specifically from EUAA, UNHCR, the Council of Europe and other relevant / authoritative / reputable organisations. In four cases concerning **Kuwait**, the **United Arab Emirates** and **Russia**, the Council of State ruled that the Secretary of State must rely on country of origin information, which must be transparent and applicable to the individual asylum seeker's case.[438]

The law does not expressly require the third country to have ratified the Refugee Convention without limitation. The Council of State found that Article 38 of the recast Asylum Procedures Directive does not require the third country to have ratified the Refugee Convention to be considered a safe third country. Nevertheless, the third country must abide by the principle of *non-refoulement*. The cases concerned the **United Arab Emirates** and **Kuwait**.[439]

In January 2020, the Regional Court of Amsterdam ruled that it considered **Türkiye** a safe third country for Uyghurs from China.[440] Reasons for this judgment were the historical link between Türkiye and the Uyghur community and that twenty to thirty thousand Uyghurs live in Türkiye. Since 2018, Uyghurs have a special long-term residence permit. Other refugees and asylum seekers in Türkiye do not have the right to apply for long-term residence. This permit allows Uyghurs to apply for Turkish citizenship after five years. Although Türkiye is rated as non-safe third country in general, the Aliens Circular does state that for Uyghur applicants it will be assessed whether Türkiye is a safe third country.[441] In 2021, the Dutch Council of Refugees has seen one decision in which the IND concluded that Türkiye was not a safe third country for Uyghurs.

In a case about Armenia as a safe third country, the Council of State ruled that the Secretary of State cannot use only the designation of Armenia as a safe country of origin to prove that Armenia is a safe third country for any applicant.[442] It must either be shown which sources were the basis for this designation or indicate the sources that in the specific case were the basis for the assessment of Armenia as a safe third country.

2.2. Connection criteria

On the basis of Article 3.106a(2) of the Aliens Decree a connection (*band*) with the third country is required on the basis of which it would be reasonable for the asylum seeker to go to that country. This has been elaborated on in Article 3.37e(3) of the Aliens Regulation and in Paragraph C2/6.3 of the Aliens Circular. According to the IND such a connection exists where:[443]

- The husband / wife or partner of the asylum seeker has the nationality of the third country;
- First or direct family members reside in the third country, with whom the asylum seeker is still in contact; or
- The asylum seeker has stayed in the third country.

438 Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, No 201606126/1, 13 December 2017.
439 Council of State, Decisions No 201704433/1, No 201703605/1, No 201609584/1, 13 December 2017.
440 Regional Court Amsterdam, Decision No NL19.30580, 15 January 2020.
441 Paragraph C7/8.8 Aliens Circular.
442 Council of State, ECLI:NL:RVS:2020:2356, 6 October 2020.
443 Paragraph C2/6.3 Aliens Circular.

As regards the nationality of the partner of the asylum seeker, the Regional Court Arnhem ruled that there is still a connection between the asylum seeker and the country of nationality of their partner when the partner has permanently moved away from her country of nationality.[444] The Regional Court The Hague examined the relevance of a connection (*band*) to the United States for an Afghan national who worked as an interpreter to the US Army and US Government in Afghanistan. The court concluded that a sufficient connection existed for the "safe third country" concept to be applicable,[445] although the admission criterion was not met.

The Dutch Council for Refugees is not aware of cases in which mere transit through a third country was considered to be sufficient to declare the asylum request inadmissible on the basis of the concept of safe third country.

2.3. Admission criterion

Positive case law with regard to the admission criterion is scarce. Although national policy entails a heavy burden of proof for the IND, in practice it is quickly assumed that this burden of proof has been met. Even in subsequent asylum applications in which the asylum seeker argues that he was not admitted to the third country of origin, is often negative. For example, the Regional Court Utrecht considered **Brazil** to be a safe third country for two Turkish asylum seekers, even though their passports were expired. The Court ruled that re-admission to Brazil was probably possible after asking for a visa or a laissez-passer at the Brazilian embassy and then asking for asylum again upon their arrival in Brazil.[446] According to the *internal information message* 2021/8 the asylum seeker needs to make serious attempts to demonstrate that they would not be admitted to the third country after the inadmissibility of his request, which shows similarities with the 'no fault' policy. This shows that the IND sets very high standards for asylum seekers in this regard.

3. Safe country of origin

An asylum request can be declared manifestly unfounded in case the asylum seeker is from a safe country of origin.[447] Applicants presumed to come from safe countries of origin are channelled under the Accelerated Procedure ("Track 2") by the IND.

In case an asylum seeker is from a safe country of origin, it is presumed that they have no well-founded fear of persecution and does risk of treatment contrary to Article 3 ECHR. However, the IND has to assess in every individual case whether, based on the applicant's statements, this country is indeed safe for the asylum seeker. In other words, the IND must consider whether the authorities of the applicants' country of origin, in practice, comply with their obligations under the relevant human rights treaties.

The IND cannot maintain the presumption of safe country of origin if the asylum seeker demonstrates that his or her country of origin cannot be regarded as a safe country for them. In that case, the IND has to assess whether the asylum seeker is eligible for international protection.[448]

Should it become clear, during the Track 2 procedure, that the asylum seeker might have a well-founded fear for persecution (for example because of their sexual orientation), more thorough assessment by the IND is required. As a result, the asylum request is further assessed in Track 4. Switching from Track 2 to Track 4 may also occur when for example there is ample medical evidence, which demonstrates that the asylum seeker is vulnerable and needs special procedural guarantees.

444 Regional Court Arnhem, Decision No NL19.13391, 26 July 2019.
445 Regional Court The Hague, Decision No 17/8274, 26 June 2017.
446 Regional Court Utrecht, ECLI:NL:RBDHA:2020:7575, 15 July 2020.
447 Article 30b(1)(b) Aliens Act.
448 Paragraph C2/7.2 Aliens Circular.

List of safe countries of origin

Anticipating an EU list of safe countries of origin, the Secretary of State communicated at the end of 2015 the intention to draft a national list of safe countries of origin.[449] As provided in the recast Asylum Procedures Directive and Article 3.105ba of the Aliens Decree, this national list was annexed to the Aliens Regulation. In 2022, it has also been added to the Aliens Circular. The list contains countries in which, according to the Dutch government, nationals are under no risk of persecution, torture or inhuman or degrading treatment. Following a judgement from the Council of State from April 2021,[450] the Secretary of State had to reassess the list of safe countries of origin. The Council ruled that the IND had to reassess the list every two years and that this reassessment should be carried out through the same procedure used for the designation of a country as a safe country of origin. This reassessment replaced the 'quick reassessment' that was normally carried out by the IND and focused only on sources from the US State Department and Freedom House – only if these sources showed significant changes in the country, the IND would carry out a 'full reassessment' consulting all sources stated by Article 37(3) Procedures Directive. The period of mandatory reassessment was completed on 4 November 2021, resulting in cancelling **Algeria**[451] as a safe country of origin and adding some groups of exemption and groups of special attention to the designation of **Mongolia**,[452] **Morocco**, **Tunisia** and **Georgia** as safe countries of origin.[453] In addition, the Secretary of State decided to shorten the list of safe countries of origin in order to lower the periodical efforts to reassess their situation. Twelve countries - from which an extremely limited number of asylum seekers arrives - were deleted from the list: **Andorra**, **Australia**, **Canada**, **Iceland**, **Japan**, **Liechtenstein**, **Monaco**, **New Zealand**, **Norway**, **San Marino**, **Vatican City** and **Switzerland**.[454] All countries of origin still need to be reassessed every two years. In addition, the IND needs to constantly monitor whether there are signs that a change of situation for the worse is taking place in a country designated as a safe country of origin.

On 14 December 2021, the temporary suspension of **India** as a safe country of origin was reassessed. India has then again returned to its designation as a safe country of origin, with the exception of the union territory of Jammu and Kashmir and with the exception of religious minorities, such as Muslims and Christians, as well as Dalit women and girls and journalists. In addition, special attention has to be paid to those who have been critical of government and government policy and have encountered problems as a result, including, for example, human rights activists, academics and protesters.[455]

As of 1 January 2023, the following countries have been designated safe countries of origin:[456]

- EU Member States
- Albania
- Armenia*
- Bosnia-Herzegovina
- Brazil*
- Georgia *
- Ghana*
- India *
- Jamaica*
- Kosovo
- The republic of North Macedonia
- Morocco *
- Mongolia*
- Montenegro
- Senegal *
- Serbia *
- Trinidad and Tobago*
- Tunisia*
- United States of America
- *Ukraine**

449 KST 19637, 3 November 2015, No 2076.
450 Council of State, ECLI:NL:RVS:2021:738, 7 April 2021.
451 KST 19637, No 2743, 11 June 2021.
452 KST 19637, No 2778, 4 November 2021.
453 KST 19637, No 2726, 6 May 2021.
454 KST 19637, No 2778, 4 November 2021.
455 KST 19637, No 2807,14 December 2021.
456 In comparison to 2020, India and the United Kingdom were added to the list, while various countries were not included anymore: Algeria, Andorra, Australia, Canada, Iceland, Japan, Liechtenstein, Monaco, New Zealand, Norway, San Marino, Vatican City and Switzerland.

* Some groups are exempted from the designation of safe country of origin, cases will be dealt with in Track 4 (for example: LGBT persons in **Trinidad and Tobago**, **Tunisia**, **Senegal**, **Jamaica**, **Brazil**, **Armenia** and **Morocco**).

Due to recent developments with Russia, the designation of **Ukraine** as a safe country of origin has been suspended until February 28, 2023.[457] Until then, the safe countries of origin concept will not be applied to Ukrainian asylum seekers. The United Kingdom has been deleted from the list on 8 February 2023, as very few people from the UK apply for asylum in the Netherlands.[458]

Following the *coup* that took place in **Tunisia** in the summer of 2021, numerous Regional Courts requested the Secretary of State to reassess the designation of Tunisia as a safe country of origin.[459] On 20 December 2021, the Secretary of State announced that Tunisia would remain a safe country of origin because the short thematic official message of 14 December 2021 shows that the political events in Tunisia have not led to (major) changes in the security and human rights situation.

Application of the concept of safe country of origin

The Secretary of State can designate a country as a safe country of origin, while exempting specific groups such as LGBT individuals or women or specific areas such as the union territory of Jammu and Kashmir in India. According to the Council of State, exempting specific areas is only allowed if there is a clear dividing line between the safe and no-safe part of the country.[460] In these cases, the safe country of origin-concept and the fast rejection Track 2 cannot be regarded as such for a specific group or people from a specific area. Those belonging to this group are not faced with an increased burden of proof.

On 25 May 2022, the State Secretary decided for procedural and economic reasons to no longer use the 'groups with higher concern' in response to a ruling of the Council of State.[461] The Council of State had ruled that the consequences of designating a specific 'group with higher concern' for the assessment framework are unclear and that the Secretary of State should either give a substantial interpretation to this concept or abolish it. All groups with higher concern will henceforth be treated as exception groups.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No

❖ Is tailored information provided to unaccompanied children? ☒ Yes ☐ No

As laid down in the Aliens Circular,[462] (representatives of) the Dutch Council for Refugees inform asylum seekers about the asylum procedure during the rest and preparation period (see Registration). This can be done either during a one-on-one meeting, or in a group where asylum seekers often do not know each other but speak a common language, generally through an interpreter on the phone. During this information meeting, the asylum seeker will also be informed that the IND may request for their transfer to another Member State under the Dublin Regulation. In such meetings, asylum seekers receive

457 KST 19 637, no. 2822, available in Dutch at: https://bit.ly/3WmZUDJ; and KST 19637, no. 2982, available in Dutch at: https://bit.ly/3hUF8fs.
458 Stcrt 2023, nr. 3235, available in Dutch at: https://bit.ly/3YvewS4.
459 E.g. Regional Court Haarlem, 26 November 2021, ECLI:NL:RBDHA:2021:14730.
460 Council of State, ECLI:NL:2017:1838, 7 July 2017.
461 KST 19637, no. 2894, available in Dutch at: https://bit.ly/3Vn7Tzf. Council of State, ECLI:NL:RVS:2022:985, 5 April 2022.
462 Paragraph C1/2 Aliens Circular. See also: Dutch Council for Refugees, 'Voorlichtingsfolders Asielprocedure en de Gezinsherenigingsprocedure', available at: https://bit.ly/3I9JdFS.

information from the Dutch Council for Refugees on the Dutch asylum procedure and on their rights and obligations.

The Dutch Council for Refugees also has up-to-date brochures available for every step in the asylum procedure (for example: the rest and preparation period, the general and short procedure, the extended procedure and the Dublin procedure) in 25 different languages, which are based on the most common asylum countries, notably Somalia, Iraq and Afghanistan. The brochure describes the steps in the asylum procedure, the competent authorities and the duties of the asylum seeker. In addition to this brochure, there are employees of the Dutch Council for Refugees present in the COL, POL and at Application Centres. At the moment, there are nine different brochures available for asylum seekers. The information in the brochures has been coordinated with the IND. The IND and the Dutch Council for Refugees together hand out the brochures at different moments in the asylum procedure.

UNHCR verifies the content of the brochure and leaflets of the IND and the Dutch Council for Refugees. The common information forms included in Annexes X to XIII of the Commission Implementing Regulation (EU) No 118/2014 are in use.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

There are employees of the Dutch Council for Refugees present in the COL, POL and the Application Centres (AC).

Asylum seekers who are detained during their border procedure do have access to (other) NGOs (such as Amnesty International) and UNHCR. These organisations are able to visit asylum seekers in detention as any other regular visitor, but in practice, this rarely happens. On the one hand, asylum seekers are not always familiar with the organisations and do not always know how to reach them. On the other hand (representatives of) the organisations do not have the capacity to visit all the asylum seekers who wish to meet the representatives of the NGOs or UNHCR.[463]

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?[464] ☒ Yes ☐ No
   - ❖ If yes, specify which: Safe countries of origin

No applications from specific nationalities are considered as manifestly well-founded. However, Dutch authorities publish country-specific policy recommendations for processing asylum cases of various specific nationalities. This country-specific policy includes for example which groups are considered to

[463] There are also so-called voluntary visitor groups that visit asylum seekers in detention.
[464] Whether under the "safe country of origin" concept or otherwise.

be at risk, in which areas an armed conflict is considered to reach the art. 15c QD standard, but also for which nationalities there is a Postponement of Decision and Departure in place (see below).

In general, applications from asylum seekers from "safe countries of origin" are considered manifestly unfounded and subject to an Accelerated Procedure ("Track 2"). However, in policy rules exceptions are being made with regard to certain groups, like LGBTI asylum seekers or specific ethnicities. The safe countries of origin are listed in the section on Safe Country of Origin.

For all other nationalities there is no differentiated treatment in the procedure. There is one exception made for the written interview which is offered only to certain nationalities who have relatively high protection rates: Türkiye, Syria and Yemen. For more information see the section dedicated to the Written interview.

Public Country-specific policy

In 2022, the Dutch had published the country-specific policy for 35 nationalities and is usually based on an official country report from the ministry of Foreign Affairs.[465] It is published in the Aliens Circular C7 [466] and currently includes the following countries:

- Afghanistan
- Angola
- Armenia
- Azerbaijan
- Belarus
- Bosnia-Herzegovina
- Burundi
- Cameroon
- China
- Colombia
- Democratic Republic Congo
- Eritrea
- Guinee
- Iraq
- Iran
- Ivory Coast
- Lebanon: situation for Palestinians
- Libya
- Mongolia
- Nepal
- Nigeria
- Ukraine
- Pakistan
- Russian Federation
- Sierra Leone
- Somalia
- Sri Lanka
- Sudan
- Syria
- Türkiye
- Uganda
- Venezuela
- Yemen

The following paragraphs explain which categories and groups can be distinguished in a country-specific policy and provides some examples. For the complete and up-to-date public country-specific policy please see paragraph C7 of the Aliens Circular.

The standard country-specific policy consists of the following paragraphs:

1. Postponement of Decision
2. Article 1F Refugee Convention
3. Persecution under the Refugee Convention
4. Serious Harm under art 15 QD
5. Protection
6. Adequate reception for unaccompanied minors
7. Postponement of Departure
8. Particularities

465 The official country report takes into account all types of information, also EUAA country guidance information. However, the EUAA guidance is not always followed in the actual country specific policy.

466 Please see the following link: https://bit.ly/3HJu5Ac.

Postponement of Decision and Departure

When the situation in a certain country is uncertain, Dutch authorities can proclaim a general Postponement of Decision and Departure for a certain nationality or certain groups within a country of origin. This means that the time limit for deciding is prolonged for six months. During these six months there will usually also be no forced returns executed. The Postponement of Decision and Departure can be prolonged with an additional 6 months. In 2022, there was a Postponement of Decision and Departure in place for the Russian Federation (only concerning military conscription refusers and deserters, prolonged for 6 additional months on 29 December), Ukraine (prolonged for 6 additional months in August) and Sudan (prolonged for 6 additional months on 23 August).

Article 1F Refugee Convention

For some nationalities the Dutch authorities have included a description of categories in which 'personal and knowing participation' within the meaning of art. 1F Refugee Convention is assumed. These categories include lists of military positions within a certain military branch or during a certain regime or time. In 2022 the country-specific policy of Afghanistan and Iraq include an 1F-paragraph.[467]

Refugee protection: Group Persecution and Groups of Risk

The country-specific policy first identifies groups that have well-founded fear of being persecuted under the Refugee Convention. A group can be identified as being at risk of group persecution. As a result, being a member of this groups is enough to qualify for refugee protection. In 2022 groups that have been identified as being at risk of group persecution are:

- Afghanistan: translators that have been working for international military or policy missions.[468]
- China: Uyghurs
- China: Active followers of religious and spiritual movements identified as *xie jiao* by the Chinese authorities [469]
- Russian Federation: LGBT individuals from Chechnya[470]

A group can also be qualified a Group of Risk. This means the Dutch authorities accept there is an elevated risk of persecution for members of this group in the country of origin. In theory, applicants being a member of a Group of Risk should have a lower burden of proof and it should be easier to qualify for refugee protection. In practice, the effect of being qualified as a Group of Risk on the protection rate varies greatly. A Group of Risk can consist of an ethnicity (for example Hazara in Afghanistan), a social group (for example LGBTI in Egypt) or religious group (for example Christians in Libya and Pakistan). Some Groups of Risk have a very broad definition (for example 'journalists' in Libya and Burundi), others have a very narrow and specific definition (for example in Somalia a Group of Risk is defined as: "Leaders of clans who support or support the government or elections, or other prominent persons with a large public reach and who openly spoke out against Al-Shabaab").

Subsidiary Protection: Systemic Exposure and Vulnerable groups

Next there is a section considering serious harm under article 15 QD (subsidiary protection). Groups can be identified that are at risk of systemic exposure to serious harm. As a result, being a member of this groups is enough to qualify for subsidiary protection. In 2022, no groups were considered to be at risk of systemic exposure. Only in Somalia, the human rights situation in southern and central Somalia where Al-Shabaab is in power or controls the area is considered so severe that any returnee is considered to be at risk of serious harm. However, under certain conditions, it can be argued that an internal protection alternative in an area where Al-Shabaab is not in power exists.

[467] See paragraph C7/2.2 (Afghanistan) and C7/16.2 (Iraq) Aliens Circular
[468] See C7/2.3.1 Aliens Circular
[469] See C7/9.3.1 Aliens Circular
[470] See C7/28.3.1 Aliens Circular

A group can also be qualified a Vulnerable Group. This means Dutch authorities accept there is an elevated risk of serious harm for members of this group in the country of origin. In theory, applicants being a member of a Vulnerable Group should have a lower burden of proof and it should be easier to qualify for subsidiary protection. In practice, the effect of being qualified as a Vulnerable group on the protection rate varies greatly. A Vulnerable Group can consist of an ethnicity (for example Yezidi in Iraq), a religious group (for example converted Christians in Afghanistan) or other groups (for example ethnic Tigrayan women in Ethiopia). Some Groups of Risk are also considered a Vulnerable group, this is the case for the Country-specific Policy for Afghanistan, which includes the group: "non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus."

Exceptional circumstances under article 15c QD

The Country-specific policy also includes the countries and areas for which the Dutch Authorities consider an armed conflict is considered to reach the art. 15c QD standard.[471] In 2022, this was the case for the whole of Yemen. As a result, every applicant coming from the country will be granted subsidiary protection status (subject to possible application of the safe third country concept and other contra-indications such as exclusion clauses). In Congo DRC there is also considered to be exceptional situation that reaches the art.15 QD standard in the provinces North-Kivu, South-Kivu and Ituri. However, an internal protection alternative is considered to be present in other areas of the country.[472] The same accounts for Cameroon and the provinces North-West and South-West (NWSW).[473]

Protection

Some country-specific policies contain a protection paragraph. This includes the (im)possibility to receive protection from the authorities in that country or the (im)possibilities of an internal protection alternative. Sometimes groups are listed for which the Dutch authorities assume no protection from the authorities is possible (for example women who fear FGM in Sudan),[474] or no protection alternative can be opposed (for example Ahmadi's in Pakistan).[475]

Adequate reception for unaccompanied minors

In the country-specific policy is also included whether there is adequate reception for unaccompanied minors. Either the country-specific policy includes that: "general reception facilities are not available and/or adequate, and the authorities do not take care of the reception" (this is the case for example for Uganda and Syria). Or it is included explicitly that there is adequate reception for unaccompanied minors (for example Türkiye).

Syrian nationals

The country-specific policy for Syria contains no groups that fear Group Persecution or Systemic Exposure to serious harm. Also, no exceptional circumstances under art. 15C QD are accepted for any part of the country. However, almost all applicants from Syria are eligible for a subsidiary protection status. The Dutch authorities assume that a foreign national from Syria runs a real risk of serious harm upon or after returning from abroad. Two exceptions are formulated; applicants that are active supporters of the regime and applicants that have already returned to Syria without experiencing problems.[476]

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471 In court cases, there is often discussion about whether the level of conflict in a certain country or area reaches the standard for art. 15C, this was for example the case for Libya. When the highest court in the Netherlands decides there is a 15c policy in a country, it is usually included in the country policy.
472 See paragraph C7/11.4.1 and C7/11.5.2 Aliens Circular
473 See paragraph C7/20 Aliens Circular
474 See paragraph C7/32.5.1 Aliens Circular
475 See paragraph C7/27.5.2 Aliens Circular
476 See paragraph C7/33.4.4 Aliens Circular

Afghan nationals

Short asylum procedure evacuated Afghan nationals

From 26 Augustus 2021 to 6 December 2022, a total of 2,591 people were evacuated from Afghanistan to the Netherlands In many cases, the evacuees used to work for the Dutch government in Afghanistan. After the Taliban takeover of the country, these people were considered at risk to be persecuted in their home country. The applications of these asylum seekers were processed in a short asylum procedure in specific emergency facilities. These emergency facilities were created to accommodate the evacuated persons.[477]
The applications of evacuated Afghan asylum seekers have been processed in a shorter asylum procedure.[478] As far as known, almost all of them have obtained an asylum permit.

There is an elaborate country policy for Afghanistan including extensive lists with groups of risk and vulnerable groups.
Groups of risk include:

a) family members associated by the Taliban with the interpreters.
b) persons who are or have been active in journalism and media or in the field of human rights and their family members associated with them by the Taliban.
c) representatives and employees of the judiciary, police, army and ministries under the previous regime and their relatives associated with them by the Taliban.
d) women who work or have worked in areas within the public arena other than those referred to under b and c (particularly non-governmental organisations, in education and health care).
e) civilians associated with – or considered supportive of – the former Afghan authorities, Afghan civil society and the international community in Afghanistan, including international forces, and as a result are at increased risk of targeted violence, in particular by the Taliban and ISKP. This also includes employees of Dutch or other international development projects, fixers of journalists and people who have worked for the Dutch government or other Western countries (other than interpreters) in Afghanistan. This also applies to relatives associated with them by the Taliban.
f) persons who have (in the past) publicly criticized the Taliban.
g) Hazaras.
h) persons who come from a living area where they belong to a (marginalized) ethnic minority, who experience serious problems there.
i) persons who come from a living area where they belong to a (marginalized) religious minority, who experience serious problems there.
j) non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus.
k) LGBT people.
l) victims of Bacha Bazi abuse.

Vulnerable groups:

a) aliens who come from an area where they belong to a (marginalized) ethnic minority, who experience serious problems there.
b) aliens who come from an area where they belong to a (marginalized) religious minority, who experience serious problems there.
c) non-(practising) Muslims, including converts (converts to Christianity), (alleged) apostates, Christians, Bahai and Sikhs/Hindus.

With regard to female applicants there are two catagories which are considered as in need of protection: single women and westernized women. Single women obtain a subsidiary protection status, except

477 IND, 'Afghanistan: asylum for Afghans transferred to the Netherlands', last updated 23 May 2022, available at: https://bit.ly/42X1zmG.
478 IND, 'Afghanistan: asylum for Afghans transferred to the Netherlands', last updated 23 May 2022, available at: https://bit.ly/42X1zmG.

when the applicant has been able to maintain herself independently in Afghanistan in the past. For westernized women the following is included in the country specific policy: as a rule, a Western lifestyle developed in the Netherlands cannot, in itself, lead to refugee status or subsidiary protection. Adaptation to Afghanistan's customs may be required. There are two exceptions to this: if the Western behavior is an expression of a religious or political conviction, or if a woman has personal characteristics that are extremely difficult or virtually impossible to change and because of these characteristics she fears persecution or inhumane treatment in Afghanistan. In IND Information Message 2022/71 of 21 July 2022 it is stated that due to the very worrying situation of women in Afghanistan (alleged) westernized women will sooner receive the benefit of the doubt.

