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Asylum Information Database

Country Report: Netherlands

2017
Update

VluchtelingenWerk Nederland

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Acknowledgements & Methodology

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The information in this report is up-to-date as of 31 December 2017, 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 on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. 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.

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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 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
Self-care arrangement	Voluntary scheme in place between 2015 and 2016, allowing beneficiaries of protection who were awaiting housing to temporarily stay with families and friends | *Zelfzorgarrangement*
Short asylum procedure	The general procedure applicable to asylum seekers, which lasts 8 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	Advice Commission on Aliens' Matters | Adviescommissie in Vreemdelingenzaken
ALO	Alleenstaande Ouderkop
AVIM	Aliens Police
AZC	Centre for Asylum Seekers I Asielzoekerscentrum
BRP	Persons' Database | Basisregistratie Personen
CBS	Central Office of Statistics | Centraal Bureau voor de Statistiek
COA	Central Agency for the Reception of Asylum Seekers I Centraal Orgaan opvang Asielzoekers
COL	Central Reception Centre I Centraal Opvanglocatie,
CTIVD	Committee of the Dutch Intelligence Service
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 | Diesnt Uitvoering Onderwijs
EASO	European Asylum Support Office
EBTL	Extra Guidance and Supervision Location | Extra begeleiding en toezichtlocatie
ECHR	European Convention on Human Rights

ECtHR	European Court of Human Rights
EMN	European Migration Network
FMMU	Forensisch Medische Maatschappij Utrecht
GL	Family housing I Gezinslocatie
iMMO	Institute for Human Rights and Medical Assessment | instituut voor Mensenrechten en Medisch Onderzoek, iMMO
IND	Immigration and Naturalisation Service I Immigratie- en Naturalisatiedienst
KMar	Royal Military Police I Koninklijke Marechaussee
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LOS	Landelijk Ongedocumenteerden Steunpunt
NFI	Dutch Forensic Institute | Nederlands Forensisch Instituut
Nidos	Independent guardianship and (family) supervision agency
NVVB	Dutch Association for Civil Affairs | Nederlandse Vereniging voor Burgerzaken
POL	Process Reception Centre | Proces Opvanglocatie
SBB	Cooperation Organisation for Vocational Education, Training and the Labour Market | Stichting Samenwerking Beroepsonderwijs Bedrijfsleven
VBL	Freedom restrictive location I Vrijheidsbeperkende locatie
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.

Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	16,785	7,365	3,030	4,140	645	8,135	19%	26%	4%	51%

Breakdown by countries of origin of the total numbers

Syria	2,240	835	935	1,555	15	440	31.7%	52.8%	0.5%	15%
Eritrea	1,170	415	0	1,370	15	180	0%	87.5%	1%	11.5%
Morocco	1,020	200	15	0	5	290	0%	0%	1.7%	98.3%
Algeria	925	220	0	0	0	260	0%	0%	0%	100%
Iraq	975	610	145	405	75	975	9.1%	25.3%	4.7%	60.9%
Iran	895	655	595	30	95	810	30.6%	1.5%	4.9%	63%
Afghanistan	785	655	250	275	145	1,225	13.2%	14.5%	7.7%	64.6%
Unknown	610	240	160	55	35	200	35.6%	12.2%	7.8%	44.4%
Georgia	510	60	5	0	0	235	2.1%	0%	0%	97.9%
Turkey	510	305	210	5	140	80	48.3%	1.1%	32.2%	18.4%

Source: Eurostat. Note that “Rejection” covers inadmissibility decisions in Eurostat data.

[1] IND, *Asylum trends*, available at: http://bit.ly/2jPWOVX.

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of asylum applicants	16,785	-
Men	12,255	73%
Women	4,530	27%
Children	3,775	22.5%
Unaccompanied children	1,181	1%

Source: Eurostat; IND Asylum Trends.

Comparison between first instance and appeal decision rates: 2017

The number of appeal decisions is not available.

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	http://bit.ly/1HIpzv1 (EN)
Aliens Act 2000	Vreemdelingenwet 2000 (Vw 2000)	Aliens Act	http://bit.ly/1RPkp8j (NL) http://bit.ly/1CPkXEI (EN)
Act of the Central Agency of Reception	Wet Centraal Opvang Orgaan (Wet COA)	Reception Act	http://bit.ly/1KjQoJS (NL)
Aliens Labour Act	Wet Arbeid Vreemdelingen (Wav)	Aliens Labour Act	http://bit.ly/1JeYnWU (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	http://bit.ly/1Kkkv0N (NL)
Aliens Circular 2000	Vreemdelingen-circulaire 2000 (Vc 2000)	Aliens Circular	http://bit.ly/1Jx3f5C (NL)
Aliens Regulation 2000	Voorschrift Vreemdelingen 2000 (Vv 2000)	Aliens Regulation	http://bit.ly/1HQDvkn (NL)
Regulation on benefits for asylum seekers and other categories of foreigners 2005	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Rva 2005)	RVA	http://bit.ly/1HQDugl (NL)
Border Accommodation Regime Regulation	Reglement Regime Grenslogies (Rrg)	Border Regime Regulation	http://bit.ly/1g40K3N (NL)

Overview of the main changes since the previous report update

The report was previously updated in **March 2017**.

Asylum procedure

- **Onward appeal:** In April 2017, the Council of State referred preliminary questions to the Court of Justice of the European Union (CJEU) on whether an appeal with the Council of State against the rejection of an asylum application as such has automatic suspensive effect. The Council of State involved in this matter the Returns Directive and Article 47 of the EU Charter regarding the right to an effective remedy. The CJEU has not issued a decision on this yet.

- **Subsequent applications:** Article 40(4) of the recast Asylum Procedures Directive states that Member States may provide that a subsequent application for international protection will only be further examined if the asylum seeker concerned presents new elements or findings which could, through no fault of his or her own, not have been presented in a previous procedure; this is called "*verwijtbaarheidstoets*". This provision is not explicitly and separately transposed into Dutch law, ad courts debated on whether this was necessary. The Council of State ruled that this was not.

- **Safe third country:** The Council of State ruled in four cases regarding the criteria for applying the "safe third country" concept. In these cases the Council of State judged that a third country could be considered as a safe third country only when the asylum seeker is admitted to the third country. Furthermore, it held that the Secretary of State is allowed to consider a third country as a safe on the basis of country of origin information, but this information should also be transparent and apply to the asylum seeker in the individual case. The Council of State affirmed that Article 38 of the recast Asylum Procedures Directive does not require the third country to have ratified the Refugee Convention. Nevertheless, the third country should abide to the principle of *non-refoulement*.

Reception conditions

- **Types of accommodation:** Extra Guidance and Supervision Locations (EBTL) were 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. Two such facilities were opened at the end of 2017.

Content of international protection

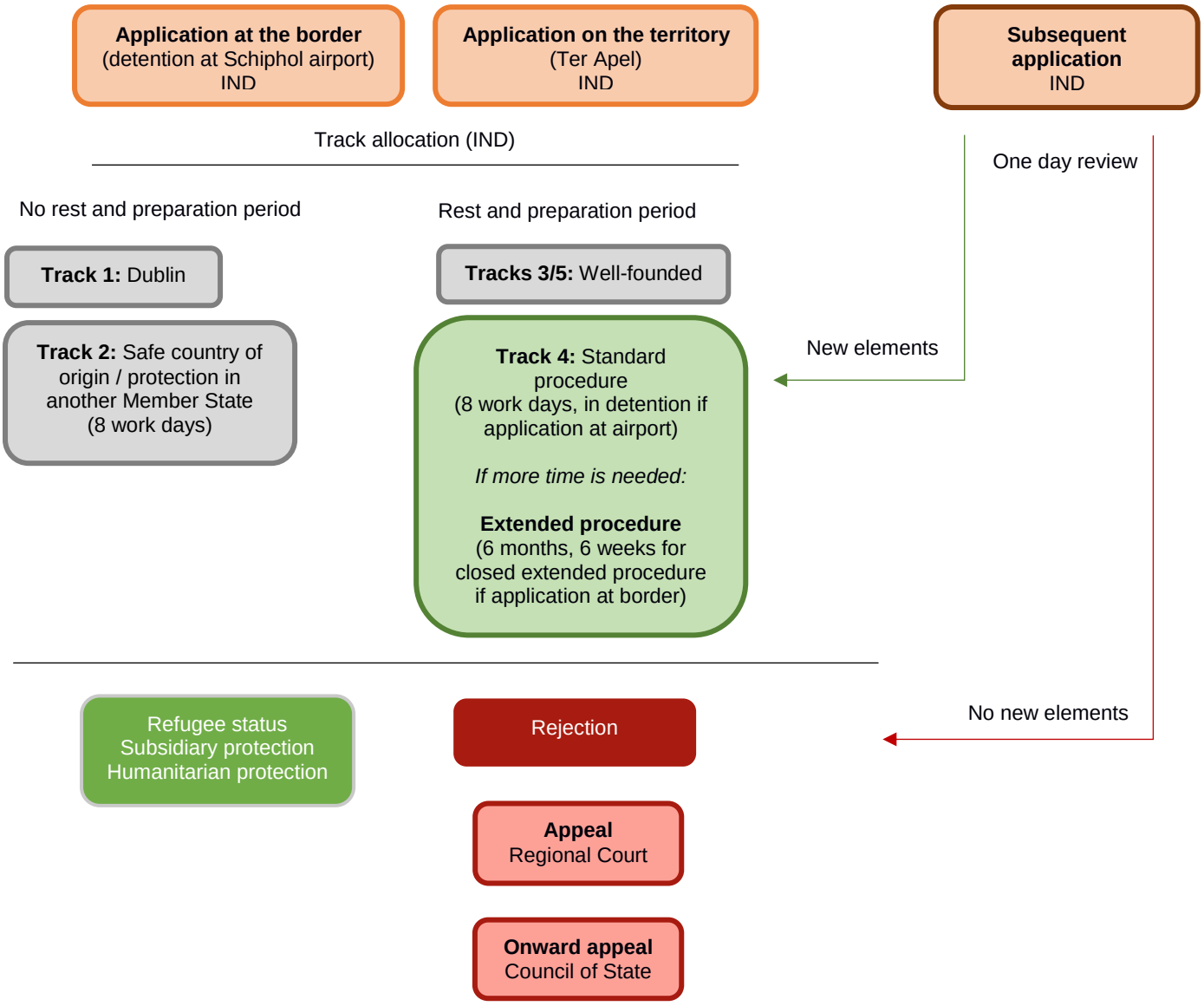
- **Housing:** As of 1 February 2018, a new pilot *logeerregeling* will come into effect until January 2019. The goal of the new *logeerregeling* is to assess whether stay with families and friends has a positive effect on the integration and participation of beneficiaries in society.

- **Social welfare:** The Coalition Agreement of October 2017 has announced restrictions to social assistance for beneficiaries of protection. Beneficiaries will no longer be eligible for the social benefit, rent benefit and health care benefit during the first 2 years of their legal stay in the Netherlands. Instead they will receive services by the municipalities such as housing, a healthcare insurance and assistance in the integration process in kind. In addition, beneficiaries of international protection will receive an allowance. It remains to seen whether this agreement is actually going to be converted into law.

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:[2]	☐ Yes	☒ No
❖ Fast-track processing:[3]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☐ Yes	☒ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[4]	☒ 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)	Regional Court Council of State	Rechtbank Afdeling Bestuursrechtspraak Raad van State (ABRvS)
Repatriation and return	Service Return and Departure	Dienst Terugkeer en Vertrek (DT&V)

[2] For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.
[3] Accelerating the processing of specific caseloads as part of the regular procedure.
[4] Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

4. Number of staff and nature of the first instance 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 first instance authority?
Immigration and Naturalisation Service (IND)	Not available	Ministry of Security and Justice	☒ Yes ☐ No

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 Immigration and Naturalisation Service (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, he or she has to report immediately to the Central Reception Centre (*Centraal Opvanglocatie*, 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 a form, fingerprints are taken and he or she is interviewed 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.

Procedural tracks: Since March 2016, the IND applies a "Five Tracks" policy,[5] whereby asylum seekers are channelled to a specific procedure track (*spoor*) depending on the circumstances of their case.

Track 1 The IND is of the opinion that the Dublin Regulation is applicable on the asylum application. The application is assessed in a Dublin Procedure. The asylum seeker is not entitled to a rest and preparation period nor a medical examination by FMMU.[6]

Track 2 Applications from asylum seekers from a Safe Country of Origin or asylum seekers who already receive international protection in another Member State are assessed in this fast-track procedure. The IND finds that it is not likely that these asylum requests will be complied with. The assessment of the application takes place in 8 steps within a maximum of 8 days; in practice they are concluded in less than 8 days. The asylum seeker is not entitled to a rest and preparation period or a medical examination by FMMU.[7]

5 Decree WBV 2016/4 of 26 February 2016 amending the Aliens Circular 2000, available in Dutch at: http://bit.ly/2fp4K0z.
6 Article 3.109c Aliens Decree.
7 Article 3.109ca Aliens Decree.

Track 3 Applications of asylum seekers which are *prima facie* considered likely to be granted will be assessed in this fast-track procedure. This procedure is also linked to Track 5. This procedure has not been applied in 2017.

Track 4 This procedure is the Regular Procedure of 8 days, with the possibility to extend this time limit by 6, 8 or 14 days.[8] In case the application cannot be thoroughly assessed within the regular procedure there is a possibility of assessing the application in the Extended Procedure, within a deadline of 6 months.

Track 5 Asylum applications that could not be assessed in Track 3, due to the fact that nationality or identity documents have not been submitted. Like Track 3, Track 5 has not been applied in 2017.

Rest and preparation period: With the exception of Tracks 1 and 2, the asylum seeker is granted a rest and preparation period starting from the moment the asylum application is formally lodged by signing an application form.[9] 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.[10]

The rest and preparation period takes at least 6 days. It is designed, on the one hand, offer the asylum seeker some time to rest, on the other hand, to provide 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 (FMMU) 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
- 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 general asylum procedure (*Algemene asielprocedure*) which is, as a rule, designed to last 8 working days ("short asylum procedure"). The short asylum procedure may be extended by 6, 8 or 14 working days 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 investigated in the "extended asylum 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.[11]

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).[12] 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

8 Article 3.115(6) Aliens Decree.

9 When it is assumed that the asylum application will be rejected in accordance with the Dublin Regulation (Article 3.109c Aliens Decree) or due the fact that the safe country of origin concept applies or the asylum seeker already receives international protection in a Member State of the European Union (Article 3.109ca Aliens Decree) the asylum seeker will not have a rest and preparation period, including the medical examination by FMMU.

10 Article 3.109 Aliens Decree.

11 See Article 42(4)(5) Aliens Act.

12 Article 29 Aliens Act.

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.[13]

The IND must first examine whether an asylum seeker qualifies for refugee status, before examining whether the asylum seeker should be granted subsidiary protection. 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.[14] 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).

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 after the negative decision. The appeal has automatic suspensive effect, except for cases falling in Tracks 1 and 2. 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 4 weeks regardless whether he or she lodges an appeal and whether this appeal has suspensive effect due to a granted provisional measure.[15] 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.[16] The asylum seeker is entitled to accommodation during this appeal.

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 this provisional measure is denied by the Council of State, the asylum seeker is no longer entitled to accommodation. The Council of State ruled in 2016 that a request for a provisional measure preventing expulsion during the appeal shall be granted if the asylum request is considered to have an arguable claim in the sense of Article 13 of the European Convention on Human Rights (ECHR).[17] In April 2017 the Council of State referred preliminary questions to the CJEU on whether an appeal before it against the rejection of an asylum application has automatic suspensive effect.

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

In 2017, there have been no reports or testimonies of people refused entry at the border and returned without examination of their protection needs in the Netherlands.

13 The trauma policy used to have its own ground: Article 29(1)(c) Aliens Act 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.

14 Council of State, Decision 20010591481, 28 March 2002.

15 Article 82(2) Aliens Act.

16 Article 69(2) Aliens Act.

17 Council of State (Judge for provisional measures), Decision 201609138/3/V2, 20 December 2016.

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?

