First instance determination - Switzerland

Overview of first instance procedures

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Relevant EU legislation

Switzerland is not bound by the recast Asylum Procedures Directive (APD/APR), nor by the recast Qualification Directive. A similar national legal framework applies, through the Asylum Act (Loi sur l'asile (LAsi), 358/1999) , without the inclusion of subsidiary protection as a type of international protection.

National legislation

The Asylum Act (Loi sur l'asile (LAsi), 358/1999) provides for the accelerated procedure, the extended procedure, the airport procedure and the subsequent application procedure. There is no separate admissibility procedure equivalent to the admissibility procedure provided in the recast Asylum Procedures Directive, although the Asylum Act, in specific cases, the SEM may take a decision not to examine the merits of the case (*décision de non-entrée en matière*) according to Article 31a of the Asylum Act, at the end of the preparatory phase.

The law provides that the SEM changes from the accelerated procedure to the extended procedure, when - based on the personal interview - it becomes clear that further information and measures are necessary in order to make a decision on the application (Article 26d).

Competent authority and other stakeholders

National authorities: The State Secretariat for Migration (State Secretariat for Migration | Staatssekretariat für Migration | Secrétariat d'Etat aux migrations | Segreteria di Stato della migrazione) is responsible for examining/processing

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requests for international protection in the extended asylum procedure and in special procedures.

SEM is a federal authority of the Swiss Confederation, falling under the responsibility of the Federal Department of Justice and Police of the Federal Council.

SEM regulates the conditions under which someone is allowed to enter, live and work in Switzerland, including deciding on granting international protection. Together with the cantons, SEM organises the accommodation of asylum applicants and the return of those who do not need protection. In addition, SEM coordinates integration work, is responsible for naturalisation at the federal level and is committed to the effective management of migration movements at the international level.

Staff: 853 staff working on asylum as of December 2023.

Other actors: The Border Police and the Airport Police are involved in decision on entry to the territory.

Types of procedures and case processing

The Asylum Act (Loi sur l'asile (LAsi), 358/1999) provides for the accelerated procedure, the extended procedure, the airport procedure and the subsequent application procedure.

The accelerated procedure is in principle the main rule for all asylum applications and can be considered as the regular procedure under EU terminology.

There is no separate admissibility procedure equivalent to the admissibility procedure provided in the recast Asylum Procedures Directive, although the Asylum Act, in specific cases, the SEM may take a decision not to examine the merits of the case (*décision de non-entrée en matière*) according to Article 31a of the Asylum Act, at the end of the preparatory phase.

The law provides that the SEM changes from the accelerated procedure to the extended procedure, when - based on the personal interview - it becomes clear that further information and measures are necessary in order to make a decision on the application.

Time limit for a decision and length of the procedure

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Time limits for taking a decision in:

- the **extended procedure**: within 2 months from the end of the preparatory phase (Article 37(4) of the Asylum Act). The procedure includes a preparatory phase, which can range from up to 21 days, during which time clarifications are completed (e.g. collect personal data, examine the medical situation of the applicant, carrying out a preliminary interview to determine the Member State responsible, carrying out the age assessment).
- special procedures:
  - **accelerated procedure**: 8 working days (Article 37(2) of the Asylum Act). If there are valid reasons and it is foreseeable that the decision can be taken in a federal centre, the time limit may be exceeded by a few days (Article 37(3) of the Asylum Act).
  - **airport procedure**: 20 days form the lodging of the asylum application

In other cases, decisions to dismiss an application must be made within 5 working days and decisions must be made within ten working days of the application being filed (Article 37(5) of the Asylum Act).

SEM decides with priority and immediately if the applicant is in detention pending extradition on the basis of a request made by a state which the applicant is seeking protection from in Switzerland.

Measures to enforce the legal time limit for processing an application:

Information is currently not available.

Penalty payment for exceeding processing time:

Information is currently not available.

Prioritisation policies:

Information is currently not available.

Quality assurance of first instance procedures

Who:

Information is currently not available.

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Methods/criteria:

Information is currently not available.

Frequency:

Information is currently not available.

Interinstitutional cooperation

Information is currently not available.

Regular asylum procedure at first instance

Legal basis

The Asylum Act (Loi sur l'asile (LAsi), 358/1999) provides for the extended procedure (Article 26d).

Competent authority and stakeholders

The State Secretariat for Migration (State Secretariat for Migration | Staatssekretariat für Migration | Secrétariat d'Etat aux migrations | Segreteria di Stato della migrazione) is responsible for examining/processing requests for international protection in the extended asylum procedure.