Other decision and departure moratoria

For Ukraine a decision and departure moratorium was installed on 28 February 2022. This was extended with another six months in August 2022. See for more information the section on Ukraine.

For Russian male deserters and conscripts between the ages of 18 and 27, a decision and departure moratorium was installed on 28 June 2022. This was extended with another six months on 13 December 2022.[479]

For Sudanese political activists, a decision and departure moratorium was installed on 24 February 2022. This was extended with another six months on 23 August 2022.[480]

479 Paragraph C7/28.1 Aliens Circular.
480 Paragraph C7/32.1 Aliens Circular.

Reception Conditions

Short overview of the reception system

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers – COA) is the authority responsible for the accommodation of asylum seekers and thus manages the reception centres. Normally asylum seekers who enter the Netherlands by land have to apply at the Central Reception Centre (Centraal Opvanglocatie, COL) in **Ter Apel**, where they should stay for a maximum of three days. The COL is not designed for a long stay. If applicants arrive during the weekend, they will have access to night reception until registration on the first working day.

After this stay at the COL, the asylum seeker is transferred to a Process Reception Centre (Proces Opvanglocatie, POL). An asylum seeker remains in the POL if the IND decides to examine the asylum application in the regular asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a Centre for Asylum Seekers (*Asielzoekerscentrum*, AZC) before receiving housing in the Netherlands. If the IND decides to handle the application in the extended asylum procedure, the asylum seeker will also be transferred from the POL to an AZC. Asylum seekers and beneficiaries of protection who have not yet been housed are hosted in collective centres. Currently, no option to access individual housing is provided by the authorities.

The Netherlands experienced various reception crises, one of which in 2015, while the latest started in September 2021. Whereas the reception crisis experienced in 2015 was due to an unexpected and very high number of new arrivals of asylum seekers, the current one could have been prevented, had the government anticipated the possibility of having to manage an increase in the number of new arrivals. Instead, many reception centres were closed as soon as the number of arriving asylum seekers dropped, which caused the current shortage of asylum reception places.[481] People have been sleeping on the floor outside the **Ter Apel** centre while waiting for their turn to register, followed by a transfer to one of the many (Crisis) Emergency Reception Centres that opened (and closed) around the country from September 2021 onwards. The reception crisis continued throughout 2022.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers accessible in the following stages of the asylum procedure?

1.	Regular procedure	☒	Yes	☐	Reduced material conditions	☐	No
2.	Dublin procedure	☒	Yes	☐	Reduced material conditions	☐	No
3.	Border procedure	☐	Yes	☒	Reduced material conditions	☐	No
4.	Accelerated procedure	☒	Yes	☐	Reduced material conditions	☐	No
5.	First appeal[482]	☒	Yes	☐	Reduced material conditions	☐	No
6.	Onward appeal[483]	☐	Yes	☐	Reduced material conditions	☒	No
7.	Subsequent application	☒	Yes	☐	Reduced material conditions	☐	No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers are entitled to material reception conditions after they have shown their wish to apply for asylum. This can be done by registering themselves in the Central Reception Centre COL in **Ter Apel**. The actual registration of the asylum application will happen after spending at least six days (three

481 This has also been confirmed by the ACVZ and ROB (*Raad voor het Openbaar Bestuur*). In their report they state that the reception crisis is a self-made crisis by the Dutch government: 'Asielopvang uit de crisis', 14 June 2022, available in Dutch at: https://bit.ly/3ik1OGw.

482 Except where there is no suspensive effect.

483 Unless provisional measures are granted by the Council of State: Article 3(3)(a) RVA.

weeks for minors) at a reception location. During this time, the asylum seeker is entitled to reception conditions set out in Article 9(1) RVA (Regulation on benefits for asylum seekers and other categories of foreigners 2005).[484] The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Reception Act.[485]

The material reception conditions are not tied to the issuance of any document by the authorities, but the IND will issue a temporary identification card ("W document") to asylum seekers while their asylum application is still in process. Asylum seekers can use this "W document" to prove their identity, nationality and lawful stay in the Netherlands.[486] If such a document is not issued, the asylum seeker can apply for this. The law makes it clear that the asylum seeker is entitled to obtain it.[487]

In September-October 2021, due to a lack of capacity at the AVIM, IND and an increase in new arrivals, the application centre in **Ter Apel** surpassed its maximum capacity. The location was so full that people could not be registered in time and had to stay in tents outside the site. For days people, including children, were forced to sleep on chairs or on the ground in large tents.[488]

A similar situation was registered several times in 2022. From May 2022, newly arrived asylum seekers in need of registering their asylum application at **Ter Apel** have been sleeping on a chair, on the floor or even outside in the grass, for one or more days.[489] As of July, the number of asylum seekers sleeping outdoors had risen to 300.[490] On 24 August 2022, 700 people slept outside in the grass at Ter Apel.[491] Although attempts were made to house them in crisis emergency locations, there were not always enough available spots. Moreover, many asylum seekers felt compelled to stay in Ter Apel because they feared that they would not be registered otherwise (which proved to be a well-founded fear). The Secretary of State stated at 25 May 2022, 'every day it is uncertain to what extent reception can be assured'.[492] From 25th August until 11th of September Médicins sans Frontières (*Artsen zonder Grenzen*) provided medical care in Ter Apel.[493] It was the very first time that MSF operated in the Netherlands. MSF provided 449 medical and 203 psychological consults.

At the beginning of September, the Ministry of Defence opened a location at **Marnewaard** to temporarily house unregistered asylum seekers during their registration period at Ter Apel. From the opening of this 'waiting room' on, no more asylum seekers slept outside in Ter Apel – except for one night.

The support from EUAA has not really been visible. No information is provided on this by the Dutch government or COA. The only available information is a LinkedIn post from July 2022 by EUAA about the delivery of reception units to the Netherlands.[494] According to the Operating Plan signed by EUAA and the Dutch government in May 2022, EUAA would provide immediate support to the reception system through the increase of the temporary reception capacity and, a framework for medium-term collaboration, in view of developing blueprints and technical specifications for the establishment of modular temporary reception centres, exchanging expertise regarding reception-related training; and,

484 Article 9(1) RVA.
485 Article 3(1) RVA.
486 IND, 'Vreemdelingen Identiteitsbewijs (Type W en W2)', available in Dutch at: http://bit.ly/2y8JraF.
487 Article 9 Aliens Act.
488 Dutch Council for Refugees, *Major concerns about the quality of the reception of asylum seekers*, 12 October 2021, see: https://bit.ly/336Aun9.
489 NOS, 'Noodkreet na noodkreet, maar in Ter Apel verandert er (bijna) niets', 12 May 2022, available in Dutch at: https://bit.ly/3GRhdap.
490 NOS, '300 asielzoekers in Ter Apel sliepen vannacht buiten, hoogste aantal tot nu toe', 17 July 2022, available in Dutch at: https://bit.ly/3vMZieW.
491 NOS, 'Asielcrisis Ter Apel: vannacht hebben 700 mensen buiten geslapen', 24 August 2022, available in Dutch at: https://bit.ly/3IFeeDp.
492 Letter from State Secretary and Miniser of Housing to parliament, 25 May 2022, available in Dutch at: https://bit.ly/3X3Lh8z.
493 MSF, 'Crisis at Ter Apel Registration Centre', 11 September 2022, available in Dutch at: https://bit.ly/3QsWpcx.
494 EUAA on LinkedIn 'The #EUAA has started delivering reception units to the #Netherlands - Centraal Orgaan opvang asielzoekers (COA) to enhance their #reception capacity and quality for #refugees. Today, our teams visited the installation of these units.', available at: https://bit.ly/3CxR3qD.

exploring the feasibility of setting up a logistical hub for first operational response.[495] According to information provided by the Agency, in 2022, it provided Dutch national reception authorities with 160 containers, including 128 for accommodation use and 32 for other reception use.[496]

1.1. Right to reception in different procedural stages

The COA only provides reception to the categories of people listed in the RVA. The system is based on the principle that all asylum seekers are entitled to material reception conditions. However, according to Dutch legislation only applicants who lack resources are entitled to material reception conditions.[497] During the whole asylum procedure, the COA is responsible for the reception of asylum seekers.

As will be further addressed in sections below, during a reception crisis, asylum seekers and BIPs in all stages can be housed in (crisis)emergency centres.

Rest and preparation period: During the rest and preparation period, an individual is already considered an asylum seeker under the RVA because this person has made an application for asylum. So already during the rest and preparation period, an individual is entitled to reception. However, daily allowances are reduced during the rest and preparation period.[498]

Starting from 2019, this became an issue due to the long waiting times (see The rest and preparation period). The RVA distinguishes between asylum seekers awaiting the start of their asylum procedure and asylum seekers awaiting the decision. On 29 July 2020, the Council of State ruled that this distinction is permitted by the Reception Conditions Directive.[499] The applicants pointed to Article 2(f) RCD for arguing that the distinction made by the RVA is not in accordance with EU-law. Article 2(f) RCD states that 'material reception conditions' include reception provided in kind, or as financial allowances or in vouchers, or a combination of the three, *and* a daily expenses allowance. However, the Council of State concluded that this article in the RCD is merely an article giving definitions and cannot be used as a legal basis for the right to receive a financial allowance for daily expenses. Therefore, the Council of State found that the distinction made in the RVA, resulting in not providing daily allowances to asylum seekers in the RVT, is not in violation of EU-law.

During the procedure started by the Dutch Council for Refugees (*VluchtelingenWerk Nederland*, *VWN*) in August 2022, COA stated that asylum seekers would receive allowances during the Rest and Preparation period starting from 1 August 2022 – except for asylum seekers staying at crisis emergency shelter centres (See: 2. Conditions in reception facilities). The RVA has not been altered yet and no public report on this is available.

Asylum procedure/awaiting the decision: During the actual procedure, asylum seekers stay in a process reception location (POL) and while they wait for the decision of the IND, they stay in an AZC. Asylum seekers whose asylum application is processed in 'Track 2', however, must – as of September 2020 – stay in a 'austere' reception centre. In this reception centre, they receive benefits in kind, they have to report daily, and extra security is present.[500] Even if the asylum seeker appeals after the rejection of his asylum application, he will remain in the austere reception centre. Children and vulnerable asylum seekers are excluded from the austerity of reception but must adhere to the austerity regime (reporting daily) in the AZC.

Rejection / appeal: Pursuant to article 5 of the RVA, the right to reception of the rejected asylum seeker continues to exist as long as no deportation decision is taken under the Aliens Act. Article 82 of the Aliens Act provides that an appeal against the rejection of an asylum application has an automatic

495 EUAA, Operating Plan to the Netherlands, 6 may 2022, available at: https://bit.ly/3ImuO9d.
496 Information provided by the EUAA, 28 February 2023.
497 Article 2(1) RVA.
498 Article 9 sub 5 RVA.
499 Council of State, ECLI:NL:RVS:2020:1803, 29 July 2020.
500 Letter of the Secretary of State, KST 19637, nr 2658, 14 September 2020.

suspensive effect even before the appeal is lodged. The asylum seeker therefore retains his right to reception if he lodges an appeal within 4 weeks and then until a decision has been taken on this appeal. From the moment the appeal is declared unfounded, the departure period of (usually) 4 weeks starts.

The negative asylum decision does not automatically have suspensive effect in all cases. There is no automatic suspensive effect in case of:

- a rejection based on the Dublin procedure (Article 30 of the Aliens Act),
- asylum applications declared inadmissible (Article 30a of the Aliens Act, with the exception of paragraph 1 under c - safe third country),
- manifestly unfounded asylum applications (Article 30b of the Aliens Act, with the exception of sub 1 under h - unlawful entry / failure to notify immediately),
- in the event of "not considering the case on its merits" (article 30c of the Aliens Act) and the rejection of subsequent applications on the basis of article 4:6 GALA.

Nevertheless, even in these cases the asylum seeker does not immediately lose their right to reception, retaining it instead for the duration of the remedy period (four weeks after rejection). This can be deduced from the jurisprudence of the Council of State following the *Gnandi* judgment (C-181/16).[501] The *Gnandi* judgment shows that all legal consequences of a return decision must be suspended by operation of law during the legal remedies period. The remedy period is the period in which it is still possible to lodge an appeal, if it has not yet been presented. During this period, according to the Council of State, there is a national right of residence of a temporary nature.[502] This right of residence concerns lawful residence on the basis of Article 8 opening words under h of the Aliens Act: "pending the decision on appeal". Based on the interpretation in accordance with the directive, 'appeal' should also be read as 'request (for a provisional measure)'. The rejection of an asylum application as manifestly unfounded does not therefore lead to the loss of lawful residence. In addition, residence after requesting a provisional measure remains lawful until a decision has been made on that request, on the basis of article 8 opening words under h of the Aliens Act jo. art. 7.3 Aliens Decree (cf. Article 46 (6) and (8) of the Procedural Directive).

However, in the case of beneficiaries of international protection from other EU-member states, the COA often does not wait for the applicant to request a provisional measure before ending their stay at the reception centre. Therefore, the Council of State ruled that asylum seekers, whose application is deemed inadmissible because they received protection in another EU-member state, had the right to reception during the period following the inadmissibility decision in which they were able to appeal.[503]

Onward appeal: If the person lodges an onward appeal to the Council of State, there generally is no entitlement to reception facilities. However, the law subscribes that, in case that a provisional measure is granted by the Council of State, proclaiming that the asylum seeker cannot be expelled until the decision on the appeal is made, there is a right to reception.[504]

Beneficiaries of international protection: When the asylum application has a positive outcome, the asylum seeker will retain the right to shelter until there is housing available.

Subsequent applicants: When an asylum seeker wishes to lodge a Subsequent Application he or she has to complete a separate form. From this point onwards, the asylum seeker enjoys the right to reception.[505] However, if the form is not completely filled in (e.g. when no new circumstances are put forward) the application will be disregarded and the right to reception will end.[506] When the form is complete, and the application is being handled during the short or extended asylum procedure, the asylum seeker enjoys the right to shelter until the IND has made a decision on the application.

501 Council of State, ECLI:NL:RVS:2019:1710, 5 June 2019.
502 Council of State, ECLI:NL:RVS:2019:3442, 15 October 2019.
503 Council of State, ECLI:NL:RVS:2020:8, 6 January 2020.
504 Article 3(3)(a) RVA.
505 Council of State, Decision No 201706173/1, 28 June 2018.
506 Article 30c (1) Aliens Act.

If the subsequent application is rejected, the applicant must ask a preliminary ruling in order to keep his right to reception. In two judgments, the Council of State ruled that the main rule for subsequent applications based on EU Directives is that the processing of a request for a preliminary ruling after rejection may be awaited in the reception centre.[507] There are two exceptions: there is no *novum* and the subsequent application was submitted to frustrate the deportation (This is assumed if the deportation date is known.) If the main rule applies to the case, the asylum seeker retains the right to reception after rejection of the subsequent application until a decision in appeal has been made.

1.2. Assessment of resources

According to Dutch legislation, only asylum seekers who lack resources are entitled to material reception conditions.[508] There is no specific assessment to determine the resources of the asylum seeker. If an asylum seeker has financial means of a value higher than the maximum resources allowed in order to benefit from the social allowance system (around €7.605 for a single person and €15.210 for a married couple), the COA can reduce the provision of reception conditions accordingly, with a maximum of the economic value equivalent to the reception conditions provided.[509] The assessment of resources is carried out two days after the asylum seeker has been moved to a Centre for Asylum Seekers (AZC).

In 2020, another problem arose: asylum seekers who received significant monetary indemnities, as a result of the legal penalties imposed on the IND that had not deliberated on time on their applications, were considered to have enough resources to pay for their reception. The COA considered the legal penalty payments as assets. In 2020, 257 people received monetary indemnities were requested to pay for their stay at the asylum reception centre. In 2021, 661 people received this request. Up until August 2022, 61 people received this request (this is because courts were not allowed to impose legal penalties as of 11 July 2021, see B2.2 under Legal Penalties).[510]

As the COA often did not immediately request the payment, asylum seekers had often already spent the sums received, for example on air tickets for their family members. A limited number of regional courts ruled on this issue, establishing that the COA was allowed to reclaim the costs for reception as the legal penalty payments are not considered as compensation for the asylum seeker but merely as a financial incentive for the IND to decide quicker.[511] However, one court ruled that the COA should have researched the full financial situation of the asylum seeker (both debts and assets) instead of just reclaiming the money.[512] Another court ruled that COA calculates the amount of money that needs to be paid back incorrectly.[513] COA calculates for how long someone needs to pay until their financial means are below the threshold of the social allowances again. This could mean that the asylum seeker already is requested to pay for reception he has not enjoyed yet and that he might even not access at all – in case they receive a permit and housing before.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2022 (in original currency and in €):
   - ❖ Single adult accommodated by COA: €239.68

The allowance of €239.68/month covers food, clothing and personal expenses, but it does not include public transportation nor medical costs.

507 Council of State, ECLI:NL:RVS:2019:4358, 19 December 2019 and ECLI:NL:RVS: 2020:244, 29 January 2020.
508 Article 2(1) RVA.
509 Article 20(2) RVA.
510 These figures were given by COA in the non-public file of a court case.
511 E.g. Regional Court Middelburg, ECLI:NL:RBDHA:2022:1114, 21 October 2022 and Regional Court of Groningen, ECLI:NL:RBNNE:2021:4635, 28 October 2021.
512 Regional Court Arnhem, ECLI:NL:RBDHA:14536, 27 December 2021.
513 Regional Court Haarlem, Decision No AWB 21/4779, 28 April 2022.

The right to reception conditions includes an entitlement to:[514]

- Accommodation
- A weekly financial allowance for the purpose of food, clothing and personal expenses;
- Public transport tickets to visit a lawyer;
- Recreational and educational activities (for example a preparation for the integration-exam);
- A provision for medical costs (healthcare insurance);
- An insurance covering the asylum seekers' legal civil liability;
- Payment of exceptional costs.

The weekly allowance depends on the situation of the applicant. Asylum seekers have the possibility to have the main meal at the reception location, but this will lead to a reduction of their allowance. In the situation where the asylum seekers choose to take care of their own food, the amounts are as follows:

Weekly allowance to asylum seekers accommodated by COA		
Category of applicant	With dinner provided	Without dinner provided
1-2 person household		
Adult or unaccompanied minor	€46.97	€31.92
Child	€38.92	€27.02
3 person household		
Adult	€37.59	€25.55
Child	€31.15	€21.63
4+ person household		
Adult	€32.90	€22.33
Child	€27.23	€18.90

Source: Article 14(2)-(3) RVA.

The cost for clothes and other expenses is covered by a fixed amount of €12.95 per week per person.[515] Unlike the other allowances, this allowance is fixed and not adjusted annually which has been criticized by academia.[516]

As of 1 January 2023, the social welfare allowance for Dutch citizens is set at €1.195,66 for a single person who is at least 21 years old and not older than 67 years. An asylum seeker receives approximately less than 30% of the social welfare allowance provided to Dutch citizens. However, it has to be acknowledged that it is difficult to compare these amounts as asylum seekers are offered accommodation and other benefits.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? ☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions? ☒ Yes ☐ No

Article 10 RVA sets out the grounds for restricting or, in exceptional cases, withdrawing reception conditions. These include cases where the asylum seeker:

- Has left the reception centre without informing the COA or without permission, if permission is required;
- Has not reported to the reception centre for two weeks;[517]

514 Article 9(1) RVA.
515 Article 14(4) RVA.
516 L. Slingenberg, *Geen cent te makken*, A&MR 2020, nr. 6-7, 292-295.
517 Article 19(1)(e) RVA. This provision sets out the obligation to report to the centre once a week.

- Has failed to respond to COA requests for information for two weeks, including personal details required for registration in the centre;
- Has failed to appear for the personal interview with the IND for two consecutive times;
- Has lodged a subsequent application after a final decision;
- Has concealed financial resources and therefore improperly benefitted from reception;
- Does not pay back a fee paid to them for childbirth costs;
- Seriously violates the house rules of the centre;[518]
- Has committed a serious form of violence to asylum seekers staying in the centre, persons employed in the centre or others.

Measures that can be imposed in the aforementioned circumstances are sanctions and preventative measures (*Reglement Onthoudingen Verstrekkingen* (ROV)). The ROV measures entail an actual reduction or withdrawal of material reception conditions e.g. suspension of the financial allowance or accommodation. Before imposing a measure, the asylum seeker must be heard. Following the *Haqbin* judgment,[519] the COA is not allowed to completely withdraw material reception as a sanction. The Secretary of State therefore announced that instead of temporarily withdrawing material receptions, 'time out rooms' will be introduced in AZCs as of 1 July 2020.[520] COA is still using the ROV measure of completely withdrawing material reception and financial allowances, thereby announcing that if the asylum seeker does not have a place to go he can stay in a 'time-out room'.

Individuals who received a positive asylum decision might, however, lose the entitlement to reception according to COA. Article 12(2) RVA states that BIPs must report to the COA every two weeks (and also once at AVIM). If they do not report twice in a row, they will be removed from the reception centre. There are only a few court decisions on this kind of cases. The outcomes are very different. One positive case refers to Haqbin and the applicability of the Reception Directive on BIPs through article 3 RVA.[521] In other cases courts ruled that COA was allowed to stop the reception.[522]
The position of BIPs who have been removed from reception centres is very precarious. They can no longer be hosted in another asylum seekers' centre, the freedom-restricting location or a national aliens facility - the latter because they already have a permit - and they often have difficulties finding housing at the municipality by themselves without the COA intervention.

Asylum seekers aged 16 or more, who seriously violate the house rules of reception centres or otherwise demonstrate aggressive behaviour, may also be transferred to Enforcement and Surveillance Location (*Handhaving en toezichtlocatie*, HTL) in **Hoogeveen** at a former prison building.[523] Placement in the HTL is accompanied by a freedom-restricting measure on the basis of Article 56 of the Aliens Act. See Types of Accommodation.

Reduction of reception facilities is a decision of the COA and therefore subject to the Aliens Act regarding applicable legal remedies.[524] This means that the same court that decides on alien's law matters is competent. A lawyer can get an allowance from the Legal Aid Board to defend the asylum seeker. If the decision becomes irrevocable, the measures cannot be re-instated.

518 Article 19(1) RVA.
519 CJEU, C-233/18, 12 November 2019.
520 Letter of the Secretary of State, Parliamentary Documents 19637, nr. 2642, 1 July 2020.
521 Regional Court Den Bosch, ECLI:NL:RBDHA:2021:10832, 27 September 2021.
522 Regional Court Utrecht, Decision No AWB 22/9208, 29 December 2022.
523 Article 1(n) RVA.
524 Article 5 Reception Act.

4. Freedom of movement

Indicators: Freedom of Movement		
1. Is there a mechanism for the dispersal of applicants across the territory of the country?	☒ Yes	☐ No
2. Does the law provide for restrictions on freedom of movement?	☒ Yes	☐ No

The stage and type of asylum procedure applicable to the asylum seeker is relevant relating to the type of accommodation they are entitled to.

Asylum seekers can be moved to another AZC due to the closure of the centre they are currently staying at or because this serves the execution of the asylum procedure, e.g. in order to avoid that the AZC is so full this would create tension amongst the residents. It may also happen that the applicant has to relocate from one reception centre to another if their case changes "tracks" during the procedure, for example if they are moved from the accelerated procedure ("Track 2") to the regular procedure ("Track 4").

There is no appeal available against 'procedural' transfers (movements) from COL/POL to AZC. Indirectly there is an appeal available against a transfer to another AZC or to a (crisis) emergency centre but in practice, this does not happen often.[525]

Defence for Children, Kerk in Actie, UNICEF, the Dutch Council for Refugees and War Child wrote a report on transfer of families with children and unaccompanied minors. The report makes several recommendations to improve the situation of children in reception centres, for example not to move children from one place to another. The Secretary of State has acknowledged the need to minimise the movements these children make during the asylum procedure.[526] However, similar recommendations are made in a more in a recent general report on the living conditions of children in reception centres.[527]

AZC are so-called open centres in which the freedom of movement of asylum seekers is not restricted. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*).[528]

Rejected asylum seekers, whose claims are rejected without any legal remedies, are not entitled to reception and may be placed in locations where their freedom of movement is restricted (*Vrijheidsbeperkende locatie*, VBL). That applies also to a facility for families, the Family Location (Gezinslocatie, GL). An applicant is transferred to a VBL if they are willing to cooperate in establishing departure and there is a possibility to depart. In case of a family with minor children, cooperation is not required for the transfer to a GL. In these centres, people are not detained but their freedom is restricted to a certain municipality. Although this is not actually controlled by the authorities, asylum seekers have to report six days a week (daily except on Sundays). It is therefore difficult to leave the municipality in practice.[529] The penalty for not reporting can be a fine or even criminal detention or an indication that the asylum seeker is not willing to cooperate on their return. It can further lead to pre-removal detention.[530]

525 Regional Court Roermond, Decision No 09/29454, 2 March 2010. When analysing this ruling, it should be noted that there is formally no distinction anymore between a return and an integration AZC.

526 Defence for Children, Kerk in Actie, UNICEF the Netherlands, the Dutch Council for Refugees and War Child, *Zo kan het ook! Aanbevelingen voor een betere situatie van kinderen in asielzoekerscentra*, 18 November 2016, available in Dutch at www.kind-in-azc.nl.

527 Defence for Children, Kerk in Actie, UNICEF the Netherlands, the Dutch Council for Refugees, Stichting de Vrolijkheid and War Child, *Werkgroep Kind in AZC, Leefomstandigheden van kinderen in asielzoekerscentra en gezinslocaties*, 6 June 2016, available in Dutch at: www.kind-in-azc.nl.

528 Articles 19(1)(e) and 10(1)(b) RVA.

529 These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restriction measures based on Article 56 in conjunction with Article 54 Aliens Act.