1.1. Making and registering the application

If an asylum seeker enters the Netherlands by land, he or she has to apply at the Central Reception Centre (*Centraal Opvanglocatie*, COL) in **Ter Apel** (nearby **Groningen**, north-east of the Netherlands, where the registration takes place. The Immigration and Naturalisation Service (IND) is responsible for the registration of the asylum application. The Aliens Police (*Vreemdelingenpolitie*, AVIM) takes note of personal data such as name, date of birth and country of origin. The application/registration procedure in the COL takes three days. During this procedure the asylum seeker has to complete a form, fingerprints are taken and he or she is interviewed regarding his or her identity, family members, travel route and profession. Data from Eurodac and the Visa Information System (VIS) are consulted.

If an asylum seeker from a non-Schengen country has arrived in the Netherlands by plane 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 mainly responsible for the registration of those persons who apply for asylum at the international airport.[18] 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).[19] As far as the known 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.[20]

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

1.2. The rest and preparation period

Exclusively in Track 4, the asylum seeker is granted a rest and preparation period. This starts from the moment the asylum application is formally lodged by signing an application form. 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.[21]

The rest and preparation period takes at least 6 days. It is designed, on the one hand, offer the asylum seeker some time to rest, on the other hand, to provide 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 KMar;

18 IND, *Voordat jouw asielprocedure begint – AMV*, August 2015, available in Dutch at: http://bit.ly/2DChVcO.
19 Article 3(3) Aliens Act.
20 Council of State, Decision ABKort 1999.551, 20 September 1999.
21 Article 3.109 Aliens Decree.

- Medical examination by an independent medical agency (FMMU) 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
- Appointment of a lawyer and substantive preparation for the asylum procedure.

The rest and preparation period is not available to asylum seekers falling in 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).

C. Procedures

Since March 2016, the IND implements 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.

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 make a decision on the asylum application at first instance:
   - ❖ Short procedure — 8 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 2017: 7,365

The general asylum procedure (Track 4) is divided into a short asylum procedure of 8 days and an extended asylum procedure. 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 asylum procedure.

Short asylum procedure

A decision on an asylum application in the short asylum procedure has to be issued within 8 working days.[22] In exceptional cases, this deadline may be extended by 6, 8 or 14 more days. Therefore, the total length of the short asylum procedure is 14, 16 or 22 days depending on the grounds for extending the short procedure.[23] These extensions are not frequent in practice. According to Paragraph C1/2.3 of the Aliens Circular, the IND is reticent regarding extensions of the deadline of the short asylum procedure.

22 Article 3.110(1) Aliens Decree.

23 Article 3.110(2) Aliens Decree. An extension with six days is applied for instance in case an interpreter is not available or documents have to be analysed.

For a clear understanding of the short asylum procedure it is important to indicate what happens during these eight days. In short, on the odd days the asylum seeker has contact with the IND and on the even days with his or her legal advisor / counsellor:[24]

Day 1	Start of the actual asylum procedure with first interview	On the day of the official lodging of the asylum application, the IND conducts the first interview with the asylum seeker to ascertain the asylum seeker's identity, nationality and travel route from their country of origin to the Netherlands. The first interview does not concern the reasons for seeking asylum. A lawyer is automatically appointed from day 1.
Day 2	Review of the first interview and preparation of the second interview	The asylum seeker and the appointed lawyer review the first interview after which corrections and additions thereto may be submitted, which happens generally due to interpretation problems, where a misunderstanding easily occurs. The second day also focuses on the preparation of the second interview.
Day 3	Second interview by the IND	In the second and more extensive interview, the asylum seeker is questioned by the IND about his or her reasons for seeking asylum.
Day 4	Review of the second interview and corrections and additions	The lawyer and the asylum seeker review the report on the day after the second interview. During this stage, the asylum seeker may submit any corrections and additions to the second interview. After day 4, the IND makes an assessment of the asylum application. It may decide to grant asylum. If not, the IND chooses either to continue the examination in the short asylum procedure or to refer to the extended procedure.
Day 5	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.
Day 6	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 with regards to the written intention on behalf of the asylum seeker.
Day 7/8	The decision of the IND (*Beschikking*)	After submission of the lawyer's view in writing, the IND may decide either to grant or refuse asylum. It may also still decide to continue the examination of the asylum application in the extended asylum procedure.

When the IND cannot assess the asylum claim and cannot take a decision within the time frame of the short asylum procedure, it has to refer the case to the extended asylum procedure. A decision is taken by the IND on the basis of the information that stems from the first and second interviews, 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.[25]

24 Article 3.112-3.115 Aliens Decree.
25 Article 42(3) Aliens Act.

Extended asylum procedure

In case the IND, after the second interview and the submission of corrections and additional information in the short asylum procedure, decides to continue examination of the asylum application in the extended asylum procedure, the asylum seeker is relocated from a POL to a centre for asylum seekers (*Asielzoekerscentrum*, AZC). There are no specific conditions under which the IND can refer a case to the extended asylum procedure, but in general the IND needs more time to investigate the identity of the asylum seeker or his or her reasons for seeking asylum. This referral cannot be appealed.

The asylum seeker and his or her lawyer are given 4 weeks to submit a viewpoint in writing in response to the intention of the IND to reject the asylum application.[26] The IND has to issue a new intention to reject the asylum application if it changes its grounds for rejecting the claim substantially.

If an asylum application is examined in the extended asylum procedure the maximum time limit for making a decision 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.

This extension was introduced by the government in February 2016 through Decree 2016/3, due to the increased number of asylum applications in the Netherlands in 2015. In its judgment of 8 December 2016, the Council of State ruled that the State Secretary was able to extend the asylum procedure in general by publishing Decree 2016/3.[27] According to the Council of State, the State Secretary did not and does not have to inform each asylum seeker individually by letter / written notice when he extends the time limit. The (collective) extension of the time limit by 9 months has ended since February 2017.[28]

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 Eritrea. 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, however, as neither Track 3 nor Track 5 were applied in 2017.

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

The law requires the IND to organise a personal interview for all asylum seekers.[29] Every asylum seeker is interviewed at least twice, with the exception of applications dealt with in the Dublin Procedure (Track 1) and the Accelerated Procedure (Track 2). The first interview is designed to clarify nationality, identity

26 Article 3.117 Aliens Decree.
27 Council of State, Decision 201606176/1, 8 December 2016.
28 Decree 2017/1 of 11 January 2017, available in Dutch at: http://bit.ly/2nbEB8H.
29 Article 3.112 Aliens Decree.

and travel route. In the second interview the asylum seeker is able to explain the reasons for fleeing his or her country of origin.[30]

Interpretation

The asylum seeker is to be interviewed in a language which he or she may reasonably be assumed to understand.[31] This means that in all cases an interpreter is present during the interviews, unless the asylum seeker speaks Dutch.[32] The IND may only use certified interpreters by law.[33] 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.[34] Interpreters are obliged to perform their duties honestly, conscientiously and must render an oath.[35] The IND uses its own code of conduct which is primarily based on the general code of conduct for interpreters.[36] The Legal Aid Board arranges for an interpreter in order to facilitate the communication between asylum seekers and their lawyer. They are allowed to make use of the "interpreter telephone". This service is provided by Concorde and paid by the Legal Aid Board.[37]

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 speak about issues such as sexual violence.

Questions asked

In the past, there have been concerns about questioning in cases of persecution related to grounds of sexual orientation. Persons with asylum claims related to sexual orientation or gender identity were for instance questioned about sexual conduct and what kind of feelings this raised.[38] However, the IND has changed this practice and stopped asking such questions. Recent examples of such inappropriate questions are therefore not known to the Dutch Council for Refugees.

Besides that, the Council of State has referred preliminary questions to the Court of Justice of the European Union (CJEU) asking which limits are set by Article 4 of the Qualification Directive in assessing the credibility of alleged sexual orientation and if with this assessment different thresholds apply compared to the assessment of the credibility of the other grounds of persecution.[39] These questions were answered in the CJEU's *A, B and C* judgment of 2 December 2014.[40] The Court clarified the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for international protection. The Dutch government had stated that this judgment is in line with Dutch policy on assessing the credibility of homosexual asylum seekers except on the point that the conclusion of a lack of credibility cannot solely be reached if an applicant cannot furnish information about the gay scene (in the Netherlands or in their country of origin). In some cases the IND based its judgment too readily on the fact that an applicant could not give details about the gay scene. Following *A, B and C*, however, this is no longer possible according to the Council of State in a judgment of 8 July 2015,[41] and the Secretary of State had to further clarify how the credibility examination of LGBTI claimants takes place. The IND has issued a Work instruction which stresses the relevance of questions

30 Article 3.113 Aliens Decree.
31 Article 38 Aliens Act.
32 IND, *Toelichting inzet tolken*, February 2014, available at http://bit.ly/2E6UYv9, 1.
33 Article 28(1) Law on Sworn Interpreters and Translators.
34 Article 28(3) Law on Sworn Interpreters and Translators.
35 Frits Koers et al, *Best practice guide asiel: Bij de hand in asielzaken*, Raad voor de Rechtsbijstand, Nijmegen 2012, 38.
36 IND, *Toelichting inzet tolken*, February 2014, 5.
37 Secretary of State Decision No INDVITI3-273, 1 April 2013, 110.
38 Lieneke Luit, *Pink Solution, inventarisatie van LHBT asielzoekers (Inventory of LGBTI asylum seekers),* available at: http://bit.ly/1MyMHfE.
39 Council of State, Decision 201110141/1/T1/V2, 30 March 2013.
40 CJEU, Joined Cases C-148/13, C-149/13 and C-150/13 *A, B and C*, Judgment of 2 December 2014.
41 Council of State, Decisions 201208550/1**,** 201110141/1 and 201210441/1, 8 July 2015.

about the personal experience (including awakening and self-acceptance) of the asylum seeker concerning his or her sexual orientation.[42] The Council of State has accepted this Work instruction as a solid basis for assessing the credibility of the sexual orientation in LGBTI asylum claims.[43]

Recording

The National Ombudsman made recommendations in 2014 concerning the possibilities for civilians to record conversations with governmental institutions.[44] One of the recommendations is that a governmental institution should not, in principle, refuse the wish of a civilian to make recordings of a hearing or conversation with a governmental institution. This recommendation is also explicitly applicable in relation to asylum seekers and the IND. The Dutch Council for Refugees has started a pilot on 1 December 2016 at **AC Zevenaar** which entails that there is a possibility to record the interview.[45] This pilot continued in 2017.

On day 2 and 4 of the short regular 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 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 procedure), the IND may make a decision without considering that view.[46]

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: 4 weeks

Time limits

In the **short asylum procedure**, an asylum seeker whose application for asylum is rejected on the merits within the framework of the short asylum procedure has one week to lodge an appeal before the Regional Court (*Rechtbank*).[47] 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 weeks. Claims rejected as manifestly unfounded, dismissed as inadmissible, or rejected following implicit withdrawal or abandonment have to be lodged within one week.

Suspensive effect

The appeal against a negative in-merit decision in the short 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.[48]

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42 IND, Work Instruction 2015/9, October 2015, available at: http://bit.ly/2k8Wl4x.
43 See e.g. Council of State, Decision 201601800/1, 16 June 2016.
44 Ombudsman, Report 2014/166, November 2014.
45 Available at: http://bit.ly/1MjB3HJ.
46 Article 3.114 Aliens Regulation.
47 Article 69(2) Aliens Act.
48 Article 82(2)(c) Aliens Act, citing Article 30b(1)(h).

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 the cases where the appeal has no automatic suspensive effect, the lawyer has to request a provisional measure pending the appeal. 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.

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 his or her own opinion on the credibility of the asylum seeker’s statements for that of the authorities. Where contradictory or inconsistent statements are made by the asylum seeker, the review can, however, be more intensive; this is different than it used to be. The other elements – not the credibility of the statements – for assessing whether the asylum seeker qualifies for international protection (*de zwaarwegendheid*) have always been reviewed intensively by Regional Courts.

Furthermore, when assessing the appeal the Regional Court takes into consideration all the new facts and circumstances which appear after the decision issued by the IND. This is the so-called *ex nunc* examination of the appeal.[49]

Onward appeal

After a decision in the short and extended asylum procedure is taken by the Regional Court, either the asylum seeker and/or the IND may appeal against the decision of the regional court to the Council of State.[50] The IND makes use of this possibility especially in matters of principle, for example if a court judges that a particular minority is systematically subjected to a violation of Article 3 ECHR. This procedure does not have any suspensive effect.

49 Article 83 Aliens Act.
50 Article 70(1) Aliens Act.

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.[51] A provisional measure from the president of the Council of State is needed to prevent expulsion before the verdict of the Council.[52] A provisional measure is only granted in case the departure date is set. A granted provisional measure gives a right to reception facilities. In the extended asylum procedure the right to accommodation ends after the verdict of the court, or in the case of onward appeal and this appeal has suspensive effect, after the verdict of the Council of State. However, in most cases only in a very late stage the departure date and time is set so in general there are no reception facilities during the onward appeal.

All decisions of the appeal body are public and some are published.[53] 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.

In April 2017, the Council of State referred preliminary questions to the CJEU on whether the onward appeal has as such automatic suspensive effect. The Council of State involved the Returns Directive and Article 47 of the EU Charter on the right to an effective remedy in this regard.[54]

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.[55] To ensure this right, the following system has been designed:

1.5.1. Free legal assistance at first instance

To register the actual asylum application the asylum seeker has to go to an Application Centre. These Application Centres have schedules where an asylum lawyer can subscribe. For instance if five asylum lawyers are scheduled on a Monday they are responsible for all the asylum requests which 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 this schedule and makes sure that sufficient lawyers are listed on the schedules every day. Therefore every asylum seeker is automatically appointed a lawyer. On the other hand, in case there are too many applications on one day, it may also happen that lawyers are forced to take on too many cases.

An appointed lawyer from the Legal Aid Board is free of charge for the asylum seeker. However, an asylum seeker may choose a lawyer him or herself. If this self-appointed lawyer is recognised by the Legal Aid Board as an official asylum lawyer, the Legal Aid Board 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

51 Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014–2015, 22 and Chapter 8.5 GALA.
52 Article 8.106 GALA.
53 Decisions of the Regional Courts and Council of State may be found at: https://www.rechtspraak.nl/.
54 CJEU, Case C-175/17 *X*, Reference of 6 April 2017.
55 Article 10 Aliens Act.

long as he or she gets 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 in this system.

Nevertheless, the Coalition Agreement of the new Dutch administration announces that free legal assistance at first instance will be limited to the moment when an asylum seeker has to submit his or her views against the IND written intention to reject the application.[56] As a result, the applicant will not be able to discuss his or her case before the start of the actual asylum procedure. At the time of writing, the system of free legal assistance at first instance has not changed yet.

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 duties, as well as what they might expect 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. No merits test applies.[57] Every asylum seeker has access to free legal assistance under the same conditions. However, the lawyer can decide not to submit any written viewpoint – on day 6 of 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 for a “second opinion”, meaning that another lawyer takes over the case.[58] 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 viewpoint, this would be considered as ‘malpractice’ because submitting a written viewpoint is actually 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 it 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.

The amount of financial compensation for lawyers who represent asylum seekers can be an obstacle. Some lawyers consider the amount of time to prepare a case, and therefore the compensation they get, as too little. This means that it is possible that some lawyers spend more work on a case than they get paid for or that some cases are not prepared thoroughly enough. Alongside this, due to the economic crisis, more cutbacks had to be made within the state-funded legal aid system.

56 Cabinet, *Regeerakkoord 'Vertrouwen in de toekomst'*, 10 October 2017, available in Dutch at: http://bit.ly/2i1wmgo, part 4.5.

57 Circular on payments legal aid in the new asylum procedure, 1 July 2010, available in Dutch at: http://bit.ly/1HS8gek.

58 Article 12 Legal Aid Act.

2. Dublin ("Track 1")

2.1. General

Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	7,450	1,890	**Total**	4,630	810

Source: IND, 23 March 2018.

In 2017, the Netherlands issued 7,450 outgoing requests and implemented 1,890 transfers, while it received 4,630 incoming requests and 810 transfers.

