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4.3.1 Border procedures

Many applications for international protection are made at the border of a country or in a transit zone before an applicant gains entry into the territory. In well-defined circumstances under the recast Asylum Procedures Directive, a Member State can handle the application directly in such a location, either to assess its admissibility or to fully determine the case on the merits of the application.

4.3.1.1 Border procedures in the new Pact on Migration and Asylum

One of the most important proposals in 2020 was the mandatory pre-screening procedure at the border which was included in the new Pact on Migration and Asylum. The procedure would include steps to establish the identity of new arrivals, assess the risk they pose for security and public health, and identify any special needs.[382] New rules included in the pact also concern the asylum border procedure and return border procedure *(see Section 2)*.[383]

The EASO publication on Border Procedures for Asylum Applications in EU+ Countries was published shortly before the presentation of the pact to inform discussions on the topic. The European Parliamentary Research Service drew up a European Implementation Assessment on asylum procedures at the border, highlighting divergences in Member States' practices and underlining concerns around fundamental rights compliance.[384]

4.3.1.2 Different practices in applying the border procedure

Various types of border procedures, typically focusing on swift processing, were introduced or extended in 2020. In Greece, the 'fast-track border procedure' foreseen by Law No 4636/2019, in force since 1 January 2020, was applied to people arriving on the Greek Eastern Aegean islands. Staff of the Hellenic Police or the Armed Forces may register applications, notify decisions, receive appeals and exceptionally conduct interviews. In 2020, Greece also extended the exceptional border procedure that applies to third-country nationals in Reception and Identification Centres in Lesvos, Chios, Samos, Leros and Kos until 31 December 2021.[385]

The Greek Council for Refugees, METAdrasi and the Network for Children's Rights raised concerns about the fast-track border procedure due to the possible limitation of procedural guarantees. For example, they reported that the time limits to examine and submit documentation by lawyers during border procedures in the hotspots became even stricter and more difficult, with continued

violations of safeguards for vulnerable asylum applicants.[386]

In Italy, the Legislative Decree No 130, which amended Law No 132 of 2018 (the Salvini Decree), entered into force on
22 October 2020 and touched upon the accelerated procedure and revoked the 18-day procedure. It provides that the
9-day procedure is applied to applications made at the border after trying to elude border checks.[387] Applications made from return facilities *(Centri di Permanenza per il Rimpatrio)* and those made by applicants from safe countries of origin are assessed within the 9-day accelerated procedure, while a new ground for the 5-day procedure was established for applicants convicted of serious crimes.

In 2020, the use of the border procedure was still suspended in Hungary. However, Hungary uses a de facto border procedure which is not in compliance with EU law, as confirmed by the European Commission in the infringement procedure against Hungary[388] and the CJEU. Furthermore, as a result of the CJEU judgment in *FMS and Others*
(C-924/19), Hungary closed the facilities in the transit zones of Röszke and Tompa on 21 May 2020.

A new Lithuanian law foresees that those who apply for asylum at border crossing points or transit zones are not considered to have entered the territory of Lithuania until a decision to allow entrance is issued. This decision must be issued by the Migration Department within 48 hours from the registration of the asylum application. Applicants who were not allowed to enter the territory were accommodated at border crossing points or transit zones during the timeframe for lodging an appeal.[389]

In the Netherlands, the Immigration and Naturalisation Service (IND) published updated work instructions on the border procedure, which are applied since 14 May 2020. The instructions cover time limits, procedural aspects, refusal of entry, detention at the border and practical examples for case officers.[390] In France, the Council of State ruled on 8 July 2020 that COVID-19 pandemic restrictions cannot justify a refusal to register asylum applications made at the border. In Spain, the Constitutional Court ruled on 19 November 2020 that the legislation on a special asylum regime for Ceuta and Melita (Spain's two autonomous cities at the Moroccan border) was constitutional, given that there are specific legal pathways, including a judicial review by courts in border procedures. But the court noted that procedures must comply with human rights instruments and international protection principles.