530 Article 108 Aliens Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres:	170
2. Total number of places in the reception centres:	45,840
3. Total number of places in private accommodation:	Not available
4. Type of accommodation most frequently used in a regular procedure: ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other	
5. Type of accommodation most frequently used in an accelerated procedure: ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other	

As of 2 January 2023, 51,701 people in the Netherlands were entitled to access reception conditions.[531] Only slightly more than half are staying at one of the 77 'regular' reception centres by COA (30,053). The rest is hosted in one of the 90 emergency locations managed by COA (14,707) or other locations such as (crisis)management centres managed by a municipality (6,946). In 2022, as in 2021, one third of the people entitled to receive reception by COA were beneficiaries of international protection (16,160). These figures do not include displaced people from Ukraine. It is important to note that not only newly arrived asylum seekers are staying at (crisis) emergency locations. Asylum seekers who are already staying in the Netherlands awaiting the (start of) their procedure and BIPs can be also placed at (crisis) emergency locations.

Twice a year the COA predicts the capacity it will need in the upcoming period. On 9 November 2022, COA expecting, for the beginning of 2023, to need to house 61,189 people registered to reception. In its report, the COA foresaw there would be a shortage of13,952 places at the beginning of the year, a number that is expected to grow throughout the year,[532] as contracts with municipalities for reception centres are ending and many of them do not want to renew the contracts. At the end of 2023, a shortage of 35,067 places is expected by COA.

On 26 August 2022, the Secretary of State announced several measures to address the reception crisis,[533] often referred to as the 'asylum deal'. The most important measures are the prolonging of the time period of decision-making (WBV 2022/22), the suspension of family reunification, temporary cancellation of resettlement of refugees under the EU-Türkiye deal and the launch of the 'Spreading law' (S*preidingswet*). In response to the reception crisis, on 8 November 2022 a legislative proposal aimed at distributing the number of reception places in the country was put forward.[534] The Spreading law – as per the currently pending approval text – will ensure that the municipalities are also be responsible for providing sufficient reception places for asylum seekers (article 6 paragraph 1).

Once every two years before 1 February, the minister will announce in the capacity estimate how many reception places for asylum seekers will be needed in the following two years (Article 2 paragraph 1). These places are divided among the twelve provinces that will discuss with the municipalities how these places are divided. Before 1 September, the minister will decide on the basis of the reports from the provincial discussions what the minimum number of required reception places is for the next two years, which will be divided over the municipality designated in the decision (Article 5 paragraph 1). The financial system put in place is very difficult. Municipalities receive different amounts of compensations based on whether they offer accommodations before or after the minister announces the estimated capacity and on the number of years they provide the accommodation for.

531 Numbers available at https://www.coa.nl, accessed at 9 January 2022.
532 COA Website: https://www.coa.nl/nl/lijst/capaciteit-en-bezetting, figures are updated monthly.
533 KST 19637, no. 2992, Letter of the Ministry of Justice and Securty on decision-making concerning the reception crisis, 26 August 2022, available in Dutch at: https://bit.ly/3ikz3JP.
534 Concept Bill and explanatory memorandum, 8 November 2022, available in Dutch at: https://bit.ly/3CzSjtz.

The Dutch Council for Refugees' response to the consultation identified the following issues in the bill:[535] (1) The distribution and reward system makes the law extremely complex and administratively cumbersome; (2) little to no attention is paid to the importance of buffer capacity and prevent downscaling reception capacity; (3) monitoring of the division of responsibility is insufficiently guaranteed; (4) a quality framework should be anchored in the law; (5) more attention should be paid to the realization of small-scale reception facilities; (6) the relationship with other laws and context is not sufficiently included, for example the relation with the reception regulations for displaced people from Ukraine (7) attention should be paid to the long-term commitment with a parallel approach for the short term. Finally, the Council for Refugees argued that for the nearly 20,000 people who are currently staying in conditions that do not comply with the (international) rules that the Netherlands must adhere to, acute state emergency law or urgent legislation is required.

1.1 Central Reception Centre (COL)

If an asylum seeker from a non-Schengen country has arrived in the Netherlands by plane or boat, the application for asylum must be lodged at the **AC Schiphol**, which is located at the *Justitieel Centrum Schiphol* (JCS).[536] The application centre **Schiphol** is a closed centre, which means that asylum seekers are not allowed to leave the centre (see Place of Detention). Asylum seekers are further not transferred to the POL after the application, as is the case for asylum seekers who entered the Netherlands by land and/or lodged their asylum application at the COL.[537] Vulnerable asylum seekers such as children do not stay at JCS.

Asylum seekers who enter the Netherlands by land have to apply at the Central Reception Centre (*Centraal Opvanglocatie*, COL) in **Ter Apel**, where they stay for a maximum of three days. The COL is not designed for a long stay. In 2022, the location of **Ter Apel** reached its full capacity multiple times, resulting in asylum seekers sleeping outside on the grass and being sent all over the country – see A1. Criteria and restrictions to access reception conditions. On 10 September 2022, the Ministry of Defence opened a special location at **Marnewaard** to house asylum seekers who are still going through the registration process in Ter Apel. This location, also called 'the waiting room' has a capacity of 600. Asylum seekers do not stay for longer than a week at Marnewaard.

Asylum seekers whose request is dealt with in Track 2 are only entitled to **'austere' reception** (*sobere opvang*) as of September 2020. During 2020, many asylum seekers stayed at the 'austere' reception centre (which is a separate fenced building on the same site of normal reception centres in **Ter Apel** and **Budel**). Vulnerable asylum seekers are exempted from staying at the fenced separate 'austere' reception building, but they receive an 'austere' regime at a normal reception centre. Both the asylum seekers staying at the separate 'austere' reception centres and the vulnerable ones have to report their presence daily, do not receive financial allowances and are given frozen microwave meals. Following the Council of State ruling on the risk of treatment in violation of Article 3 ECHR upon return to Greece for international protection beneficiaries,[538] regional courts decided that beneficiaries of protection from Greece could no longer be obligated to stay at the 'austere' reception centres since their applications are no longer chanceless.[539] In 2022, no separate 'austere' reception centre was used, as no municipality made one available. For 2023, COA might open another 'austere' reception centre in a former prison in **Almere**.[540]

535 VWN, 'Response to Internetconsultation on Spreading Law', 23 November 2022, available in Dutch at: https://bit.ly/3VZOgh4.
536 Article 3(3) Aliens Act.
537 Asylum seekers who are not stopped at an international border of the Netherlands and want to make an asylum application have to go to the COL in Ter Apel, even if they initially came by plane or boat.
538 Council of State, ECLI:NL:RVS:2021:1626 and ECLI:NL:RVS:2021:1627, 28 July 2021.
539 E.g. Regional Court Haarlem, 18 August 2021, ECLI:NL:RBDHA:2021:9028.
540 KST 19637, nr. 3010, 24 November 2022, available in Dutch at: https://bit.ly/3GNZFuX.

1.2 Emergency locations (Noodopvang)

Emergency locations are temporary locations, managed by COA. Locations differ from sport and event halls, boats, cruise ships, pavilions, hotels, former schools former office buildings and in former COVID-19 test locations. Many of these locations house more than 500 people. Two cruiseships in **Amsterdam** and **Velsen** both house 1000 people.

In 2021, Afghan evacuees have been located on sites provided by the Ministry of Defence, as many of the evacuees were its former employees. One of these was a large camp with tents in the woods close to Nijmegen called **Heumensoord**, hosting 1,000 people. This location was used during the 2015 reception crisis and was often criticized. The National Ombudsman and the Human Rights Committee went to visit **Heumensoord** in September 2021 as a follow-up to their 2016 visit. These parties recommended the government to close down Heumensoord as soon as possible, most importantly before winter, since the camp was not deemed good for the safety and (mental) health of the residents.[541] The Secretary of State finally moved Afghan evacuees still living in tents at Heumensoord to another site at the end of January 2022 placing them in other emergency locations. At another site in which Afghan evacuees were located (**Harskamp**), the residents of the village started protests against their arrival on 24 August 2021. Initially quite peaceful and counting only 250 demonstrators, the protest became much more violent in the night, when the few participants left set fire to car tires.[542]

1.3 Crisis Emergency Locations (Crisisnoodopvang, CNO)

The first Crisis Emergency Locations opened in May 2022. Crisis Emergency Locations are managed by municipalities or Security Regions (*Veiligheidsregio's*), they are even more temporary than emergency locations and may sometimes only house people for up to 2-3 days. This means that people have to move from place to place.

COA provided a guide for municipalities on managing CNOs.[543] This guide states that very vulnerable people such as pregnant women, baby's and elderly should not be placed in CNOs – however, this has often been the case in 2022.

1.4 Process Reception Centres (POL)

After this stay at the COL, the asylum seeker would normally be transferred to a Process Reception Centre (Proces Opvanglocatie, POL). However, this is not always the case since the start of the reception crisis. Asylum seekers can stay at all kind of locations during their asylum procedure, they might even be interviewed at the reception centre.

At the POL, the asylum seeker will take the next steps of the rest and preparation period and awaits the official asylum application at the application centre. As soon as the asylum seeker has officially lodged an asylum application, they receive a certificate of legal stay. Due to lack of capacity in the POL, the so-called pre-POLs have been opened. Often these are located at the site of an AZC, but the people staying at the pre-POL will have the same (limited) facilities as asylum seekers at the POL, so they will have different access to medical care and language lessons, and no weekly allowance. The Dutch Council for Refugees reported that the excessive waiting time in the rest and preparation period (up to two years) has serious consequences regarding the material reception conditions and mental health of asylum seekers. Among them, limited access to medical care, tension in the centres due to serious concerns about family reunification and a lack of facilities since the (pre-)POL is not designed for a long stay.[544]

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541 National Ombudsman, 'Close emergency location Heumensoord and fix other accommodation for Afghan evacuees', 10 November 2021, see: https://bit.ly/3HF2KMp.

542 NOS, 'Politie grijpt in bij protest in Harskamp tegen komst Afghanen, 24 August 2021, available in Dutch at: https://bit.ly/3rqgzsP.

543 COA (and other organizations), *Handreiking Crisisnoodopvang*, 2 December 2020, available in Dutch at: https://bit.ly/3CzLMix.

544 Dutch refugee Council, *Gevangen in een vastgelopen asielsysteem: Gevolgen en verhalen uit de praktijk*, November 2019, available In Dutch at: https://bit.ly/2vSP2pW .

Additionally, The Dutch Council for Refugees and the Ombudsman fear a set-back in integration possibilities for applicants since there is no or limited possibility to perform volunteer work or get access to language education.[545]

1.5 Centres for Asylum Seekers (AZC)

An asylum seeker remains in the POL if the IND decides to examine the asylum application in the regular asylum procedure (within eight days). If protection is granted, the asylum seeker is transferred to a Centre for Asylum Seekers (*Asielzoekerscentrum*, AZC) before receiving housing in the Netherlands. If the IND decides, usually after four days, to handle the application in the extended asylum procedure, the asylum seeker will also be transferred from the POL to an AZC.

Due to the large number of asylum applications in 2015, COA was experiencing difficulties in providing accommodation for all the newly arrived asylum seekers. Creative solutions were needed, for example emergency reception centres and allowing refugees with a residence permit to reside with family and friends. The number of people in reception centres decreased from 47,764 at the end of 2015 to 21,037 at the end of 2017.[546] Therefore, such solutions were no longer needed. However, due to the long waiting times at the IND, applicants spend longer periods in the reception centres. In addition, more and more beneficiaries of international protection have to stay in the reception centres awaiting to be housed. At of the end of 2020, 7,762 beneficiaries of international protection were staying in COA locations,[547] but this number significantly increased in 2021, to reach 36,059 persons residing in COA reception centres managed at the end of 2021. At the end of 2022, the number of BIPs in reception centres decreased, reaching 16,160. This might be due to the measures taken by the government to try to convince municipalities to respect their obligation to house BIPs. The government, however, had forecasted that only 13,500 BIPs would be in need of accommodation in the second half of 2022, this number turned out to be too low. This means that the number of BIPs that need to be housed in the first half of 2023 will be much higher. Moreover, the municipalities have a backlog of about 1,800 BIPs that need to be housed. Therefore, the government decided in August 2022 to urge municipalities to already start housing more BIPs, in order to 'free up space' in the reception centres (for more information on the Housing system see: Content of International Protection: Housing) .[548] Another cause of the reduction in the number of BIPs in reception centres could also be that the IND issued less asylum decisions throughout the year.
The COA continuously requests municipalities to provide more locations and places.

1.6 Enforcement and Supervision Location (HTL)

The Enforcement and Supervision Location (*Handhaving en Toezichtlocatie, HTL*) was installed as a special reception centre for asylum seekers who have caused tension or any form of nuisance at an AZC, for example by bullying other inhabitants, destroying materials, exhibiting aggressive behaviour or violating the COA house rules. Minors aged 16 or more can also be transferred to these locations.[549] This facility is to be distinguished from the Freedom Restricted Locations *VBL* or *GL*, where persons subject to return proceedings may be housed.

One HTL in **Hoogeveen**, opened in December 2017 as an Extra Guidance and Supervision location (*Extra Begeleiding- en Toezichtlocatie*, *EBTL*) and became an HTL in February 2020. The location has a capacity of 50 places.[550]

545 See for example: NOS, "Ombudsman: zakgeld en privacy voor asielzoekers vanwege lange wachttijden", 10 March 2020, available in Dutch at: https://bit.ly/33OOIL1.
546 *Ibid*.
547 Ibid.
548 COA, *Bezetting*, available in Dutch at: http://bit.ly/2E95a6F. And KST 19637, no. 2992, Appendix to letter decision-making on the reception crisis, available in Dutch at: https://bit.ly/3ImJjdc.
549 Article 1(n) RVA, Decision of Secretary of State, No 69941, 3 December 2018
550 COA, *Verschillende soorten opvang,* available in Dutch at: https://bit.ly/3IKH8kb

The Inspection of the Ministry of Justice and Security concluded in 2018 that the EBTL had not been effective in changing the behaviour of violent applicants. This is partly due to the fact that these applicants often have mental disorders and psychiatric problems. As a result, the EBTL was closed and the HTL was opened.[551] The difference between the EBTL and the HTL is that the HTL objective is no longer to change the behaviour of the applicant. Applicants placed in the HTL will get a stringent area ban and a compulsory day programme.

The number of people placed in the EBTL and the HTL over the last few years were as follows:[552]

Year	Number of persons placed
2019	250
2020	210
2021	205

Asylum seekers staying at the HTL are only allowed to go outside for four hours a day, where they cannot leave a small grass field. Several lawyers have argued that asylum seekers are illegally deprived of their liberty in the HTL.[553] However, the Regional Court of Groningen conducted an on-site investigation and concluded that placement in the HTL is not contrary to Article 5 ECHR.[554] This was mostly due to the possibility to leave the HTL, even though leaving means that one loses their right to reception.

In August 2022, the Inspection department of the Ministry of Justice and Security paid an unannounced visit to the HTL following the report of a 'whistleblower' who notified eight incidents in the twenty days that he worked at the HTL. During this visit, employees and asylum seekers were interviewed. Observations were also made and supervision plans were examined in the information system of COA. Finally, the Inspection requested documentation and camera images. The findings are alarming.[555] The Inspection established that housing supervisors, who work for the COA and the DJI, use coercion and violence. For example, housing supervisors pushed, slapped or kicked asylum seekers and made unauthorized use of handcuffs.
In his response, the Secretary of State indicated that not having recognized any pattern of disproportionate violence on the HTL.[556] According to the Secretary of State, these cases were isolated and COA always investigates thoroughly when this happens. However, the daily program will be examined.

1.7 Administrative placing and lodging arrangement

Administrative placement makes it possible for asylum seekers to live with (first-degree) relatives while receiving allowances and health insurance. Previously, the administrative placement was regulated in Article 13 Rva (old), but this basis has disappeared. However, practice shows that it is still possible in exceptional cases to be placed administratively at the nearest AZC from the place of residence of the family member. The asylum seeker must report to the AZC on a weekly basis. According to the COA's Provisions Policy, an income check is carried out during administrative placement. If the family member earns too much, the asylum seeker will not receive allowances. Administrative placement of an asylum seeker who is still in the pre-pol is not yet possible. VWN has often pointed out that this practice could

551 Secretary of State, Letter KST19637 2572, 18 December 2019.
552 WODC, 'Incidenten en misdrijven door COA-bewoners 2017-2021', 22 June 2022, available in Dutch at: https://bit.ly/3XliZGv.
553 For example in the case: Regional Court Den Bosch, ECLI:NL:RBDHA:2020:4558, 25 May 2020.
554 Regional Court Groningen, ECLI:NL:RBDHA:2020:6252, 10 July 2020. For a more recent judgement see: Regional Court Groningen, Case nos. AWB 22/6262 en NL22.21029, 11 November 2022..
555 Inspection of the Ministry of Justice and Security, 'Letter on the investigation of the HTL in Hoogeveen', 13 October 2022, available in Dutch at: https://bit.ly/3jOns5O. See also this report from newspaper NRC, 'Wat gebeurt er achter de muren van het 'aso-azc' in Hoogeveen?', 11 November 2022, available in Dutch at: https://bit.ly/3vzymz9.
556 KST 19637, no. 2995, 19 October 2022, available in Dutch at: https://bit.ly/3jNuw2y.

be expanded, because more and more people are requesting it and it could be a way to make up space for new asylum seekers.[557]

BIPs staying at a reception centre while waiting to be housed, can stay at a host family for up to three months using the 'lodging arrangement'. The organization Takecarebnb is connecting and guiding host families and BIPs.[558]

In a debate in parliament the Secretary of State stated that 1,000 people were using either the administrative placing or the lodging arrangement in 2022.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
2. What is the average length of stay of asylum seekers in the reception centres? 10,89 months (01-01-2022)[559]
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

The instances of asylum seekers not having access to reception accommodation are addressed under Criteria and restrictions to access reception conditions.

2.1 Conditions in (crisis)emergency locations

In 2022, reception conditions provided to many asylum seekers did not meet the minimum legal standards. The Dutch Council for Refugees (VWN) published three *Quickscans* on the conditions in (crisis) emergency locations.[560] The living conditions in emergency reception centres for refugees and asylum seekers are seriously inadequate. Many locations do not ensure that basic needs - such as privacy, security and warmth – are fulfilled. There are also concerns about health care, access to education and other activities for children and the fact that asylum seekers are forced to frequently move from one facility to the other.

After almost a year of witnessing said conditions, the Dutch Council for Refugees (VWN) formally announced that it holds the State and COA responsible for the current circumstances which violate the Receptions Conditions Directive, and that if the situation would not improve, within a month, it would take the matter to court in a tort procedure.[561] The situation did not change, therefore VWN summoned the State and COA in front of the Regional Court of the Hague on 17 August 2022.[562] On 6 October 2022, the court of first instance confirmed that the State has an obligation of result to take appropriate measures to guarantee dignified reception facilities for asylum seekers. In fulfilling these obligations, the State must take into account the EUAA reception guidelines, as they are widely supported scientific insights and internationally accepted standards.[563] Furthermore, the court established that COA and the

557 E.g. VWN, 'Brief VluchtelingenWerk Nederland t.b.v. het commissiedebat Vreemdelingen- en asielbeleid 22 juni 2022', 17 June 2022, available in Dutch at: https://bit.ly/3GrK2sI, 5.
558 See their website here: https://takecarebnb.org/.
559 Ministry of Justice and Security, State of Migration 2022, 30 June 2022, available in Dutch at: https://bit.ly/3r2SiYD, 109.
560 VWN, First Quickscan, 14 December 2021, available in Dutch at: https://bit.ly/3QzQimT, VWN, Second Quickscan, 9 March 2022, available in Dutch at: https://bit.ly/3iubcHC and VWN, Third Quickscan, 19 October 2022, https://bit.ly/3ZseCuT.
561 VWN, 'VluchtelingenWerk takes legal action against the government and COA over shelter crisis', 7 July 2-2022, available at: https://bit.ly/3ZphJnh. See also a more detailed explanation on the situation and reasons for VWN to summone COA and the State plus an inspection of a few (crisis)emergency locations by VWN in Dutch at: https://bit.ly/3GSaiOp.
562 VWN, VluchtelingenWerk spant kort geding aan tegen het Rijk en het COA vanwege opvangcrisis, 17 August 2022, available in Dutch at: https://bit.ly/3IBnuIz.
563 Regional Court The Hague (civil department), ECLI:NL:RBDHA:2022:10210, 6 October 2022, par. 7.4.

State needed to improve reception conditions in a timely manner, detailing different terms for various situations in the country:

- In Ter Apel, every asylum seeker who wants to register their application must immediately be offered a safe covered sleeping place, food, water and access to hygienic sanitary facilities.
- All asylum seekers must be given immediate access to any form of necessary health care.
- The vulnerable asylum seekers mentioned in the Crisis Emergency Locations Guide (including babies and their families and heavily pregnant women) may no longer be placed in crisis emergency shelters, with immediate effect.[564]
- All asylum seekers must be medically screened before being placed in a crisis emergency location within two weeks.
- Additional reception for unaccompanied minors must be realized within two weeks, in particular for the unaccompanied minors currently residing in Ter Apel.
- A maximum of 55 unaccompanied minors may stay in Ter Apel for a maximum of five days, within two weeks.
- Minor asylum seekers must be given access to play facilities and education within four weeks.
- All asylum seekers residing in (crisis) emergency reception locations must receive a financial allowance, within four weeks.
- Vulnerable asylum seekers may no longer be placed in an emergency reception location in four weeks' time, unless their specific special reception needs are met in that location.

The overall situation had to be improved within nine months. The State and COA appealed the court decision and asked for the judgment to be suspended. This request was not allowed, meaning that the State and COA needed to fulfil the obligations that were imposed within a short time period.[565] On 20 December 2022, the Hague Court of Appeal upheld the essence of the earlier ruling: the reception conditions in which thousands of asylum seekers are forced to live and do not meet minimum legal requirements.[566] The 'reception crisis' is a self-made crisis caused by the government's policies.[567] Therefore, the State and COA could not invoke the *force majeure* situation of article 18(9) Reception Conditions Directive. However, although the Court expects the State and COA to fulfil their legal obligations as soon as possible, the deadline given to the State to improve all reception conditions was revoked. The State and COA still need to provide with immediate effect that:

- Asylum seekers are no longer left in the streets or sleeping outdoors in Ter Apel.
- Vulnerable asylum seekers should not be placed in (crisis) emergency locations unless their special needs are met there.
- The State and COA must make every effort to screen asylum seekers medically as far as possible before they are transferred from Ter Apel to another reception center – especially if that other facility is an (crisis)emergency location; if the screening could not take place immediately, it should take place as soon as possible thereafter.
- Access to necessary health care is be provided.
- Asylum seekers in crisis emergency locations must be provided with a weekly financial allowance in accordance with Article 14 Rva 2005.
- Children in (crisis) emergency locations should have access to playing facilities and education. An exception can only be made if there is no way to meet this condition immediately due to a shortage of teachers, and then only as long as the State continues its efforts to make education accessible to minor asylum seekers.

Moreover, the Court ruled that the State treats displaced persons from Ukraine and asylum seekers from other countries unequally. The Court rejected VWN's request to order the State and COA to treat all asylum seekers equally, based on the fact that the goal of ensuring that reception conditions meet the State's minimum legal obligations ,was deemed impossible to achieve within a short period of time.

564 Guide for Crisis Emergency Locations, 2 December 2020, available in Dutch at: https://bit.ly/3XSRbJi.
565 The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 17 October 2022.
566 The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022.
567 This has also been confirmed by the ACVZ and ROB (*Raad voor het Openbaar Bestuur*). In their report they state that the reception crisis is a self-made crisis by the Dutch government: 'Asielopvang uit de crisis', 14 June 2022, available in Dutch at: https://bit.ly/3ik1OGw

The Court also does not consider it their role to instruct the State on how to ensure that the State ensures equal treatment of all asylum seekers. None of the parties appealed this decision, so the judgement is final.

2.2 Conditions in AZCs

Residents of a regular reception centre usually live with 5 to 8 people in one unit. Each unit has several bedrooms and a shared living room, kitchen and sanitary facilities. At the time of writing, there are no reports of serious deficiencies in the sanitary facilities that are provided in the reception centres. Residents are responsible for keeping their habitat in order.[568] Unaccompanied children live in small-scale shelters, which are specialised in the reception of unaccompanied children. They are intensively monitored to increase their safety (see section on Special Reception Needs).

Adults can attend programmes and counselling meetings, tailored to the type and stage of the asylum procedure in which they are. Next to this, it is possible for asylum seekers to work on maintenance of the centre, cleaning of common areas, etc. and earn a small fee of up to €14 per week doing this.[569] It is also possible for children as well as adults to participate in courses or sports at the local sports club. Children of school age are obliged to attend school. To practice with teaching materials and to keep in touch with family and friends, asylum seekers can visit the Open Education Centre (*Open Leercentrum*) which is equipped with computers with internet access. Children can do their homework here. There is supervision by other asylum seekers and Dutch volunteers.

AZC are so-called open centres. This entails that asylum seekers are free to go outside if they please. However, there is a weekly duty to report (*meldplicht*) in order for the COA to determine whether the asylum seeker still resides in the facility and whether he or she is still entitled to the facilities.[570] Some reception centres such as HTL, as well as centres for rejected asylum seekers, have a stricter regime. There have previously been some incidents and issues with asylum seekers. Other incidents are related to Dutch citizens protesting the establishment of a reception centre in their city.