Application of the Dublin criteria

Eurodac and prior applications

In addition to a match in the Eurodac system other information, such as an original visa supplied by another Member State or statements from the asylum seeker regarding family members or his or her travel route, may result in a Dublin claim. In a judgment from 18 January 2017 concerning Germany, the Council of State ruled that no formal application for asylum is required for another country to be determined as the responsible Member State. The asylum seeker did express a wish for asylum to the German authorities. Even though this wish had not yet been formalised,[59] the Council of State ruled that the German authorities were responsible for examining the asylum application.[60]

Unaccompanied children

As to the application of Articles 6 and 8 of the Dublin III Regulation on unaccompanied children, the State Secretary for Security and Justice informed the House of Representatives on 2 September 2013 about the consequences and the change in policy concerning unaccompanied children, who have already applied for asylum in another Member State, in order to comply with the CJEU's *M.A.* judgment.[61] The Council of State ruled end of September 2013 that the IND should not have refused to examine the asylum request of an unaccompanied minor who does not have any family members legally residing in the EU.[62] As of the end of 2017, the IND still applies this policy. Where an unaccompanied child has a family member legally residing in another Member State, the IND assumes this country as responsible for the application. Some Regional Courts have found this approach incompatible with the best interests of the child in specific cases.[63]

Family unity

Dutch policy only clarifies how family links are assessed with regard to unaccompanied children. 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 has not mentioned his or her family members in 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.[64]

59 For a discussion of registration in Germany, see AIDA, Country Report Germany, 2017 Update, March 2018.
60 Council of State, Decision 201608443/1, 18 January 2017.
61 Letter of the State Secretary for Security and Justice concerning case C-648/11 of the CJEU, 2 September 2013. See also para C2/5 Aliens Circular.
62 Council of State, Decision 201205236/1, 5 September 2013.
63 Regional Court Zwolle, Decision NL16.3574, 23 December 2016.
64 Regional Court The Hague, Decisions 17/591 and NL.1428, 17 August 2017.

The IND does not register the criteria most frequently used in practice for outgoing and incoming requests.

The dependent persons and discretionary clauses

Dependent persons: Article 16 Dublin Regulation

The Council of State has ruled on several occasions that, in order to conclude that a situation of dependency exists, the asylum seeker has to demonstrate, using objective documents, what concrete assistance his or her family member is offering him or her.[65] In the case of an asylum seeker who had objectively shown that he benefits from the care of his sister, the Council of State ruled that no situation of dependency existed as it had not been shown that only the asylum seeker's sister could offer him the help he needed.[66] The Council of State is stricter when it comes to the duty to motivate refusals: the IND has to motivate every case where it refuses to apply Article 16.[67]

Sovereignty clause: Article 17(1) Dublin Regulation

The IND is reticent regarding the application of Article 17 of the Dublin 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 when Article 17(1) of the Dublin Regulation will in any case 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 application of Article 17 of the Dublin Regulation may better serve process control, in particular when the asylum seeker originates from a safe country of origin.

The Council of State ruled in 2016 that there is no obligation on the IND to protect family relations other than those mentioned in the Dublin Regulation.[68] 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 gives rise to the application of Article 17 of the Dublin Regulation.[69] The interests of the child and respect for family life are enshrined in the Dublin Regulation in various binding criteria for identifying the responsible Member State, according to the Council of State.[70]

The Council of State ruled at the end of November 2015 that the Secretary of State cannot claim, without further investigating the situation for Dublin returnees after their transfer to Hungary, they will not find themselves in a situation contrary to Article 3 ECHR.[71] At the moment the discretionary clause is applied in cases where it has been established that Hungary is the responsible Member State and the time frame for transferring the asylum seeker under Article 29 of the Dublin Regulation has expired.

Humanitarian clause: Article 17(2) Dublin Regulation

The IND is equally reticent with regard to the application of Article 17(2) of the Regulation in requesting another Member 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

65 Council of State, Decision 201403670/1, 5 February 2015.
66 Council of State, Decision 201502436/1, 1 December 2016.
67 Council of State, Decision 201701137/1, 20 March 2017. See also Regional Court Middelburg, Decision 17/540, 30 January 2017.
68 Council of State, 9 August 2016, 201507801/1.
69 Council of State, 19 February 2016, 201505706/1.
70 Council of State, 19 February 2016, 201505706/1.
71 Council of State, 26 November 2015, 201507248/1.

that would result in the asylum seeker facing disproportionate hardship if he or she is not reunited with his or her family.[72]

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.

2.2. Procedure

Indicators: Dublin: Procedure

1. 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 VIS.[73] Refusal to be fingerprinted can be considered as lack of sufficient cooperation during the procedure which can in turn lead to a rejection of the asylum application.[74]

The IND, in cooperation with the Dutch Council for Refugees, has drafted brochures in 13 languages several languages for asylum seekers with information about the Dublin procedure. These brochures are available in Arabic, Armenian, Chinese, Dari, English, Farsi, French, Mongolian, Russian, Servo-Croatian, Somali, Tigrinya and Armenian.

In case the IND has (strong) indication to believe 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 FMMU.

Within a few days after filing the application, the asylum seeker has a reporting interview with the IND (*aanmeldgehoor*). This interview solely focuses on the asylum seeker's identity, nationality and travel route. During this interview, the asylum seeker is informed that the IND may request or already has requested another Member State to examine the request for asylum. The asylum seeker may present the reasons as to 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.[75] After this interview the IND decides whether another Member State is responsible for examining the asylum request. If that is the case, the asylum request is rejected and processed in the Dublin procedure.[76]

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 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. The whole procedure, from the moment it officially starts until the decision to not handle the asylum application, takes about a week.

72 Paragraph C2/5 Aliens Circular.
73 Paragraph A2/10.1 Aliens Circular.
74 Paragraph C2/7.9 Aliens Circular.
75 CJEU, Case C-63/15 *Ghezelbash*, Judgment of 7 June 2016.
76 Paragraph C2/5 Aliens Circular.

Individualised guarantees

Following the *Tarakhel v. Switzerland* judgment,[77] a specific procedure has been developed regarding transfers of vulnerable asylum seekers to Italy. Reference is made to the Circular letters from the Italian authorities, issued on 8 June 2015, 15 February 2016 and 12 October 2016, in which several SPRAR locations have been earmarked for the accommodation of vulnerable asylum seekers, including families with minor children. According to the Council of State, the Secretary of State may rely on the guarantees given by the Italian authorities in these Circulars, that families with minor children will be accommodated in one of the listed SPRAR locations.[78]

The Council of State has ruled in another judgment that, although the Circular from the Italian authorities dated 15 February 2016 listed fewer suitable SPRAR places than its predecessor, the appellant had not demonstrated an insufficiency of suitable accommodation, given that Italian authorities would enlarge reception capacity if needed. No further individual guarantees were deemed to be needed for the State Secretary to proceed with a Dublin transfer.[79] This has not been followed, however, in the case of a pregnant women. In that case the Council of State has ruled that reference to the Circular letter was not sufficient, as the guarantees in that letter do not concern pregnant women as well.[80]

As to the scope of the *Tarakhel* judgment, the Council of State ruled in December 2015 that the judgment does not only regard families with minor children, but also those asylum seekers who can be designated as belonging to a potential particularly vulnerable group. Gender, age and medical circumstances are important factors in designating an asylum seeker as particularly vulnerable.[81] In the case of a woman with a serious medical condition the Council of State ruled in March 2016 that individual guarantees from the Italian authorities are not required, as the transfer would take place in accordance with Article 32 of the Dublin Regulation.[82]

The IND claims to generally request individual guarantees from Member States concerning transfers of asylum seekers with special needs, but only requests such guarantees at the point of transferring the applicant. In the case of Italy, the IND often refers to the aforementioned Circulars.[83]

Transfers

An asylum seeker whose case has been rejected because he or she is to be transferred to another Member State may be detained if certain conditions are fulfilled, mainly to prevent him from absconding. Article 28 of the Dublin Regulation is interpreted in a way that allows detention in many cases (see section on Detention of Asylum Seekers).

In principle, the asylum seeker has the option to travel to the responsible Member State voluntarily or under escort. When the applicant chooses to leave voluntarily, he or she has 4 weeks to do so.[84] 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.[85]

Normally, vulnerable and ill persons are also transferred under the Dublin Regulation. The IND will examine from the outset whether someone should be considered as a vulnerable person in need of special care. The transfer is carried out in accordance with Article 32 of the Dublin Regulation.

77 ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.
78 Council of State, Decision 201506164/1/V3, 7 October 2015.
79 Council of State, Decision 201605509/1, 9 December 2016.
80 Council of State, Decision 201507918/1, 6 January 2017.
81 Council of State, Decision 201504479/1, 3 December 2015.
82 Council of State, Decision 201505068/1, 14 March 2016; 201602689/1, 3 August 2016.
83 Regional Court Middelburg, Decision NL17.12435, 6 December 2017; Regional Court Haarlem, Decision NL17.7069 and NL17.7071, 12 September 2017.
84 Article 62c(1) Aliens Act.
85 Council of State, Decision 201701623/1/V3, 10 August 2017.

The IND does not register the average duration of the procedure, from the moment a request is accepted until the transfer takes place. The actual time lapse until the execution of the transfer to the responsible Member State within the fixed term of 6 months depends on whether an appeal against the Dublin transfer decision has been submitted.

One obstacle has emerged due to differences in the interpretation of the Regulation between the Netherlands and Hungary. This concerns two categories of cases: (1) asylum seekers who travel through Hungary and apply for asylum for the first time in the Netherlands; and (2) asylum seekers who have applied for asylum in Hungary and applied for a second time in the Netherlands. According to the IND, Hungary is responsible for the asylum application in both situations. The Hungarian authorities generally do not accept these requests. Therefore the Dutch State Secretary has started a conciliation procedure with the European Commission.[86]

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

A personal interview is solely conducted during the application procedure. The interview is conducted by the IND, in order to determine whether another Member State is responsible for examining the asylum request. 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.

However, the asylum seeker has not had a rest and preparation period in this procedure and is not appointed a legal representative from the outset.[87] The Dutch Council for Refugees has not received any specific signals or proven impact of this difference in the procedure in 2017.

Remarks concerning video/audio recording, interpreters, accessibility and quality of the interview also apply to the Dublin procedure. The whole procedure takes approximately a week from the moment it officially starts until the IND decision not to process the asylum application.

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

When an asylum application is rejected on the ground that another Member State is responsible for examining the asylum application according to the Dublin Regulation, the asylum request “shall not be considered”.[88] The asylum seeker may appeal this decision before the Regional Court.[89] The appeal

86 State Secretary, Letter TK 2017-2018, 19 637, No. 2355, 27 November 2017.
87 Article 3.109c(1) Aliens Decree.
88 Article 30(1) Aliens Act.
89 Article 62(c) Aliens Act.

has no automatic suspensive effect and must be filed within a week after the decision not to handle the asylum application.[90]

As a result of the CJEU ruling in *Ghezelbash*, the asylum seeker can claim wrongful application of the Dublin criteria as well as state circumstances and facts that demonstrate that the transfer would result in a violation of Article 3 ECHR.[91]

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 appointed 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.[92]

Numerous cases have been reported where this has caused problems concerning the obligation, or even the possibility, for legal counsel to represent the asylum seeker. In those cases, no contact was 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. It remains unclear whether the lawyer concerned then has power of attorney to represent the case.[93]

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? Greece, Hungary

Greece: The Netherlands has suspended all transfers to Greece since the European Court of Human Rights (ECtHR) 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.[94] The Netherlands assumes responsibility for all applications of asylum seekers for whom Greece should be responsible. However, the State Secretary has investigated whether transfers to Greece would be possible, without officially starting such a process.

Hungary: Following a Council of State ruling in November 2015,[95] the "sovereignty" clause is applied in cases where it has been established that Hungary is the responsible Member State. As a result, to our

90 Articles 69(2)(b) and 82(2)(a) Aliens Act.
91 CJEU, C-63/15 *Ghezelbash*, Judgment of 7 June 2016.
92 Article 3.109c(1) Aliens Act. This is due to the lack of a rest and preparation period.
93 Regional Court Haarlem, Decision NL17.9768; Regional Court Den Bosch, Decision 17/3849, 13 March 2017; Regional Court Roermond, Decision 17/4719, 28 March 2017; Regional Court Utrecht, Decision NL17.2072, 1 June 2017.
94 Paragraph C2/5.1 Aliens Circular. See also Council of State, Decision 201009278/1/V3, 14 July 2011.
95 Council of State, Decision 201507248/1, 26 November 2015.

knowledge, no asylum seekers are transferred to Hungary at the moment, although the IND has requested Hungary to accept responsibility for certain cases, which has been denied (see Dublin: Procedure).

Bulgaria: The Council of State granted suspensive effect in three cases concerning Dublin transfers to Bulgaria in 2016, [96] and found in another case, concerning an asylum seeker suffering from psychological illness, that concrete indication for doubting the principle of mutual trust could be found in the AIDA Country Report Bulgaria, and thus that the IND should have investigated further.[97] In 2017, however, the Council of State found that the principle of mutual trust could be upheld vis-à-vis Bulgaria,[98] including in one case concerning a family with children.[99] This led the State Secretary to conclude that the special attention previously afforded to vulnerable applicants was no longer necessary for Bulgaria.[100]

Italy: As mentioned above, a special policy applies with regard to transfers of vulnerable asylum seekers to Italy as a result of the judgement of the ECtHR in the case of *Tarakhel v. Switzerland* (see section on Dublin: Procedure).

Regarding other Member States suspension of transfers has been applied on a case by case basis.[101]

2.7. The situation of Dublin returnees

If an asylum seeker is transferred to the Netherlands under the Dublin Regulation, the 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 should 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.

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:

a. Enjoys international protection in another EU Member State;
b. Comes from a "first country of asylum" i.e. is recognised as a refugee or otherwise enjoys sufficient protection in a third country;

96 Council of State, Decisions 201608203/2, 18 November 2016; 201606446/2, 25 October 2016; 201606788/2, 13 October 2016.
97 Council of State, Decision 201604780/1, 25 November 2016.
98 Council of State, Decision 201604481/1, 4 April 2017.
99 Council of State, Decision 201603754/1, 19 July 2017.
100 State Secretary, Letter TK 2017-2018, 32 317, No. 492, 5 October 2017.
101 See e.g. Regional Court Amsterdam, Decision NL17.11470, 20 December 2017; Regional Court Haarlem, Decision 17/2914, 7 March 2017.

c. Comes from a "safe third country";
d. Has submitted a subsequent application with no new elements;
e. Has already been granted a residence permit.

This examination is done 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, however, are subject to an Accelerated Procedure ("Track 2").[102]

There are no statistics available on the number of applications dismissed as inadmissible in 2017.

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.[103] 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.[104] This appeal has no automatic suspensive effect, except in the case of the "safe third country" concept.[105]

102 Article 3.109ca(1) Aliens Decree.
103 Article 3.109ca(1) Aliens Decree.
104 Article 69(2)(c) Aliens Act.
105 Article 82(2)(b) Aliens Act.

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.[106] Therefore the same remarks are applicable concerning legal assistance (see Regular Procedure: Legal Assistance).

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. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. 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

Since the transposition of the recast Asylum Procedures Directive in July 2015, the Netherlands has a formal border procedure applicable to asylum seekers applying at airports and ports. 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:[107]

- Not considered, due to the application of the Dublin Regulation;[108]
- Inadmissible;[109] or
- Manifestly unfounded.[110]

If the IND is not able to stay within the time limits prescribed by the short asylum procedure i.e. 8 days, it can continue the border procedure if it suspects it can reject the asylum application based on the Dublin Regulation, or declare it inadmissible or manifestly unfounded.[111] The maximum duration of the border procedure is 4 weeks.[112] However, if the examination takes longer than 4 weeks or another ground of rejection is applicable, the detention is lifted, the asylum seeker is allowed to enter the Netherlands and the treatment of the application is continued in the regular procedure.[113]

106 Article 3.109ca(1) Aliens Decree.
107 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.
108 Article 30 Aliens Act.
109 Article 30a Aliens Act.
110 Article 30b Aliens Act.
111 Article 3.109b(1) Aliens Decree.
112 Article 3(7) Aliens Act.
113 Articles 3 and 6 Aliens Act. See also IND, Work Instruction 2017/1 Border procedure, 6.