Personal interview

According to Article 29 of the Asylum Act, SEM interviews the applicant on the grounds for asylum, in a federal centre. Minutes of the interview are taken, which shall be signed by those participating in the interview.

If necessary, an interpreter will participate in the interview.

For additional information refer to the section on Personal Interview below.

Assessment of an application

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The Asylum Directorate of the State Secretariat for Migration (SEM) (about 500 staff) is the competent authority for the assessment of the asylum application at first instance.

The SEM falls under the responsibility of the Federal Department of Justice and Police of the Federal Council.

Central Migration Information System (ZEMIS in German, SYMIC in French and SIMIC in Italian) of the SEM.

Article 1a of the Ordinance 3 on asylum concerning the treatment of personal data lists further information systems on which the SEM relies on: Kompass (data bank on countries of origin), loan administration system for recognised refugees, Finasi (data on asylum financing), the data bank for medical cases, the data bank on support for individual (voluntary) return, the information system on the Confederation centres and MIDES (information on accommodation at airports), AURORA (on return and removal), DOPO (pool of interpreters), and FM-Tool (for managing deadlines).

The Federal Council sought to renew the Central Information System on Migration (SYMIC) and develop new functionalities to provide high-quality digital services for a smooth running of cases in the areas of asylum, foreigners and nationality. (source: EUAA Asylum Report 2021).

Scope and outcomes of a decision

Possible outcomes include:

- Granting international protection, which is called temporary protection in Switzerland, in accordance with Article 66 (Article 39 of the Asylum Act);
- Refusal of protection, and rejection without further investigation when as a result of the interview, it is obvious that the applicant is unable to prove or credibly demonstrate refugee status and there are no grounds preventing removal.

Decisions to dismiss an application must be accompanied by a summary statement of grounds (Article 37a of the Asylum Act).

Article 44 of the Asylum Act provides that if SEM rejects or dismisses the application for asylum, it shall normally issue a return decision and enforce removal from Switzerland.

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Withdrawal of an application

Competent authority to withdraw an application

The State Secretariat for Migration (SEM) is responsible for implicit and explicit withdrawals.

Implicit withdrawal

Grounds for implicit withdrawal: Article 8(3bis) of the Asylum Act clarifies that persons lose their right to have the asylum procedure continued, when they fail to cooperate without a valid reason or they fail to make themselves available for the authorities for more than 20 days. This also applies to persons who fail for more than 5 days to make themselves available to the asylum authorities in a federal centre without a valid reason.

Consequences of implicit withdrawal: The application is discontinued without a formal decision (*classifié*). No new asylum application may be filed within 3 years from an implicit withdrawal. Article 8(3bis) of the Asylum Act underlines that this restriction has to be in compliance with the Geneva Convention.

Appeal against a decision to discontinue the examination due to an implicit withdrawal:

Information is currently not available.

Explicit withdrawal

Grounds for explicit withdrawal: Article 26(3) of the Asylum Act underlines that an applicant can withdraw the application during the preparatory phase by formally signing a withdrawal declaration.

Consequences of explicit withdrawal: The request shall be cancelled without a formal decision being taken and preparations made for return (Article 26(3) of the Asylum Act).

Appeal against a decision to discontinue the examination due to an explicit withdrawal:

Information is currently not available.

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Personal interview

Competent authority: Interviewers

The SEM - State Secretariat for Migration (Secrétariat d'Etat aux Migrations) is responsible to conduct personal interviews with applicants for international protection.

1. **Preliminary interview:** The applicant undergoes a first (Dublin) interview during the preparatory phase, which aims to clarify issues concerning their identity, nationality, family ties and family members eventually present in Switzerland or in other countries, travel route, the circumstances and reasons of leaving the country of origin and other issues which might be relevant for determining the responsible Dublin State.
2. **Interview on the grounds for asylum:** Art. 29, Asylum Act, which focuses on the reasons for applying for asylum and the presentation of eventual (further) pieces of evidence.

Interviewers are expected to have a higher education degree, but this is not a legal prerequisite. Relevant knowledge and competences are required. Specialised officers conduct interviews with children, vulnerable applicants, for specific procedures implemented (e.g. subsequent applications, exclusion cases, gender related cases). The specialisation system is also based on geographical areas/country of origin of applications.