Residents can use the MyCOA-application - available in 10 languages – to obtain extensive information on their stay in an AZC. For example, they receive a message when post arrives; they can obtain information on the job market in the Netherlands or regarding COVID-19 vaccines.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers?	☒ Yes ☐ No
❖ If yes, when do asylum seekers have access the labour market?	6 months
2. Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☒ No
❖ If yes, specify which sectors:	
4. Does the law limit asylum seekers' employment to a maximum working time?	☒ Yes ☐ No
❖ If yes, specify the number of days per year	168 days
5. Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

The Aliens Labour Act and other regulations lay down the rules regarding access to the labour market for asylum seekers. Despite having the right to work, asylum seekers can only work limited time, namely

568 For more information, see COA, *House rules*, available in Dutch at: http://bit.ly/2Dyks3K.
569 Article 18(1) and (3) RVA.
570 Article 19(1)(e) RVA.

a maximum of 24 weeks each 12 months. Before the asylum seeker can start working, the employer must request an employment-licence for asylum seekers (*tewerkstellingsvergunning*). To acquire an employment-licence the asylum seeker must fulfil the following cumulative conditions:[571]

- The asylum application has been lodged at least 6 months before and is still pending a (final) decision;
- The asylum seeker is staying legally in the Netherlands on the basis of Article 8(f) or (h) of the Aliens Act;
- The asylum seeker is provided reception conditions as they come within the scope of RVA, or under the responsibility of Nidos;
- The asylum seeker does not exceed the maximum time limit of employment, which is 24 weeks per 12 months;
- The intended work is conducted under general labour market conditions;
- The employer submits a copy of the "W document" (identity card).

Despite the fact that Dutch legislation provides for access to the labour market to asylum seekers,[572] in practice, it is extremely hard for an asylum seeker to find a job. Employers are not eager to contract an asylum seeker due the assumed administrative hurdles and because of the limited time they could be employed for.

The procedure for applying for an employment licence at the Dutch Employees Insurance Agency in practice takes no longer than 2 weeks, which is within the time limit foreseen in law.[573] Moreover, although access to the labour market is granted 6 months after the application has been lodged, before the employer can apply for the work permit, a declaration of reception must be obtained. Therefore, the time for obtaining the declaration of reception should be added to the waiting period before employment. In conclusion, the moment the asylum seeker has the right to perform paid labour differs significantly from the moment they can in fact exercise it.

Currently, there is a lack of labour forces in manyproductive sectors in the Netherlands, and therefore employers have more interest in finding new employees. It is one of the main reasons why there is more attention by the media and politics for earlier participation of asylum seekers in the Dutch labour market. Recently, the Minister of Social Affairs requested for a research on the legal and practical barriers for asylum seekers to access the labour market.[574] The report will probably be published in the first quarter of 2023.

If asylum seekers are employed and stay in the reception facility arranged by the COA, they should contribute a certain amount of money to the accommodation costs. Asylum seekers are allowed to keep 25% of their income with a maximum of €226 per month.[575] In case their monthly income transcends the required contribution to accommodation costs, they can keep any surplus income.[576] This depends on how much they earn and it can never exceed the economic value of the accommodation facilities. Once an asylum seeker surpasses such threshold, the financial allowance can be withdrawn.. Another issue that arises is that beneficiaries of international protection receive the reclamation by the COA after they have been housed in a municipality. As a result, these beneficiaries start with a debt to the COA.

Asylum seekers are also allowed to take part in voluntary work. This is possible from the moment the asylum application has been lodged. The employer needs a "volunteer's declaration" form from the Dutch Employees Insurance Agency. Work usually needs to be unpaid, non-profit and of social value.[577]

Minor asylum seekers are allowed to do an internship when this is an obligatory part of their study path.

571 Article 6.2 Aliens Labour Decree and paragraph 8.2 Annex I Aliens Act Implementing Regulation 2022.
572 Article 6.2 Aliens Labour Decree and paragraph 8.2 Annex I Aliens Act Implementing Regulation 2022.
573 Article 6 Aliens Labour Act.
574 KST 35 680, nr. 22, 15th of April 2022, available at: http://bit.ly/3HIKWmo.
575 Article 5, lid 3 Reba 2008.
576 Article 5(4) Regeling eigen bijdrage asielzoekers met inkomen (Reba).
577 Article 1a(b) Aliens Labour Decree.

The rules explained above (after six months in procedure and with a permit ("*tewerkstellingsvergunning*") do not apply to them. The internship is allowed directly after lodging the asylum application and a permit is not required.[578]

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?	☒ Yes ☐ No

According to Article 3 of the Compulsory Education Act, education is mandatory for every child under 18, including asylum seekers.[579] Asylum-seeking children have the same rights to education as Dutch children or children who are treated in the same way e.g. children with a residence permit. This also applies to children with special needs: if possible, arrangements will be made to ensure that those children get the attention they deserve.[580] Every AZC is in touch with and has arrangements with an elementary school nearby. However, if the parents wish to send their child to another school, they are free to do so.

Children below 12 go to elementary school either at the school nearby the AZC or at the AZC itself. Children between the age of 12 and 18 are first taught in an international class. When their level of Dutch is considered as sufficient, they enrol in the suitable education programme.[581]

According to the RVA, the COA provides access to educational programmes for adults at the AZC.[582] Depending on the stage of the asylum application, the COA offers different educational programmes including vocational training. Refugees who have been granted a residence permit can still be offered an educational programme.[583]

Theoretically, there are no obstacles as to access to vocational training for adults. However, asylum seekers have often not had the chance to learn Dutch at a sufficient level, and this decreases their chance of accessing vocational training in practice. One of the causes is the fact that Dutch classes for asylum seekers are not compulsory. Moreover, volunteers instead of professional teachers provide them, while refugees with a permit living in reception centres receive Dutch classes from a professional language teacher. Nevertheless, eligible asylum seekers[584] can participate in a language programme of 24 hours of Dutch classes, given by a professional teacher. Another reason that hinders adult asylum seekers in accessing education is that they do not have a right to financial study aid from the government.

578 Article 3.2 Aliens Labour Decree.
579 Law of 30 May 1968 houdende vaststelling Leerplichtwet 1969, available in Dutch at: http://bit.ly/2kKXQpV.
580 Available at: http://www.lowan.nl/.
581 For more information, see the Agreement of 28 April 2016 concerning the increased influx of asylum seekers as Annex to Minister of Internal Affairs, Letter No 19637/2182, 28 April 2016, available at: http://bit.ly/2miTkiV; and the website of the COA, available at: http://bit.ly/2IBa5Ht.
582 Article 9(3)(d) RVA.
583 Article 12(1) RVA.
584 'Eligible' asylum seekers are those who, based on their nationality, have at least 70% chance to be granted a residence permit and are originally from a country of origin with more than 50 asylum seekers a year that are granted a permit in the Netherlands, see: http://bit.ly/3YcDtS0.

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? ☒ Yes ☐ Limited ☐ No

The COA is responsible for the provision of health care in the reception centres. In principle, the health care provided to asylum seekers should be in line with the regular health care applied in the Netherlands. As any other person in the Netherlands, an asylum seeker can therefore visit a general practitioner, midwife or hospital. As of 1 January 2018, the Regeling Medische zorg Asielzoekers (RMA) Healthcare was the first point of reference for asylum seeker who had health issues.

As addressed above, issues connected to the lack of accessible health care services in emergency locations and crisis emergency locations emerged in 2022. On 3 August 2022, the Inspection of the Ministry of Health Care and Youth warned the Minister of Health Care and Youth and the Secretary of State of Justice and Security about the alarming situation with regard to access of health care in crisis emergency locations.[585] The Inspection saw that medical care for asylum seekers in crisis emergency locations is seriously suffering under the current crisis conditions. The care is sometimes limited to emergency care. That is less than the normal medical care to which everyone is entitled. It is also less than the medical care that asylum seekers' centers and 'ordinary' emergency reception locations offer. In crisis emergency locations, care providers often cannot work according to the usual standards and guidelines, no matter how hard they try. This is due to the rapid grow of crisis emergency locations, to a lack of personnel and to the fact that many of the asylum seekers staying at these locations have not yet been registered – making it difficult to arrange the health insurance. There is a risk that healthcare will stagnate even more.

The relevant legal provision can be found in Article 9(1)(e) RVA. This provision is further elaborated in the Healthcare for Asylum Seekers Regulation (*Regeling Zorg Asielzoekers*). According to the latter, asylum seekers have access to basic health care. This includes *inter alia*, hospitalisation, consultations with a general practitioner, physiotherapy, dental care (only in extreme cases) and consultations with a psychologist. If necessary, an asylum seeker can be referred to a mental hospital for day treatment. There are several institutions specialised in the treatment of asylum seekers with psychological problems, such as Pharos.

When an asylum seeker stays in a reception facility but the RVA is not applicable, health care is arranged differently. Asylum seekers in the POL, the COL, as well as rejected asylum seekers in the VBL and adults in the GL only have access to emergency health care.[586] In medical emergency situations, there is always a right to healthcare, according to Article 10 of the Aliens Act. For this group, problems can arise if there is a medical problem that does not constitute an emergency. Care providers who do help irregular migrants who are unable to pay their own medical treatment can declare those costs at a special foundation, which then pays the costs.

Problems might also arise with respect to access to health care where the asylum seeker wants to use a health care provider whose costs are not covered by their insurance.

585 Inspection Health Care and Youth, 'Medische zorg in crisisnoodopvang asielzoekers onder enorme druk', 3 August 2022, available in Dutch at: https://bit.ly/3Qp954k.

586 Article 10(2) Aliens Act.

Asylum seekers, undocumented migrants and migrants in detention centres are explicitly included in the COVID-19 vaccination strategy.[587] Around half of the asylum seekers living in AZCs have received one or more vaccinations. Due to the influx and outflow, the vaccination rate varies. Furthermore, not all vaccinations are registered in medical files (e.g. vaccinations that were given abroad), which means that these residents are not included in the vaccination rate. On 29 November 2021, it was recorded that a total of 18,648 asylum seekers had received one or two vaccinations.[588] For 2022, these figures were not made available by the COA.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
   ☒ Yes ☐ No

Article 18a RVA refers to Article 21 of the recast Reception Conditions Directive to define asylum seekers considered vulnerable.

With regard to the (crisis)emergency locations, the problem with fulfilling special reception needs of vulnerable groups was that medical screening was not consistently and adequately offered in Ter Apel. Therefore, many cases of vulnerable people being place in non-sufficient emergency locations have taken place. For example, someone who had recent breast surgery and back problems and for whom it is not suitable to sleep on a stretcher, a girl with severe kidney disease who needed urgent treatment and heavily pregnant women.[589] The Hague Court of Appeal judgement of 20 December 2022 states that medical screening always needs to be offered and that special needs of vulnerable groups need to be provided.[590]

In the night between 23 and 24 August 2022, a three-months old baby, staying with his family in a sport hall at **Ter Apel**, died.[591] The Inspections of the Ministry of Justice and Security and Health Care and Youth will investigate whether adequate care is provided and whether the living conditions in **Ter Apel** caused the death of this baby.

With the exception of specialised accommodation for unaccompanied children, the COA does not provide separate reception centres for women, LGBTI persons or other categories – although there have been calls for their creation. An investigation into the treatment of LGBTI persons and of converts and apostates has been completed in 2021.[592] The researchers conclude that COA does not pursue a target group policy, but that the organization does pay structural attention to vulnerable groups in reception. With regard to LGBTI asylum seekers, the COA has developed a policy to increase the quality of life at COA locations. Special LGBTI attention officers are available at various COA locations to assist LGBTI asylum seekers and to whom employees can appeal. In addition, COA is committed to promoting the expertise of its employees on the topic. The report concludes that, in comparison to the LGBTI policy, there is less attention in reception for converts and apostates and attention to issues connected to religious freedom is still limited. The researchers recommended opening special LGBTI units, but the COA does not consider it a priority. Additionally, were the COA willing to consider their wishes (e.g.

587 See, point 2.3. Rijksinstituut voor Volksgezondheid en Milieu, COVID-19-vaccinatie Uitvoeringsrichtlijn, March 2021, available at: https://bit.ly/30wlHxw.
588 Answers to questions of Member of Parliament by the Minister of Public Health, Welfare and Sports, 13 December 2021, available in Dutch at: https://bit.ly/33ndkbZ.
589 VWN, Third Quickscan, 19 October 2022, available at: https://bit.ly/3ZseCuT.
590 The Hague Court of Appeal (civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022.
591 NOS, 'Geschokte reacties in Den Haag op dood baby Ter Apel, inspecties doen onderzoek', 24 August 2022, available in Dutch at: https://bit.ly/3XfCAYw.
592 Regioplan and Free University, LGBTIs, converts and apostates in asylum reception, 6 October 2021, available in Dutch at: https://bit.ly/3nhpc6K.

having a room for themselves or living in the same building as other LGBTI persons), it is impossible to address them given the current reception crisis.[593]

However, employees of the COA have to make sure that a reception centre provides an adequate standard of living as the COA is responsible for the welfare of the asylum seekers.[594] In practice, this means that the COA considers the special needs of the asylum seekers. For example, if an asylum seeker is in a wheelchair the room will be on the ground floor. Besides that, if asylum seekers cannot wash themselves, they are allowed to make use of the regular home care facilities; the asylum seeker is entitled to the same level of health care as a Dutch national.

1. Reception of unaccompanied children

In 2022, UAMs were especially affected by the reception crisis. In the COL location in **Ter Apel** there is space and guidance for 55 UAMs. Throughout the year this location hosted more than 200-300 UAMs. The Ombudsperson for children raised concern on the situation of UAMs in Ter Apel multiple times.[595] After her visit in October 2022, she reported the following:

"During our working visit last Monday, 300 unaccompanied minors were staying in **Ter Apel**, while there is room for 55. We encountered a group of about thirty boys and two girls who had been staying in the waiting room of the IND for three days. There was no place for them at the centre. They wait all day in their plastic chair and sleep in another identical waiting room at night on a stone floor or on a chair with a sheet and something that passes for a blanket. They look grey with fatigue. They do not have a bed, nor are there sanitary facilities. They don't eat enough. They brush their teeth with their fingers in the toilet and there is no shower. And what is stress-increasing, there is no one who can tell them how long it will take before there is room for them."[596]

Both Inspections of the Ministries of Justice and Security, and Healthcare and Youth set an 'urgent letter' with concerns to the Ministry on the situation of the children staying in **Ter Apel** and on emergency locations, stating that health damage, especially mentally, will occur if the situation will not be improved.[597]

In June 2022, the Working Group 'Child in AZC' also published a report on the reception conditions of children in emergency locations, titled 'Emergency at the emergency locations'.[598] The report shows that children cannot find a safe living environment in the emergency shelters or in Ter Apel, neither physically nor socially. Accessibility of health care and education is often lacking and nutrition became a problem since children are not familiar with the provided Dutch food.

In first instance at the court proceeding on the reception conditions initiated by VWN, the court ruled that COA and the government needed to make sure that no more than 55 UAMs would stay in Ter Apel within two weeks.[599] Following this judgement, the Secretary of State made (another) special request to

593 Reaction by the Secretary of State to the Research on LGBTIs, converts and apostates in asylum reception, 7 December 2021, KST 19637, No 2801, available in Dutch at: https://bit.ly/3tl7JOr.
594 Article 3 Reception Act.
595 Kinderombudsman, 'Nog steeds sprake van kinderrechtenschendingen in Ter Apel', 7 november 2022, available in Dutch at: https://bit.ly/3Qq9B1U; Kinderombudsman, 'Brief aan staatsecretaris Van der Burg over onveilige en stressvolle opvang amv's in Ter Apel' 10 October 2022, available in Dutch at: https://bit.ly/3GNMzOj; Kinderombudsman in newspaper NRC, 'Kinderen in Ter Apel worden verwaarloosd', Andreas Kouwenhoven, 14 april 2022, available in Dutch at: https://bit.ly/3GQWaVt.
596 Kinderombudsman, 'Brief aan staatsecretaris Van der Burg over onveilige en stressvolle opvang amv's in Ter Apel', 10 October 2022, available in Dutch at: https://bit.ly/3GNMzOj.
597 Inspectie JenV en Inspectie Gezondheidszorg en Jeugd, 'Signaalbrief Kinderen in de opvang', 16 June 2022, available in Dutch at https://bit.ly/3Qqel7I and Factsheet Emercency Locations asylum seekers, available in Dutch at: https://bit.ly/3k2tjVw.
598 Werkgroep kind in AZC (o.a. UNICEF en VWN), 'Noodsituatie op Noodlocaties – Quickscan naar de leefomstandigheden van kinderen in de (nood)opvang', 20 June 2022, available in Dutch at: https://bit.ly/3GRXesl.
599 Regional Court The Hague (civil department), ECLI:NL:RBDHA:2022:10210, 6 October 2022, par. 7.4.

the municipalities to provide locations for the reception of UAMs.[600] Only one municipality responded, providing a hotel that could house 60 UAMs. The municipality stated that it provided the accommodation because of the court ruling.[601] Although confirming the seriousness of the situation of UAMs and the responsibility (and blame) of the government, the court in second instanced decided to squash the time limits that were given to the government in first instance.[602]

Due to the shortage of reception places for unaccompanied minors, UAMs from the age of 17.5 are placed among adults in regular AZC's or emergency locations.[603] There might also be minors placed among adults if the IND does not believe that they are underage (see also section 2.1.1. Application of the Dublin criteria).

Unaccompanied minors from the age of 16 can be placed in the Enforcement and Supervision location (see section above) if they broke the rules.

Unaccompanied children younger than 15 are accommodated in foster families and are placed with those families immediately.

Unaccompanied children between 15 and 18 years old are initially accommodated in a special reception location (POL-amv). Children are guided by their guardian of Stichting Nidos, the guardianship agency, and by the Dutch Council for Refugees. They stay in this POL-amv during their procedure for a maximum of 7 weeks. If their application is rejected, they go to small housing units (*kleine woonvoorziening*). The small housing units fall under the responsibility of the COA and are designed for children between the age of 15 and 18 years old, often of different nationalities. These small housing units are located in the area of a larger AZC, at a maximum distance of 15km. The capacity of the small housing units is between 16 and 20 children. The total number of children housed in the small housing and the AZC cannot exceed 100.

A mentor is present 28.5 hours a week. If unaccompanied children receive a residence permit, Nidos is responsible for their accommodation.

The COA had accommodated 3,246 unaccompanied children by the end of 2022,[604] more than twice to the number registered at the end of 2021 (1,305).

In June 2022, the IND published a report analysing the high number of UAMs arrivals in 2021.[605] The analysis was only based on figures form EUROSTAT and interviews with IND personnel. The outcome is therefore somewhat prejudiced. In 2021, the Netherlands received 8.6% of the arriving UAMs in the EU, whereas the Netherlands only receives 5.8% of the arriving asylum seekers in the EU. Other member states also saw a high influx of UAMs with even more growth than the Netherlands – for example in Austria, Belgium and Bulgaria. According to the IND personnel, UAMs coming to the Netherlands 'have the view that it is easier to be granted international protection and to ask for family reunification in the Netherlands'.

600 State Secretary, Letter to municipalities relating to the reception of UAMs, 6 October 2022, available in Dutch at: https://bit.ly/3GSlT00.

601 Leeuwarder Courant, 'COA start noodopvang voor minderjarige jongeren in Hotel Aan de Vaart in Appelscha', 1 November 2022, available in Dutch at: https://bit.ly/3QpUaqC.

602 Court The Hague (appeal; civil department), ECLI:NL:GHDHA:2022:2078, 20 December 2022.

603 This was the case from November 2021 – May 2022 and from November 2022 on, see KST 30573, nr. 195, available in Dutch at: https://bit.ly/3VGp9Qb.

604 COA, "Personen in de opvang uitgesplitst naar leeftijd en land van herkomst", available in Dutch at:https://bit.ly/3KiETqB.

605 IND, Analyse instroom alleenstaande minderjarige vreemdelingen, June 2022, available in Dutch at: https://bit.ly/3QqC0Vs.

In 2022, the Ombudsperson for children also published a report on the duration of asylum procedures of UAMs following a complaint of a UAM whose asylum procedure lasted for 4 years. And recommended that the IND prioritizes asylum requests from UAMs.[606] .

Protection reception locations

Unaccompanied asylum-seeking children are extra vulnerable with regard to human smuggling and trafficking. Children who have a higher risk of becoming a victim, based on the experience of the decision-making authorities, are therefore placed in protection reception locations (*beschermde opvang*). The children are living in small locations, with 24/7 professional guidance available. When a child arrives at **Ter Apel**, the organisation Nidos decides whether he or she should be placed in the protection reception location, under the responsibility of the NGO Yadeborg, contracted by COA. Their services were inspected by the youth support unit (*Jeugdzorg)*, which led to a report in 2017 establishing that still too many children disappear from these locations.[607] Another research shows that 1,190 UAMs left COA locations without reason (*MOB-melding*) between 2015 and 2018; 50% of the minors left a protection reception location.[608]

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Article 2(3) and (4) RVA is the legal basis for the provision of information to asylum seekers. Article 2(3) states that the COA provides information concerning benefits and obligations with regard to reception, legal aid, and reception conditions within 10 days after the asylum application has been lodged. Article 2(4) states that "The COA provides information in writing in the form of brochures in a language that is understandable for the asylum seeker." In practice, asylum seekers are informed of the house rules of the reception centre and provide their agreement by signature

The exact content and the modalities of the information provision vary from one reception centre to another. For instance, in some centres, information meetings on health care and security in the reception centre are organised in groups, whereas the rights and duties of the asylum seeker in the centre are usually discussed individually.[609]

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
   ☒ Yes ☐ With limitations ☐ No

Article 9(3)(b) RVA states that, during a stay in the reception centre, the asylum seeker must have the opportunity to communicate with family members, legal advisers, representatives of UNHCR and NGOs. There are no major obstacles in relation to access of UNHCR representatives or other legal advisers at reception centres known to the author of this report.

606 Kinderombudsman, 'Rapport 'Onderzoek naar een tijdige asielprocedure voor amv's bij de IND", 15 June 2022, available in Dutch at: https://bit.ly/3CwgHvV.

607 Jeugdzorg, *De kwaliteit van de beschermde opvang voor alleenstaande minderjarige vreemdelingen Hertoets*, September 2017, available in Dutch at: http://bit.ly/2DCmlw0.

608 APM (*Analyseproeftuin Migratieketen*) Report on UAMs leaving reception locations without reason, February 2020, available in Dutch at: https://bit.ly/3HR9yXs.

609 COA, *Infosheets*, available in Dutch at: http://bit.ly/2IfnQXG.

G. Differential treatment of specific nationalities in reception

In general, no distinction is made on grounds of nationality in the Netherlands. However, asylum seekers from **safe countries of origin** and third country nationals who have already been granted an international protection status and whose asylum application is dealt with in 'Track 2' will only be entitled to 'austere reception conditions', see Access and forms of reception conditions.

Detention of Asylum Seekers

A. General

Indicators: General		
1.	Total number of persons detained in 2022:	2,920
2.	Number of detention centres:	3
3.	Total capacity of detention centres:	Not available

There are two types of detention of asylum seekers. Either a person is detained at the external border, trying to access the Schengen area in the Netherlands (border detention), or they can be detained in case they are undocumented and subjected to a return decision (territorial detention).

Statistics published by the Ministry of Justice and Security do not distinguish asylum seekers from other categories of persons in immigration detention:

Immigration detention in the Netherlands			
	2020	2021	2022
Total	2,550	3,190	2,920

Source: Repatriation and Departure Service, Inflow and departure figures, available in Dutch at: https://bit.ly/3CuZi6Y.

Border detention: Pursuant to Article 6(1) and (2) of the Aliens Act, the third-country national who has been refused entry when he or she wants to enter the Schengen area at the Dutch border, is obliged "to stay in a by the border control officer designated area or place, which can be protected against unauthorised departure."[610] Border detention can be extended with the aim of transferring asylum seekers to the Member State that is responsible for the assessment of their asylum application according to the Dublin Regulation.[611]

If an asylum seeker makes an asylum application at an external border of the Netherlands, his or her application will be assessed in the Border Procedure. Consequently, these asylum seekers can be detained based on Article 6(3) of the Aliens Act.

There is one border detention centre for detaining asylum seekers. Asylum seekers who enter the Netherlands via airplane or boat are required to apply for asylum at the detention centre at **Justitieel Complex Schiphol**. During this procedure, the asylum seeker will be placed in detention and the whole asylum procedure will take place in detention. Both of the personal interviews (*eerste gehoor* -first interview and *nader gehoor*-second interview) take place in the detention centre. The Dutch Council for Refugees will prepare the asylum seekers for these interviews; moreover, a staff member of the Dutch Council for Refugees can be present at the personal interview. This depends on whether the asylum seeker requests this and whether there is enough staff available. The lawyer is also allowed to be present at the hearing but in practice, this rarely happens, as lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.[612] Following the *Gnandi* judgement of the CJEU,[613] the grounds for detention during the appeal procedure have been altered in the Aliens Act, see Border Procedure.

Territorial detention: Asylum seekers may also be detained in the course of the asylum procedure on the territory, in accordance with Article 59b of the Aliens Act, which transposes Article 8 of the recast

610 Article 6 Aliens Act.
611 Article 6a Aliens Act.
612 Regional Court Haarlem, Decision NL18.16477, 19 September 2018; Decision NL18.19950, 6 November 2018.
613 CJEU, Case C-181/16 *Sadikou Gnandi v Belgium*, Judgment of 19 June 2018.

Reception Conditions Directive. Article 59a of the Aliens Act foresees the possibility to detain an asylum seeker for the purpose of transferring him or her under the Dublin Regulation. This article refers to Article 28 of the EU Dublin Regulation.