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.[114]

The following groups are exempted from the border procedure:

- Unaccompanied children;[115]
- Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible,[116] as the Netherlands does not detain families with children at the border.[117] Instead of being put in border detention, families seeking asylum at Amsterdam **Schiphol Airport** are now redirected to a closed reception centre in **Zeist** (see Detention of Vulnerable Applicants);
- Persons for whose individual circumstances border detention is disproportionately burdensome;[118]
- 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.[119]

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:[120]

- ❖ If, after the first hearing, 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 first hearing 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 first hearing, 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.[121] The Committee of Human Rights (*Comité voor de Mensenrechten*) has also published advice to the Dutch government in previous years, in which it concludes that it is unnecessary to *always* detain asylum seekers at the border, especially children.[122] According to the Committee the detention of all asylum seekers at the border without weighing the

114 Article 3.109b(2) Aliens Decree.
115 Article 3.109b(7) Aliens Decree.
116 Paragraph A1/7.3 Aliens Circular.
117 Paragraph A1/7.3 Aliens Circular.
118 Article 5.1a(3) Aliens Decree.
119 Article 3.108 Aliens Decree.
120 Paragraph C1/2 Aliens Circular.
121 Dutch Council for Refugees, *Standpunt: grensdetentie*, available in Dutch at: http://bit.ly/2w1LrAF.
122 Committee for Human Rights, *Advies: Over de Grens, Grensdetentie van asielzoekers in het licht van mensenrechtelijke normen*, May 2014, available at: http://bit.ly/1YeuUBM.

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 the first half of 2017, 290 asylum seekers filed applications at the border.[123]

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.

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"[124] ("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.

There are no statistics on the number of applications processed under Track 2 in 2017.

5.2. Personal interview

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

123 Ministry of Security and Justice, *Rapportage Vreemdelingenketen*: *January-June 2017*, 28.

124 The term "simplified procedure" is used by the IND in the relevant information leaflet, available at: http://bit.ly/2w3lOiW.

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 his or her case well in advance.

As regards free legal assistance at the appeal stage, a new approach to limiting legal assistance in appeals against negative decisions in Track 2 cases was recently tested, whereby the applicant would be excluded from legal aid if two legal representatives have refused to undertake the 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, Article 3.108b of the Aliens Decree provides that the IND shall examine from the start of the asylum procedure whether the individual applicant is vulnerable and in need of special care. However, unaccompanied children are generally considered as a vulnerable group in policy.

1.1. Screening of vulnerability

Before the start of the short asylum procedure in Track 4, therefore not in Tracks 1 and 2, a medical examiner from FMMU examines every asylum seeker as to whether he or she is mentally and physically able to be interviewed (see Registration). FMMU is an independent agency, working on behalf of the IND to provide medical advice. FMMU's medical advice forms an important element in the decision as to how the application will be handled. However, it should be noted that FMMU 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 has in order to be interviewed. FMMU cannot be seen as a 'product' of the Istanbul Protocol, because its examination is limited to the question as to whether the asylum seeker is able to be interviewed based on physical and/or mental capacity.

From the start of the asylum procedure, the IND will examine 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.[125]

The IND decides whether the way the interview is conducted should be adapted as a result of FMMU advice. The IND bases its decision on the medical advice, its own observations and those of the lawyer and asylum seeker him or herself. Important documents in this context are the IND Work Instructions 2010/13 and 2015/8.[126] Work Instruction 2015/8 there is a list of indications on the basis of 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; blind or handicapped) or psychological problems (traumatised, depressed or confused). It is explicitly noted that this is not an exhaustive list.

1.2. Age assessment of unaccompanied children

The age assessment procedure is governed by Paragraph C1/2 of the Aliens Circular and starts with an age inspection.

Age inspection (*leeftijdsschouw*)

If an asylum seeker, who claims to be an unaccompanied minor, lodges an asylum application in the Netherlands, the Royal Police (KMar) and/or the IND can conduct an inspection (*leeftijdsschouw*).[127] This means that officers from the KMar and/or the IND assess whether the asylum seeker is evidently over or under 18 based on his or her appearance and discussion with him or her. This is usually done in cases where it seems evident that the asylum seeker is an adult. The opposite is possible too, however: when an asylum seeker claims he or she is of age, an inspection can follow if the authorities suspect they are dealing with a minor.

This method has been criticised in recent Dutch case law.[128] As a result, the Secretary of State made some adjustments to the *leeftijdsschouw* in 2016. The policy on age assessment was amended as of 1 January 2017. Currently, three officers from the IND, the KMar or the Border Police (AVIM) have to conduct the inspection independently from one another. There must ultimately be a unanimous judgment

125 Article 3.108b Aliens Decree.

126 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.

127 Paragraph C1/2 Aliens Circular.

128 In one case, the court concluded allowed an appeal against an age assessment decision on the ground that the age inspection had not been carried out by experts on the matter: Regional Court of Amsterdam, Decision 16/13578 of 13 July 2016. See also critiques of the age inspection by: Regional Court of Arnhem, Decision 16/10627 of 16 June 2016; Regional Court of Haarlem, Decisions 16/5615 of 19 April 2016 and 16/833 of 12 February 2016.

to come to the conclusion of obvious majority or minority of the applicant. In addition, officials cannot establish that the person is an adult solely based on appearance.[129]

Medical age assessment

It the officers from IND, AVIM or KMar cannot conclude that the asylum seeker is evidently over 18 years of age and he or she cannot prove his or her minority, an age assessment takes place.[130] This is carried out on the basis of X-rays of the clavicle, the hand and wrist.[131] Radiologists examine if the clavicle is closed. When the clavicle is closed the asylum seeker is considered to be at least 20 years old according to some scientific experts. It is the responsibility of the IND to ensure the examination has been conducted by certified professionals and is carefully performed.[132] The age assessment has to be signed by the radiologist.

It should be noted that the methods which are used in the medical age assessment process are controversial[133] which is also illustrated by the sometimes very technical discussions among radiologists referred to in the case law.[134] The X-rays will be examined by two radiologists, independently from each other. When one radiologist considers that the clavicle is not closed, the IND has to follow the declared age of the asylum seeker.[135] 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 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.[136]

The Dutch Council for Refugees intervened together with ECRE and the AIRE Centre in the case of *Darboe and Camara v. Italy*, drawing attention to the fact that no existing medical method can reliably determine the age of an individual. The interveners state that medical age assessments have been criticised by medical experts.[137]

Until 2016 a special commission, the Medico-ethical Commission (*Medisch-ethische Commissie*) supervised the practice of age assessment. Now this has been assigned to the *Inspectie voor Veiligheid en Justitie*.

129 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/2glbqMT. See also Paragraph C1/2.2, *ad b* Aliens Circular.
130 Article 3.109d(2) Aliens Decree.
131 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, available in Dutch at: http://bit.ly/2xlFvky, 7.
132 Article 3.2 GALA.
133 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 7.
134 See e.g. Regional Court Amsterdam, Decision 10/14112, 18 December 2012. See also the pending case before the ECtHR, *Darboe and Camara v. Italy*, Application No 5797/17.
135 Tweede Kamer, *Report of the Committee on Age assessment*, April 2012, 16.
136 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.
137 ECRE *et al.*, *Third party intervention in Darboe and Camara v. Italy*, 5 July 2017, available at: http://bit.ly/2uqoBFu.

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 is in need of procedural guarantees as per Article 24 of the recast Asylum Procedures Directive. 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:[138]

- Attendance of a person of confidence or family members in the interview;[139]
- 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.

The IND does not have specialised units dealing with vulnerable groups. However, every caseworker has to follow the European Asylum Support Office (EASO) training module on Interviewing Vulnerable Persons since 2012.[140] In one case concerning an LGBTI applicant, the Regional Court of Zwolle accepted an appeal on the basis that the IND caseworker who had interviewed the applicant had not followed the training module on Interviewing Vulnerable Persons.[141] In another case, where the Regional Court of Arnhem considered that it was unclear whether the asylum case worker had followed the training module, it ordered the IND to ensure that the caseworker would have received the relevant training if the LGBTI applicant concerned had to be interviewed again.[142]

The asylum seeker cannot appeal the refusal to grant him or her special procedural guarantees, as the refusal is not considered to be an appealable decision. The asylum seeker is able to make objections regarding the refusal of the IND to grant him or her special procedural guarantees in the appeal against the negative decision on the asylum application.

2.2. Exemption from special procedures

In the regular procedure ("Track 4"), all asylum seekers start their procedure within 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 firstly will be processed within this procedure. However,

138 IND Work Instruction 2015/ Special procedural guarantees, 20 July 2015, 6.
139 This was confirmed as a form of adequate support in Council of State, Decision 201609551/1, 3 August 2017.
140 Tweede Kamer, 2013-2014, Aanhangsel 636.
141 Regional Court Zwolle, Decision 16/1743, 28 March 2017.
142 Regional Court Arnhem, Decision 17/5771, 24 July 2017.

generally, in most of these cases more investigation is needed, for example a medical report has to be drawn up. In such cases the application will be referred to the extended procedure which lasts 6 months.

The Accelerated Procedure ("Track 2") is not applicable to unaccompanied children. This is not regulated in law but happens in practice.

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

- Unaccompanied children;[143]
- Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;[144]
- Persons for whose individual circumstances border detention is disproportionately burdensome;[145]
- 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.[146]

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 2017/1 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 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 assessed on a case-by-case basis and can be derived from a FMMU medical report. 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.[147]

The decision to detain at the border has to contain the reasons why the IND, though taking into account the individual and special circumstances produced by the asylum seeker, is of the opinion to detain the asylum seeker concerned; for example where the IND is of the opinion that the border security interest should prevail above 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.

Special measures also exist for victims of human trafficking but technically this has nothing to do with the asylum procedure. 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.[148] The IND employees are also trained to recognise victims of human trafficking.[149] Victims of trafficking who have been refused asylum can be granted a temporary permit on a regular ground. During a time frame of 3 months the asylum seeker has to consider whether he lodges a complaint or cooperate with the authorities 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.

143 Article 3.109b(7) Aliens Decree.
144 Paragraph A1/7.3 Aliens Circular.
145 Article 5.1a(3) Aliens Decree.
146 Article 3.108 Aliens Decree.
147 IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5.
148 Section B/9 Aliens Circular.
149 IND, Work Instruction 2007/16 Victims of human trafficking in the asylum procedure, 18 December 2007, available in Dutch at: http://bit.ly/1MjGx5i.

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 regular procedure ("Track 4") is invited to be medically examined by FMMU in order to assess whether he or she can be interviewed (see Identification).[150] Besides that, the IND has, since the implementation date of the recast Asylum Procedures Directive, the legal obligation to medically examine asylum seekers in connection to their reasons for requesting protection. Although the obligation to conduct a medical examination is now explicitly incorporated in Dutch law and policy, it is defendable to claim the Dutch authorities already had this obligation due to rulings of the ECtHR.[151]

National legislation guarantees the possibility to use a medical examination as supportive evidence.[152] Dutch law and policy provide that a medical examination has to be done if the IND finds this necessary for 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*), to conduct the examination.[153] The IND bears the costs of this examination. If the asylum seeker is of the opinion that an examination has to be conducted, but the IND disagrees, the asylum seeker can proceed but on his or her own initiative and costs.

An NGO, called Institute for Human Rights and Medical Assessment (*instituut voor Mensenrechten en Medisch Onderzoek*, iMMO) has the resources and specific expertise to medically examine asylum seekers (physically and psychologically) at their request, if this is needed. This NGO is not funded by the State and operates independently. It works with freelance doctors on a voluntary basis and does not charge the asylum seeker, although the lawyer of the asylum seeker is obligated to make an effort to get the expenses reimbursed.[154] The authority of iMMO is 'codified' in Aliens Circular and its authority has been accepted by the Council of State.[155]

In this regard, the main question is whether the IND finds it is necessary to conduct an examination.

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:

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

150 Article 3.109 Aliens Decree.
151 ECtHR, *R.C. v. Sweden*, Application No 41827/07, Judgment of 9 March 2010.
152 Article 3.109e Aliens Decree.
153 IND, Work Instruction 2016/4 Forensic medical examination for supporting evidence, 1 July 2016, available in Dutch at: http://bit.ly/2wa4v3o.
154 Regional Court The Hague, Decision 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 14/1945, 6 February 2015.
155 Paragraph C1/4.4.4 Aliens Circular. See Council of State, Decision 201211436/1, 31 July 2013.

- Indications of the presence of scars, physical complaints and/or psychological symptoms coming from: (a) the 'hear medical advice and decide; (b) the reports of the interviews; and (c) other medical documents.

Until 2016, the Dutch Government did not adopt a clear vision on the implementation of the Istanbul Protocol.[156] In the past, certain members of the government stated that the practice of the Dutch asylum system was in accordance with this Protocol, but without being specific 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.[157] 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.[158]

4. Legal representation of unaccompanied children

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 a "child" (underage) when under the age of 18 and not (registered as) married. In case the IND doubts whether an asylum seeker is a child, an age assessment examination can be initiated.

In principle the same conditions apply for 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.[159]

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.[160]

A guardian is assigned to every unaccompanied children. Nidos, the independent guardianship and (family) supervision agency, is responsible for the appointment of guardians for unaccompanied asylum seeking children in a reception location.[161] Under the Dutch Civil Code, all children must have a legal guardian (a parent or court appointed guardian).[162] For unaccompanied children, Nidos will request to be appointed as a guardian by the juvenile court.[163] The child has to give his or her consent. Even though the formal guardianship is assigned to the organisation, the tasks are carried out by individual professionals, called "youth protectors".

156 Work Instruction 2016/4 refers to the Istanbul Protocol.
157 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.
158 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.
159 Section C2 Aliens Circular.
160 *Ibid*.
161 Article 1.245 Dutch Civil Code.
162 *Ibid*.
163 Article 1.254(2) Civil Code.

There is no time limit for the appointment of a legal guardian to an unaccompanied child. However, no instances have been reported where the period between entry into the Netherlands and the appointment of a guardian was unreasonably long.

Children from the age of 13 to 18 years are accommodated in a specific Process Reception Centre (POL). After their stay in the POL they are transferred to foster families or small-scale housing. 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** if their minority is not disputed. Children under the age of 15 are not immediately sent to **Ter Apel** but are placed in a foster family straight away. After a few days the child and the guardian go to **Ter Apel** to lodge the asylum application.

The guardian takes important decisions in the life of the child which are taken with his or her future in mind, *inter alia*, which education fits, where the unaccompanied child can find the best housing and what medical care is necessary. The purpose of the guardianship can be divided into legal and pedagogical.

When an asylum application is rejected the child is able to be granted a specific permit, which is not an asylum permit. However, there are many conditions that have to be met in order to qualify for this specific permit.[164] As a result, as far as we know, no permit on this ground has been granted yet.

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 (*herhaalde aanvraag*) 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.[165]

The assessment of subsequent asylum application takes place in the so called “one-day review” (*de eendagstoets*).[166]

1. New facts and findings (*nova*)

The IND shall declare a subsequent application inadmissible in case there are no new elements or findings.[167] The term “new facts and findings” is derived from the recast Asylum Procedures Directive.[168]

164 Conditions to be met are laid down in policy Paragraph B8/6 Aliens Circular.
165 Paragraphs C1/ 4.6 and C2/6.4 Aliens Circular.
166 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.
167 Article 30b(1)(d) Aliens Act.
168 Article 33(1)(d) Aliens Act.

According to the Secretary of State[169] and case law,[170] 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 the transposition of the recast Directive is still applicable.[171] From here on the "new elements or circumstances" will be called "*nova*".

The *nova* criterion is 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. 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, only after the previous decision, gets hold of relevant documents which are dated from before the previous asylum application(s). The basic principle is that the asylum seeker must submit all the information and documents known to him or her in the initial asylum procedure. Also in case of possible traumatic experiences it is in principle for the asylum seeker to, even briefly, mention those.[172]

In this regard, Article 40(4) of the recast Asylum Procedures Directive is relevant 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 his or her own, not have been presented in a previous procedure. This is the so called "*verwijtbaarheidstoets*". This Article is not explicitly and separately 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.[173] 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.

The Regional Court no longer reviews the decisions of the subsequent asylum applications *ex officio*, but in the same way as other decisions: depending on the grounds the asylum seeker has submitted in appeal.

2. Subsequent application procedure

The subsequent asylum procedure with the asylum seeker being required to fill out a form. According to the Council of State this is the formal application for asylum.[174] When the IND has received this form and assessed whether the application is complete, the asylum seeker receives an invitation to submit an asylum application at an Application Centre. The IND strives to deal with an actual application submitted by the asylum seeker within two weeks of the reception of the form. There have not been any indications that the two-week period was not respected by the IND in 2017.

At the appointed day and time the asylum seeker must register him or herself and his or her luggage at the allocated Application Centre. Firstly the IND shall check his or her identity using fingerprints and several other documents. After identity has been checked, the asylum application is signed and an interview is conducted by an employee from the IND and an interpreter. This interview does not consist of a complete review of the asylum request and statements. The IND will solely address the question whether new facts or circumstances exist on the basis of which a new asylum application would be justifiable.