Special procedural guarantees during the interview

Minors: All accompanied children above 14 years old are interviewed. Children under the age of 14 years old can also be interviewed if they have personal grounds and the capacity to contribute to the establishment of the material facts. Generally, all accompanied children aged 14 or older are interviewed in order to discover eventual personal asylum grounds pertaining to them. The interview is conducted in the presence of one of the parents unless the interests of the accompanied dictate otherwise. The parents represent the interest of the child during the asylum procedure.

Should the child be under 14 years old, it is the responsibility of the parents to disclosure eventual personal asylum grounds pertaining to the child. Should this

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be the case, the accompanied child below the age of 14 years with the capacity of discernment will also be interviewed.

Unaccompanied minors: For unaccompanied minors, no minimum age limit is applied for conducting the personal interview. All UAMs, regardless of their age, are interviewed if they have the capacity of discernment, meaning that they should be able to understand the meaning of an asylum procedure and be able to present their asylum grounds.

Every unaccompanied child has the right to be represented by a free legal representative appointed by the federal asylum centre. This representative ensures the defence of the best interests of the child and acts as their trusted person. The representative takes part in the interview. The State Secretariat for Migration takes into account the particular aspect of the child's age during the asylum interview. All information required by State Secretariat for Migration that was not collected during the interviews is requested to the representative of the unaccompanied minor who then coordinates with the child in order to provide for the relevant information. If the unaccompanied child does not have the capacity of discernment, all information is requested through the representative.

Victims of trafficking or other forms of violence:

Information is currently not available.

Applicants with disabilities or other health issues:

Information is currently not available.

Possibility to omit the personal interview

The SEM omits the personal interview on the substance of the application, when it takes a decision not to examine the merits of the case at the end of the preparatory phase, in the following cases:

- the applicant can return to a safe third country (as defined by Art. 6a(2)b) Asylum Act - definition different from Art. 38 recast APD) in which they have previously resided;
- the applicant can be transferred to a third country responsible for the asylum procedure and return, based on an international agreement (such as the Dublin Association Agreement);

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- the applicant can return to a third country in which they have previously resided and where the principle of non-refoulement is effectively respected;
- the applicant can continue their journey to a third country for which they have visa, where they can seek protection and where the principle of non-refoulement is effectively respected;
- the applicant can travel to a third country where they have close relatives or persons with whom they have close links and where the principle of non-refoulement is effectively respected;
- the applicant may be returned to their country of origin based on the recognition of the relevant decision of another Dublin State (Art. 31b Asylum Act).

These applicants still have the right to be heard, except when hey have misled the authorities with respect to their identity, the application is essentially based on false or falsified evidence or when they breach the duty to cooperate in an intentional and serious manner.

The SEM still organises a personal interview on the substance of the application when it plans to take a decision without examining the merits of the case due to the fact that the applicant has applied for asylum solely for economic or medical reasons.

Accompanied minors: Accompanied minors above the age of 14 are typically interviewed separately from their parents.

Unaccompanied minors: A person of confidence is present for UAMs

Applicants with special needs/vulnerabilities:

- Victims of trafficking or other forms of violence
- Applicants with disabilities and/or other health issues

Positive decision	Yes. SEM should take a decision not to examine the case on merits within 5 days from the filling of the application.
Previous meeting - essential information	Information is not currently available.

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Issues raised are not relevant or of minimal relevance	Information is not currently available.
Safe country of origin	Information is not currently available.
Safe third countries	Yes SEM should take a decision not to examine the case on merits within 5 days from the filling of the application.
Inconsistent, contradictory, improbable, insufficient representations	Information is not currently available.
Subsequent application	Yes Submitted in writing with a statement of the grounds. SEM has the duty to examine all arguments carefully and individually.
Application to merely delay/frustrate enforcement	Information is not currently available.
Not reasonably practical to conduct it	Information is not currently available.
Applicant unfit or unable to be interviewed	Yes

Organisational aspects

Preparation and timing of the interview:

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The SEM communicates the convocation for the interview to the service provider responsible for legal assistance at least two days in advance, when the applicant is accommodated in a federal centre, or at least five days in advance, if the applicants is already assigned to a canton.

There are no specific rules for preparatory arrangements for the personal interview (setting up of hearing rooms, equipment and others relevant preparations).

Information provision (before the personal interview)

The convocation includes the date, time and place of the personal interview. The legal representative has the task to provide detailed information and prepare the applicant for the interview.