Territorial detention is also applicable to persons without a right to legal residence under Article 59 of the Aliens Act. Detention based on Article 59 cannot be applied to asylum seekers during their asylum procedure or in some cases – after the *Gnandi* judgment – while they are waiting for the result of their appeal.[614]

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained?
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☐ Frequently ☒ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☒ Rarely ☐ Never

1.1. Border detention

The legal grounds for refusing entry to the Dutch territory at the border are laid down in Article 3(1)(a)-(d) of the Aliens Act. In addition, the asylum seeker can be detained on the basis of Article 6(1) and (2) of the Aliens Act. In practice, this leads to an initial systematic detention of all asylum seekers at the external Schengen borders of the Netherlands.

According to Article 3(1) of the Aliens Act, in cases other than the Schengen Border Code listed cases, access to the Netherlands shall be denied to the alien who:

- ❖ Does not possess a valid document to cross the border, or does possess a document to cross the border but lacks the necessary visa;
- ❖ Is a danger to the public order or national security;
- ❖ Does not possess sufficient means to cover the expenses of a stay in the Netherlands as well as travel expenses to a place outside the Netherlands where their access is guaranteed;[615]
- ❖ Does not fulfil the requirements set by a general policy measure.

These grounds are further elaborated in Article 2.1 to 2.11 of the Aliens Decree and Paragraph A1/3 of the Aliens Circular.

Migrants are mostly detained because they do not fulfil the requirements as set out in Article 3(1)(a) and (c) Aliens Act.[616] Migrants, who, after arriving to the Netherlands, apply for asylum, can be detained as well. This is based on Article 6(3) read in conjunction with Article 3(3) of the Aliens Act. They are kept in detention throughout their asylum procedure. Work Instruction 2021/10 lists the cases of exceptions

614 Secretary of State of Justice and Security: *Memorie van antwoord Wet terugkeer en vreemdelingenbewaring,* 13 December 2018, available in Dutch at: https://bit.ly/2I580Po, 7. There was also a decision from the Regional Court of the Hague, Decision NL18.11194, 26 June 2018, with the same conclusion.

615 The Aliens Circular stipulates in paragraph A1/4.5 that the condition of sufficient means will be fulfilled if the asylum seeker disposes of at least €34 per day.

616 Article 6(1)-(2) Aliens Act.

under which the asylum seeker is not subject to the border procedure and is already allowed entry during the asylum procedure (see further Detention of Vulnerable Applicants).[617]

Courts have recently been discussing whether beneficiaries of protection from other Member States can be detained at the border. According to the Regional Court Amsterdam, they should be released from border detention after the IND run its checks on EURODAC, from which emerged they were recognised international protection in another Member State.[618] One of the reasons for this exemption is that Article 6(5)(a) of the Schengen Borders Code states that beneficiaries of protection or third country nationals with a visa should be authorised to enter the territory of the Member States for transit purposes to the Member State which granted them a residence permit. The Council of State upheld its previous judgements, ruling that EU law does not prohibit automatic application of the border procedure and border detention to everyone who applies for asylum at the border (with the exception of vulnerable persons).[619]

1.2. Territorial detention of asylum seekers

There are three forms of territorial detention: (a) the detention of third country nationals who have no right of residence (Article 59 of the Aliens Act); (b) the detention of Dublin claimants (Article 59a Vw); and (c) the detention of asylum seekers (Article 59b Vw). They are based respectively on Article 15 of the Return Directive, Article 28 of the Dublin Regulation and Article 8 of the Procedures Directive. Different rules and terms apply to each form, which will be discussed below.

Detention for the purpose of removal

Detention for the purpose of removal can be imposed on both third country nationals (TCNs) with and without lawful residence on the basis of Article 59 of the Aliens Act. However, third country nationals who can be detained with lawful residence on the basis of Article 59(1)(b) of the Aliens Act are considered as asylum seekers, but, for example, as third country nationals who have applied for a regular permit. Only the detention of third country nationals without lawful residence will be discussed in the following paragraph.

Conditions
It follows from the Return Directive that TCNs without lawful residence can be detained if the following cumulative (added together, ed.) conditions are met:

1. Return decision
2. Risk of absconding / hampering return procedure
3. A reasonable prospect of removal
4. Removal arrangements are in progress and executed with due diligence
5. No other sufficient but less coercive measures can be applied

Return decision
The Council of State ruled on 2 June 2021 that, as established by the CJEU judgements that a country of return must be mentioned in the return decision.[620] The country of return can also be deduced from the asylum decision and it is possible to add several countries of return. This is mostly relevant for asylum seekers whose claim of holding a certain nationality was not believed, leaving them with no country to return to.

EU status holders whose asylum application has been declared inadmissible will not receive a return decision, as it refers to return to a country outside the EU - usually the country of origin of the applicant -, while it is clear for EU beneficiaries that they run a risk of refoulement upon return to their country of

617 Article 5.1a(3) Aliens Decree. See IND Work Instruction 2017/1, available in Dutch at: http://bit.ly/2IZGp2X.
618 E.g. Regional Court Amsterdam, ECLI:NL:RBDHA:2021:12551, 7 October 2021.
619 Council of State, ECLI:NL:RVS:2021:1648, 28 July 2021; based on ECLI:NL:RVS:2016:1452, 3 June 2016; see also Council of State, ECLI:NL:RVS:2021:2870, 22 December 2022.
620 Council of State, ECLI:NL:RVS:2021:1155, 2 June 2021. This follows from CJEU, C-924/19 PPU en C-925/19 PPU (FMS and others), 14 May 2020 and C-673/19 (M. and others), 24 February 2021.

origin. However, the Court of Justice ruled that this group of TCNs can be detained on national grounds with a view to deportation, without a return decision being imposed on them.[621] Therefore, the beneficiaries of protection in another Member State will not be issued a return decision after their asylum application was declared inadmissible; regardless, they have an obligation to leave. If they do not comply with this departure obligation, they can be forcibly deported on the basis of the general deportation authority of Article 63 of the Aliens Act. The status holder can also be detained for deportation on the basis of Article 59, paragraph 2 of the Aliens Act (the fiction that the interest of public order demands detention, if the documents necessary for return are available in the short term).

Risk of absconding

According to Article 59 of the Aliens Act, a foreign national can be detained on the grounds of being a potential threat to the interests of public order or national security. Whether there is a risk of absconding is determined based on light and serious grounds for detention as described in paragraphs 3 and 4 of Article 5.1b Aliens Decree. If at least two of these grounds are met, the risk of absconding can be assumed. However, the IND still needs to substantiate why these grounds entail a risk of absconding. A serious ground is for example 'illegal entry'. Practice shows that these grounds are easily met in case of third country nationals who have no right of residence.

A reasonable prospect of removal

The condition 'reasonable prospect of removal' requires the indication of a reasonable period of time within which the removal can be carried out. If forced deportations are not at all foreseeable for the future, such in the case of Eritrea, there is no prospect of deportation, and as such, detention is not possible. Courts usually look at whether embassies issue *laissez passers* and whether presentations are possible at the embassy. For example, the Council of State ruled that there was no reasonable prospect of removal to Algeria, because the Embassy had not issued any *laissez passers* for 26 months.[622] On 14 November 2022, the Council of State ruled that there is a reasonable prospect of removal to Morocco, after having been ruled out since 2 April 2021.[623] The Council of State considered that a reasonable prospect of removal can be envisioned due to a political process between the Netherlands and Morocco that was expressed in an Action Plan made public on 29 November 2022.[624] One of the agreed statements is as followed: 'Both countries are bound to respect each other's sovereignty and institutions and not to interfere in internal affairs.' According to Moroccan experts interviewed by the newspaper *NRC*, the Action Plan shows that the Netherlands will no longer openly criticize the human rights situation in Morocco in exchange for being able to deport and detain Moroccan nationals.[625]

Removal arrangements are in progress and executed with due diligence

Numerous rulings analysed this condition. Case law does not clearly specify how many days does the Secretary of State have to start deportation acts, however. More than usual diligence is required if the third country national is in possession is of a valid passport. Deportation arrangements include conducting departure interviews, investigating the deportation process, applying for the *laissez passer* and taking fingerprints.

No other sufficient but less coercive measures can be applied

Finally, pursuant to Article 59c of the Aliens Detention, detention may only be used as an *ultimum remedium*. Case law is however scarce on this matter. The Council of State often follows the IND position in arguing that the risk of absconding does not allow for alternatives.[626]

621 CJEU, C-673/19, 24 February 2021.
622 Council of State, ECLI:NL:RVS:2022:1276, 4 May 2022.
623 Council of State, ECLI:NL:RVS:2022:3269, 14 November 2022 overruling Council of State ECLI:NL:RVS:2021:695, 2 April 2021.
624 Action Plan Netherlands-Morocco, 8 July 2021, available in Dutch at: https://bit.ly/3vv1WFV.
625 NRC, The Netherlands can again deport migrants to Morocco — but may no longer criticize the country, 1 October 2022, available in Dutch at: https://bit.ly/3IcBMOl.
626 E.g. Council of State, ECLI:NL:RVS:2020:1546, 1 July 2020.

Detention of Dublin applicants

Dublin claimants can be detained for the purpose of transferring them to the responsible Member State.[627] Two conditions apply: (1) a concrete starting point for a Dublin transfer and (2) a significant risk of absconding. A EURODAC hit and a Dublin claim are both concrete starting points. For the risk of absconding Article 5.1b, paragraph 2 Aliens Decree is also used in Dublin cases. At least two grounds need to apply and at least one needs to be a serious grounds.

Detention of asylum seekers

The Aliens Act also provides a basis for the detention of asylum seekers during the asylum procedure (Article 8 Reception Directive). This form of detention may be imposed when:[628]

a. Detention is necessary for ascertaining the identity and nationality of the asylum seeker. This is the case when the identity or nationality of the asylum seeker are insufficiently known to the authorities and at least two of the grounds for detention are applicable.

b. Detention is necessary for acquiring information that is necessary for the assessment of the asylum application, especially when there is a risk of absconding. This condition is fulfilled when information that is necessary for the assessment of the asylum application can be obtained and at least two of the grounds for detention are applicable.

c. The asylum seeker has already been detained in the context of a return procedure, has previously had the chance to make an asylum application and has only made the asylum application to delay the return procedure. This assessment considers all circumstances.

d. The asylum seeker is a threat to public order or national security. This condition is in any case fulfilled if Article 1F of the Refugee Convention is probably applicable.

The above grounds are further elaborated in Article 5.1c Aliens Decree. In principle, detention of third country nationals with lawful residence may not last longer than four weeks. However, an extension can be given for two weeks if the third country national submitted an asylum application and the intention procedure of Art. 39 Aliens Act is followed. The Secretary of State must process the asylum application expeditiously. It appears from a decision by the Council of State that Article 59b sub b of the Aliens Act can no longer be used as a basis for the detention measure on appeal, but only in the administrative phase.[629]

2. Alternatives to detention

Indicators: Alternatives to Detention

1.	Which alternatives to detention have been laid down in the law?	☒ Reporting duties ☐ Surrendering documents ☒ Financial guarantee ☒ Residence restrictions ☐ Other
2.	Are alternatives to detention used in practice?	☒ Yes ☐ No

Detention is supposed to be a matter of last resort.[630] This is also laid down in policy rules.[631] Consequently, one alternative to detention is the limitation of freedom based on Article 56 of the Aliens Act. This includes reporting duties and restriction of freedom of movement, for instance within the borders of one specific municipality (see Freedom of Movement).

627 Article 59a Aliens Act.
628 Article 59b Aliens Act.
629 Council of State, ECLI:NL:RVS:2021:230, 4 February 2021.
630 Article 59c Aliens Act.
631 Paragraph A5/1 Aliens Circular.

According to an EMN-report on Alternatives to detention, the following alternatives to detention are used in the Netherlands: (1) Reporting obligations, (2) Requirement to reside at a designated area, (3) Obligation to surrender a passport, travel document or identity document, (4) Deposit or financial guarantee, (5) Accommodation in return and asylum facilities.[632]Other alternatives to detention, such as electronic monitoring or return counselling are not used.

Clear data on such practices are however often not available, as it is impossible to determine whether the measure is used as an alternative to detention, or just used in general. This has been criticised by the Advisory Council on Migration (Adviesraad Migratie), that recommended in 2021 that the government should start registering the use of alternatives to detention and should also experiment more with lighter alternative methods to detention.[633] An important 'alternative to detention' as discussed in the EMN-report is the 'Requirement to reside at a designated area' (2). The period 2015-2020 saw between 450 and 2,890 persons each year subject to reside at the Freedom Restricted Location (*VBL*) in the return procedure, see Freedom of Movement.[634] However, the question is whether residing at the Freedom Restricted Location can really be viewed as an alternative to detention. Rejected asylum seekers who are willing to cooperate in their return procedure can stay at this location for a maximum period of 12 weeks. As these people are already willing to cooperate in their return procedure, they would probably not have been detained as they do not qualify for the condition of risk of absconding / hampering the return procedure. The same goes for (3) Obligation to surrender a passport, travel document or identity document as all asylum seekers need to surrender their passport, which will only be given back upon return or if a residence status is granted.[635]

A draft Decree relating to a Bill regarding return and detention of aliens, specifies the circumstances in which alternatives to detention can be applied.[636] However, the adoption of this Bill had been delayed (see below). The Bill has been presented to the Senate of the Dutch Parliament, which is assessing it.

Recently, some courts ruled that detention in a specific case was unlawful due to a lack of investigation by the IND into alternatives to detention.[637]

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never
   - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never

3.1. Border detention of vulnerable applicants

Article 5.1a (3) of the Aliens Decree stipulates that border detention is not imposed or prolonged if there are special individual circumstances that make the detention disproportionate. As IND Work Instruction 2020/9 indicates, border detention cannot be applied to:

632 EMN, 'Detention and alternatives to detention in international protection and return procedures', May 2022, available at: https://bit.ly/3liT1Px.
633 ACVZ, *Advice: Working together on Retun*, April 2021, available at: https://bit.ly/3HsoxHP.
634 EMN-report, p. 19.
635 Par. C1/2.1 Aliens Circular.
636 Bill regarding return and detention of aliens (2015-2016), 34309/2, available in Dutch at: http://bit.ly/2mUloL3.
637 E.g. Council of State, ECLI:NL:RVS:2022:1667, 13 June 2022 (Dublin case), Regional Court Haarlem, Decision No NL21.19757, 28 December 2021; Regional Court Den Bosch, Decision No NL21.5216 and NL21.5248, 21 April 2021.

- Unaccompanied children,[638] whose detention is only possible when doubt has risen regarding their minority;[639]
- Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;[640]
- Persons for whose individual circumstances border detention is disproportionately burdensome;[641]
- Persons who need special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured within the border procedure.[642]

For the cases of applicants in need of special procedural guarantees or for whom detention at the border would be disproportionately burdensome, IND Work Instruction 2021/10 clarifies that vulnerability does not automatically mean that the applicant will not be detained at the border. The central issue remains whether the detention results into a disproportionately burdensome situation in view of the asylum seekers' "special individual circumstances" as mentioned in the Aliens Decree. Whether there are such "special individual circumstances" must be assessed on a case-by-case basis. The IND Work Instruction provides two examples of such circumstances: where a medical situation of an asylum seeker leads to sudden hospitalisation for a longer duration, or where the asylum seeker has serious mental conditions.[643]

The decision to detain at the border has to contain the reasons why the IND, though considering the individual and special circumstances produced by the asylum seeker, is of the opinion to detain the asylum seeker concerned (for example, the IND is of the opinion the border security interest should prevail above the individual circumstances).

If during the detention at the border special circumstances arise, which are disproportionately burdensome for the asylum seeker concerned, the detention will end and the asylum seeker will be placed in a regular reception centre. This means that during the detention it has to be monitored whether such circumstances arise.

3.2. Territorial detention of vulnerable applicants

In principle, no group of vulnerable third country nationals is automatically and *per se* excluded from detention. According to Amnesty International and *Stichting LOS,* vulnerable aliens sometimes end up in detention because there are no legal safeguards with regard to specific groups of vulnerable aliens.[644] However, families with minor children and unaccompanied minors are in principle not detained. A policy with regard to the exclusion of other categories of vulnerable aliens to detention has not been adopted.

Families with children and unaccompanied children who enter the Netherlands at an external border are redirected to the Application Centre in **Ter Apel**. Exceptions in the context of territorial detention are made for unaccompanied children that are suspected of or convicted for a crime, that have left the reception centre or that have not abided by a duty to report or a freedom restrictive measure. It is also possible to detain unaccompanied minors when there is a prospect of removing the minor within 14 days.[645] Detention of families with children is possible when the conditions of Articles 5.1a and 5.1b of the Aliens Decree are fulfilled for all family members, i.e. risk of absconding, obstruction the return procedure, additional information needed for the processing of an application, public order grounds, or significant risk of absconding in Dublin cases. In addition, it must be clear that at least one of the family

638 Article 3.109b(7) Aliens Decree.
639 Also in paragraphs A5/3.2 and A1/7.3 Aliens Circular.
640 Also in paragraph A1/7.3 Aliens Circular.
641 Article 5.1a(3) Aliens Decree.
642 Article 3.108b Aliens Decree.
643 IND, Work Instruction 2021/10, available in Dutch at: https://bit.ly/3dCOkj8.
644 Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016, available at: http://bit.ly/2f5t3QI.
645 Paragraph A5/2.4 Aliens Circular.

members is not cooperating in the return procedure.[646] Defence for Children strongly opposes detention of children on these grounds and in general.[647] Amnesty International and LOS have also pointed out that detention of children with insufficient balancing of interest has occurred several times.[648]

In 2019, 30 unaccompanied children were placed in detention, compared to 40 unaccompanied children in the whole of 2018.[649] From 2020 to 2022, there were less than 5 UAMs detained per year. Their average stay was 8 days in 2020, 9 days in 2021 and 14 days in 2022.[650] Children are detained at the closed family location in **Zeist**. In 2020, 50 families were detained at Zeist, their average stay was 9 days. In 2021, 75 families were detained at Zeist, their average stay was 8 days. In 2022, 55 families were detained at Zeist, their average stay was 9 days. However, in 2022, there was one case of an Iranian family with a 9-year old daughter, detained for more than five weeks in Zeist.[651]

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law:
   - ❖ Border detention: 4 weeks
   - ❖ Territorial detention: 18 months
   - ❖ Territorial detention of asylum seekers: 4.5 to 15 months

2. In practice, how long in average are asylum seekers detained in 2022?
   - ❖ Border detention: 30[652]
   - ❖ Territorial detention: 29 days[653]

The law provides different maximum time limits for detention depending on the applicable ground.

- ❖ The general time limit for border detention is 18 months.[654]
- ❖ Border detention may be imposed for a maximum of four weeks. In case the asylum request is denied and entry is refused the border detention can be prolonged. As a consequence, if an asylum request at the border is not rejected within four weeks, the detention is lifted and the asylum seeker is allowed entry during his further asylum procedure.[655] In case the asylum request is denied and entry is refused the border detention can be prolonged during the appeal procedure. The asylum seeker has 1 week to appeal the decision and the court has 4 weeks to make a decision. The prolonging should therefore not last more than 5 weeks.
- ❖ Territorial pre-removal detention under Article 59 of the Aliens Act may be imposed for a maximum of 18 months.[656]
- ❖ Territorial detention of asylum seekers under Article 59b of the Aliens Act may be imposed initially for four weeks, subject to the possibility of extension by another two weeks.[657]
- ❖ Territorial detention of asylum seekers on grounds of public order may be ordered for a period of up to 6 months, with the possibility of an extension for another 9 months in the case of

646 Paragraph A5/2.4 Aliens Circular.
647 Defence for Children, *Vreemdelingenbewaring*, available in Dutch at: http://bit.ly/2jTIOyZ.
648 Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016.
649 Ministry of Security and Justice, Rapportage vreemdelingenketen: January-December 2018, 42; January-June 2019, 32.
650 Statistics in this paragraph from 2020 on are based on questions answered by Repatriation and Departure Service (DT&V), received on 18 January 2023.
651 Meldpunt Vreemdelingendetentie, 'Gezin ruim vijf weken in detentiecentrum Zeist', 11 November 2022, available in Dutch at: https://bit.ly/3VFnhHw.
652 This concerns asylum seekers detained in border detention who were not continued to be detained after the border procedure, for example based on the Return Directive. Their average stay is 40 days. These figures are based on questions answered by Repatriation and Departure Service (DT&V), received on 18 January 2023.
653 These figures are based on questions answered by Repatriation and Departure Service (DT&V), received on 18 January 2023.
654 Article 59(7) Aliens Act
655 Article 3(7) Aliens Act.
656 Article 59(5) -(6) Aliens Act.
657 Article 59b(2)-(3) Aliens Act.

complex factual and legal circumstances, or an important issue of public order or national security.[658]

The majority of persons are detained for less than 3 months both at the border and on the territory. It should be noted, however, how there have been cases of persons detained for more than 6 months (for more information, see AIDA 2020 Update).

The available figures do not distinguish asylum seekers from other immigrants. In the first half of 2020, the average border detention period was around three weeks.[659] The average duration for territorial detention was 41 days in 2019, 34 days in 2021 and 29 days in 2022.[660]

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☒ Yes ☐ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☒ Yes ☐ No

In principle, asylum seekers are not detained in prisons for the sole purpose of their asylum procedure. Asylum seekers may be detained during their procedure.

(Rejected) asylum seekers with psychological problems can be transferred to a specialised institution called **Veldzicht**, which offers psychological care.[661] The transfer can be carried out voluntarily because the asylum seeker wants intensive psychological help, or involuntarily as a crisis measure. This option is also included in the Bill regarding the return and detention of aliens, which is still in the legislative process.[662] This is only possible when the detention or the asylum seekers centre cannot offer adequate care and at the condition that the asylum seeker is kept separate from (foreign) criminal detainees.

Even though asylum seekers are not detained with criminals or in prisons, the facilities for their detention managed by the Custodial Institutions Service (*Dienst Justitiële Inrichtingen*, DJI) are very similar. During the border procedure, adults are detained at the **Justitieel Complex Schiphol**. They stay in a separate wing at the detention centre. Territorial detention takes place in **Rotterdam** for men and in **Zeist** for women and (families with) children. In November 2020 and July 2022, the Council of State ruled that DC Rotterdam was to be considered a special detention facility within the meaning of Article 16 of the Return Directive.[663] The underlying intention of article 16 is to ensure that immigrants are separated from criminal detainees in detention.

658 Article 59b(4)-(5) Aliens Act.
659 Answers to written questions about the budget of the Ministry of Justice and Safety 2021, Question 480, available in Dutch at: https://bit.ly/35Pj8cE.
660 DJI, *Vreemdelingenbewaring* 2019, available in Dutch: https://bit.ly/3inAiTO; the figures of 2022 are based on questions answered by Repatriation and Departure Service (DT&V), received on 18 January 2023.
661 For more information see the website of Veldzicht: https://www.ctpveldzicht.nl/.
662 Bill regarding return and detention of aliens (2015-2016), 34309/2.
663 Council of State, ECLI:NL:RVS:2020:2795, 25 November 2020 and ECLI:NL:RVS:2022:2103, 21 July 2022.

The three centres have the following capacity:

Average detention capacity in the Netherlands: Sept – Dec 2022			
Detention centre	Maximum capacity	Maximum capacity immediately available	Occupancy
Schiphol	470	150	186
Rotterdam	640	113	357
Zeist	370	5 107	100

Source: DJI. [664]

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities		
1. Do detainees have access to health care in practice?	☒ Yes	☐ No
❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No

The Bill regarding return and detention of aliens was introduced in 2015 but is still being debated and will enter into force once it is accepted by the Senate.[665] In 2022, the file was still pending because an addition to the Bill had been presented to Parliament and because the Bill is already outdated so it needs a revision that still has not been presented.[666] The addition concerns specific measures for nuisance-causing aliens. The Bill stresses the difference between criminal detention and detention of aliens, which does not have a punitive character. It proposes an improvement in detention conditions for aliens who are placed in detention at the border and on the territory. For instance, aliens would be free to move within the centre for at least twelve hours per day.

Persons in detention have a right to health care, either provided by a doctor appointed by the centre or by a doctor of their own choosing. In March 2022, newspaper *Trouw* reported that due to a lack of qualified personnel and the right resources, the men detained in the Rotterdam immigration detention centre have been receiving poor medical care for years.[667] In one example a detainee needed to wait four months in order to see a doctor for a growing bump on his chin, because the nurse recorded his request as 'no emergency'. In response, the Custodial Institutions Agency denied the lack of access to adequate care, neither physical nor mental.

There are no known problems of overcrowding. Due to a reserve both on the short term and on the long run, overcrowding is highly unlikely.

Detained asylum seekers and migrants are normally held in a cell with another detainee. Only upon medical recommendation, an individual can obtain a cell of their own. Detainees are allowed to leave their cells to stay in the living areas within the detention centre between 8 am and 10 pm, with the exception of two hours during which meals are to be consumed in the cell. During these hours, activities are offered. Detained asylum seekers are able to make phone calls, go outside in a small 'playground', go to the recreational area of the detention centre, receive visitors (four hours a week), access spiritual counselling, visit the library, watch movies, and do sports and other recreational activities. All units have access to the internet but detainees are not allowed to go on social media websites, e-mail or any other website with chat functions. Since the beginning of the pandemic, this timetable underwent significant changes. Detainees were sometimes only allowed to leave their rooms for 1 hour a day due to lack of

664 DJI, Capacity and occupancy statistics, September – December 2022, available in Dutch at: https://bit.ly/3k76hgw.

665 Bill regarding return and detention of aliens (2015-2016), 34309/2. Information on the current state of affairs can be found on the website of the Senate at: https://bit.ly/2DY5WoF.