4.3.1.3 Accommodation and detention at the border



Due to the specificity of the border procedure, it often raises questions related to accommodation conditions provided during the procedure, and the application of detention, and conditions related to guarantees for applicants with special needs and vulnerable groups. In 2020, the European Parliament assessed the implementation of asylum procedures at the border or transit zone of Member States. It concluded that the current practice does not result in uniform and effective reviews of applications for international protection on the basis of a fair process. In particular, certain Member States apply timelines within which a serious consideration of an application is not feasible. Furthermore, applicants are placed in detention or restricted in their freedom of movement without considering alternatives and deprived of

opportunities to effectively exercise their procedural rights. A number of recommendations were made to address the shortcomings in future legal and practical arrangements for border procedures.[391]

Replying to the recommendations of the UN Human Rights Committee on its fourth periodic report on detention at the border, Lithuania noted that its national law does not provide for the possibility to detain asylum applicants at the border, but they are accommodated in specially-equipped premises at border checkpoints or transit zones. If it is not possible to provide adequate accommodation, other places may be provided by decision of the Migration Department under the Ministry of the Interior. In addition, Lithuania provided several training sessions on asylum for its SBGS officials.[392]

In the Netherlands, the Law of 22 April 2020 amended the Aliens Act 2000, providing a clear legal basis for continuing detention pending an appeal during a border procedure.[393]

In Spain, civil society organisations expressed concerns about the application of the special border procedure in Immigration Detention Centres *(Centros de Internamiento de Extranjeros, CIE)* and specifically deficiencies in providing adequate legal assistance, identifying vulnerable applicants and the lack of specific safeguards for vulnerable persons *(see Section 5)*.

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[382] Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817. COM/2020/612 final, September 23, 2020. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291190831&uri=COM:2020:612:FIN , Article 1

[383] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2020/611 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:611:FIN , Article 41(11) on the asylum border procedure and Article 41(a) on the return border procedure.

[384] European Parliamentary Research Service. (November 2020). *Asylum Procedures at the Border: European Implementation Assessment* . https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654201/EPRS_STU(2020)654201_EN.pdf

[385] ????????? ??????? ?????. 15996/2020 ??? 5948/?/31-12-2020 ???????? ??? ????????? ??? ???. 3 ??? 5 ??? ?????? 90 ??? ?. 4636/2019 (?? 169) [Ministerial Decision No 15996/2020 Government Gazette 5948/ ?/31-12-20 Application of the provisions of paragraphs 3 and 5 of Article 90 of Law 4636/2019 (A' 169)]. http://www.et.gr/

[386] Doctors without Borders | Médecins Sans Frontières, Refugee Support Aegean, & Pro Asyl. (2021, February 15). *Border procedures on the Greek islands violate asylum seekers' right to special procedural guarantees* . https://rsaegean.org/wp-content/uploads/2021/02/RSA_MSF_PROASYL_SpecialProceduralGuarantees_EN.pdf

[387] Legge 18 dicembre 2020, n. 173 Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonche' misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della liberta' personale. (20G00195) [Law No 173 of 18 December 2020, Conversion into law, with amendments, of Decree-Law No 130 of 21 October 2020 laying down urgent provisions on immigration, international protection and supplementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures concerning the prohibition of access to public establishments and premises of public detention, combating the misuse of the web and regulating the rights of persons deprived of personal freedom. (20G00195)], December 18, 2020. https://www.gazzettaufficiale.it/eli/id/2020/12/19/20G00195/sg

[388] European Commission. (2015, December 10). *Commission opens infringement procedure against Hungary concerning its asylum law* . https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6228 ; European Commission. (2018, June 19). *Migration and Asylum: Commission takes further steps in infringement procedures against Hungary* . https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4522

[389] XIII-3412 Lietuvos Respublikos ?statymo „D?l užsienie?i? teisin?s pad?ties“ Nr. IX-2206 pakeitimo ?statymas [XIII-3412 Law amending the Law of the Republic of Lithuania “On the Legal Status of Aliens” No IX-2206], 10 November 2020. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d9581ac124e611eb8c97e01ffe050e1c

[390]??????? Immigration and Naturalisation Service | Immigratie- en Naturalisatiedienst. (2020, May 27). *WI 2020/9 Grensprocedure [WI 2020/9 Border procedure]*. https://ind.nl/Documents/WI_2020-9.pdf

[391] European Parliamentary Research Service. (November 2020). *Asylum Procedures at the Border: European Implementation Assessment* . https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654201/EPRS_STU(2020)654201_EN.pdf

[392] United Nations, Human Rights Committee. (2020, October 27). *Information received from Lithuania on follow-up to the concluding observations on its fourth periodic report* .

http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspsxgIUbPkaTnjMNKleQtzmmIaLOTzXwmIvHLeFv6AzwmowQ
[393] Wet van 22 april 2020 tot wijziging van de Vreemdelingenwet 2000 tot aanpassing van de wettelijke grondslag voor vrijheidsontneming van asielzoekers na afwijzing of niet in behandeling nemen van een aan de grens ingediend asielverzoek [Law of 22 April 2020 amending the Aliens Act 2000 adjusting the legal basis for asylum seekers' detention following the rejection or inadmissibility of an asylum application at the border, April 22, 2020. https://zoek.officielebekendmakingen.nl/stb-2020-136.html



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