



Input by civil society to the EASO Annual Report 2017

EASO has started the production of the 2017 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries. Previous reports are [available for review at EASO's website](#).

We would like to kindly invite you to take part in this process, by sharing your observations **on developments in asylum law, policy or practice in 2017 (and early 2018) in the areas listed on page 2**. The topics listed there reflect the structure of Chapter 4 of the EASO report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2017, including **improvements and new/remaining concerns**. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2016 Annual Report](#). If you do not consent on EASO making your submission available, please inform us accordingly.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input by filling in this document (with attachments, if needed) and returning it to ids@easo.europa.eu **AND** consultative-forum@easo.europa.eu **by 16 February 2018**.

Within each area, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

Name of the contributing stakeholder:

Contact details:

1) Access to territory and access to asylum procedure

A crucial legal safeguard in the safe third country provision has been removed

In reaction to the sudden increase in arrivals of asylum seekers through the Russian-Norwegian border in late 2015, the Norwegian parliament has removed a key safeguard from the safe third country provision in the Immigration Act.¹ Although the amendment had been explicitly intended to be temporary at the time of adoption, following a subsequent legislative proposal it was made permanent in December 2017.² The safeguard requiring that applicant's asylum claim "will be assessed" in the third country was removed from the provision, as indicated below:

"An application for a residence permit under section 28 [asylum] may be refused examination on its merits if [...] d) the applicant has travelled to the realm after having resided in a country or a territory where the foreigner was not persecuted, and where the foreign national's application for protection will be examined."³

The Norwegian Directorate of Immigration has followed up the legislative change, issuing a circular specifically applicable to asylum seekers arriving through the Norwegian-Russian border.⁴ The circular has introduced a peculiar version of the concept of a safe country/area of origin.⁵ The circular explicitly listed several countries, as well as specific areas in certain countries, such as Kurdistan in Northern Iraq and Kabul in Afghanistan, noting they were safe. The novelty consisted of two aspects. First, these countries and areas had not before been considered as safe countries/areas of origin, meaning that until then asylum applications submitted by persons originating from these places were assessed on their merits in a standard asylum procedure. Second, instead of assessing the merits of these supposedly 'manifestly unfounded' applications in a fast track procedure, which Norway uses to assess applications submitted by asylum seekers originating from advanced, mostly European, democracies within 48 hours,⁶ the applications were to be denied merits assessment altogether – even if the risk of deportation from Russia to the country/area of origin was established.

As pointed out by the UNHCR, the new legislative changes and instructions introduced in Norway "appear to have created a hybrid between the concepts of 'safe third country' and the 'safe country of origin', without applying all of the established criteria and procedural safeguards for the implementation of these concepts".⁷

¹ Justis- og beredskapsdepartementet, *Prop. 16 L (2015–2016)*, 13.11.2015, p. 12, available at:

<http://bit.ly/2FHQfQX>

² Justis- og beredskapsdepartementet, *Høringsbrev – evaluering og videreføring av midlertidige endringer i utlendingsloven vedtatt på bakgrunn av Prop. 16 L (2015–2016)*, 19.01.2017, pp. 13-18, available at:

<https://goo.gl/TXxG2M>

³ Norwegian Immigration Act, § 32(1)(d).

⁴ Utlendingsdirektoratet (UDI), *Rundskriv om behandlingen av asylsøknader fra personer som har reist inn i Norge fra Russland (Storskog-porteføljen)*, RS 2015-013, 25.11.2015, available at: <http://bit.ly/2DBC13H>

⁵ *Ibid.*, section 3.

⁶ Utlendingsdirektoratet (UDI), *48-timersprosedyren*, RS 2011-030, 27.06.2011, available at:

<https://goo.gl/Vnp8nc>; For the list of countries in the 48-hour procedure see: Utlendingsdirektoratet (UDI), *Land i 48-timersprosedyren*, RS 2011-030V, available at: <https://goo.gl/y3xynx>

⁷ UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Law Proposal "Prop. 16L (2015-2016) Endringer i utlendingsloven (innstramminger)", Instructions GI-12/2015, GI-13/2015 and 15/7814-EST". Circular "RS 2015-013", and amendment to the "Immigration Regulation, §§ 17-18"*, 23.12.2015, para. 11, available at: <http://bit.ly/2FJldam>. See also: UN High Commissioner for Refugees (UNHCR), *Interviews with Syrian asylum-seekers expelled from Norway to the Russian Federation*, 33/RRNE/2016, 30.03.2016, available