169 Tweede Kamer, *Explanatory notes on the implementation of the recast Asylum Procedures Directive*, Vergaderjaar 34 088, number. 3, 2014-2015, 12.
170 Council of State, Decision 201113489/1/V4, 28 June 2012.
171 Article 4.6 GALA.
172 Council of State, Decision 200509675/1, 13 March 2006.
173 Council of State, Decision 201604251/1, 6 October 2017.
174 Council of State, Decision 201504600/1/V1, 29 March 2016.

After the interview, on the same day, the IND decides whether status will be granted, whether the asylum application will be rejected or 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**: When further research is required, the application will be assessed in the short or extended asylum procedure.

When the asylum seeker receives a decision that his or her subsequent asylum application has been rejected, the asylum seeker can be expelled.[175]

An appeal before the Regional Court can be lodged against a negative decision on the subsequent asylum application. However, lodging an appeal is not automatically suspensive for the asylum seeker to retain lawful residence 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.[176] The appeal has to be lodged within one week after the rejection.[177] The court mainly examines if the elements and findings are 'new' in the sense of the Aliens Act (and Aliens Circular) and the GALA.[178] After the decision of the Regional Court the asylum seeker can lodge an onward appeal with the Council of State.

A problem arises when an asylum seeker with a re-entry ban, issued on the ground that he or she has a criminal past,[179] lodges a subsequent asylum application. In that case their asylum application will be assessed by the IND, but an appeal against the rejection of the asylum application will be considered inadmissible by the Regional Court.[180] The asylum seeker has to request for cancellation/revocation of the re-entry ban.

In 2017, the number of subsequent applications lodged in the Netherlands was as follows:

Subsequent applicants in the Netherlands: 2017	
Country of origin	2017
Afghanistan	464
Iraq	249
Iran	176
Armenia	82
Nigeria	77
Somalia	76
Eritrea	62
Unknown	61
Syria	45

175 Article 3.1(1) Aliens Decree.
176 Article 82(2)(b) Aliens Act.
177 Article 69(2) Aliens Act.
178 Article 30a(1)(d) Aliens Act and Paragraph C1/2.7 Aliens Circular.
179 In Dutch, a so called "*zwaar inreisverbod*" as laid down in Article 66a(7) Aliens Act.
180 Council of State, Decision 201207041/1, 19 December 2013.

Sudan	38
Total	**2,121**

Source: IND Asylum Trends, December 2017: http://bit.ly/2DIhlcU.

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

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.[181]

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 mere fact that the asylum seeker has a valid visa for entering the third country is not sufficient to consider that the asylum seeker receives protection from that third country according to Article 30a(1)(b) of the Aliens Act. The Dutch Council for Refugees is not familiar with any case law on this issue.

181 Article 30a(1)(b) Aliens Act.

2. Safe third country

An asylum application can be declared inadmissible in case a third country is regarded a safe third country for the asylum seeker.[182] There is no list of safe third countries. The concept is applied on a case by case basis.

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 EASO, UNHCR, the Council of Europe and other relevant / authoritative / reputable organisations. In four recent cases concerning **Kuwait**, the **United Arab Emirates** and **Russia**, the Council of State ruled that the State Secretary must rely on country of origin information which must be transparent and also applicable to the individual asylum seeker's case.[183] It also noted that a country qualifies as a safe third country when the applicant is admitted in that country.

The law does not expressly require the third country to have ratified the Refugee Convention without limitation. The Council of State recently 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**.[184]

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:[185]

- 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.

In a recent case, 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.[186]

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.

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.[187] Applicants presumed to come from safe countries of origin are also channelled under the Accelerated Procedure ("Track 2") by the IND.

182 Article 30a(1)(c) Aliens Act.
183 Council of State, Decisions 201704433/1, 201703605/1, 201609584/1, 201606126/1, 13 December 2017.
184 Council of State, Decisions 201704433/1, 201703605/1, 201609584/1, 13 December 2017.
185 Paragraph C2/6.3 Aliens Circular.
186 Regional Court The Hague, Decision 17/8274, 26 June 2017.
187 Article 30b(1)(b) Aliens Act.

The statements of the asylum seeker form the basis for the assessment whether a country that has been designated as a safe country of origin is safe for the individual asylum seeker. The IND considers whether the particular country complies with its obligations under the relevant human rights treaties in practice. The IND cannot maintain the presumption of safe country of origin if the asylum seeker can demonstrate that his or her country of origin cannot be regarded as a safe country for him or her. In that case the IND assesses whether the asylum seeker is eligible for international protection.[188]

It is possible for an asylum seeker to switch from Track 2 to Track 4. For example when during the Track 2 procedure it becomes clear that the asylum seeker might have a well-founded fear for persecution because of his or her sexual orientation, this needs to be assessed thoroughly by the IND in Track 4. Alternatively, this can also occur when for example there is ample medical evidence which demonstrates that the asylum seeker is vulnerable and needs special procedural guarantees.

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 his intention to draft a national list of safe countries of origin.[189] 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. The list contains countries where according to the Dutch government nationals are under no risk of persecution, torture or inhuman or degrading treatment.

The following countries are as safe countries of origin as of the end of 2017:[190]

- EU Member States and Schengen Associated States
- Albania
- Bosnia-Herzegovina
- Kosovo
- Macedonia
- Montenegro
- Serbia
- Andorra
- Monaco
- San Marino
- Vatican City
- Australia
- Canada
- Japan
- US
- New Zealand
- Ghana
- India
- Jamaica
- Morocco
- Mongolia
- Senegal
- Ukraine
- Georgia
- Algeria
- Tunisia
- Togo

188 Paragraph C2/7.2 Aliens Circular.
189 KST 19637, 3 November 2015, No 2076.
190 KST 19637, 9 February 2016, No 2123; KST 19637, 11 October 2016, No 2241; KST 19637, 25 April 2017, No. 2314. The latest amendment added Brazil and Trinidad and Tobago.

- Brazil
- Trinidad and Tobago

At the request of the Council of State, the Advocate General has drafted a conclusion concerning (the application of) the concept of safe country of origin in 2016.[191]

Some of the abovementioned countries the Secretary of State considers to be safe contain an exception for a particular group of people (mainly LGBTI persons) and/or a certain region / area. In a judgment of February 2017 the Council of state considered this practice not to be in violation of the recast Asylum Procedures Directive.[192]

Since the end of 2015, the Regional Courts have ruled in many cases concerning the question whether the abovementioned countries have been rightly designated as safe countries of origin. Most of these judgments concern the question whether the Secretary of State has, while referring to the required sources, sufficiently substantiated that the country can be considered to be a safe country of origin. Some Regional Courts have ruled that the designation of Mongolia, Algeria, Morocco and Tunisia as safe countries of origin has not been well motivated by the Secretary of State.[193] The Council of State has ruled that these countries can be considered as safe countries of origin on the basis that they meet the statutory requirements.[194]

In 2017, Morocco (977), Algeria (891), Georgia (487) and Albania (365) were among the top ten nationalities of first time asylum seekers in the Netherlands.[195]

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme: 2,645

2. Are applications by relocated persons subject to a fast-track procedure?
   - ❖ Doubts on nationality or other "indications": ☐ Yes ☒ No
   - ❖ Where no "indications" exist: Immediate permit

Relocation statistics: 22 September 2015 – 31 December 2017

Relocation from Italy			Relocation from Greece		
	Requests	Relocations		Requests	Relocations
Total	:	891	**Total**	:	1,754

Source: European Commission.

The Netherlands originally pledged 8,712 places for relocation and had effective relocated 2,645 persons as of January 2018. The main nationalities relocated include Syria (1,468) and Eritrea (862), although the IND does not provide a separate nationality breakdown for Italy and Greece.[196]

191 Council of State, Conclusions of the Advocate General, 201603036/3, 20 July 2016.
192 Council of State, Decision 201606592/1, 1 February 2017.
193 Regional Court Roermond, Decision 16.1759, 9 August 2016 (Mongolia); Regional Court Groningen, Decision 16/27140, 19 December 2016 (Algeria); Regional Court Den Bosch, Decision 17/4539, 29 March 2017 (Tunisia). The Council of State has asked questions to the Secretary of State about Morocco: Decision 201606592/1, 17 December 2016.
194 Council of State, 201702914/1, 20 October 2017 (Tunisia): Tunisia can be considered as a safe country of origin except for asylum seekers with a LGBTI background; Council of State, 201701147/1, 13 September 2017 (Mongolia); Council of State, 201700680/1, 31 July 2017 and 20172056/1, 24 May 2017 and 201609909/1, 13 April 2017 (Algeria); Council of State, 201609929/1, 6 April 2017 (Morocco).
195 IND, *Asylum Trends*, December 2017.
196 IND, *Asylum Trends*, December 2017.

1. Relocation procedure

In general, there are no different procedures for Italy and Greece, although there are some differences in terms of logistics. The process starts with the IND receiving the relocation requests from Greece and Italy. The IND registers the asylum seeker and conducts a security screening. If the request is accepted, the IND informs the relevant national and international partners, and prepares a relocation mission.

The relocation mission consists of an interview of the persons concerned in Athens or Rome with IND, as well as a relocation training with the Central Agency for the Reception of Asylum Seekers (COA).

- The IND holds an interview of about 1.5 hours, following which the selected asylum seeker can only be rejected on grounds of public order, national security or the exclusion clauses of Article 1F of the Refugee Convention. 65 requests from Greece have been rejected so far;[197]

- COA organises a Cultural Orientation training of 2 days with includes: Dutch lessons; geography; information on the relocation programme; reception in the Netherlands; education; rules, regulations, norms and values; health care; and information on flight and arrival.

Finally, the International Organisation for Migration (IOM) organises pre-departure arrangements.

The IND is not aware whether vulnerability is a selection criterion in the requests referred by Italy and Greece. We do not know whether there have been specific difficulties in relocating vulnerable groups such as unaccompanied children or victims of torture.

Asylum seekers are relocated to the Netherlands within 2 months from the submission of the pledge.

2. Post-arrival treatment

The procedure in the Netherlands lasts one day for the asylum seekers who receive a permit upon arrival, and 8 days for the few others who are channelled under the regular procedure.

IOM accompanies asylum seekers upon arrival. COA arranges transport and accompanies them to the Aliens Police office (AVIM-straat) where they are identified and registered. The outcome of identification and verification of documents is discussed with IND on the spot.

Asylum seekers without “indications” receive a permit after registration in the Netherlands. This can either be a permit as a refugee (A-status) or for subsidiary protection (B-status).

If there are doubts on nationality of a selected asylum seeker after registration in the Netherlands, he or she will be transferred to the regular asylum procedure. This applies to around 15% of the relocated asylum seekers. There have been negative decisions on some of these cases amongst them, for example because the declared nationality was not deemed credible. We are also aware of a case of an Iraqi asylum seeker whose application was rejected after relocation, the Dutch policy regarding Iraq being stricter than the EU average.

All relocated persons are housed in an asylum centre after arrival. Those granted permits move to their own accommodation after a certain waiting period.

197 Greek Asylum Service, *Relocation statistics*, 14 January 2018.

H. 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,[198] (representatives of) the Dutch Council for Refugees inform the asylum seekers about the asylum procedure during the rest and preparation period (see Registration). This can be either done during a one-to-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, the asylum seeker receives information from the Dutch Council for Refugees on how the Dutch asylum procedure works and what his or her rights and duties are.

The Dutch Council for Refugees also has up-to-date brochures available for every step in the asylum procedure (rest and preparation, short procedure, extended procedure and Dublin procedure) in 33 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.

The IND also has leaflets with information on the different types of procedures, and rights and duties of the asylum seekers, most of which were updated in August 2015.[199] A more recent leaflet has been produced for the accelerated procedure ("Track 2") in April 2017.[200] 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.[201]

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).

198 Paragraph C1/2 Aliens Circular.

199 See e.g. IND, *Your asylum application: Information on the general asylum procedure*, August 2015, available at: http://bit.ly/2f5a74M; *The extended asylum procedure*, August 2015, available at: http://bit.ly/2f3fwJe.

200 IND, *The simplified asylum procedure*, April 2017, available at: http://bit.ly/2w3lOiW.

201 IND, *Which country is responsible for your asylum application? The Dublin procedure*, August 2015, available at: http://bit.ly/2fuQzHz.

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 hardly 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.[202]

I. 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?[203] ☒ Yes ☐ No
   - ❖ If yes, specify which: Safe countries of origin

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. The safe countries of origin are listed in the section on Safe Country of Origin.

202 There are also so-called voluntary visitor groups which visit asylum seekers in detention.
203 Whether under the "safe country of origin" concept or otherwise.

Reception Conditions

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?

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Accelerated procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ First appeal[204]	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal[205]	☐ Yes	☐ Reduced material conditions	☒ No
❖ 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

The regime of reception conditions for asylum seekers has been laid down in a number of legislative instruments, of which the Act of the Central Agency for the Reception of Asylum Seekers (*Wet Centraal Orgaan opvang Asielzoekers*) is the most important. The Regulation on Benefits for Asylum Seekers 2005 (*Regeling verstrekkingen asielzoekers*, RVA) is based on this Act and it is of greatest importance in practice. This Regulation defines who is entitled to reception conditions and who is exempt from this right. The organisation responsible for the reception of asylum seekers is the COA. This is an independent administrative body that falls under the political responsibility of the Secretary of State of Security and Justice. The Secretary of State is also entitled to exclude certain categories of asylum seekers from reception conditions when there is an emergency in terms of capacity.

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 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.[206] The organ responsible for both material as well as non-material reception of asylum seekers is the COA, according to the Reception Act.[207]

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. The asylum seeker can use this "W document" to prove his or her identity, nationality and lawful stay in the Netherlands.[208] 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 such document.[209] There are no reports indicating that asylum seekers are unable to access material reception conditions or that there are any obstacles which prevent asylum seekers entitled to material reception conditions from accessing them in practice.

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

204 Except where there is no suspensive effect.
205 Unless provisional measures are granted by the Council of State: Article 3(3)(a) RVA.
206 Article 9(1) RVA.
207 Article 3(1) RVA.
208 IND, 'Vreemdelingen Identiteitsbewijs (Type W en W2)', available in Dutch at: http://bit.ly/2y8JraF.
209 Article 9 Aliens Act.

Dutch legislation only applicants who lack resources are entitled to material reception conditions.[210] During the whole asylum procedure the COA is responsible for the reception of asylum seekers.

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 lodged an application for asylum. So already during the rest and preparation period an individual is entitled to reception.

Rejection / appeal: When the asylum application is rejected during the regular asylum procedure, the asylum seeker continues to be entitled to reception facilities until 4 weeks after the negative decision of the IND.[211] If the asylum seeker makes use of the possibility to appeal the first instance decision within these four weeks the right to reception conditions continues until four weeks after the verdict of the court.[212] After those four weeks, the asylum seeker has to leave the reception centre. To avoid this precarious situation an asylum seeker can make a request for an 'immediate' provisional measure as soon as it is clear that the court will not decide within this 4-week period.[213] Making such a request for a provisional measure ensures that after the 4-week period the asylum seeker is still entitled to stay in the reception centre while the appeal is still pending. Based on Article 3(3)(a) RVA, however, the mere submission of a request for provisional measures does not entail a right to reception. This has been challenged several times in 2017, with varying outcomes.[214]

There is no right to reception if the appeal is not suspensive i.e. where an application is rejected based on: the Dublin Regulation, as inadmissible for reasons other than the "safe third country" concept; or as manifestly unfounded for reasons other than the fact that the applicant did not report to the authorities promptly to apply. Of course these applicants can request a provisional measure to be granted reception, which again will be provided when the court is not deciding on the appeal within 4 weeks.

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.[215]

Subsequent applicants: When an asylum seeker wishes to lodge a Subsequent Application he or she has to fill in a separate form. 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. When the application is granted, the asylum seeker will retain the right to shelter until there is housing available. After a subsequent asylum application has been rejected in the extended asylum procedure, no voluntary departure period is granted.[216] An appeal against a negative decision for subsequent applications has no suspensive effect.[217] Since the asylum seeker who submitted a subsequent application in principle has to leave the territory immediately after a negative decision there is no right to reception conditions.[218] Of course there is still an opportunity to appeal and request a provisional measure. Only after this appeal or provisional measure has been granted can the asylum seeker benefit from reception conditions once again.[219]

210 Article 2(1) RVA.
211 From this moment the asylum seeker officially falls under the scope of the RVA.
212 Article 5 RVA.
213 Regional Court Den Bosch, Decision 11/25103, 1 September 2011.
214 Regional Court The Hague, Decision NL17.9885, 29 October 2017; Regional Court The Hague, Decisions NL17.13663 and NL17.13665, 29 November 2017; Regional Court Middelburg, Decision NL17.14646, 19 December 2017.
215 Article 3(3)(a) RVA.
216 Article 62(2)(b) Aliens Act.
217 Article 82(2)(b) Aliens Act.
218 Article 62 Aliens Act.
219 Article 3(3)(a) RVA.