666 KST 35 501, nr. 29, 11 April 2022, available in Dutch at: https://bit.ly/3vM4Ru0.

667 Trouw, 'Gezond erin, ziek eruit: de gebrekkige zorg in de vreemdelingendetentie' (Healthy in, sick out: the lack of care in immigration detention), 14 March 2022, available in Dutch at: https://bit.ly/3VUj5nd.

staff in the facilities. Overall, they were not allowed to leave their living areas for more than 3,5-4 hours a day.[668] This regime ended at the beginning of April 2022.[669]

As opposed to criminal detainees, migrant detainees are not allowed to access work or education inside the detention centre.

Isolation

A report from Amnesty International, Doctors from the World and Immigration Detention Hotline (*Meldpunt Vreemdelingendetentie*) shed light on the frequent use made of isolation cells in detention centres.[670] According to the report, detainees were put in isolation 1,176 times in 2019. In response to questions of a regional court, DJI said that in 2021, isolation measures have been carried out 504 times in total.[671] Isolation is an order measure for the safety of the personnel, other detainees or the detainee himself, but also a punishment. Detainees are put in a cell with nothing but a mattress, a stool, and an iron toilet wearing a 'non-tearable dress' for 23 hours a day, up to 14 days in a row (with possibility to prolong). The organizations give a few recommendations to reduce isolating detainees: isolation should not be used for punishment, nor as a collective measure, it should also be used less and for a shorter period. A following report from the Immigration Detention Hotline from 2021 shows that the isolation measure is still being used as punishment for minor violations, such as refusing to stay in a multi-person cell.[672] Isolation is also used as a 'protective measure' in cases of hunger strike, self-mutilation and based on potential risk of committing suicide.

3. Access to detention facilities

Indicators: Conditions in Detention Facilities

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☒ Yes ☐ Limited ☐ No
   - ❖ NGOs: ☒ Yes ☐ Limited ☐ No
   - ❖ UNHCR: ☒ Yes ☐ Limited ☐ No
   - ❖ Family members: ☒ Yes ☐ Limited ☐ No

According to the Bill on return and detention of aliens (which still has to enters into force, as previously specified), contact with the outside world is guaranteed through certain people, amongst which the National Ombudsman, the legal counsellor of the alien, members of parliament and relevant NGOs.[673]

Current policies do not specify the capacity of visitors, but Paragraph A5/6.10 of the Aliens Circular grants detained migrants the right to receive visitors, to make phone calls and to send and receive correspondence. However, these rights may be restricted by the managing director of the detention facility when the person in question abuses them to abscond or obstruct their return procedure. There is however no information on how often this occurs. Up until June 2020, detainees were not allowed to receive visitors due to the COVID-19 pandemic. From June 2020, visits restarted, but were limited to a few times a week early in the morning, and only behind glass.[674]

The Dutch Council for Refugees has an active branch in the Schiphol detention centre, which enables the DCR to support asylum seekers during their asylum procedure. Asylum lawyers are also present on a regular basis at the Schiphol detention centre. Since 2018, the DCR has also consulting hours available three days a week for asylum seekers in the detention centre of Rotterdam. Furthermore, the

668 Meldpunt Vreemdelingendetentie, 'Covid in migrant detention', 1 December 2021, available in Dutch at: https://bit.ly/3JZKJun.
669 Newsflash Detention Hotline, 'Hopelijk Geen 1 April Grap: Celdeuren in April weer Open', 4 April 2022, available in Dutch at: https://bit.ly/3CB0XI6.
670 Amnesty International, Doctors from the World, Meldpunt Vreemdelingendetentie (2020): *Isolatie in Vreemdelingendetentie,* available in Dutch: https://bit.ly/3nQgkCh.
671 Regional Court Den Bosch, ECLI:NL:RBDHA:2022:5970, 22 June 2022.
672 Meldpunt Vreemdelingendetentie (2021): *Gebroken in vreemdelingendetentie,* available in Dutch at: https://bit.ly/3WJMlOM.
673 Bill regarding return and detention of aliens (2015-2016), 34309/2.
674 Meldpunt Vreemdelingendetentie, *Covid in migrant detention*, 1 December 2021, available in Dutch at: https://bit.ly/3JZKJun.

DCR occasionally visits the centre in Zeist to provide legal assistance and information to asylum seekers.

Moreover, Stichting LOS visits the detention centres. Stichting LOS is an NGO that strives for improving immigration detention conditions.[675] Stichting LOS supports detainees for instance with files of complaints against detention conditions. Stichting LOS also has an "Immigration Detention Hotline" that detainees can call (using their right to make phone calls) free of charge.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention		
1. Is there an automatic review of the lawfulness of detention?	☒ Yes	☐ No
2. If yes, at what interval is the detention order reviewed?	4 weeks	

Before a detention order is issued, or as soon as possible after this, the detainee has to be interviewed so that he can give his opinion about the (intended) detention.[676]

According to Article 93 of the Aliens Act, an asylum seeker is entitled to lodge an appeal at any moment they are detained on the basis of territorial detention or border detention.

There is also an automatic review by a judge of the decision to detain, regardless of whether it concerns border detention or territorial detention. According to Article 94 of the Aliens Act, the authorities have to notify the Regional Court within 28 days after the detention of a migrant is ordered, unless the migrant or asylum seeker has already lodged an application for judicial review him or herself. The hearing takes place within 14 days after the notification or the application for judicial review by the migrant,[677] and the decision on the detention is taken within 7 days.[678] When the Regional Court receives the notification, it considers this as if the migrant or asylum seeker has lodged an application for judicial review.

The Council of State has referred a question for a preliminary ruling to the CJEU on the review of the migrant detention on 23 December 2020 (C-704/20).[679] The Council questioned whether judges are obliged to rule of their own motion upon all the conditions of detention, even when the detainee has not complained about certain conditions. In January 2021, the Regional Court of Den Bosch added some questions to the ones raised by the Council of State.

The CJEU ruled that it follows from CEAS provisions on detention, which give concrete form to the right to effective judicial protection safeguarded in Article 47 of the Charter, that Member States must provide for a 'speedy' judicial review, either ex officio or at the request of the person concerned, of the lawfulness of that detention.[680] Since the EU legislation requires, without exception, that supervision that the conditions governing the lawfulness of the detention are satisfied must be effected 'at reasonable intervals of time', the competent authority is required to carry out that supervision of its own motion, even if the person concerned does not request it.

675 Full name: Stichting Landelijk Ongedocumenteerden Steunpunt. See www.stichtinglos.nl and https://bit.ly/2WMaB4g.

676 Article 59(2) Aliens Decree. The importance of this procedural condition was stressed in the following judgments: Council of State, Decision No 201506839/1/V3, 30 March 2016; and Council of State, Decision No 201801240/1/V3, 2 May 2018. The Council of State referred to EU law, including to the CJEU's judgment *Mukarubega* of 5 November 2014 (Case C-166/13).

677 Article 94(2) Aliens Act.

678 Article 94(5) Aliens Act.

679 Council of State, ECLI:NL:RVS:2020:3061, 23 December 2020.

680 CJEU, C-704/20 and C-39/21 (C, B, X), 8 November 2022.

The first judicial review examines the lawfulness of the grounds for detention – whether the conditions for detention were fulfilled – whereas further appeals against immigration detention review the lawfulness of the continuation of detention.[681]

If the court is convinced that the detention is unreasonably burdensome because the decision-making authorities have not sufficiently taken into account the interests of the individual, detention can be lifted.[682] Article 59c Aliens Act stipulates: "Our Minister shall only detain an alien on the basis of Article 59, 59a or 59b, insofar as no less coercive measures can be applied effectively" and "Detention of an alien is waived or terminated if it is no longer necessary with a view to the purpose of the detention."

Paragraph A5/1 of the Aliens Circular states that the interests of the person need to be weighed against the interests of the government in keeping him or her available for the return procedure. This is stressed in the specific context of the detention of asylum seekers.[683] The weighing of interests is not mentioned explicitly in policy with regard to border detention.

Detainees have the right to be informed about the reason for their detention; this is laid down in the Aliens Decree.[684] Usually this information is provided to the individual concerned by the government official who issues the detention order, or by a lawyer. In all cases, the detention order has to be given in writing and state the reasons for detention. More practical rules on how the information should be provided, are laid down in policy guideline Aliens Circular.[685]

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☒ Yes ☐ No

Asylum seekers are provided legal aid in detention and it is paid for by the State.[686] Individuals who claim asylum upon their arrival at the border and who are subsequently detained, will be assigned a lawyer / legal aid worker specialised in asylum law. Because of the existence of these state funded lawyers, NGOs in general do not intervene in such cases before the Regional Court.

E. Differential treatment of specific nationalities in detention

No distinctions are made between different nationalities in detention. The Dutch Council for Refugees has no indication to believe that some nationalities are treated less favourably compared to others in the context of detention.

681 Article 96 Aliens Act.
682 Article 94(5) Aliens Act.
683 Paragraph A5/6.3 Aliens Circular.
684 Article 5.3 Aliens Decree.
685 Paragraph A5/6.6 Aliens Circular.
686 Article 100 Aliens Act.

Content of International Protection

A Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status 5 years
   - ❖ Subsidiary protection 5 years
   - ❖ Humanitarian protection 5 years

Refugees and beneficiaries of subsidiary protection are granted temporary asylum status for 5 years.[687] Material rights are the same. The residence permit also has a validity of 5 years.[688]

Regardless of the ground on which the permit is granted, the permit entitles the status holder to the same rights and entitlements.

Procedure for granting a permit

The IND is responsible for issuing a residence permit. Asylum seekers who are granted temporary asylum (i.e. refugee status and subsidiary protection) status during their stay at the Application Centre are registered immediately in the Persons' Database at the so called "BRP-*straat*" (BRP stands for *Basisregistratie Personen*, the Persons' Database of the municipality) and will receive their temporary residence permit from the IND. There are no problems known to the Dutch Council for Refugees regarding this procedure.

Beneficiaries who already have been transferred to a Centre for Asylum Seekers (AZC) when granted temporary asylum status will, within a few weeks after the status has been granted, be invited to pick up their residence permit at one of the offices of the IND. There are no problems known to the Dutch Council for Refugees regarding this procedure.

Because of COVID-19 the "BRP-straat" was temporarily closed on several occasions in 2020. Therefore, there is a backlog in registration, also during 2021. The "BRP-straat" did not close during 2022, but the backlog in registration was still present. Due to limited capacity, priority is given to the registration of refugees with a permit, who will be entitled to a house in a municipality. Priority is also given to family members of refugees who came to the Netherlands through family reunification. No priority is given to asylum seekers who want to be registered, unless they provide a specific reason (e.g. medical reasons). The backlog in registration in 2022 was caused partly by previous issues that originated from the pandemic, but also due to limited capacity at the "BRP-straat" and logistic problems. For example, the COA must transport people from the reception centers to the "BRP-straat", but the service is not functioning well. So people can not reach the "BRP-straat" for their appointments. Since summer in 2021, family members of refugees who came to the Netherlands due to family reunification are registered at the "BRP-straat" in Emmen. Since the end of 2022, a part of them are instead registered at the "BRP-straat" in Budel. That is the case for family members of refugees that already have housing that is fitting for the whole familiy. During the COVID-19 crisis, various delays were registered in the time needed to receive the temporary residence permit (the document itself) from the IND. This was still the case both in 2021 and 2022. The delays increased. The problems were caused by a shortage of staff at the IND and an increasing amount of documents that had to be issued. There is a emergency procedure for people in need of a document for hospitalization or for keeping ones job for example. At the end of 2022 the delays decreased.

687 Article 28(2) Aliens Act.
688 Article 4.22(2) Aliens Decree.

The first issuance of the temporary residence permit for refugees is free of charge. In case the residence permit is stolen or lost, the beneficiary is requested to report this to the police.[689] In order to acquire a new permit, a form, which can be found on the website of the IND, has to be completed and sent to the IND. A copy of the police report has to be included. Costs for renewing a residence permit are €146 for an adult and €70 for a child.

2. Civil registration

Every person who is legally present in the Netherlands is registered in the Persons Database (*Basisregistratie personen*, BRP).[690] That means that asylum seekers and beneficiaries of international protection also have to be registered in the BRP. The registration takes place in the municipality where the person resides.

The following personal details are registered at the BRP:

- Civil status: name, date of birth, marriage, child birth certificates;
- Address;
- Nationality;
- Legal status;
- Registration of travel documents;
- Official identity number;
- Parental authority; and
- Information on voting rights.

The registration of foreigners is based on family documents and identity documents. If there are no documents available, a person can be registered based on a sworn statement on their personal record. It is not possible to register a person's nationality with a sworn statement.

If someone does not know their date of birth, the IND can make a declaration on the day of birth that they determined and used in the asylum procedure. The IND can do the same when someone has no documents to prove their nationality. The municipality can use the declaration of the IND to register the day of birth and/or the nationality in this way if necessary.[691]

The registration in the Persons Database is necessary to obtain an official identity registration number ("*burgerservicenummer*"). Having an official identity registration number is an administrative requirement in order to access social welfare, housing, health care insurance and other public provisions.

The registration of asylum seekers takes place at the Application Centers. At the end of 2015, the so called "BRP-*straat*" (the Persons' Database of the municipality) was introduced in Application Centres nationwide. As a result, asylum seekers who are granted temporary asylum status during their stay at the Application Centre are registered immediately in the Persons' Database and will receive their temporary residence permit. This means that, once they are assigned to a local authority, their registration can quickly and easily be processed by that new local authority. Additionally, they will have quicker access to social security benefits. Organisations contributing to the BRP-*straat* are IND, COA, the Dutch Association for Civil Affairs (NVVB) and the former Platform *Opnieuw Thuis*.

The BRP-*straat* is working well in practice. Refugees with a permit as well as asylum seekers are registered. There are a few conditions for asylum seekers before they can be registered. As soon as the identity of the asylum seeker is determined, the IND notifies the municipality stating that this person can be registered.[692] However, the IND does not notify the municipality for people falling under the Dublin Procedure (Track 1) or the Accelerated Procedure (Track 2). These applicants cannot register at the BRP early in the asylum procedure.

689 Article 4.22 Aliens Decree; Article 3.43c(1) Aliens Regulation.
690 Persons Database Act, available in Dutch at: http://bit.ly/2Bx1lFu.
691 Article 2(17) Persons Database Act.
692 Article 24a Persons Database Decree.

Childbirth registration

When a child of an asylum seeker or beneficiary of international protection is born in the Netherlands, the child will be registered at the BRP even if the parents are not registered at the BRP. The child can obtain a birth certificate.

Marriage registration

The registration of a marriage is based on a marriage certificate. Some applicants and beneficiaries do not have a marriage certificate from their country of origin. In this case the instrument of sworn statement can provide a solution, provided that: (a) a marriage certificate cannot be produced; and (b) it is very clear for the municipality that the person concerned will not be able to obtain a marriage certificate within six months.[693]

Dutch authorities do not, as a rule, recognize a traditional / religious marriage. However, a traditional / religious marriage contracted in the country of origin can be recognized if it is perceived as legally valid in the country of origin. Sometimes the law of the country of origin requires a formal registration of the traditional / religious marriages before these become legal.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2022: Not available

Pursuant to Article 45b(1)(d) and (e) of the Aliens Act, a beneficiary can obtain an EU long-term residence permit if he or she meets the requirements of Article 45b(2) of the Aliens Act:

- The applicant must have had legal stay for five continuously years and immediately preceding the application. In the aforementioned period, the applicant is not allowed to stay outside the Netherlands for six consecutive months or more, or in total ten months;
- Whether or not together with its family members, the applicant must have means which are independent, sustainable and sufficient;
- Is not convicted for a crime threatened with imprisonment of three years or more;
- Should not constitute a risk for national security;
- Must have adequate medical insurance for him and his family members; and
- Must have passed the integration test.

However, most beneficiaries do not apply for EU long-term resident status, but for permanent asylum status on the basis of Article 33 of the Aliens Act.

After five years of holding a temporary asylum permit (both refugees and subsidiary protection beneficiaries) in the Netherlands, a status holder may be eligible for a permanent asylum residence permit. The conditions that apply to the permanent residence permit application are the following:

1. The status holder has lawful residence in the Netherlands on the basis of a temporary asylum residence permit.
2. The status holder has resided lawfully in the Netherlands for more than 5 years without interruption.
3. The status holder has not provided incorrect information or concealed any information that could have caused the IND to reject the asylum application.
4. The status holder is not a threat to public order or national security.
5. The status holder meets the conditions of his permit. This means that the ground for asylum must still exist.

693 Article 2(10) Persons Database Act.

6. The status holder has fulfilled the integration requirement.
7. The status holder must be registered in the Personal Records Database (BRP) of his / her place of residence (municipality).
8. The status holder must pay legal fees. The legal fee for adults is €270 and for children € 70.[694]

If it is already clear that the status holder is not going to meet the integration condition (for example, someone does not yet have an integration diploma and that will also take considerable time), it is better to apply for an extension of the temporary asylum status. There are no legal fees for the application of an extension. The permanent asylum status can be requested at any time after extending the temporary asylum status when the conditions are met.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	5 years
2. Number of citizenship grants to beneficiaries in 2022:	Not available

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Act on Dutch Citizenship.[695] When a holder of an asylum residence permit wants to obtain Dutch citizenship, he or she must have a permanent residence permit. There are no different criteria for recognised refugees and those granted subsidiary protection.

To fulfil the conditions for Dutch citizenship, a beneficiary must:

1. Be 18 years old or older.

2. Have lived uninterruptedly in the Netherlands for at least 5 years with a valid residence permit. The person must always extend his or her residence permit on time.

   There are a number of exceptions to the 5-years rule. If, however, the beneficiary is officially recognised as a **stateless person** he or she can apply for naturalisation after at least 3 years living in the Netherlands with a valid residence permit.

3. Have a valid residence permit immediately prior to the application for citizenship. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. At the time of the decision on the application, the permanent residence permit must still be valid. There is an exception for recognised **stateless persons**: they can apply for naturalisation after at least 3 years even if they still have an asylum residence permit that is not yet permanent.

4. Be sufficiently integrated. This means that they can read, write speak and understand Dutch. In order to show that sufficient integration, the beneficiary has to take the civic integration examination at A2 level. The civic integration examination has been changed various times. As of 1 January 2015, its examination consists of the following parts: reading skills in Dutch, listening skills in Dutch, writing skills in Dutch, speaking skills in Dutch, knowledge of Dutch society and orientation on the Dutch labour market. Since 1 October 2017, a new part was added: the Declaration of Participation. This is a part of the civic integration examination. One must sign the participation statement after attending a workshop on Dutch core values. Since 1 January 2022, a new Civic Integration Act was introduced.[696] The language level requested to undergo the civic integration examination was raised at a B1 level. Instead, no changes were made regarding the conditions set to evaluate 'sufficient integration', necessary to obtain Dutch nationality, so that the requisite in terms of language knowledge remains at an A2 level. No

694 Article 3.43b Aliens Regulations.
695 Act on Dutch Citizenship, available in Dutch at: http://bit.ly/2IfqBbe.
696 Stb. 2021, 35, Wet inburgering 2021.

changes are foreseen for 2022, regardless of the introduction of the new Civic Integration Act.[697] The conditions remained the same in 2022. It is unknown when there will be changes and which they might be in 2023.

If the beneficiary holds certain diplomas or certificates, e.g. education in the Dutch language certified by a diploma based on a Dutch Act such as the Higher Education and Research Act, Higher Professional Education Act, Secondary Act Education Professions Act or Apprentice Act, they can be exempt for the obligation to pass for the civic integration examination.

When someone suffers from severe permanent physical problems or serious mental health limitations, they may get an exemption on the civic integration examination. One has to prove that due to a psychological or physical impairment or a mental disability, one is permanently unable to pass the civic integration examination. One needs an advice about that from an independent doctor. At this moment one has to undergo a medical examination done by a medical adviser from Argonaut, which is the Medical Advisor assigned by the Minister of Social Affairs and Employment.

It is possible to get an exemption on non-medical grounds for example in case of illiteracy. Therefore, the person needs to prove that he or she has made sufficient efforts to pass for the civic integration examination. As of 1 July 2018, the following elements are considered:

- Showing participation for at least 600 hours in a civic integration course; a course preparing for the State Exam Dutch as a second language (NT-2), level I or II, or a combination of both courses. The course must have been taken at a language institution with a quality mark of an organisation called Blik op Werk and that the person has not passed parts of the civic integration examination at least 4 times. Maximum two of those parts can be parts of the State Exam Dutch as a second language (NT-2), level I or II;
- Showing participation for at least 600 hours in an (adult) literacy course at an institution with a quality mark of Blik op Werk and having demonstrated through a learning ability test taken by the Education Executive Agency (DUO) that he or she does not have the learning ability to pass the civic integration examination.
- Showing participation for at least 600 hours in an (adult) literacy course and a following civic integration course, both at a language institution with a quality mark of Blik op Werk. At least 300 hours must have been attended in a (adult) literacy course and it has been demonstrated - with a learning ability test taken by DUO, that the person does not have the learning ability to pass the civic integration examination.

5. Not having received a prison sentence, training or community service order or paid or had to pay a large fine either in the Netherlands or abroad in the previous 5 years before the application for naturalisation (up until 1 May 2018 this period was 4 years). A large fine is a fine with an amount of €810 or more. Someone must also not have received multiple fines of €405 or more, with a total amount of €1,215 or more. At the time of the application, there must also be no ongoing criminal proceedings against the person. There also must not be a suspicion on violation of human rights or the suspicion that someone is a danger to society.

6. Renounce their current nationality. There are some exceptions to this rule. One of the exceptions is the following. When a person obtains a (permanent) asylum residence permit, they do not have to renounce their nationality.

7. Make the declaration of solidarity. One is obligated to go to the naturalisation ceremony and to make the statement of allegiance. They agree that the laws of the Netherlands also apply to them. The statement of allegiance must be done in person.

697 KST 32824, nr.346, Brief Voorbereiding ontwerp- algemene maatregelen van bestuur tot wijziging van het Vreemdelingenbesluit 2000 en het Besluit naturalisatietoets in verband met een overgangssituatie na de inwerkingtreding van de Wet inburgering 2021 (Letter from the Secretary of State to the Parliament on the consequences of the new Civic Integration Act for obtaining long term permit or the Dutch nationality).

A child can only apply for naturalisation together with the parent ("*medenaturalisatie*"). The child under the age of 16 years must live in the Netherlands and must have a residence permit.[698] This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents.

Children of the age of 16 or 17 years old must have been living uninterruptedly in the Netherlands for at least 3 years with a valid residence permit. This must be a permanent residence permit or a temporary residence permit with a non-temporary purpose of stay. Children of holders of a permanent asylum residence permit must have the same permit or an asylum residence permit dependent on the permanent asylum residence permit of the parents. The child must be present for the application and he must indicate that he agrees with the application. Children of 16 and 17 years old must also meet the condition mentioned here above under 5 and 7.

A person has to submit the application for naturalisation in the municipality where he lives. The municipality has to check whether the application is complete. When someone submits the application in regular cases one has to show a legalised birth certificate and a valid foreign passport. Holders of a permanent asylum residence permit are exempt from this (only in very specific situations the IND can ask for document). The municipality also looks at whether the person meets all the conditions for naturalisation and gives a recommendation to the IND (Immigration and Naturalisation Service). The municipality sends the application to the IND.

The IND is the service that makes the decision. The IND checks whether a person meets all the conditions required and must decide within 12 months.

The beneficiary has to pay a fee for the application for naturalisation. Holders of an asylum residence permit pay less than holders of a regular residence permit.

Fees for citizenship applications			
Category of applicant	2020	2021	2022
A single stateless person or a holder of an asylum residence permit	€670	€688	€722
Plural application stateless persons or holders of an asylum residence permit (e.g. married couples)	€920	€945	€991
A request for a child younger than 18 years-old obtaining the Dutch citizenship together with his/her parents	€133	€137	€143

There are no data available on the number of people who obtained Dutch citizenship in 2022. According the CBS (Centraal Bureau voor de Statistiek), in 2021 34,692 adults obtained the Dutch nationality via a independent application. 21,627 minors obtained the Dutch nationality via "*medenaturalisatie*" (obtaining Dutch nationality together with their parents). In total, 56,319 people obtained Dutch nationality.[699] It is unknown how many of the applications were issued by beneficiaries of international protection.

The Annual Report of the IND for 2022 is not yet published and there is not yet a list of annual figures for 2022. In its 2021 Annual Report, the IND mentioned in the list of annual figures of 2021 that in 2021, 59,680 applications for naturalisation were submitted. The IND took 55,930 decisions on applications for naturalisation into consideration. 98% of those decisions were positive but it is unknown how many of the applications were issued by beneficiaries of international protection.[700]

698 Article 11 Act on Dutch Citizenship.
699 CBS, available at: https://bit.ly/3DFqQpG.
700 IND, Annual report 2020 and 2021 and Jaarcijfers 2021, available in Dutch at: www.IND.nl.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

5.1. Grounds for cessation of status

Article 32 of the Aliens Act provides the grounds for revocation of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection. It states that temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case the legal ground for granting protection status has ceased to exist. The temporary asylum status of a recognised refugee will be revoked in case any of the grounds of Article 32 Aliens Act applies,[701] as will be the case for temporary asylum status of a beneficiary of subsidiary protection.[702]

Revocation of refugee status or subsidiary protection is further explained in Paragraph C2/10.4 of the Aliens Circular.