2) Access to information and legal assistance

Asylum seekers to Norway receive general information on Norwegian asylum procedure and individual guidance regarding their case from NOAS upon arrival, in accordance with the Immigration Regulation, article 17-17, second paragraph. After the initial phase, access to legal assistance and information relevant to the assessment of the asylum application is limited. Most asylum seekers are not entitled to free legal representation in the first instance. Limited access to information and updates on changes to procedures, laws and regulations that affected asylum seekers and refugees, have been a particular concern since 2015, when the asylum case processing system suffered substantial backlogs and delays due to an increased number of applicants. During 2017, the backlogs have been handled and processing times diminished. NOAS still see a need for improvement in access to legal information and counsel for asylum seekers in all stages of the process, including those who receive a rejection (first and second instance). Furthermore, amendments to national law have led to an increased use of detention of asylum seekers upon arrival. NOAS experience some difficulty in providing information on asylum procedure to those in detention, as information on detained person may be lacking and communication is limited to telephone only.

3) Providing interpretation services

4) Dublin procedure

As of June 1st, 2017 the Norwegian Ministry of Justice issued an instruction to resume returns to Greece in accordance with the Dublin regulation. According to the instruction, the Directorate of Immigration (UDI) shall consider applying the Dublin regulation in all cases in which Greece is responsible, and assess if there are grounds to request individual guaranties in some cases, or consider exempting certain groups of (vulnerable) applicants. NOAS has serious concerns regarding Dublin transfers to Greece. Reports and feedback from Greek counterparts, suggest transfers to Greece are premature, as the asylum reception system still is overburdened and access to procedure may be difficult. As of January 2018, the UDI had sent approx. 40 requests to Greece, 7 of which were accepted. All 7 transfers have been suspended and appeals are pending.

NOAS is concerned also for the rights and safety of third country nationals, including recognized refugees who are being returned to Greece after having applied for protection in Norway. In 2017, 88 individuals were transported to Greece by the Norwegian Immigration Police, only 5 were Greek citizens. Arrivals should be monitored and information by NGOs/legal rights organizations provided at airports, for possible Dublin returns, refugees and other third country nationals.

Instruction press release in English: <https://www.regjeringen.no/en/aktuelt/dublin-transfers-to-greece/id2555259/>

UDI statistics on Dublin requests (Norwegian only): <https://www.udi.no/statistikk-og-analyse/statistikk/dublinanmodninger-2017/>

Immigration Police statistics on transfers (Norwegian only): <https://www.politiet.no/aktuelt-tall-og-fakta/tall-og-fakta/uttransporteringer/>

5) Specific procedures (border, accelerated, admissibility)

6) Reception of applicants for international protection

as the last annex to NOAS' *høringssvar til evaluering av videreføring av midlertidige endringer fra Prop. 16 L (2015-2016)*, 10.03.2017 at: <https://goo.gl/KxFbFf>

7) Detention of applicants for international protection

Expanded detention powers allow unnecessary detention

The Norwegian Immigration Act has recently been amended several times, introducing, *inter alia*, two new legal grounds for detention of asylum seekers.⁸ The amendments allow detention if an application for asylum is most likely not to be assessed on the merits⁹ and if the application is considered manifestly unfounded.¹⁰ Risk of absconding is not a required precondition under these two provisions. The provisions do not state the purpose of detention, opening instead for detention of any asylum seeker who falls under one of the two categories. As the wording of the provisions does not state the purpose of detention, it is unclear how the requirement of necessity¹¹ is to be individually assessed when applying the provisions.¹²

A positive aspect is that neither of these two newly introduced provisions allows detention of children or families with children. However, the amendments have made alternatives to detention, including the obligation to report and the obligation to stay at a specific place, applicable in the same circumstances.¹³

8) Procedures at First instance

9) Procedures at Second Instance

10) Availability and use of Country of Origin Information

11) Vulnerable applicants

Norway does not have a mechanism for the systematic identification of vulnerable asylum seekers upon arrival. Channels and responsibilities for communicating information on vulnerabilities that could be relevant for the assessment of protection needs of applicants (besides the asylum interview) are unclear. Torture victims' injuries are not properly investigated or documented with the aim to offer redress and rehabilitation in accordance with the Convention against Torture. NOAS

⁸ Justis- og beredskapsdepartementet, *Høringsnotat om ny heimel for pågriping og fengsling i samband med 48-timarprosedyren for openbert grunnlause asylsøknader*, 3 July 2015, available at: <http://bit.ly/2BFRux5>; Justis- og beredskapsdepartementet, *Prop. 16 L (2015–2016) Endringer i utlendingsloven (innstramninger)*, 13.11.2015, p. 18, available at: <https://goo.gl/54SQe1>; Justis- og beredskapsdepartementet, *Høringsbrev – evaluering og videreføring av midlertidige endringer i utlendingsloven vedtatt på bakgrunn av Prop. 16 L (2015–2016)*, 19.01.2017, p. 19-22, available at: <https://goo.gl/TXxG2M>

⁹ Norwegian immigration Act, § 106(1)(g).