1.2. Assessment of resources

According to Dutch legislation only asylum seekers who lack resources are entitled to material reception conditions.[220] There is no specific assessment to determine whether the asylum seeker is destitute. However there are more or less some guarantees to ensure that asylum seekers do not become destitute. For instance, 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 €6,000 for a single person), the COA is allowed to reduce the provision of reception conditions accordingly but with a maximum of the economic value equivalent to the reception conditions provided.[221]

In theory reception facilities can be withdrawn or refused if asylum seekers have resources of their own. In practice this rarely happens but it is a possibility. For instance, in 2016 it came to the attention of the Dutch Council for Refugees that the COA considers asylum seekers that have a derived refugee status (based on their relationship with a refugee) and that now want to get a divorce and lodge their own asylum application, as still having enough resources. This practice has continued throughout 2017.

According to the COA, these people are to be regarded as spouses of people who have a right to housing in the municipality, even when they filed for divorce, and as such they can be considered as asylum seekers with enough resources of their own. They are therefore not entitled to reception facilities.

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 2017 (in original currency and in €):
   - ❖ Single adult accommodated by COA: 296.24 €

The right to reception conditions includes an entitlement to:[222]

- ❖ 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 breakfast and lunch 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 food provided	Without food provided
1-2 person household	29.33 €	45.43 €
1 parent and 1 minor household	24.57 €	37.10 €
3 person household Adult Child	 23.45 € 19.67 €	 36.33 € 29.68 €
4+ person household Adult	 20.51 €	 31.78 €

220 Article 2(1) RVA.
221 Article 20(2) RVA.
222 Article 9(1) RVA.

Child	17.22 €	25.97 €

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

The cost for clothes and other expenses is a fixed amount: 12.95 € per week per person.[223]

As of 1 January 2018 the social welfare allowance for Dutch citizens is 992.12 € for a single person of 21 years and older. Relatively speaking, an asylum seeker receives only about 30% of the social welfare allowance for Dutch citizens. However, it has to be acknowledged that it is difficult to compare these amounts because an asylum seeker is offered accommodation and other benefits etc.

In general, material support is never given through an allowance only. Due to the large numbers of asylum seekers applying for asylum in 2015, the Secretary of State made it possible for asylum seekers who had been granted a residence permit but were still accommodated in the Centres for Asylum Seekers (AZC) to stay with family and friends from the moment they obtained their residence permit until suitable housing was found.[224] According to the COA, this is still possible based on Articles 11(1) and 9(1) RVA.

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:

a. Has left the reception centre without informing the COA or without permission, if permission is required;
b. Has not reported to the reception centre for two weeks;[225]
c. Has failed to respond to COA requests for information for two weeks, including personal details required for registration in the centre;
d. Has failed to appear for the personal interview with the IND for two consecutive times;
e. Has lodged a subsequent application after a final decision;
f. Has concealed financial resources and therefore improperly benefitted from reception;
g. Does not pay back a fee paid to him or her for childbirth costs;
h. Seriously violates the house rules of the centre;[226]
i. Has committed a serious form of violence to asylum seekers staying in the centre, persons employed in the centre or others.

Withdrawal or reduction of reception facilities is a decision of the COA and therefore subject to the Aliens Act regarding applicable legal remedies.[227] This means that the same court that decides on aliens 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.

Asylum seekers who seriously violate the house rules of reception centres or who otherwise demonstrate aggressive behaviour may be transferred to Extra Guidance and Supervision Locations (*Extra begeleiding en toezichtlocaties*, EBTL). Two such facilities were established at the end of 2017.

223 Article 14(4) RVA.
224 Secretary of State Decision 677862, 10 September 2015.
225 Article 19(1)(e) RVA. This provision sets out the obligation to report to the centre once a week.
226 Article 19(1) RVA.
227 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 he or she is entitled to. Every asylum seeker not subject to the border procedure starts in the COL and is transferred to the POL. After this the asylum seeker is transferred to an AZC if he or she is still entitled to reception conditions, that is if he or she (i) is granted a permit, (ii) is referred to the extended asylum procedure, (iii) lodges an appeal with suspensive effect, or (iv) is entitled to a four week departure period (see Criteria and Restrictions).

Moreover, 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 but in practice this does not happen often.[228]

With regard to the transfer of families with children and unaccompanied minors, a report was written by Defence for Children, Kerk in Actie, UNICEF, the Dutch Council for Refugees and War Child. 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.[229]

In the first half of 2017, there were 1,720 transfers from one AZC to another, out of which 680 were requested by the applicants, 730 were requested by the COA, 10 were forced and 300 were due to the closure of centres.[230]

The asylum seeker who is residing in an AZC is barely restricted in his or her freedom of movement. 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*) and if asylum seekers fail to report themselves twice the reception conditions will be withdrawn.[231]

Failed asylum seekers, whose claims are rejected with no legal remedies left, are not entitled to reception conditions and are located in the freedom restricted locations (*Vrijheidsbeperkende locatie*, VBL) and family housing (*Gezinslocatie*, GL), which is also a freedom restricted location. An applicant is transferred to a VBL if he or she is willing to cooperate in establishing departure, whereas in case of a family with minor children cooperation is not required. In these centres they are not detained but their freedom is restricted to a certain municipality. They are not allowed to leave the borders of the municipality. This is not really checked by the authorities but the asylum seekers have to report six days

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

229 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 at www.kind-in-azc.nl; Secretary of State, Letter No 2011959, 29 November 2016.

230 Ministry of Security and Justice, *Raportage Vreemdelingenketen*, January-June 2017, available in Dutch at: http://bit.ly/2f4UolV, 23.

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

a week (except Sunday) so in practice it is hard to leave the municipality.[232] The penalty for not reporting could be a fine or even criminal detention or an indication that the asylum seeker is not willing to cooperate regarding his or her return – this is a requirement for staying in the freedom restricted location – which could be a reason to detain them in pre-removal detention.[233]

An asylum seeker can appeal against the decision to transfer him or her from an AZC to a VBL because a transfer to a VBL is a freedom restricting measure against which there must be an appeal available by law.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[234] 61
2. Total number of places in the reception centres: 31,000
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

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).[235] The application centre **Schiphol** is a closed centre, which means the asylum seeker is not allowed to leave the centre (see Place of Detention). The asylum seeker is also 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.[236] Vulnerable asylum seekers such as children do not stay at JCS.

1.1. Central Reception Centre (COL) and Process Reception Centres (POL)

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.

After this short stay at the COL, the asylum seeker is transferred to a Process Reception Centre (Proces Opvanglocatie, POL). There are four POL in the Netherlands: **Ter Apel**, **Budel**, **Wageningen**, **Schiphol** and **Gilze**, totalling a capacity of 2,000 places. Neither capacity nor occupancy of COL and POL are registered.

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 he or she receives a certificate of legal stay.

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232 These failed asylum seekers who are placed in a VBL or a GL are subject to the freedom restricted measures based on Article 56 in conjunction with Article 54 Aliens Act.
233 Article 108 Aliens Act.
234 COA, 'Opvangcapaciteit COA voor eind 2017 naar 31.000 plaatsen', 26 April 2017, available in Dutch at: http://bit.ly/2FiOCg7.
235 Article 3(3) Aliens Act.
236 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.

1.2. 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.

At the end of 2017, there were 21,037 persons residing in reception centres managed by COA.[237]

Due to the large number of asylum applications in 2015, COA was experiencing difficulties to provide accommodation for all 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 has decreased from 47,764 at the end of 2015 to 21,037 at the end of 2017.[238] Therefore, such solutions are no longer needed. The COA has even decided to close several of the reception centres.

1.3. Extra Begeleiding en Toezichtlocatie (EBTL)

Extra Guidance and Supervision Locations (*Extra begeleiding en toezichtlocaties*, EBTL) were 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.

The rules in these centres are stricter than regular AZC; inhabitants are obliged to report whenever they leave or return to the centre. There is one EBTL in **Amsterdam**, which opened in November 2017, and one in **Hoogeveen**, which opened in December 2017. Both EBTL have a capacity of 50 places each.[239]

These facilities are to be distinguished from VBL or GL, where persons subject to return proceedings may be housed.

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? Not available
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

Residents of a 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.[240] 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 in. 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.[241] It

237 COA, *Bezetting*, available in Dutch at: http://bit.ly/2E95a6F.
238 *Ibid*.
239 COA, *Extra begeleiding en toezichtlocatie*, available in Dutch at: http://bit.ly/2Bs9QBB.
240 For more information, see COA, *House rules*, available in Dutch at: http://bit.ly/2Dyks3K.
241 Article 18(1) and (3) RVA.

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.[242] Some reception centres such as EBTL, as well as centres for rejected asylum seekers, have a stricter regime.

There have recently been some individual incidents and issues involving asylum seekers. On 16 January of 2016, an Iraqi asylum seeker who was residing in an emergency reception location committed suicide. This was investigated by the Ministry of Security and Justice which resulted in a report finding that the Dutch government had not acted negligently. However, several recommendations regarding communication and transparency were formulated.[243] Other incidents are related to Dutch citizens protesting the establishment of a reception centre in their city.[244]

In 2016, there were issues in reception centres with asylum seekers originating from safe countries of origin. In response, the State Secretary decided to take several measures amongst which the decision to limit their right to reception.[245] By the end of 2017, two EBTL have been opened for asylum seekers causing nuisance.[246]

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 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:[247]

242 Article 19(1)(e) RVA.
243 Ministry of Security and Justice, *Rapport 'Het overlijden irakese asielzoeker in de noodopvang in Alphen aan den Rijn'*, 12 August 2016, available in Dutch at: http://bit.ly/2hcftiB.
244 See e.g. NRC Handelsblad, 'Betogers tegen azc in Brabantse Heesch bestormen gemeentehuis', 18 January 2016, available in Dutch at: http://bit.ly/2lsnAom.
245 State Secretary, Letter No 19637/2268, 13 December 2016.
246 Rijksoverheid, *Welke maatregelen neemt de overheid tegen asielzoekers die overlast veroorzaken?*, available in Dutch at: http://bit.ly/2nb3y58.
247 Article 2(a) Aliens Labour Decree.

- 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,[248] 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 the supply on the labour market.

The procedure for applying for an employment licence at the Dutch Employees Insurance Agency in practice takes no longer than 2 weeks, which is the time limit foreseen in law.[249] 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 he or she can in fact exercise it.

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 196 € per month. In case their monthly income becomes higher than the contribution to accommodation costs, they can keep any surplus income.[250] This depends on how much they earned and it can never exceed the economic value of the accommodation facilities. Besides that, the financial allowance can be withdrawn.

Asylum seekers are also allowed to do internships or voluntary work. For voluntary work 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.[251]

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.[252] 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.[253] 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.

248 Article 2(a)(1) first sentence and (a), (b) and (c) Aliens Labour Decree.
249 Article 6 Aliens Labour Act.
250 Article 5(4) Regeling eigen bijdrage asielzoekers met inkomen (Reba).
251 Article 1a(b) Aliens Labour Decree.
252 Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: http://bit.ly/2kKXQpV.
253 Available at: http://www.lowan.nl/.

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 to be sufficient, they enrol in the suitable education programme.[254]

According to the RVA, the COA provides access to educational programmes for adults at the AZC.[255] 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.[256]

There are no theoretical obstacles as to access to vocational training for adults. However, asylum seekers have often not had the chance to learn Dutch and this decreases their chance of accessing vocational training in practice. Moreover, asylum seekers do not have a right to financial study aid from the government.

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 Dutch regular health care. As any other person in the Netherlands, an asylum seeker can visit a general practitioner, midwife or hospital. As of 1 January 2018, the Regeling Medische zorg Asielzoekers (RMA) Healthcare is the first point of reference for the asylum seeker in case of health issues.

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 Phoenix.

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.[257] 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 which 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. The National Ombudsman has investigated access to

254 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/2lBa5Ht.
255 Article 9(3)(d) RVA.
256 Article 12(1) RVA.
257 Article 10(2) Aliens Act.

health care for asylum seekers and rejected asylum seekers and has requested the Minister of Public Health to ensure that undocumented migrants also have access to health care.[258]

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.

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 to be vulnerable. With the exception of specialised accommodation for unaccompanied children, the COA does not provide separate reception centres for women, LGBTI persons or other categories.

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.[259] In practice, this means that the COA takes into account 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 an asylum seeker, for instance, cannot wash themselves due to whatever reason, they are allowed to make use of the regular home care facilities; thee asylum seeker is entitled to the same health care as a Dutch national.

1. Reception of unaccompanied children

Unaccompanied children younger than 15 are accommodated in foster families and are placed with those families immediately.

POL-amv

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. Due to low capacity, 2016 and 2017 have been a transition period in which the COA was also providing accommodation for unaccompanied children with refugee status.

258 Ombudsman, Report on health care for asylum seekers and rejected asylum seekers, 3 October 2013, available at: http://bit.ly/2mfJ3Cv; Ombudsman, Letter and recommendations to the Minister of Public Health, 16 December 2015, available at: http://bit.ly/2kdMvvF.

259 Article 3 Reception Act.

At the end of 2017, 595 unaccompanied children were accommodated by the COA,[260] down from 1,230 at the end of 2016.[261]

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**, Nidos decides whether he or she should be placed in the protection reception location. This reception is carried out by Jade, contracted by COA. Their services were inspected by the youth support unit (*Jeugdzorg)* which led to a report in 2017, in which the inspection concluded that still too many children disappear from these locations.[262]

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."

The exact content and the modalities of the information provision varies 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 group, whereas the rights and duties of the asylum seeker in the centre are usually discussed individually.[263]

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.

G. Differential treatment of specific nationalities in reception

In general, no distinction is made on grounds of nationality in the Netherlands. However, the State Secretary announced at the end of 2016 that asylum seekers from **safe countries of origin** will have a limited right to reception. This was a reaction to complaints about asylum seekers originating from North

260 COA, *Personen in de opvang uitgesplitst naar leeftijd en land van herkomst*, available in Dutch at: http://bit.ly/2ipVtYv.

261 Ministry of Security and Justice, *Raportage Vreemdelingenketen*, January-June 2017, available in Dutch at: http://bit.ly/2f4UolV, 23; *Raportage Vreemdelingenketen*, January-December 2016, available in Dutch at: http://bit.ly/2hbO24S, 25.

262 Jeugdzorg, *De kwaliteit van de beschermde opvang voor alleenstaande minderjarige vreemdelingen Hertoets*, September 2017, available in Dutch at: http://bit.ly/2DCmlw0.

263 COA, *Infosheets*, available in Dutch at: http://bit.ly/2lfnQXG.

African countries,[264] which could be linked to the opening of the two special reception centres (EBTL) for asylum seekers causing nuisance by the end of 2017, though it is not formally linked to any nationality. Beyond this, there are no indications of differential treatment.

[264] State Secretary, Letter No 19637/2268, 13 December 2016.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention		
1.	Total number of persons detained in 2017:	Not available
2.	Number of persons in detention at the end of 2017:	627
3.	Number of detention centres:	3
4.	Total capacity of detention centres:	1,446

There are two types of detention of asylum seekers in the Netherlands depending on where they cross the Dutch border. Either this is done at the external border, which means that the third country national is trying to enter the Schengen area in the Netherlands, or this can be done after the third country national has already entered the Schengen area before entering the Netherlands. The former can lead to border detention, the latter can lead to territorial detention.

Statistics published by the Ministry for Security and Justice do not distinguish asylum seekers from other categories of persons in immigration detention:

Immigration detention in the Netherlands		
	1 January – 31 December 2016	1 January – 30 June 2017
Total	**2,560**	**1,540**

Source: Ministry of Security and Justice, *Rapportage vreemdelingenketen*, 2016 and 2017.

