

ACCELERATED PROCEDURES – DISCUSSION PAPER

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Introduction – Elements of the debate

1. An ability to consider applications for asylum in most Member States under accelerated or prioritised procedures forms an important element in most Member States asylum decision making capability. For some of us the percentage of cases subject to these processes is relatively small compared to the overall intake, for others it plays a more important role.
2. Under the existing Procedures Directive Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.
3. The existing Procedures Directive leaves some ambiguity as to the difference between accelerated and prioritized procedures as well as to the guarantees to be applied to either of them.
4. The recent UNHCR study comparing the practical implementation of the Asylum Procedures Directive concluded that in all Member States surveyed (12 in all) national legislation complies with the basic principles and guarantees of Chapter II of the Asylum Procedures Directive (APD) as required by Article 23 (3) and (4). However, UNHCR did raise some concerns regarding Chapter II itself, namely that it does not guarantee all the effective safeguards required to ensure that all protection concerns are adequately and appropriately identified and met.
5. The European Commission has adopted a proposal to recast the Asylum Procedures Directive. In doing so it observed Member State's practices in accordance with the current Directive and aimed to achieve higher and more harmonised protection standards than those established in the first phase of the Common European Asylum System. The Commission observed that Article 23 of the current APD had resulted in the increase of diverse procedural arrangements within the EU with some Member States introducing additional grounds for accelerated procedures which do not appear in the Directive. Another criticism observed was that the Directive allowed for procedures to be expedited on *any ground* and within *any time limit* and this was reflected within the time frames for accelerated procedures imposed by different Member States. These varied from 3 days to 3 months.

6. The argument runs that it is important that an applicant seeking protection has their case considered fully and objectively but the use of accelerated procedures in doing this can help us to ensure that resources are directed effectively. It also should help a Member State deal with unfounded claims for protection efficiently and therefore provides a benefit for the State as well as for genuine asylum seekers.

Discussion issue – What is the purpose of distinguishing in law between routine and accelerated claims?

7. UNHCR research finds that 'law and practice on the prioritisation and acceleration of examination in the 12 member states of focus are disparate and difficult to compare'
8. Against this backdrop, the question arises are we not better off setting out minimum standards and safeguards for asylum decision making in general – rather than trying to distinguish those to be applied separately to a 'routine' or 'accelerated' procedure? In reality, law and practice is inconsistent across the spectrum of relevant issues for accelerated procedures.

Timeframes

9. European legislation stipulates no timeframe for routine asylum decisions nor those in an accelerated procedure. UNHCR observe that "the legally stipulated timeframes of accelerated procedures vary widely across Member States from three calendar months to 2 days." UNHCR further observe that in some Member States "the average duration of and safeguards applicable to the accelerated examination are comparable to the regular procedures of other Member States."
10. There seems very little purpose in stipulating specific safeguards for an accelerated procedure over a routine procedure when that very accelerated procedure may take place over a longer period of time in some states than does the routine procedure in others.

Grounds for acceleration

11. UNHCR observe that grounds for an accelerated procedure diverge across Member States. UNHCR would like to delete some of the 16 illustrative grounds set out in Article 23. But, whether we add or delete grounds, they remain illustrative. UNHCR observes 2 Member States they studied operate different grounds from those illustrated. As with the timescales, the grounds for operating accelerated procedures are so different that they cannot properly be described as applying to the same process. We should retrench to the

absolute standards required for an asylum decision. Those standards, of themselves, should suffice.

The proportion of cases to be accelerated

12. Part of UNHCR research observes that the accelerated process comes perilously close to being the normal process in some states studied. And, indeed if we had collectively identified specific types of cases only which could be processed with specifically fast time frames, it would be reasonable to set parameters around the proportion of cases that can be dealt with in this way. Yet, we have no set grounds and no set timescale, so we should not be surprised if Member States have widely varying proportions of cases that are 'accelerated.' This is merely another symptom of the fact that no standard accelerated process exists.

Conclusion

13. The overriding objective is that asylum decisions are made in accordance with minimum standards and safeguards. But the APD attempts to set out separately how such safeguards and standards might be applied to decisions that are accelerated. Yet, research has shown that despite this legislation:
 - accelerated procedures should be clearly distinguished from prioritized procedures
 - there are no standard timeframes for accelerated processes. Some accelerated procedures are slower than other Member States routine procedures.
 - there are no common grounds for application of the accelerated procedures – the grounds that are listed are many and are illustrative. At least two Member States have initiated new ones.
 - in some Member States use of the accelerated procedures is close to the norm.
14. The rational conclusion is that we should put consideration of separate regulation of accelerated procedures to one side and form one minimum standard applying to all asylum decisions.

Questions



15. How can a clear distinction between the concepts of accelerated procedure and prioritized procedures best be ensured?

16. What are the minimum standards that ought to be applied to all asylum decisions, whether they be routine, accelerated or prioritized?