Modalities of carrying out the interview

Personal interviews - both preliminary and substantive interviews are organised in federal reception centres with processing facilities. The applicant has an obligation to cooperate in the asylum procedure, which includes the possibility of checking an applicant’s mobile phone.

Choice of gender of the interviewer/interpreter

The applicant has the right to be heard by a team of persons of the same sex (including the interviewer, interpreter, legal advisor, officer taking the notes), when there are concrete indications on gender specific persecution. Not respecting this right amounts to the breach of the right to be heard. Information is provided proactively of the possibility to choose an interpreter/interviewer of a specific gender, as soon as the applicant brings up a gender-related claim.

Objecting to the interviewer/interpreter

The interviewer and the interpreter cannot have personal ties to the applicant. The applicant cannot otherwise refuse to be interviewed by a particular interviewer or interpreter, but they can express disagreement (e.g. difficulties of understanding the interpreter). The interviewer decides of the consequences (continuation or interruption of the interview).

Language and interpretation

Interpreters must be approved/registered with the asylum authority, and not necessarily legally sworn/certified. They must adhere to the Code of Conduct and

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to have a clean personal record/special security clearance procedure. Every newly contracted interpreter is invited to an extensive on-boarding conversation during which they are briefed about the necessary requirements/work. If the newly contracted interpreter has little or no experience interpreting, direct coaching with an experienced interpreter will be arranged. The quality of work by interpreters is continuously assessed via feedback forms (completed by the interviewers). The number of requested feedback forms is determined by the section responsible for interpreters (SAM). For newly contracted interpreters, more frequent feedback forms are requested. In case of negative feedback, further conversations with the interpreter in question will be held.

For unavailability of interpreters in the applicant's language, cooperation with other authorities in the Member States is envisaged and elements of the application can be submitted in writing. When there is no available professional interpreter in the applicant's language or in a language that s/he is expected to understand, the procedure may be suspended/prolonged until an interpreter is identified.

Persons present during the interview

- **Interviewer:** The relevant manual underlines that the interviewer's tasks does not only involve asking questions to the applicant, but they need to also keep the order throughout the interview. They remind the participants about their rights and duties, should any of the interview participant be in breach of these.
- **Applicant:** Applicants have the duty to cooperate in the establishment of the facts, in particular to present the reasons for applying for asylum during the personal interview. The have the opportunity to express in details the reasons for flight and the eventual obstacles for return to the country of origin.
- **Official interpreter:** The SEM invites an official interpreter when the applicant does not master in a sufficient manner one of the official languages, even if the applicant brings a private interpreter. The fact that communication issues arose between the interpreter and the applicant has to be mentioned in the minutes and the interview may be cancelled and rescheduled with the participation of another interpreter. The interpreter has translate to entirely and in a correct manner all questions and answers, without completing, summarising or reformulating them, even if a word-by-word translation seems to be incoherent. They also have to reflect the applicant's style, linguistic level, word choice and the statements' structure.

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The interpreter has to notify the interviewer when the applicant does not understand the question, so that the interviewer can reformulate it. The interpreter translates the statements in first-person and not as an indirect speech.

- **Officer taking the minutes:** An officer (*procès-verbaliste officiel*) has the task to take the minutes of the personal interview in a neutral manner. They have to write it entirely and in a correct manner all questions and answers: they cannot complete, summarise or reformulate the interview.
- **Legal representative/advisor:** The legal advisor is a lawyer or a person with a university diploma in law, who provides advice and representation for applicants in a professional manner and who is employed by the service provider to who SEM gave the mandate. The applicant has the right to renounce the help of the assigned legal advisor: this has to be done in an explicit manner. The applicant can request to change the legal advisor only in exceptional, duly justified cases (for example, when there are concrete indications on gender specific persecution). The legal advisor ensures complete legal support for the applicant: they are present at the personal interview and may ask the interviewer to clarify certain points. The service provider needs to ensure that the legal advisor is informed about and participates at the personal interview. The service provider is also responsible to find a replacement, when the assigned legal advisor is not available. The interview may be postponed for a very short period, when the assigned legal advisor is not available for an unforeseen and excusable reason. The legal advisor's assignment lasts until the entry into force of a decision within the accelerated or Dublin procedures or until a decision is made to treat the application in an extended procedure and the applicant is assigned to a canton.
- **Guardian for UAMs:** Only UAMs reaching a sufficient level of maturity (*capacité de discernement*, presumed at the age of 14) are interviewed. The interviewer has to check whether the UAM has a representative: the legal advisor, acting as person of trust during the accelerated procedure or the guardian (*curateur or tuteur*) appointed after the UAM is assigned to the cantonal reception centre. However, the absence of the representative is not obligatory: the application file needs to include the proof that the representative was invited and the fact that they are not present is mentioned.
- **Person of trust:** The presence of a trusted person of choice of the applicant is allowed, mostly in order to provide support to the applicant; however, the trusted person is supposed to remain silent during the

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personal interview.