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.[265] Border detention can be continued 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.[266]

If the alien 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. The whole asylum procedure will take place in detention. Both of the personal interviews (*eerste gehoor* [first interview] *en nader gehoor* [second interview]) take place in the detention centre. The asylum seekers will be prepared for these interviews by the Dutch Council for Refugees and it is also possible that a staff member of the Dutch Council for Refugees is 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 because lawyers do not receive a remuneration for this activity. During the interview, there are IND accredited interpreters present.

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 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. Territorial detention is also applicable to persons without a right to legal residence under Article 59 of the Aliens Act.

265 Article 6 Aliens Act.
266 Article 6a Aliens Act.

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;[267]
- ❖ 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 Regulation and Paragraph A1/4 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.[268] 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. However, the detention during the border procedure will not be continued if this is disproportionally aggravating because of special individual circumstances (see Detention of Vulnerable Applicants).[269]

1.2. Territorial detention of asylum seekers

The conditions for the detention of asylum seekers are in Article 59b of the Aliens Act and further clarified in Article 5.1c of the Aliens Decree. Territorial detention of asylum seekers is only possible in the following situations:

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.

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267 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.

268 Article 6(1)-(2) Aliens Act.

269 Article 5.1a(3) Aliens Decree. See IND Work Instruction 2017/1, available at: http://bit.ly/2lZGp2X.

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 takes into account 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 first and second paragraph add the requirement of a risk of absconding for detaining an asylum seeker in order to obtain information. A risk of absconding is demonstrated when at least two grounds for detention, as set out in Article 5.1b(3)-(4) of the Aliens Decree, are applicable.[270]

Dutch courts have referred questions to the CJEU regarding the compatibility of the grounds for detention of asylum seekers with the Charter of Fundamental Rights. The Council of State referred a preliminary question to the CJEU on the compatibility of detention on grounds of public order or national security, which was affirmed by the Court in *J.N. v. Secretary of State for Security and Justice* in 2016.[271] After the CJEU ruling, the Council of State ruled in the same case that, while Article 59b(d) of the Aliens Act is valid, the public order or national security ground may only be fulfilled where there is a "genuine, present and sufficiently serious threat affecting one of the fundamental interests of society." The *J.N.* ruling also gave rise to a change of jurisprudence of the Council of State: a subsequent asylum application only suspends the return decision rather than annulling it.[272]

A question on the compatibility of the grounds of identity / nationality and acquisition of information necessary for the assessment of the application was referred by the Regional Court The Hague, and the CJEU clarified in *K. v. Secretary of State for Security and Justice* that their application was in line with the Charter.[273] Even prior to the *K* case, the Council of State had found that the CJEU findings in *J.N.* were also applicable to the ground for detention to determine the main elements of the claim, concluding that it is also valid.[274]

Relating to detention of asylum seekers subject to a transfer under the Dublin Regulation under Article 59a of the Aliens Act, there must be a concrete indication that the asylum seeker can be transferred based on the Dublin Regulation. Asylum seekers in Dublin procedures are not systematically detained but they may be detained when there is a significant risk of absconding. According to Article 5.1b(2) of the Aliens Decree, a "significant risk" is demonstrated in the context of the Dublin Regulation when at least two grounds for detention are applicable, of which at least one is "severe". The "severe" grounds can be found in Article 5.1b(3) of the Aliens Decree, while the "light" grounds are set out in Article 5.1b(4). A significant risk of absconding may already be determined, for example, when the person concerned has not entered the Netherlands lawfully (a "severe" ground) and does not possess sufficient resources ("light" ground).

270 Article 5.1c Aliens Decree.
271 CJEU, Case C-601/15 PPU *J.N.*, Judgment of 15 February 2016.
272 Council of State, Decision 201507608/2, 8 April 2016.
273 CJEU, Case C-18/16 *K.*, Judgment of 14 September 2017.
274 Council of State, Decision 201600224/1, 13 May 2016.

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.[275] This is also laid down in policy rules.[276] 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).

Other alternatives to detention, such as giving a financial guarantee, are rarely used. This has been criticized multiple times. For instance, the Advice Commission on Aliens' Matters (*Adviescommissie in Vreemdelingenzaken*, ACVZ) has noted in previous years that there is no explicit legal ground stating the circumstances in which an alien cannot be put in detention.[277] Amnesty International has also argued that that there should be a legal obligation imposed on the decision-making authorities to proactively consider alternatives to detention.[278] Previously, however, there have been pilots on alternatives to aliens' detention.[279]

The Decree relating to the Bill regarding return and detention of aliens, which has not yet been adopted, now specifies the circumstances in which alternatives to detention can be applied.[280]

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

Border detention cannot be applied to:

- ❖ Unaccompanied children,[281] whose detention is only possible when doubt has risen regarding their minority;[282]

275 Article 59c Aliens Act.
276 Paragraph A5/1 Aliens Circular.
277 ACVZ, *Aliens' detention or a less intrusive measure?*, May 2013, available at: http://bit.ly/2lbi4Kv.
278 Amnesty International, *Remarks to the Bill regarding return and detention of aliens (online consultation)*, February 2014, available at: http://bit.ly/2kJVszM; Amnesty International, *Detention of aliens in the Netherlands: human rights as a standard*, 2013.
279 Rijksoverheid, *Bijlage: resultaten van de pilots in het kader van alternatieve vreemdelingenbewaring*, 13 September 2013, available in Dutch at: http://bit.ly/2jUr6GA.
280 Bill regarding return and detention of aliens (2015-2016), 34309/2, available in Dutch at: http://bit.ly/2mUloL3.
281 Article 3.109b(7) Aliens Decree.
282 Paragraphs A5/3.2 and A1/7.3 Aliens Circular.

- Families with children, where there are no counter-indications such as a criminal record or family ties not found real or credible;[283]
- Persons for whose individual circumstances border detention is disproportionately burdensome;[284]
- 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.[285]

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 2017/1 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 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 assessed on a case-by-case basis and can be derived from a FMMU medical report. 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.[286]

The decision to detain at the border has to contain the reasons why the IND, though taking into account 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 aliens is automatically and per se excluded from detention. According to Amnesty International and Stichting Landelijk Ongedocumenteerden Steunpunt (LOS), a Dutch NGO working with undocumented migrants, vulnerable aliens sometimes end up in detention because there are no legal safeguards with regard to specific groups of vulnerable aliens.[287] 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.[288] 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 members is not cooperating in the return procedure.[289] Defence for Children strongly opposes detention

283 Paragraph A1/7.3 Aliens Circular.
284 Article 5.1a(3) Aliens Decree.
285 Article 3.108 Aliens Decree.
286 IND, Work Instruction 2017/1 Border procedure, 11 January 2017, 5.
287 Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016, available at: http://bit.ly/2f5t3QI.
288 Paragraph A5/2.1 Aliens Circular.
289 Paragraph A5/2.1 Aliens Circular.

of children on these grounds and in general.[290] Amnesty International and LOS have also pointed out that detention of children with insufficient balancing of interest has occurred several times.[291]

In the first six months of 2017, 20 unaccompanied children were placed in detention, compared to 30 unaccompanied children in the whole of 2016.[292] These children (and their families) are detained at the closed family location in **Zeist**.

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 / 15 months
2. In practice, how long in average are asylum seekers detained? Less than 3 months

The law provides different maximum time limits for detention depending on the applicable ground.

- Border detention may be imposed for a maximum of 4 weeks;[293]
- Territorial pre-removal detention under Article 59 of the Aliens Act may be imposed for a maximum of 18 months;[294]
- 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 or another 3 months.[295]
- 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 complex factual and legal circumstances, or an important issue of public order or national security.[296]

The majority of persons in detention both at the border and on the territory are detained for less than 3 months in practice, although in some cases they are detained for longer:

Average duration of immigration detention in the Netherlands				
	1 January – 31 December 2016		1 January – 30 June 2017	
	Border	Territorial	Border	Territorial
< 3 months	290	1,790	150	1,170
3-6 months	30	300	10	210
> 6 months	< 5	40	< 5	20

Source: Ministry of Security and Justice, *Rapportage vreemdelingenketen*, 2016 and 2017.

290 Defence for Children, *Vreemdelingenbewaring*, available in Dutch at: http://bit.ly/2jTIOyZ.
291 Amnesty International, Doctors of the World and LOS, *Opsluiten of beschermen? Kwetsbare mensen in vreemdelingendetentie*, April 2016.
292 Ministry of Security and Justice, *Rapportage vreemdelingenketen: January-December 2016*, 35; *January-June 2017*, 34.
293 Article 3(7) Aliens Act.
294 Article 59(5) Aliens Act.
295 Article 59b(2)-(3) Aliens Act.
296 Article 59b(4)-(5) Aliens Act.

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 purpose of their asylum procedure. What is remarkable, however, is that foreigners in detention with psychological problems sometimes may be transferred to a prison specialised in offering such psychological care.[297] This option is provided for in the Bill regarding the return and detention of aliens, which is still in the legislative pipeline.[298] This is only possible when the detention centre cannot offer adequate care and on the condition the asylum seeker is kept separate from criminal detainees.

Even though asylum seekers are not detained with criminals or in prisons, the facilities 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.

The three centres have the following capacity:

Detention capacity in the Netherlands: 2017		
Detention centre	Maximum capacity	Occupancy at end 2017
Schiphol	470	264
Rotterdam	640	306
Zeist	336	57
Total	**1,446**	**627**

Source: DJI, Capacity and occupancy statistics, December 2017: http://bit.ly/2nJRQhR.

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

A Bill regarding return and detention of aliens introduced in 2015 is still being debated.[299] 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 are 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. This right to health care is provided in the Bill regarding return and detention of aliens.[300] Both aliens in border detention and aliens in territorial detention have a right to

297 See e.g. CPT, *Report of the visit carried out from 2 to 13 May 2016*, CPT/Inf(2017) 1, 19 January 2017, 36.
298 Bill regarding return and detention of aliens (2015-2016), 34309/2.
299 Bill regarding return and detention of aliens (2015-2016), 34309/2.
300 *Ibid*.

health care. This health care includes a basic health care package which is equal to the health care provided outside of detention.

There are no known problems of overcrowding. Due to a reserve, overcrowding is highly unlikely. For instance, 627 foreigners were in detention at the end of 2017, whereas the total detention capacity was 1,446.[301]

No recent information is available as to whether sufficient clothing is given. Based on the Bill regarding return and detention of aliens, detainees have a right to sufficient clothing or a sum of money to allow them to buy sufficient clothing themselves.

According to the Bill regarding return and detention of aliens, detained asylum seekers are allowed to leave their living areas within the detention centre between the hours of 8 am and 10 pm. During these hours a programme is offered. Detained asylum seekers are able to make phone calls, go outside in 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 such as singing, dancing, drawing and painting. All units have access to the internet. The asylum seeker can independently gather news and information, for example concerning their country of origin.[302] Most of these conditions are already set in place, with the exception of the possibility for people to leave their living areas. Currently they can leave between 8 am – 12 pm and 1 pm – 5 pm.

Finally, specialised care can be provided to asylum seekers with mental health issues. Health care in detention centres has been subject to a major debate in the Netherlands due to the death of the Russian asylum seeker Dolmatov and more recently of a South African asylum seeker, both in the detention centre in **Rotterdam**. This gave rise to investigations that pointed out several shortcomings in the access to psychological care for persons in detention.[303] There are now psychologists present at the detention centre. If the regular facilities of the detention centre cannot meet the medical needs of the alien, he or she will be transferred to another wing of the detention centre or a prison psychiatric hospital. In case of the latter, asylum seekers will be kept separate from criminally detained persons.[304]

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 regarding return and detention of aliens, 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.[305]

Current policy does not provide specifications on 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. These rights may be restricted, however, when the person in question abuses them to abscond or obstruct their return procedure.

301 DJI, *Capacity and occupancy statistics*, December 2017, available in Dutch at: http://bit.ly/2nJRQhR.
302 Bill regarding return and detention of aliens (2015-2016), 34309/2.
303 Ministry of Security and Justice, *Report 'Onderzoek betreffende het overlijden van de heer Dolmatov in het Detentiecentrum Rotterdam'*, April 2013, available in Dutch at: http://bit.ly/2kF8fUw; *Report 'Onderzoek naar het overlijden van een asielzoeker in het Detentiecentrum Rotterdam'*, February 2016, available in Dutch at: http://bit.ly/2jUmjVI.
304 Bill regarding return and detention of aliens (2015-2016), 34309/2.
305 Bill regarding return and detention of aliens (2015-2016), 34309/2.

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	

According to Article 93 of the Aliens Act, the asylum seeker is entitled to lodge an appeal at any moment the asylum seeker is 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,[306] and the decision on the detention is taken within 7 days.[307] 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 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.[308]

If the court is convinced that the detention is unreasonably burdensome because the decision-making authorities have not sufficiently take into account the interests of the individual, detention can be lifted.[309] Paragraph A5/1 of the Aliens Circular stipulates 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.[310] 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.[311] 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.[312]

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 with legal aid in detention that is paid for by the State. The IND website explicitly states “When you appeal against a custodial measure, it is mandatory to have a lawyer. If you cannot afford this, a lawyer will then be assigned to you.”[313] Individuals who claim asylum upon their

306 Article 94(2) Aliens Act.
307 Article 94(5) Aliens Act.
308 Article 96 Aliens Act.
309 Article 94(5) Aliens Act.
310 Paragraph A5/6.3 Aliens Circular.
311 Article 5.3 Aliens Decree.
312 Paragraph A5/6.6 Aliens Circular.
313 IND, *Vertrek uit Nederland*, available in Dutch at: http://bit.ly/2jUMxaM.

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 favorably compared to others in the context of detention.

Nevertheless, the Ministry of Security and Justice has explained the increase in immigration detention with reference to a higher influx of nationals of Safe Countries of Origin such as **Morocco**, **Algeria** and **Albania**.[314]

[314] Ministry of Security and Justice, *Rapportage vreemdelingenketen: January-June 2017*, 34.

Content of International Protection

Regardless of the ground on which the permit is granted, the asylum permit entitles the status holder to the same rights and entitlements.

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.[315] Material rights are the same. The residence permit also has a validity of 5 years.[316]

Procedure for granting a permit

The IND is responsible for issuing a residence permit. The Dutch authorities have made efforts to register and issue residence permits to status holders who have been housed in a municipality at an earlier time. At the end of 2015 the so called "BRP-*straat*" (BRP stands for *Basisregistratie Personen*, the Persons' Database of the municipality) was introduced in Application Centres nationally. 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 be quickly and easily processed by that new local authority. Also, 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 Platform *Opnieuw Thuis*. 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 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.

In case the residence permit is stolen or lost, the beneficiaries is requested to report this to the police.[317] In order to acquire a new permit a form, which can be found on the website of the IND, has to be filled out and sent to the IND. A copy of the police report has to be included. Costs for renewing a residence permit are 161 € for an adult and 51 € for a child.

2. Civil registration

Every person who is legally present in the Netherlands is registered in the Persons Database (*Basisregistratie personen*, BRP).[318] That means that asylum seekers and refugees 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:

1. Civil status: name, date of birth, marriage, child birth certificates;
2. Address;

315 Article 28(2) Aliens Act.
316 Article 4.22(2) Aliens Decree.
317 Article 4.22 Aliens Decree; Article 3.43c(1) Aliens Regulation.
318 Persons Database Act, available in Dutch at: http://bit.ly/2Bx1lFu.

3. Nationality;
4. Legal status;
5. Registration of travel documents;
6. Official identity number;
7. Parental authority; and
8. 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 his or her personal records. It is not possible to register a person's nationality with a sworn statement, however.

If someone does not know his or her 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 his or her 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.[319]

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 Dutch authorities have made efforts to register and issue residence permits to status holders who have been housed in a municipality at an early time. At the end of 2015, the so called BRP-*straat* was introduced in Application Centres nationally. As a result, asylum seekers who are granted temporary asylum status during their stay at the Application Centre are registered immediately in the BRP and will receive their temporary residence permit (see Residence Permit).

The BRP-*straat* is working well in practice. Since 1 September 2017 asylum seekers who do not yet have a permit yet are allowed to register earlier in their asylum procedure. Previously, asylum seekers used to have to wait 6 months before they could be registered at the BRP. As soon as the identity of the asylum seeker is determined, the IND notifies the municipality stating that this person can be registered.[320] 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.

Child birth 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.[321]

A traditional / religious marriage as such is not recognised by the Dutch authorities. However, a traditional / religious marriage which is contracted in the country of origin can be recognised 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.