¹⁰ Norwegian immigration Act, § 106(1)(h).

¹¹ While necessity of detention in immigration cases does not follow from Art. 5(1)(f), ECHR (see: *Saadi v. UK [GC]*, App. No. 13229/03, paras. 72-74), it is required under ICCPR (see, e.g., *A. v. Australia*, CCPR/C/59/D/560/1993, UN Human Rights Committee, 3 April 1997, para. 9.2) as well as under Norwegian constitution (§ 94) and the Norwegian Immigration Act (§ 99).

¹² UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the proposed amendments to the Norwegian Immigration Act to allow for detention of asylum-seekers in the 48-hours accelerated procedure*, October 2015, para. 20, available at: <https://goo.gl/c7vvAE>; UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Law Proposal "Prop. 16 L(2015-2016) Endringer i utlendingsloven (innstramninger)", Instructions "GI-12/2015, GI-13/2015 and 15/7814 -EST", Circular "RS 2015-013", and amendment to the "Immigration Regulation, §§ 17-18"*, December 2015, para. 27, available at: <https://goo.gl/NM3k4K>

¹³ Norwegian immigration Act §§ 105(1)(e) and 105(1)(f).

is hopeful regarding the establishment of an identification mechanism, as the Directorate of Immigration and the Directorate of Health both recommended this since 2015. (Links to recommendations not available).

12) Content of protection – situation of beneficiaries of protection

13) Return of former applicants for international protection

Application of the «ceased circumstances» clauses in the Refugee Convention

Application of the «ceased circumstances» clauses in article 1C of the 1951 Refugee Convention requires changes of a durable and fundamental nature. The Norwegian government is currently reviewing 1600 cases of Somalis who are beneficiaries of international protection and have been granted a temporary residency permit in Norway. The review will determine whether their status should be ceased. The situation in Somalia has however not improved to the extent that the “ceased circumstances” clauses can be applied. UNHCR has in a letter to the Norwegian government criticized the practice, and is urging states to “refrain from both ceasing international protection status granted to Somalis and forcibly returning individuals to areas of Southern and Central Somalia that affected by military action, remain fragile and insecure after recent military action or are under full or partial control of non-State armed groups”. UNHCR also underlines that it “has constantly held the position that refugees and others in need of international protection are entitled to a secure status, which should not be subject to regular review...Short-term residence permits and frequent reviews thereof would be counter-productive to integration”.

Reference: UNHCRs letter to the Norwegian government -

<https://static1.squarespace.com/static/56e6a2632b8dde4bafc35e0b/t/592ca461893fc05fa7db5afe/1496097890960/Brev+fra+UNHCR+om+opphør+Somalia-saker+7.+nov+2016.pdf>

14) Resettlement and humanitarian admission programmes

15) Relocation

16) Other relevant developments

Temporary residence permits to unaccompanied minors

In 2017, close to half (42 %) of unaccompanied minors that had their asylum case processed only received a temporary permission until the age of 18. The permission cannot be renewed, and the children are expected to return to their country of origin once they turn 18. The use of temporary residence permits in the cases of unaccompanied minor asylum seekers has increased dramatically the last couple of years. A factor contributing towards this, was the removal of the reasonableness requirement in the consideration of an internal flight alternative from Norwegian asylum law in October 2016. This implies that children who according to the Refugee Convention should have been granted refugee status, are given a permit on humanitarian ground that expires when they turn 18. They are then expected to return to the assessed internal flight alternative in their country of origin. By removing the reasonableness requirement, the Norwegian government is not treating unaccompanied minor asylum seekers in line with the 1951 Refugee Convention. Norway is the only country in the EU/EEC region that has removed the reasonableness requirement from its legislation.

Reference: Statistics from the Directorate of immigration - <https://www.udi.no/statistikk-og-analyse/statistikk/asylvedtak-etter-statsborgerskap-og-utfall-for-enslige-mindrearige-asylsokere-2017/>