- **Family members:** An applicant may be interviewed in the presence of their baby/young child. However, applicants are encouraged to find someone to take care of their children during the interview. Furthermore, any applicant can be accompanied by a person of their choice as long as this person is not an asylum seeker. Therefore, the applicant is free to bring a family member (who is not an asylum seeker) at the interview. The same rule applies on the silent presence of the family member.
- **Parents of minor applicants:** Each minor reaching a sufficient level of maturity (*capacité de discernement*, presumed at the age of 14) is interviewed separately. Their statements are in principle not used for the assessment of their parents' claim. The parents have the right to assist to the child's personal interview, but it is not an obligation. The application file needs to include the proof that they have been invited and the fact that they are not present is mentioned. The SEM examines and weights the interests of the child against the interests of the parents, if the case-worker or the legal advisor notices at any stage of the procedure that there might be a conflict of interest between the child and the parents. It is also presumed that the parents should not represent their child anymore in the asylum procedure, if the SEM concludes that the child should be interviewed in the absence of the parents.
- **Attorney:** The applicant has the right to renounce the help of the assigned legal advisor and appoint an attorney for legally representing them, at their own expenses. The invitation to the interview is sent to the attorney - to the attorney who was assigned first, when the applicant assigns several different ones. The interview is considered to be subject to a defect, when the attorney does not receive the convocation, it can be cancelled and repeated, unless the applicant and the attorney renounces this possibility in written.
- **Private interpreter:** The applicant has the right to bring a private interpreter to the interviewer, who is not an applicant. The private interpreter can notify if they are of opinion that the official interpreter makes mistakes, but they cannot replace the official interpreter. The official interpreter's translation is accepted, when the two translations remain incompatible.
- **Accompanying person:** The applicant can also ask another person to accompany them to the interview, who is not an applicant and who has the full capacity of civil rights. This person cannot intervene during the interview, but the interviewer may give them the possibility to make a short

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statement at the end of the interview.
- **UNHCR:** The presence of UNHCR representatives is allowed during the personal interview. Their envisaged presence is mainly dependent upon the applicant's consent and varies from silent presence to an opportunity to make remarks and ask questions. For UNHCR, presence is with consent of the applicant. Scientific staff, students, public employees are allowed if their presence is important for the scientific work of the institution, also with consent of the applicant.

Structure/steps of the interview

The interview generally lasts for several hours and can vary on a case-by-case basis. The interviewer stops for a break in principle every two hours. Interviews should end by 18.00: they can be prolonged exceptionally with an hour.

Information is provided before or during the personal interview orally, and in written form on the following: the interview and its purpose, authority responsible for the interview, rights and obligations, confidentiality of the information, importance of the interview (explicitly) and information on the procedure after the interview.

At the beginning of the interview, interviewers present themselves and the other persons present at the interview and clarify their role in the interview process. They have to verify at this stage whether the applicant understands the interpreter and to ask about the condition of the applicant. The interviewer explains the steps of the interview, its objective and the focus elements. The interviewer informs the applicant about their rights and duties and verifies whether the applicant understands these. In case of a follow up interview, the interviewer explains that the questions will touch upon only certain elements, not clarified previously. The interviewer checks whether the applicant has questions and asks whether they are ready to begin with the questions. It is explicitly indicated to the applicant that free narrative and/or flexible/open questioning is used for the main part of the personal interview.

The preliminary questions concern the identity documents (the applicant is invited to hand over any relevant documents and their eventual translation), the places where the applicant lived, their school and professional trajectory and the family and social network. The questions may concern the applicant's knowledge about their country of origin, when there are doubts concerning their identity.

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The main part of the interview, which has to cover all crucial elements for the asylum application is related to the reasons for the asylum application. The interviewer clarifies any contradictory aspects of the applicant's statements. The interviewer also needs to clarify whether an eventual return to the country of origin could be considered reasonable.