Within the Dutch system, there is no distinction between the cessation and the withdrawal of asylum status. Moreover, the Dutch system does not differentiate between an asylum status and the asylum permit. Therefore, revocation of the asylum status means that the permit is automatically revoked. In 2019, 250 temporary asylum statuses/permits were revoked, while they were 170 in 2020 and 190 in 2021. From January to September 2022, the IND revoked 270 temporary asylum statuses/permits.[703] The IND revoked 20 permanent asylum statuses/permits in 2020 and 30 in 2021 (up until September).[704]

The grounds of revocation from Article 32 Aliens Act are:

a) False information
b) Danger to public order or national security
c) Ceased circumstances
d) [Change of main residence outside the Netherlands]
e) End of the family bond (for family reunification statuses – not discussed further)

Article 32(1)(d) of the Aliens Act provides that, where the beneficiary of international protection changes his or her main residence outside the Netherlands, temporary asylum status can be revoked. This is not in accordance with the limitative grounds for revocation in the recast Qualification Directive. It remains a revocation ground by law for regular migration permits, but can no longer be used for asylum permits. According to the Aliens Circular a change of main residence outside the Netherlands does not constitute a ground for withdrawal of status.[705] Given this policy, this revocation ground is no longer used in practice. Nevertheless, when a beneficiary of international protection changes his or her main residence outside the Netherlands, according to policy, the Dutch authorities assess whether the legal ground for granting protection has ceased to exist. This is laid down in paragraph C2/10.5 of the Aliens Circular.

701 Article 3.105d Aliens Decree.
702 Article 3.105f Aliens Decree.
703 KST 36200-VI, no. 12, List of questions and answers for the of the budget of the Ministry of Justice and Security 2023, 2 November 2022, available in Dutch at: https://bit.ly/418lvTg.
704 List of questions and answers for the of the budget of the Ministry of Justice and Security 2022, 17 November 2021, number 138, available in Dutch at: https://bit.ly/3n8vckJ.
705 Paragraph C2/10.5 Aliens Circular.

A. False information

The withdrawal ground of false information is applicable to both temporary (article 32 Aliens Act) and permanent statuses of international protection (article 35 Aliens Act). This means that this ground can be invoked as a reason of withdrawal even after living over 20 years in the Netherlands.[706]

After receiving reports of fraud, the IND started to reassess statuses from homosexual status holders from **Uganda**.[707] The IND had reasons to believe that there were organizations helping the Ugandans to get asylum in the Netherlands. Of the 253 inspected cases, one status was withdrawn, while 35 cases are still pending as of November 2020. There was no public serious follow up on these cases.

B. Danger to public order or national security

The withdrawal ground of being a danger to public order or national security is applicable to both temporary (article 32 Aliens Act) and permanent statuses of international protection (article 35 Aliens Act). This means that this ground can be used for withdrawal even after living over 20 years in the Netherlands.

In 2019, the status and residence permit of 30 persons with international protection had been revoked, in 2020 there were also 30 revocations and in 2021 there were 20 revocations.[708]

Article 3.86 Aliens Decree gives a number of 'sliding scales'. The article establishes a link between the duration of the irrevocable punishment for a crime and the duration of lawful residence in the Netherlands. Although the matter is highly complex, in short, the longer the foreign national legally resides in the Netherlands, the heavier the penalty must be in order to reject the application for extension or to terminate the legal residence.[709]

However, the 'sliding' scale only applies only if a minimum threshold of '(particularly) serious crimes' is reached. The asylum status and permit of a refugee can be revoked when the refugee commits a 'particularly serious crime' (article 14(4)(b) QD). In Dutch policy, a crime is considered 'particularly serious' when the refugee received a prison sentence for at least 10 months. On 15 June 2022, the Council of State referred preliminary questions to the CJEU about the interpretation of 'particularly serious crimes'.[710] The asylum status and permit of persons with subsidiary protection can be revoked if a 'serious crime' (article 17(1)(b) QD) is committed. In Dutch policy, a crime is considered 'serious' when the person received a prison sentence of more than 6 months.

Moreover, unique in the public order policy, only for subsidiary protection statuses also suspended sentences have to be calculated.[711]

C. Ceased circumstances

While considering whether a temporary asylum status - granted to a recognised refugee or a beneficiary of subsidiary protection - will be revoked because the legal ground for granting status is no longer applicable, Dutch authorities shall have regard to whether the change of circumstances is of such significant and non-temporary nature that the fear of persecution or the real risk of serious harm can no longer be regarded as well-founded.[712] The legal basis for granting protection status has not ceased to exist if the beneficiary can state compelling grounds arising out of previous persecution or former serious

706 For example Council of State, ECLI:NL:RVS:2020:2953, 14 December 2020 (the applicant had an asylum status for over 14 years).
707 KST 19637, nr. 2670 and appendix, LGBTI in the asylum procedure.
708 Ministry of Justice and Security, State of Migration 2022, 7 July 2022, available in Dutch at: https://bit.ly/3Z6t8Zf, 135.
709 Work Instruction 2020/12 *De toepassing van de glijdende schaal*, available in Dutch at: https://bit.ly/3wiiym0.
710 Council of State, ECLI:NL:RVS:2022:1703, C-402/22, 15 June 2022.
711 Paragraph C2/10.3 and C2/10.7 Aliens Circular.
712 Article 3.37g Aliens Regulation.

harm, to refuse to request protection of the country of his or her nationality or his or her former place of residence.[713] It will be stated in the country-based asylum policy whether the IND considers a change of circumstances in the overall situation in (a particular area of) a certain country to be significant and non-temporary for the purposes of cessation.[714]

If the IND finds that the legal ground for granting a temporary asylum status has ceased to exist, and the change of circumstances is of a significant and non-temporary nature, it investigates in any case:[715]

- Whether at the time of granting temporary asylum status another legal ground for granting protection status, provided for in Article 29(1) or (2) of the Aliens Act, applied;
- Whether at the time of review of the temporary asylum status another ground for granting protection status, as provided for in Article 29(1) or (2) of the Aliens Act, applies;
- Whether the status holder can state compelling grounds arising out of previous persecution or former serious harm to refuse to return to his or her country of origin.

If at least one of these conditions applies, the IND does not revoke temporary asylum status.

If the status holder has a permanent status of international protection, ceased circumstances do not lead to the revocation of the status (article 35 Aliens Act).

In January 2020, the IND decided that it would no longer consider certain parts of **Sudan** to be in a conflict that reaches the Article 15c QD-standards. At the same time, the IND announced starting a reassessment of all subsidiary protection statuses that were granted in line with the country policy stating that there was a 15c-situation in some parts of Sudan. The IND announced that around a hundred statuses were going to be reassessed because they believed that the change of circumstances in Sudan had such a significant and non-temporary nature that the fear of persecution or the real risk of serious harm could no longer be regarded as well-founded (article 3.37g Aliens Regulation) [716] The reassessment project terminated in 2021. According to the Evaluation of the IND, the reassessment resulted in 0 revocations on the ground of ceased circumstances. [717] Most of the status holders kept their permits on other grounds as many groups were considered to be at risk in Sudan.

No extension of the residence permit

The IND also assumes that the ground for cessation 'ceased circumstances' applies if the beneficiary of international protection has neither applied for an extension of the period of validity of his or her status nor for a permanent asylum residence permit (paragraph C2/10.4 Aliens Circular). This hypothetical policy is quite new.[718] Before, if the protection beneficiary did not renew their residence permit on time, it would be possible they were not entitled to legal stay for a short time. This was problematic for certain allowances and for employment contracts. There is barely any case law on this new phenomenon.

Change of main residence outside the Netherlands

The IND also assumes that the revocation ground 'ceased circumstances' applies if the beneficiary of international protection has left the Netherlands. If the beneficiary is no longer registered in the Municipal Personal Records Database (BRP) it is assumed that he or she has left the Netherlands. This is particularly worrying, given that people who become homeless are also unregistered from the BRP. A few cases concerning beneficiaries who became homeless and lost their asylum status and permit have been assessed by Regional Courts.[719] Often, these people realised that their status had been revoked when it was already too late to apply for review and appeal. This means that the courts cannot decide on their cases and the revocation becomes final. One court decided that the Bahaddar-exception was

713 Article 3.37g Aliens Regulation.
714 Paragraph C2/10.4 Aliens Circular.
715 Paragraph C2/10.4 Aliens Circular.
716 Decree WBV 2020/1 of 12 January 2020, Stb. 2020, 3262, amending the Aliens Circular 2000, available in Dutch at: https://bit.ly/3i9r1yB.
717 Evaluatierapport Herbeoordelingen Soedan oktober 2021, p. 21, available in Dutch at: https://bit.ly/3VPy7uh.
718 Decree WBV 2018/10 of 20 September 2018, Stb. 2018, 52887, available in Dutch at: https://bit.ly/38FLDLM.
719 Regional Court Den Bosch, 21 July 2021, Decision No NL20.18837 and Regional Court Utrecht, 14 September 2020, ECLI:NL:RBDHA:2020:9086.

applicable: an article 3 ECHR-risk was very clear, which made it possible to set the final terms for appeal aside.[720] The court then ruled that the IND could not revoke the status merely because the person was unregistered from the BRP, rather the IND needed to assess whether a change of circumstances in the overall situation in (a particular area of) a certain country was applicable and was also significant and of non-temporary nature.

Voluntary return
The Aliens Circular stipulates that voluntary return to the country of origin is not a sufficient ground for the IND to revoke temporary asylum status. In case the IND finds that a recognised refugee or a beneficiary of subsidiary protection has, of his or her own free will, returned to his or her country of origin, the IND will conduct an interview concerning this journey. It is then up to the status holder to prove that he or she is still in need of protection.

Voluntary re-availing
Considering Article 1C of the 1951 Refugee Convention, it is stipulated that a temporary asylum status of a recognised refugee shall be revoked in case he or she requests and receives a passport from the authorities of the country of origin. Temporary asylum status is not revoked in case the recognised refugee can prove that Article 1C of the Refugee Convention does not apply.[721]

5.2. Cessation procedure

The Aliens Act provides that the intention procedure is applicable in case a temporary asylum status is revoked.[722] Under the intention procedure, the status holder is informed in writing of the intention to revoke his or her temporary asylum status. The letter of intention will not be sent to the previous asylum lawyer, only to the status holder.[723] Within 6 weeks, the status holder can put forward his or her view on the intention to revoke temporary asylum status.[724] In case the IND still intends to revoke temporary asylum status, the status holder will be allowed an interview.[725] During the interview, the status holder will be given the opportunity to react on the intention to revoke temporary asylum status and explain his or her view on this. The legal representative can attend the interview.

In the decision to revoke temporary asylum status, the IND considers on its own accord, on the basis of Article 3.6a of the Aliens Decree, whether the status holder can be granted a temporary regular residence permit, or whether there are sufficient grounds for granting delay of departure from the Netherlands on medical grounds.[726]

The cessation decision states that there is an obligation to leave the country within 4 weeks.[727] Within 4 weeks the status holder can appeal the decision to revoke the temporary asylum status before the Regional Court.[728] In case a timely appeal has been made, the status holder retains his or her right to lawful residence in the Netherlands based on Article 8(c) of the Aliens Act. This means that the status holder retains his or her material rights, until the court's decision, including the right to a residence permit. The status holder has a right to legal assistance during the procedure.

The IND can review protection status at any time. As the temporary asylum status is valid for 5 years, the refugee or beneficiary of subsidiary protection must apply to either extend the period of validity of his or her status or apply for a permanent asylum residence permit. At that time, the IND systematically reviews protection statuses.

720 Regional Court of Den Bosch, 21 October 2021, NL20.22228.
721 Paragraph C2/10.4 Aliens Circular.
722 Article 38 Aliens Act and Article 41(1) Aliens Act.
723 The legality of this practice has been confirmed by the Council of State, ECLI:NL:RVS:2022:2203, 1 August 2022.
724 Article 3.116(2)(b) Aliens Decree.
725 Article 41(2) Aliens Act.
726 Article 64 Aliens Act.
727 Article 62(1) Aliens Act.
728 Article 69(1) Aliens Act.

6. Withdrawal of protection status

See Cessation and review of protection status.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification		
1. Is there a waiting period before a beneficiary can apply for family reunification?	☐ Yes	☒ No
❖ If yes, what is the waiting period?		
2. Does the law set a maximum time limit for submitting an application?	☒ Yes	☐ No
❖ If yes, what is the time limit?	3 months	
3. Does the law set a minimum income requirement?	☐ Yes	☒ No

Refugees and subsidiary protection beneficiaries can apply for family reunification under the same conditions.

Family members that are eligible for family reunification are the spouse and registered or unregistered partner, if there is a sustainable and exclusive relationship. Minor children and young adult children (aged between 18 and circa 25 years old) who still belong to the family of the parents are also eligible for family reunification.[729] This applies to biological and foster or adoptive children or children from a previous marriage from one of the parents. Lastly, the parents of an 'unaccompanied minor' in the meaning of article 2(f) of the Family Reunification Directive qualify for family reunification. Since the CJEU judgment of 12 April 2018, persons that are minor while applying for asylum are considered minor in the meaning of article 2(f) of the Family Reunification Directive (Directive 2003/86) even when they reach the age of 18 when they are eventually granted the asylum status and apply for family reunification.[730]

Three-month time limit

The beneficiary has to apply for family reunification within 3 months after being granted the asylum residence permit, in order to have their application considered within a more favourable framework for family reunification. This framework applies to holders of an asylum residence permit and contains less strict conditions for family reunification in comparison to the regular framework. There is no income and health insurance requirement if the beneficiary lodges the application within these 3 months.

If the beneficiary fails to apply for family reunification within 3 months, they will have to apply for regular family reunification, meaning they will have to meet stricter requirements like a minimum income. To save this term the application should be filed timely, but it may be incomplete. The sponsor can complete the application once it is filed. However, after the sponsor receives a 'rectification of omission'-letter stating what information and supporting documents are missing, the application must be completed within 4 weeks.

In its judgment of 7 November 2018, the CJEU ruled that the time limit of three months in which the application has to be lodged in order to enjoy the more favourable provisions for refugees, is in accordance with the Family Reunification Directive. The Court further established that no individualised

729 There is no strict age limit, in each case the immigration service has to make an individual assessment whether or not the person involved is still a 'young adult', see e.g. Council of State, 21 November 2022, Decision 202102230/1/V1.

730 CJEU, Case C-550/16, A and S v. the Netherlands, 12 April 2018.

assessment as in Article 17 of the Directive has to be made when the time limit has been exceeded.[731] However, the Court also ruled that legislation should lay down rules in which particular circumstances render the late submission of the initial application objectively excusable. In addition, member states should ensure that sponsors recognised as refugees continue to benefit from the more favourable conditions for the exercise of the right to family reunification applicable to refugees, specified in articles 10 and 11 or in article 12(2) of the directive. To date, this has not yet been secured in legislation. The legislative proposal extending the time limit for applying for family reunification from 3 to 6 months and the decision period from 6 to 9 months, has been withdrawn after the ruling of the Court.[732] A new legislative proposal on the matter should however be presented in 2023.[733] This proposal extends the decision period from 6 tot 9 months. Also it should secure in which particular circumstances the late submission of the application is objectively excusable. Other aspects of the Court ruling have been included in Works instructions. Work instructions are not policy rules, but instructions for the employees of the INS to effectuate the policy in an unambiguous matter.[734] In Work instruction 2022/7 from 2 May 2022 is now included that proving family and identity ties is similar for the regular procedure when the sponsor holds an asylum residence permit.[735] In Work instruction 2021/7 from 15 June 2022 is included that if beneficiaries of international protection submit a regular application for family reunification within the three month time limit, they have to be exempted from the income requirement.[736]

In practice, there can be difficulties in applying for family reunification within the 3-month time limit due to misinformation or a high influx of asylum seekers, for example. According to UNHCR, imposing this term does not sufficiently take into account the specific situation of beneficiaries of international protection and the circumstances that have led to the separation of the family.[737] UNHCR primarily recommends that no time limit for submission should be imposed. In case a time limit is maintained, the IND should adopt a flexible approach, such as allowing the sponsor to submit a partial application or timely notification which can be completed at a later stage.[738]

Proof of identity and family ties

In its judgment of 26 January 2022,[739] the Council of State set out a new integral assessment framework for proving identity and family ties in family reunification cases. Until this judgment, identity and family ties had to be proven or at least made plausible by official documents, and in absence thereof, with sufficient unofficial documents or explanations as to why no official documents were available. Only if there were sufficient unofficial documents or plausible explanations, dna-research would be done and/or interviews would be held. However, if unofficial documents were not sufficient and/or explanations were not considered plausible, the immigration service would reject the application without further research. In an earlier judgment, the Council of State ruled that this policy was in accordance with the ruling of the CJEU of 13 March 2019.[740] However in its judgment of 26 January 2022 he Council of State set out a new assessment framework, entailing the following.

The Secretary of State can no longer differentiate between official and unofficial documents. All documents, regardless of their nature or status, must be included in the assessment. However, the Secretary of State may, with motivated reasons, assign a different probative value to the documents submitted and attach different importance to explanations given for the lack of documents. The Secretary of State has to make an integral assessment of all the documents submitted and statements

731 CJEU, Case C-380/17, K and B v. the Netherlands, 7 November 2018.
732 KST 34544, nr. 6, Letter withdrawing the legislative proposal adjusting the terms in the family reunification procedure for refugees, 12 July 2019.
733 Verbal communication by the Ministry of Justice and Security.
734 IND, Werkinstructies, informatieberichten en landeninformatie van de IND openbaar, available in Dutch at: http://bit.ly/3HKI4pe.
735 Available at: http://bit.ly/3HJGpQC.
736 Available at: http://bit.ly/3Rj7LAe.
737 UNHCR, No family torn apart, Challenges refugees face securing family reunification in the Netherlands and recommendations for improvements, 1 September 2019, available at: https://bit.ly/3nUI1wJ, 66.
738 Ibid, 71.
739 Council of State, Decision 202006519/1/V1, 26 January 2022.
740 CJEU, Case C-635/17, E v the Netherlands, 13 March 2019.

made, and other relevant elements of the case like for example the age and gender of the family member and the administrative practice in the country of origin. The requirements set by the INS for the evidence provided, must be proportional to those elements. Unlike before, the INS has to make a motivated assessment whether there is reason to give the sponsor the benefit of the doubt. Like for example in a situation where there is only a beginning of evidence, but there are no contra-indications (like a false document) and other relevant elements are in favour of the sponsor. The interests of minor children plays an important role in this. This means that unlike before, there is not only a right to further investigation if the applicant presents substantial indicative evidence or plausible explanations about the lack of documents. Additional research can also be carried out if the benefit of the doubt principle gives rise to this. National policy was adapted to this judgement,[741] and a new Workinstruction has been published.[742]

There are still issues in cases where the documents submitted are considered as most likely not real, not originally issued, not authentic, false or falsified. Documents are examined by the office of the immigration service specialised in document research, the Identity and Document Investigation Unit ("*Bureau Documenten*").
In line with the new integral assessment, the negative outcome of document examination is taken into account as a contra-indication in the assessment of all elements. How much weight is given to this contraindication depends upon, inter alia, the conclusion of the Identity and Document Investigation Unit (which established whether the document is real, false, falsified, issued unauthorized etc.) and the administrative practice in the country of origin. In principle, a false or falsified document heavily weights in detriment of the sponsor.

There are three ways to dispute the conclusion of the Identity and Document Investigation Unit. First, it is possible to consult a contra-expert that can research the document and provide a conclusion about its authenticity. However, this is not possible if there are no contra-experts available for documents from a certain country. This is the case for example for Eritrean documents. In a case before the court in Zwolle,[743] the court ruled that the sponsor had made plausible that no contra-expert was available to research the documents from Eritrea. Considering the principle of equality of arms, the Secretary of State for Justice had to perform an id-interview to repair the imbalance between the two parties. However, this decision was overruled by the Council of State.[744] According to the Council, the principle of equality of arms does not require to compensate the sponsor, as there were additional ways to dispute the conclusion of the Identity and Document Investigation Unit. The second channel through which dispute the conclusion of the Identity and Document Investigation Unit, is to give a plausible explanation on how the document was obtained. However, according to the policy, the mere statement that the sponsor was not aware that the document was false or forged, or that the document was obtained through a third party, is not considered as a valid justification.[745] This sets the threshold to oppose the conclusion at a very high level. The sponsor has to provide a detailed and plausible explanation that he has acted in good faith and had no reason to expect that the intermediate party he approached would provide false documentation. This explanation has only been considered plausible in limited cases, which did not reach the court. The third way to oppose the conclusion is to give concrete reasons to doubt on the merits of the negative conclusion of the document. However, the reports from the Identity and Document Investigation Unit contains very limited information for reasons of public order. Because of the limited information provided, it is very hard to give concrete leads for doubt about the report. Only if the sponsor has given concrete reasons to doubt of the report, the Secretary of State has the obligation to verify how the Identity and Document Investigation Unit drew the conclusion on the authenticity of the document. For example, requesting access to the underlying documents. The Secretary of State may also need to verify how the conclusions were drawn, to assess whether the reasoning therein is understandable and the conclusions drawn are consistent with it. The Secretary of State is not required

741 Decree WBV 2022/11 of 1 April 2022 Amending the family reunification policy.
742 IND Workinstruction 2022/7, *Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure*, 2 May 2022, available in Dutch at: http://bit.ly/3WOKVSo.
743 Rechtbank Zwolle, 8 juni 2020, AWB 19/3561.
744 ABRvS, 17 maart 2021, ECLI:NL:RVS:2021:598.
745 IND, Werkinstructie 2020/13, Nader onderzoek in de nareisprocedure, inclusief DNA-onderzoek in de asielprocedure, 4.

to share the confidential information with the sponsor. He does have to inform the sponsor, if - and to what extent - he endorses the conclusions of the Identity and Document Investigation Unit after examining the underlying documents, or obtaining further information from the Unit. As the underlying documents are not shared with the sponsor, the process' transparency results limited, and the final decision difficult to oppose.

Measure of cabinet on family reunification in response to the reception crisis

On 26 August 2022 the Secretary of State announced several measures in response to the reception crisis.[746] According to the letter, 7,200 of the 15,400 persons with an asylum status in the reception centres were family members (family members also receive an asylum status, see below under B2 status and rights of family members). The government does not consider it reasonable to issue visas to family members while housing is not available in the foreseeable future. That is why one of the temporary measures announced concerns family reunification, whose details have been included in the Informationmessage 2022/90.[747] The measure took effect on 3 October 2022. It entails that the INS will asses applications for family reunifications as usual and if all conditions are met, the application will be granted. If housing is available for family members, the decision will state that family members can make an appointment at the embassy to obtain their visa.[748] If however, housing is not available, the INS will inform the sponsor of the decision that their family members will only be able to obtain their visa once housing will be available, or at the latest after six months of the date of the decision. The maximum waiting time from the date of the application to actually issuing the visas is set at 15 months. The Secretary of State assumes an average processing time of nine months for the application (even though the legal decision period is of a maximum of six months) and a maximum of six months for issuing the visa after the positive decision. If in individual cases the 15-month time period elapses without suitable housing becoming available, the visa will be issued. The measure will apply until 31 December 2023 at the latest, as it will be revoked after this date. After announcing this measure, several organisations pointed out that it was in violation of the Aliens Act, the Family Reunification Directive[749] and the EU Charter of fundamental human rights.[750] According to officials of the Ministry of Justice and Security, the legal tenability of the measure was not certain.[751] On 5 December 2022, in a provisional ruling the Court in Haarlem established that the measure was incompatible with the Aliens Act and the Family Reunification Directive. On 22 and 23 December, in five cases different courts ruled that the measure was unlawful.[752] The Secretary of State appealed against three of these rulings.[753] The Secretary of State asked the preliminary relief judge of the Council of State to suspend the judgments of the courts pending the final judgment on the family reunification measure, but said request was rejected.[754] In both cases, the Court in the provisional proceedings found that the interest of the family members outweighs the interest of the Secretary of State not to implement the court rulings. The rulings of the preliminary relief judge mean that the family members of the two sponsors in these cases could immediately obtain permission to enter the Netherlands for family reunification. After the Administrative Jurisdiction Division

746 KST 19637, nr. 2992, Letter Ministry of Justice and Safety about the reception crisis, available in Dutch at: http://bit.ly/3wSuWId.

747 IND Informationmessage 2022/90, 3 oktober 2022, Uitwerking maatregel huisvesting bij nareis, available in Dutch at: http://bit.ly/3HN5zhh.

748 The sponsor will have to inform the INS about whether the housing is suitable and provide a beginning of evidence for this, like a declaration of the municipality or a lease contract. The IND will then check with the COA whether the housing is indeed suitable.

749 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

750 See e.g. Commissie Meijers, september 2022, Reactie op kamerbrief inzake besluitvorming opvangcrisis, available in Dutch at: https://bit.ly/3jq4in9.

751 Appendix to Questions of Members of Parliament, no. 3940 on the intention to limit the right to family reunification, available in Dutch at: http://bit.ly/3Yddj1x.

752 Regional Court Haarlem, 22 December 2022, ECLI:NL:RBDHA:2022:14102; Regional Court Middelburg, 22 December 2022, ECLI:NL:RBDHA:2022:13902; Regional Court Haarlem, 22 December 2022, ECLI:NL:RBDHA:2022:14104; Regional Court Arnhem, 23 december 2022, NL22.20578; Regional Court Amsterdam, 23 december 2022, ECLI:NL:RBDHA:2022:14097.

753 Against the rulings of the Regional Courts in Amsterdam, Arnhem and Middelburg.

754 Council of State, 29 December 2022, ECLI:NL:RVS:2022:4004; Council of State, 29 December 2022, ECLI:NL:RVS:2022:4003.

held a court hearing on lawfulness of the measure on 12 January 2023[755], the Council of State finally ruled on 8 February 2023 that the measure was indeed unlawful.[756] The measure, which was already suspended since January 11th, was finally abolished.