319 Article 2(17) Persons Database Act.
320 Article 24a Persons Database Decree.
321 Article 2(10) Persons Database Act.

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2017:	Not available

Pursuant to Article 45b(1)(d) and (e) of the Aliens Act, a beneficiary can obtain a 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.

5,330 persons received long-term resident status in 2016, down from 5,210 in 2015.[322] The numbers for 2017 are currently not available.

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	5 years
2. Number of citizenship grants to beneficiaries in 2017:	Not available

The conditions for obtaining Dutch citizenship are to be found in Articles 8 and 9 of the Act on Dutch Citizenship.[323] 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-year rule. If, however, the beneficiary is officially recognised as a **stateless person** he or she can submit an application 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 submit an application 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 he or she 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 a few times. As of

322 IND, *Annual report 2016*, available in Dutch at: http://bit.ly/2EcDAp8, 28.
323 Act on Dutch Citizenship, available in Dutch at: http://bit.ly/2IfqBbe.

1 January 2015, it examination consists of the following parts: reading skills Dutch, listening skills Dutch, writing skills Dutch, speaking skills Dutch, knowledge of Dutch society and orientation on the Dutch labour market.

If the beneficiary has 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, he or she 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. There are two ways of showing that:

- Showing participation for at least 600 hours in a civic integration course at an 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;
- Showing participation for at least 600 hours in an (adult) literacy course at an institution with a quality mark of *Blik op Werk* and you have demonstrated with a learning ability test taken by the Education Executive Agency (DUO) that the person does not have the learning ability to pass the civic integration examination.

5. Not have 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 4 years before the application for naturalisation. 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 his or her current nationality. There are some exceptions to this rule. One of the exceptions is the following. When a person has a (permanent) asylum residence permit he or she does not have to renounce his or her 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.

A child can only apply for naturalisation together with the parent. The child under the age of 16 years must live in the Netherlands and must have a residence permit.[324] 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

[324] Article 11 Act on Dutch Citizenship.

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 have 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 make a decision 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. A single request by stateless people or holders of an asylum residence permit costs 636 €. Multiple persons' requests (for married couples) of stateless people or holders of an asylum residence permit cost 873 €. A request for children under 18 obtaining the Dutch citizenship together with their parents costs 126 €.

There are no numbers available about how many people obtained the Dutch citizenship in 2017. In 2016, 21,546 people obtained the Dutch citizenship by naturalisation according to the Central Office of Statistics (CBS). It is unknown how many of those people are beneficiaries of international protection. The IND has mentioned in its 2016 Annual Report that there were 23,190 applications for naturalisation. The IND took 22,800 decisions on applications for naturalisation. 97% of those decisions were positive. It is unknown how many of the applications are from beneficiaries of international protection.[325]

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(1)(c) of the Aliens Act provides the grounds for cessation 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 Article 32(1)(c) of the Aliens Act applies,[326] as will be the case for temporary asylum status of a beneficiary of subsidiary protection.[327]

325 IND, *Annual report 2016*, available in Dutch at: http://bit.ly/2EcDAp8, 27.
326 Article 3.105d Aliens Decree.
327 Article 3.105f Aliens Decree.

Cessation of refugee status or subsidiary protection is further explained in Paragraph C2/10.4 of the Aliens Circular. A detailed explanation can also be found in the IND Work Instruction 2013/5.[328]

Change of circumstances

In 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, the Dutch authorities shall have regard to whether the change of circumstances is of such a 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.[329] 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 harm, to refuse to request protection of the country of his or her nationality or his or her former place of residence.[330] 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.[331]

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:[332]

- 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.

Paragraph C2/10.4 of the Aliens Circular furthermore elaborates on what should be regarded as "compelling grounds."

Individual conduct

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.

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.[333]

328 IND Work Instruction 2013/5 Withdrawing the temporary and permanent asylum residence permits, 26 April 2013, available in Dutch at: http://bit.ly/2fwPDCs.
329 Article 3.37g Aliens Regulation.
330 Article 3.37g Aliens Regulation.
331 Paragraph C2/10.4 Aliens Circular.
332 Paragraph C2/10.4 Aliens Circular.
333 Paragraph C2/10.4 Aliens Circular.

5.2. Cessation procedure

The Aliens Act provides that the intention procedure[334] is applicable in case a temporary asylum status is revoked.[335] Under the intention procedure, the status holder is informed in writing of the intention to revoke his or her temporary asylum status. Within 6 weeks the status holder can put forward his or her view on the intention to revoke temporary asylum status.[336] In case the IND still intends to revoke temporary asylum status, the status holder will be allowed an interview.[337] 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.[338]

The cessation decision states that there is an obligation to leave the country within 4 weeks.[339] Within 4 weeks the status holder must appeal the decision to revoke the temporary asylum status before the Regional Court.[340] In case a timely appeal has been made, the status holder retains his or her right to lawful residence in the Netherlands on the basis of 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 either apply to 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 status.

Cessation of temporary asylum status is therefore applied in practice. However, numbers for 2017 are not available. From government documents, it can be deduced that in 2015 a total of 280 asylum statuses were revoked/withdrawn.[341] Unfortunately, it is not specified whether these numbers concern cessation/withdrawal of temporary and/or permanent asylum status. From court decisions available to the author it cannot be concluded that cessation of status was applied to specific groups.

334 Article 38 Aliens Act.
335 Article 41(1) Aliens Act.
336 Article 3.116(2)(b) Aliens Decree.
337 Article 41(2) Aliens Act.
338 Article 64 Aliens Act.
339 Article 62(1) Aliens Act.
340 Article 69(1) Aliens Act.
341 KST 34550 VI 11, 2016-2017, 25 November 2016.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

6.1. Grounds for withdrawal of status

Article 32(1)(a)-(b) of the Aliens Act establishes the grounds for withdrawal of temporary asylum status. This article applies to recognised refugees as well as to beneficiaries of subsidiary protection. Temporary asylum status can be revoked, and the request to extend the period of validity can be denied, in case the beneficiary:

a. Has given false information, or has withheld information that would have resulted in a negative decision on the application for asylum or the request to extend the period of validity of the temporary asylum status;[342]
b. Is a danger to public order or national security.[343]

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 withdrawn. In the opinion of the Dutch Council of Refugees, this is not in accordance with the recast Qualification Directive. However, a change of main residence outside the Netherlands does not constitute a ground for withdrawal of status according to policy.[344] Given this policy, that ground is no longer used in practice.

6.2. Withdrawal procedure

The intention procedure described in the section on Cessation applies to withdrawal of temporary asylum status. The only difference concerns return in case temporary asylum status is withdrawn because the recognised refugee or the beneficiary of subsidiary protection is a danger to public order. In such a case, the person is obligated to leave the Netherlands immediately.[345]

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

The beneficiary has to apply for family reunification within 3 months after being granted the asylum residence permit, in order to have his or her application considered within a more flexible framework for

342 Article 32(1)(a) Aliens Act.
343 Article 32(1)(b) Aliens Act.
344 Paragraph C2/10.5 Aliens Circular.
345 Article 62(2) Aliens Act.

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 are no income and health insurance requirements if the beneficiary lodges the application within these 3 months.

If, however, the beneficiary fails to apply for family reunification within 3 months, he or she will have to apply for regular family reunification, meaning that he will have to meet stricter requirements like a minimum income, stable accommodation and health insurance.

In practice, there can be difficulties in applying for family reunification within the 3-motnh time limit due to misinformation or a high influx of asylum seekers, for example. Several cases have been brought before the courts, with varying results.[346] In some cases the Regional Courts have found non-compliance with the deadline to be excusable, while in others it was not. Due to these challenges, a legislative proposal was tabled, which extends the term from 3 to 6 months.[347] The Council of State has also referred a preliminary question to the CJEU to assess whether the authorities should conduct an individualised assessment as per Article 17 of the Family Reunification Directive when the application is rejected on the ground of not being lodged within 3 months from the granting of the permit.[348]

Refugees and subsidiary protection beneficiaries can apply for family reunification under the same conditions. There are however different views on whether subsidiary protection beneficiaries can invoke the Family Reunification Directive in this regard. The aforementioned reference of the Council of State to the CJEU also covers this point.[349]

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: 2017	
Country of origin	Number
Total	**14,490**
Syria	8,582
Eritrea	2,881
Stateless	1,458
Iraq	445
Unknown	305
Iran	121
Somalia	107
Afghanistan	86
Pakistan	86
Ethiopia	48

Source: IND, Asylum Trends, December 2017.

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 the family member has a permit, the permit can be revoked.

346 See e.g. Regional Court Utrecht, Decision 17/9869, 22 November 2017; Regional Court Zwolle, Decision 16/7377, 20 December 2016.

347 Wijziging van de Vreemdelingenwet 2000 in verband met aanpassing van in de procedure voor nareis geldende termijnen, KST 34544, 23 September 2016, available in Dutch at: http://bit.ly/2FiQ4z5.

348 CJEU, Case C-380/17 *K. and B. v. Secretary of State for Security and Justice*, Reference of 26 June 2017.

349 *Ibid*.

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 52 €.

The application for a travel document is filed by an automated system at the municipality; the beneficiary does not need to submit an application.

The refugee passport contains a travel limitation, prohibiting travel to the country of origin.

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 31 December 2017	8,551

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.[350]

At the end of 2017, there were 8,551 beneficiaries staying in COA reception centres and awaiting housing, compared to 10,830 at the end of 2016.[351]

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.[352] Together with municipalities the COA has the obligation to arrange housing for beneficiaries.[353]

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 occur, 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.

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.

Due to the high number of asylum applications in 2015, a shortage of places within the reception centre arose. It was therefore decided that beneficiaries who were awaiting housing could also temporarily stay at families and friends. To this end, the so-called "self-care arrangement" ("*Zelfzorgarrangement*") and the "*logeerregeling vergunninghouders*" came into effect. The *Zelfzorgarrangement* was terminated on 1 September of 2016 but the "*logeerregeling vergunninghouders*" was prolonged.

As of 1 February 2018, a new pilot *logeerregeling* will come into effect until January 2019. The goal of the new *logeerregeling* is not to obviate the shortage of places in reception centres but to assess whether stay with families and friends has a positive effect on the integration and participation of beneficiaries in society.

Beneficiaries can make use of this arrangement on a voluntary basis. Unlike the previous *logeerregeling vergunninghouders*, the duration for which a participant can make use of this arrangement is not limited to 3 months, but runs until the moment when housing becomes final. Another difference is that young adults (18- 21 years) can also make use of the arrangement.

350 Kamerstuk II, 2017-2018, 34775 VI, nr. 17.
351 COA, *Bezetting*, available in Dutch at: http://bit.ly/2E95a6F.
352 Article 7(1)(a) RVA.
353 Article 3(1)(c) RVA; Articles 10(2) and 12(3) Housing Act.

To stimulate the use of the arrangement the COA cooperates with an organisation called Takecarebnb. The COA informs beneficiaries about the possibility to stay with the host family, but beneficiaries themselves are responsible for registering with Takecarebnb. The task of Takecarebnb is to match a beneficiary with a host family. Takecarebnb screens host families in order to ensure that the beneficiary during his or her stay has the opportunity to learn the Dutch language and to integrate. In exchange the host family is financially compensated.

Finally, there is the "*Gemeentelijke Versnellingsarrangement*", the legal basis on which municipalities can deploy non-regular accommodation e.g. a hotel for temporarily housing of beneficiaries until final placement in the municipalities is possible. This arrangement is still in force but will cease to exist when the financial budget for it has been consumed / exhausted, but at the latest at 31 December 2018.

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.[354] This law is based on international and European legislation.[355] 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 on the Dutch labour market is very vulnerable and not improving.[356] 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.[357]

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.[358] Employment services find their legal basis in the Participation Act (*Participatiewet*).[359] For asylum seekers the government also tend to improve the labour participation by focussing on participation in an earlier stage, i.e. while people are still in an AZC. Recently a pilot has started, where the COA does a screening on labour skills and finds a matching municipality for housing in order to increase job opportunities. Whether this is a successful measure is not inquired yet. Another example is that the government simplified the procedure to acquire a voluntary permit. Nowadays, an asylum

354 Aliens Labour Act, available at: http://bit.ly/2kepOre.

355 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.

356 See e.g. Scientific Council for Government Policy (WRR), *Geen tijd te verliezen: van opvang naar integratie van asielmigranten*, December 2015, available in Dutch at: http://bit.ly/2xiK18i.

357 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: http://bit.ly/2ug4beg, 3.

358 *Ibid*, 4.

359 Wet van 9 oktober 2003, houdende vaststelling van een wet inzake ondersteuning bij arbeidsinschakeling en verlening van bijstand door gemeenten, available in Dutch at: http://bit.ly/2jUSKUb.

seeker can start its voluntary work as soon as the Employee Insurance Agency confirmed the application for a voluntary permit done by the employer.[360]

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*, SBB) and EP-Nuffic jointly compare foreign diplomas with the Dutch educational system. In case a refugee follows a Dutch integration course this is provided for free. The main obstacle is that many refugees lack any credible documents to prove their qualifications. Also, a low educational level form impede access to language courses or vocational educational training.[361]

2. Access to education

According to the Compulsory Education Act,[362] 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.[363]

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.[364] 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 does not know 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.

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:

1. 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;[365]

360 Annex I, para 7bis Aliens Act Implementing Regulation.
361 EMN, *The integration of beneficiaries of international / humanitarian protection into the Dutch labour market: Policies and good practices*, February 2016, 4.
362 Wet van 30 mei 1968, houdende vaststelling Leerplichtwet 1969, available in Dutch at: http://bit.ly/2kKXQpV.
363 Article 27 recast Qualification Directive.
364 Ministry of Education, *Informatiedocument onderwijs aan asielzoekerskinderen*, May 2016, 6.
365 Article 11(2) Participation Act.

2. Benefits (*toeslagen*), which have a different aim from the social benefit; and
3. Child benefit (kinderbijslag).

Persons with a relatively low income can also count on a contribution towards specific costs. Beneficiaries of international protection can apply for:

4. Health care benefit;[366]
5. Rent benefit;[367]
6. Child care benefit;[368]
7. Supplementary child care benefit.[369]

The Coalition Agreement of October 2017 has introduced a new plan with regard to the access to social welfare of beneficiaries of international protection.[370] According to that plan, prospective beneficiaries of international protection will no longer be entitled to the social benefit, rent benefit and health care benefit during the first 2 years of their legal stay in the Netherlands. Instead beneficiaries of international protection will receive services by the municipalities such as housing, a healthcare insurance and assistance in the integration process in kind. In addition, beneficiaries of international protection will receive an allowance. The implications of these plans are far from clear yet and it remains to seen whether this agreement is actually going to be converted into law.

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.

Conditions for obtaining social welfare

Apart from certain financial requirements, the beneficiary of international protection must also meet benefit-specific conditions:

- **Child care benefit:** the person must: (a) have a paid job; or (b) attend a civic integration course, provided that the course is compulsory. 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.

- **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.

366 Articles 8-15 Rent Benefit Act.
367 Articles 2-2a Healthcare Benefit Act.
368 Article 2(1) Supplementary Child Care Act.
369 Article 1.6(1)(g) Child Care Act.
370 Cabinet, *Regeerakkoord 'Vertrouwen in de toekomst'*, 10 October 2017, available in Dutch at: http://bit.ly/2i1wmgo, part 4.5.

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 he or she is not successful in finding a job, the municipality starts processing the application. Also in this situation, after these 4 weeks, municipalities have 8 weeks to process the allocation and payment of the social benefit.

Kostendelersnormproblematiek

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 18 to 67. The aim of the "*kostendelersnorm*" 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.

More concretely, this means that the group as a whole gets more social benefit, 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 its falls under the poverty line.

ALO-*kopproblematiek*

Beneficiaries can also be confronted by the so-called "*ALO-kopproblematiek*". The "ALO-*kop*" is a part of the supplementary child care 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 in 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 child care 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 child care 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 in 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 alternative is to not apply for the supplementary child care benefit at all, yet practice shows that beneficiaries really need this contribution. The Dutch Refugee Council has addressed and continues to address this issue, but unfortunately to no avail so far.

G. Health care

Beneficiaries are required to be insured for health care as of the moment the permit is granted.[371] There is no difference if the beneficiary still resides in the reception centre or not. Moreover, although these

[371] Article 2(1) Health Care Act in conjunction with Article 2(1)(1) Long-Term Care Act.

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 approximately 28,720 € per year.

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)