Visa issuance

In 2021, there were very long waiting periods to access consular services. Especially at the embassy in Beirut (Lebanon), where the waiting period for an appointment to collect a visa was around nine months. At the beginning of 2022, waiting periods were reduced considerably by the embassy, and similar issues were not registered for the rest of the year. Previously, interviews in Beirut could be conducted with family members that were registered in Lebanon before 2015. From autumn 2022 however, IOM started to conduct interviews also with family members that are not registered in Lebanon.

Total number of family members arriving in 2022

The following numbers of persons had access to the Netherlands in the context of family reunification with the holder of an asylum residence permit:

Family reunification with beneficiaries of protection in the Netherlands: 2022	
Country of origin	Number
Total	10,927
Syrian Arab Republic	7,238
Türkiye	1,094
Eritrea	527
Yemen	377
Stateless	370
Iran	215
Afghanistan	159
Unknown	140
Pakistan	137
Iraq	130
Others	540

Source: Asylum Trends, December 2022 main report, available at: https://bit.ly/3lanW7u, 7.

Subsequent application: If family reunification could not take place during the first application

In its judgments of 23 November 2020,[757] the Council of State ruled that unaccompanied minors could not lodge a subsequent application for family reunification within the favourable framework if they no longer meet the age condition or unaccompanied condition. In the cases before the court, subsequent applications were lodged because, in one case, the parents were not able to leave their country to conduct DNA-research at the Dutch embassy. In the other case, the mother could reunite but the father had been missing. At the time of the subsequent applications, the minor had reached the age of 18 or was taken into care by his mother respectively. The Council ruled that only subsequent applications within the regular framework were open to these (former) UAMs. The Council ruled that the

755 See the press release in Dutch on the website of the Council of State, available in Dutch at: http://bit.ly/3l1FcLT.

756 Council of State, 8 February 2023, ECLI:NL:RVS:2023:506, ECLI:NL:RVS:2023:507 and ECLI:NL:RVS:2023:508.

757 Council of State, Decisions 201906347/1/V1 (about requirement: minor) and 201900263/1/V1 (about requirement: unaccompanied), 23 November 2020.

circumstances as to why family reunification could not take place during the first application should be taken into account in the subsequent procedure within the regular framework.

Other situations in which the regular framework applies

Apart from the subsequent applications by (former) UAMs, there are other situations in which a sponsor needs to submit an application for his or her family member within the regular framework, even though they are beneficiaries of international protection. This applies for example to the UAM who submits applications for not only his parents, but also for his or her brothers and sisters. The latter applications always need to be submitted within the regular framework. Another example is the reunited family member, who in turn wishes to submit an application for family reunification with a family member who was left behind. In this case, an application can only be submitted in the regular framework, unless the (new) sponsor first obtains their 'independent' asylum status, not derived from that of their initial sponsor.

2. Status and rights of family members

Family members are granted the same status and rights as the sponsor. Their status however, is derived from the status of the sponsor. This entails that if the relationship between the sponsor and the family member ends within the first 5 years after the family member received the permit, the permit can be revoked. There is an exception for children. If the family life between minor or adult children and their parents ends (e.g. because the child forms a family of his own or lives independently) after the first after year the family member (either the child itself or the parent of the unaccompanied minor) received the derived asylum status, the permit will not be revoked. This also applies to children that live, in this first, year separately from their parents for study reasons or due to a lack of space in the housing accommodation of the family. In these cases, family life will not be considered to have ended.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection are not restricted in their freedom of movement within the Netherlands. For the housing of beneficiaries, the COA takes into account four placement criteria (see section on Housing).

2. Travel documents

Holders of an asylum residence permit or a permanent asylum residence permit can apply for a refugee passport (*vluchtelingenpaspoort*) issued by the Netherlands. There are no differences between refugees and subsidiary protection beneficiaries.

The duration of validity of the passport for refugees issued to a holder of a permanent asylum residence permit is 5 years. The duration of validity of the passport of a holder of a non-permanent asylum residence permit depends on the validity of the residence permit. There is a minimum duration of validity of 1 year and a maximum duration of validity of 3 years of the passport for refugees. Therefore, if the residence permit has a duration of validity less than a year, it is not possible to obtain a passport for refugees.

The possibility for obtaining a passport for refugees is provided in the Act of Passports (*Paspoortwet*). Holders of a (permanent) asylum residence permit can apply for a passport for refugees in the municipality where they live and where they are registered at the BRP. The municipality issues passports for refugees. The application must be done in person. The person must show his or her residence document and must bring two passport photos. Fingerprints will also be taken. The municipality must issue the passport as soon as possible, which means most of the time in 5 days. The municipality

officially has 4 weeks to decide to issue the passport. The fee for a passport for refugees is maximum €58.89. The refugee passport contains a travel limitation, prohibiting travel to the country of origin.

The application for a travel document is filed by an automated system at the municipality; the beneficiary does not need to apply. As far as the Dutch Council for Refugees is aware, there are no obstacles in the recognition of travel documents for beneficiaries of international protection issued by other countries. There are no statistics available on the number of travel documents issued.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres? Not regulated
2. Number of beneficiaries staying in reception centres as of 2 January 2023: 16,160

The main forms of accommodation provided to beneficiaries of international protection are:

- Reception centres;
- Temporary placements; and
- Housing.

Asylum seekers who are granted a residence permit are allowed to stay in the reception centre until COA has arranged housing facilities in cooperation with a municipality. The asylum seeker is obliged to make use of the offer of the COA in the sense that the right to reception facilities will end at the moment housing is offered.

The law does not state a maximum period for the stay of beneficiaries in reception centres. The aim of the Dutch government for 2018 is to have a maximum stay of 3.5 months in the reception centre after the granting of a residence permit.[758]

On 2 January 2023, there were 16,160 refugees with a permit residing in COA reception centres.[759]

The right to reception ends on the date that adequate housing – outside the reception centre – can be realised. The notion of "adequate housing" is assessed by the COA.[760] Together with municipalities, the COA has the obligation to arrange housing for beneficiaries.[761] Two times per year, the authority lets the municipalities know how many beneficiaries they have to house. The COA matches the beneficiaries with a certain municipality.

For the housing of beneficiaries, the COA takes into account four placement criteria, which are:

1. Education, provided that the study is location-specific;
2. Work, provided that the beneficiary can prove that he or she has a labour contract with a duration of minimal 6 months and for 20 hours of more per week;
3. Medical and/or psychosocial indications, provided that the beneficiary can prove that the medical treatment can only be done by the current care provider, or that a customized home is necessary;
4. The presence of first-degree family in the Netherlands.

If one of these indications occurs, the COA tries to place the beneficiary in a radius of 50km of the municipality concerned. If the COA does not take into account the aforementioned indications and the beneficiary refuses the house on justifiable grounds, then a new offer will be done.

758 Kamerstuk II, 2017-2018, 34775 VI, No 17.
759 COA, *Bezetting*, available in Dutch at: https://bit.ly/3rJ3vhk.
760 Article 7(1)(a) RVA.
761 Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

A beneficiary can refuse an offer for placement. The COA will assess within 14 days whether the refusal is justifiable. If the COA is of the opinion that the accommodation is suitable and the refusal unjustified, then the beneficiary is awarded a 24 hour to reconsider its position and to accept the accommodation. If the beneficiary continues to refuse the housing, then COA does not provide for a new offer. As a consequence, the beneficiary is summoned to leave the centre and the benefits granted by COA are terminated.

The country experienced a first reception crisis in 2015, due to the high number of asylum applications. It was therefore decided that beneficiaries who were awaiting housing could also temporarily stay at families and friends. The so-called Hosting Scheme ("*Logeerregeling*") was introduced. The scheme is still in place, being renewed during the last years. Status holders can make use of the Hosting scheme if they would like to stay with friends, family, or a host family. In principle, they can stay there for up to 3 months. In some cases, this period can be extended, if an agreement is reached with the COA The COA gives status holders aged 21 years and over an additional payment of €25 per week. As of 22 March 2021, the additional payment of the COA is temporarily €75 per week, to encourage more status holder to access the Scheme. During 2022, the additional payment still consisted of €75 per week (when a whole family makes use of this scheme, the first person receives €75, the second person of the family receives €25, the third €12,50 up to a maximum of €125 for a whole family). The conditions for making use of the Hosting Scheme ("*Logeerregeling*") can be found in English in a short version on the site of COA (the site of COA is available in English).[762]

In 2021, reception centres registered a new shortage of places, partly due to the COVID-19 pandemic and partly to the generalised shortage of rented houses in the Netherlands. Since 1 November 2021, the so-called "*Hotel- en accomodatieregeling*" (Hotel- and Accomodation Arrangement) was introduced.[763] Status holders awaiting regular housing at a municipality had the opportunity of accessing temporary accommodation at the same municipality responsible for their regular housing. A temporary accommodation might be a hotel, a holiday bungalow or a B&B, and would host the status holder for a maximum of 6 months. After that time, the municipality must have found a permanent house/accommodation; in any case, the municipality would then become financially responsible for the status holder. The arrangement is only open to single beneficiaries without children. The beneficiary also may not be vulnerable. The status holders remain entitled to the COA's basic provisions, such as a weekly allowance and access to medical care. The status holder receive an additional payment of € 75 per week from the COA. The benefits granted by the COA will stop as soon as the municipality regular housed the status holder. The municipality receives a payment (€ 8280 plus € 1000 for guidance) for every status holder participating in this arrangement.

As previously described, also in 2022 there also was shortage of places at reception centers. In May 2022, "Hotel- en accomodatieregeling"(HAR), was therefore prolonged for 3 months, and the target group covered by the measure was extended.[764] The arrangement is now also open for status holders with children, status holders who still wait for family reunification and status holders who received a positive decision about there request for family reunification. The status holder still receives an additional payment of € 75 per week from the COA. If it concerns a whole familiy, the first person receives €75, the second person of the familiy receives €25, the third €12,50 up to a maximum of €125 for a whole family. The municipality still receives a payment (€ 8280 plus € 1000 for guidance) for every status holder participating in this arrangement. The arrangement was prolonged againthroughout 2022. The HAR will continue until 1 July 2023. The HAR will continue until 2,500 status holders have left the reception of the COA by means of this arrangement. The COA has the supervision. There are no figures available.

762 Explanation of the Logeerregeling available in Dutch at: https://bit.ly/3INAuIj.
763 Stcrt. nr. 45592, 2021.
764 Stcrt. nr. 12550, 2022.

E. Employment and education

1. Access to the labour market

The rights and duties for beneficiaries with regard to employment are included in the Aliens Labour Act.[765] This law is based on international and European legislation.[766] In the Netherlands, refugees and subsidiary protection beneficiaries with a residence permit have free access to the Dutch labour market as soon as they receive their residence permit. The identification card (W-document) must contain a notification stating: "free access to the labour market, no work permit required" (*arbeid vrij toegestaan, tewerkstellingsvergunning niet vereist*). Free access means in this context: free access to employment, the right to entrepreneurship, to follow an internship or to do voluntary work. There is no work permit or a so-called "volunteer's declaration" required. Dutch law makes no distinction between refugees or subsidiary protection beneficiaries.

According to several studies, the position of beneficiaries of international protection on the Dutch labour market is very vulnerable, with limited improvements made through time.[767] Although legal access to labour participation is granted, the effective access is limited as they face practical obstacles, such as psychological and physical distress, lack of documentation proving qualifications, lack of a social network, low educational levels, lack of language proficiency, etc. Therefore, beneficiaries are in a more disadvantageous position than other immigrants or Dutch nationals.[768] By the end of 2021, 32.7%, of the beneficiaries that arrived since 2014 in the Netherlands found work. In June 2020, the percentage registered was only 27.9% due to the pandemic.[769] The increase in the second part of 2020 shows that beneficiaries slowly have found their way back to the Dutch labour market, despite the smaller amount of available participation- and labour places and less guidance by the municipality during the pandemic.[770] Furthermore, research demonstrates an upcoming trend where municipalities support beneficiaries in maintaining their jobs; one third of the municipalities continue their guidance after beneficiaries started a job.[771] The decrease in number of beneficiaries actively working during the pandemic seems to be resolved, this is mainly because they also benefit from the high labour demand in the Netherlands at the moment.[772]

The Dutch government applies a hybrid approach to employment-related support measures, by combining generic measures for migrants with specific tailored measures to beneficiaries. Examples are integration courses, assistance in obtaining recognition of professional qualifications and housing assistance.[773] Employment services find their legal basis in the Participation Act (*Participatiewet*).[774]

765 Aliens Labour Act.

766 See Articles 17, 18, 19 and 24 Refugee Convention, Article 6 ICESCR, Article 26(1) recast Qualification Directive, Article 14 Family Reunification Directive, Article 1 European Social Charter, etc.

767 See e.g. Scientific Council for Government Policy (WRR), *Geen tijd te verliezen: van opvang naar integratie van asielmigranten*, December 2015 and CBS, *Uit de startblokken,* April 2018; SER, Integratie door werk. Meer kansen op werk voor nieuwkomers, May 2019, available in Dutch at: https://bit.ly/2RZQwH9; KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: https://bit.ly/2UNEMfc. KIS and Divosa, *Factsheet statushouders: rapportage werk, onderwijs en inburgering 2021, Octobre 2022.*

768 European Migration Network (EMN), *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, available at: https://bit.ly/39mwEUj, 3.

769 European Migration Network (EMN), *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, available at: https://bit.ly/39mwEUj, 3.

770 KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2021*, October 2021, available in Dutch at: https://bit.ly/3AsjjJc.

771 EMN, *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, 4..

772 KIS and Divosa, *Factsheet statushouders: rapportage werk, onderwijs en inburgering 2021, Octobre 2022.*

773 *Ibid*, 4.

774 Wet van 9 oktober 2003, houdende vaststelling van een wet inzake ondersteuning bij arbeidsinschakeling en verlening van bijstand door gemeenten (Wet werk en bijstand), available in Dutch at: https://bit.ly/2t8pSP6.

For asylum seekers the government also tends to improve the labour participation by focussing on participation at an earlier stage, i.e. while people are still in an AZC.

An example of this is the so-called 'screening and matching' process, during which the COA conducts a screening of labour skills and finds a matching municipality for housing in order to increase job opportunities. Furthermore, COA provides language classes for asylum seekers who are likely to receive international protection (at this moment only for Syrians, Eritreans, Turks, Yemeni and stateless persons).[775] Another example is that the government simplified the procedure to acquire a volunteering permit. Nowadays, an asylum seeker can start its voluntary work as soon as the Employee Insurance Agency confirmed the application for a volunteering permit done by the employer.[776]

For many job opportunities, professional qualifications are required. In order to obtain recognition of these qualifications, the Cooperation Organisation for Vocational Education, Training and the Labour Market (*Stichting Samenwerking Beroepsonderwijs Bedrijfsleven)* jointly compare foreign diplomas with the Dutch educational system.[777] In case a refugee follows a compulsory Dutch integration course, this is provided for free. The main obstacle is that many refugees lack any credible documents to prove their qualifications. Furthermore, a low educational level form impede access to language courses or vocational educational training.[778]

2. Access to education

According to the Compulsory Education Act,[779] all children in the Netherlands from the age of 5 to 16 should have access to school and education is compulsory. The abovementioned right to education is applicable to Dutch children as well as to children with refugee status or with subsidiary protection under similar conditions.[780]

The municipality where a child is housed is responsible for its access to education. In most cases, all children who are newcomers go to a regular school.[781] Schools receive a compensation for their costs to provide this specialised education. Furthermore, they can request for an additional financial compensation.

According to the recast Qualification Directive all minor children have the same access to education regardless their legal status. The Dutch Council for Refugees is not aware of any obstacles in practice for children to access education. There are preparatory classes, also known as international intermediate classes.

From the age of 16 and 17, children have the obligation to obtain a certificate in order to acquire access (a start qualification) to the Dutch labour market. Therefore, they need to obtain a diploma in secondary or vocational education. The conditions for Dutch nationals are the same as those for aliens.

Adults with a residence permit have the same access to education as Dutch nationals. Nevertheless, research shows that this group of beneficiaries faces difficulties to be accepted in education programmes. According to municipalities, whereas for 40% of the status holders the best way to integrate would have been starting an education, only 17% has started one in 2020. Reasons are among other an insufficient knowledge of Dutch or subjects such as mathematics or English, financial barriers or a lack of (soft) study skills.[782] A recent research shows that, looking at the percentage of studying

775 Ministry of Social Affairs, KST 32 824, nr. 303, 4.
776 Paragraph 3.6 Annex I Aliens Act Implementing Regulation 2022.
777 See: https://idw.nl/nl/startpagina.html.
778 EMN, *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, 4.
779 Law of 30 May 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: http://bit.ly/2kKXQpV.
780 Article 27 recast Qualification Directive.
781 Ministry of Education, *Informatiedocument onderwijs aan asielzoekerskinderen*, May 2016, 6.
782 KIS and Divosa, *Monitor gemeentelijk beleid arbeidstoeleiding vluchtelingen 2020*, November 2020, available in Dutch at: https://bit.ly/3tYN3d8.

beneficiaries and their period of time having a permit, a higher amount of younger beneficiaries start an education, and the start occurs sooner after the obtention of their permit when compared to previous years.

F. Social welfare

Dutch law provides access to social welfare for beneficiaries of international protection under the same conditions as nationals. There is no special legislation for beneficiaries of international protection beyond general legislation valid for every resident legally present in the Netherlands, except for asylum seekers whose rights are regulated by RVA. No distinction is made between refugees and subsidiary protection beneficiaries.

1. Types and conditions of social assistance

Beneficiaries of international protection between the age of 18 and 67 can apply for:

- Social benefit (*algemene bijstand*): The social benefit is meant to financially support people who are not able to cater for their own living and cannot rely on other social facilities until a job has been found;[783]
- Benefits (*toeslagen*), which have a different aim from the social benefit; and
- Child benefit (kinderbijslag).

There are four types of Benefits *(toeslagen*), each contributing towards specific costs. Beneficiaries of international protection can apply for:

1. Health care benefit;[784]
2. Rent benefit;[785]
3. Child care benefit;[786]
4. Supplementary child care benefit.[787]

Municipalities are responsible for providing social benefits for their residents. The Tax Office provides the benefits and the Social Security Bank allocates the child benefit.

Since 1 January 2022, a new Civic Integration Act entered into force.[788] Part of this new system entails that beneficiaries of international protection will no longer be entitled to the social benefit during the first six months of their legal stay in a Dutch municipality. Instead, the municipality will pay their costs for housing, the energy bills and the healthcare insurance, as far as the social benefits reaches. The beneficiaries will receive the rest of the amount as an allowance, besides the additional benefits, provided by the Tax Office and the Social Security Bank. The goal of this system is to support refugees by their start in the Netherlands so they can focus more on their integration in Dutch society. Municipalities are encouraged to provide trainings about Dutch financial systems and budget coaching so beneficiaries become more financially self-sufficient during the six months.[789]

Conditions for obtaining social welfare

Apart from certain financial requirements, the beneficiary of international protection must also meet benefit-specific conditions:

- **Childcare benefit:** the person must: (a) have a paid job; or (b) attend a civic integration course, provided that the course is compulsory. In a judgment, the Council of State decided that, in

783 Article 11(2) Participation Act.
784 Articles 8-15 Rent Benefit Act.
785 Articles 2-2a Healthcare Benefit Act.
786 Article 2(1) Supplementary Child Care Act.
787 Article 1.6(1)(g) Child Care Act.
788 Stb 2021, nr. 38.
789 Ministry of Social Affairs, KST II 2019/20, 35483, nr. 3.

exceptional cases, non-paid jobs could also suffice.[790] If the beneficiary has a spouse, both persons have to meet one of the aforementioned conditions in order to be eligible for the child care benefit together.

- **Rent benefit:** The person concerned must: (a) rent a house; (b) have a signed rental contract; (b) be registered in the Persons Database (BRP) of the municipality where the property is located; and (d) have a rental contract of durable nature. Since the first of January 2022, having a minor child without a residence permit does no longer affect the right to receive rent benefit for the rest of the family.[791]

- **Child benefit:** The child benefit is not dependent on the income of the beneficiary. Each resident who is legally present in the Netherlands and has a child is in principle eligible. However, the person must demonstrate that there is a durable bond of personal nature between him or her and the Netherlands. This bond is presumed in the case of beneficiaries of international protection, but can be problematic for other foreigners who become eligible only after a certain period of time e.g. six months or one year.

The benefits and child benefit are not tied to a requirement to reside in a specific place or region. The social benefit as such is not bound by a requirement of residence either. However, the person concerned can only apply for a social benefit at the municipality in whose BRP he or she is registered.

2. Obstacles to accessing social assistance in practice

Processing times

After the beneficiary has applied for the social benefit the processing time for the allocation and payment can run up to 8 weeks. Municipalities can grant an advance payment but this does not always cover the whole period. To prevent further delay, it is of upmost importance to apply for the social benefit timely. The processing time for the application is even longer for young adults below the age of 27, who are subject to a statutory waiting period of 4 weeks. In these 4 weeks the young adult has to try to find a paid job. If they are not successful, the municipality starts processing the application. In this situation, after these 4 weeks, municipalities have 8 weeks to process the allocation and payment of the social benefit.

Issues related to social benefits in shared households

Another known problem is the situation of collective housing of multiple, unconnected, beneficiaries. Collective housing was an important instrument especially in 2016, in order to cope with high housing demand due to the large influx of arrivals. The so-called "*kostendelersnorm*" was introduced in the Participation Act in 2015 and applies to persons aged 21 to 67. Its aim is to prevent a stack of social benefits within one household. The rationale is that family, friends and/or roommates can share costs and that less social benefits are therefore needed. The "*kostendelersnorm*" also applies in the situation of the "*logeerregeling*". However, the Ministry of Social Affairs and Employment agreed that municipalities may decide theirselves whether or not they apply the "*kostendelersnorm*" or not.

More concretely, this means that the group as a whole gets more social benefits, although the individual pro rata sum is lower. However, beneficiaries who do not have a link with one another do not share the costs in practice. This can lead to situations in which the income of beneficiaries is so low that it falls under the poverty line. Due to the current scarcity of houses in the Netherlands, this problem might be presenting again in the future. Since municipalities have more difficulties with housing beneficiaries, it is more likely that individuals will be placed together in one house, without having a link or sharing a household. Nevertheless, the '*kostendelersnorm*' will be applied.

790 See Council of State, Decision No 201800817/1/A2, 12 December 2018.
791 Article 9 (3) Algemene Wet inkomensafhankelijke regelingen [Staatsblad 2021, nr. 651, 22 December 2021].

Single parent allowances

Beneficiaries can also be confronted with the so-called "*ALO-kopproblematiek*". The "ALO-*kop*" is part of the supplementary childcare benefit and can be seen as an additional financial compensation for single parents. In practice, problems arise when the spouse of the beneficiary is still living abroad awaiting family reunification. A spouse living abroad cannot be registered into the computer system of the Tax Office, because spouses and cannot be registered in the BRP of the municipality at that stage.

In order to obtain benefits, including the supplementary child benefit, the Tax Office thus proposes that beneficiaries register themselves as single parents. However, the supplementary childcare benefit and the ALO-*kop* are linked in the computer system of the Tax Office and cannot be granted separately. As a result, by applying for the supplementary childcare benefit, the beneficiary also automatically receives the ALO-*kop*, even though the beneficiary is not entitled to the ALO-*kop*. When the family reunification has been finalised and the spouse is registered into the BRP, the Tax Office will automatically be notified. The Tax Office is then legally obliged to recover the ALO-*kop*. It regularly occurs that the beneficiary becomes aware of this fact too late and has spent the ALO-*kop*. The Dutch Council for Refugees has addressed and continues to address this issue.

The Tax Office recognised the problem and decided in 2018 to adjust its computer system in order to grant the supplementary child care benefit separately from the ALO-kop. As a result, beneficiaries will no longer be confronted to a reclamation after the family reunification. Although the offered solution entails a significant improvement, practice shows that beneficiaries really need the additional ALO-kop. The Participation act makes it possible for some municipalities to compensate the lack of the ALO-kop by increasing the social benefit. However, due to the fact that this is not obligatory, differences in practice exist.

G. Health care

Beneficiaries are required to be insured for health care as of the moment the permit is granted.[792] There is no difference if the beneficiary still resides in the reception centre or not. Moreover, although these beneficiaries are medically insured via the COA as a part of RVA, they are also obliged to insure themselves privately for healthcare.

Beneficiaries are entitled to the same health care as nationals. Like every national, beneficiaries have to pay health insurance fees. In order to compensate the paid fees, beneficiaries are entitled to health care benefits, provided that their income does not reach a threshold of an annual income of € 31,998 per year in 2022. The threshold for a household (2 partners) is € 40,944 per year in 2023.

792 Article 2(1) Health Care Act in conjunction with Article 2(1)(1) Long-Term Care Act.

ANNEX I - Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 October 2013	Wet van 29 oktober 2008 wijziging van de Vreemdelingenwet 2000 ter implementatie van richtlijn 2004/83/EG van de Raad van 29 april 2004 betreffende minimumnormen voor de erkenning en de status van onderdanen van derde landen en staatlozen als vluchteling of als persoon die anderszins internationale bescherming behoeft, en de inhoud van de verleende bescherming (PbEU L 304)	http://bit.ly/1HXcHir (NL)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	http://bit.ly/1CSh5md (NL)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	20 July 2015	Wet van 8 juli 2015 wijziging van de Vreemdelingenwet 2000 ter implementatie van Richtlijn 2013/32/EU van het Europees parlement en de Raad van 26 juni 2013 betreffende gemeenschappelijke procedures voor de toekenning en intrekking van de internationale bescherming (PbEU 2013, L 180) en Richtlijn 2013/33/EU van het Europees parlement en de Raad van 26 juni 2013 tot vaststelling van normen voor de opvang van verzoekers om internationale bescherming (PbEU 2013, L 180)	http://bit.ly/1CSh5md (NL)