At the end of the interview, the interviewer explains the next steps of the procedure to the applicant and the consequences of an eventual negative decision or of a decision not to examine the merits of the case. The applicant is further informed on the possibility to submit further evidence, and the applicant is asked if s/he understood the interpreter. The applicant has the right to be heard concerning an eventual return to the country of origin, even if they had already expressed their opinion and views concerning this issue earlier during the interview. The applicants is also informed about the possibility to appeal the decision of SEM at the Federal Administrative Court. The interview may also provide further information on the modalities of voluntary return, depending on the applicant's profile. The interviewer finally asks whether the applicant has any further questions, before closing the interview and to consent to the report of the PI.

The re-translation or re-reading of the written report takes place at the end of the interview, but it can exceptionally be re-scheduled for another date, when objective reasons justify so (illness, organisational issues, particularly stressful interview for all participants). Re-scheduling this part of the interview in the absence of such objective reasons is considered to be a breach of the right to be heard. The written report of the interview is considered to be invalid and a new personal interview needs to be organised, when the-translation or re-reading of the report does not take place on the scheduled date. The SEM may decide not to proceed with the re-translation or re-reading, when it is clear that the applicant will be granted refugee status. If finally this is not the case, the applicant is invited within ten days for the re-translation or re-reading of the report.

Audio/Video recording and written report

The written minutes of the interview include all questions and answers word-by-word. The officer in charge of taking the minutes also notes the reactions of the participants. The start and end time of the interview, and the start and end time of the breaks during the interview are all specified.

The interviewer highlights to the applicant before the report is re-translated or re-read that they can signal any eventual translation or transcription mistakes.

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The applicant finally signs the report on each page, while the interviewer and the interpreter signs only the last page. The applicant's approval of the report is requested and s/he has the opportunity to clarify/rectify the report.

Access to the report is provided also to the legal representative of the applicant. Earliest 5 days prior to the final decision the allocated legal representative of the asylum applicant is given the right to submit comments on the intended decision.

Access to the report is provided to third parties, upon applicant's request.

The written minutes form part of the overall application dossier and the SEM may refuse the applicant to consult the report before closing the procedure.

A factual report containing essential information in drafted usually in Dublin cases.

Postponing the personal interview

Applicants have to make themselves available for the authorities, as part of their duty to collaborate. The interview may only be postponed for very weighty reasons, upon a written request and justification from the applicant (for example, justified medical grounds, other valid grounds depending on the personal situation of the applicant or in case the applicant's legal counsel/the guardian of the UAM is not available).

Failure to appear

The applicant has the right to be heard on the reasons for failing to appear for the interview. Applicants lose their right to have the asylum procedure continue, when the fail to make themselves available for the authorities without a valid reasons for more than 20 days.

Other aspects

Second or follow-up personal interview:

Second or follow-up interviews may be held according to the need.

Special asylum procedures at first instance

Admissibility procedure

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Legal basis and grounds:

The decision on the admissibility of the asylum application under Swiss legislation cannot be aligned with the admissibility procedure under the recast APD.

Article 31a of the Asylum Act provides that SEM may take a decision not to examine the merits of the case (*décision de non-entrée en matière*) at the end of the preparatory phase when:

- the applicant can return to a safe third country (as defined by Article 6a(2)b of the Asylum Act) - definition different from Article 38 recast APD) in which they have previously resided;
- the applicant can be transferred to a third country responsible for the asylum procedure and return, based on an international agreement (Dublin procedure);
- the applicant can return to a third country in which they have previously resided and where the principle of non-refoulement is effectively respected;
- the applicant can continue their journey to a third country for which they have visa, where they can seek protection and where the principle of non-refoulement is effectively respected;
- the applicant can travel to a third country where they have close relatives or persons with whom they have close links and where the principle of non-refoulement is effectively respected;
- the applicant may be returned to their country of origin based on the recognition of the relevant decision of another Dublin State (Article 31b Asylum Act); or
- the applicant has applied solely for economic or medical reasons.

Competent authority and other stakeholders

The State Secretariat for Migration (SEM) is the responsible authority for matters related to admissibility procedure.

Procedural aspects

There are no specific tracks created to process the admissibility of cases.

SEM conducts a Dublin personal interview during the preparatory phase. Two further scenarios are possible when the SEM intends to take a decision not to examine the merits of the case. It still conducts a personal interview on the reasons for applying for international protection, when the applicant seems to

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have applied for asylum solely for economic or medical reasons. SEM grants the right to be heard (and not a full personal interview) in other cases (Article 36, Asylum Act).

Applicants do not have the right to be heard when they have misled the authorities with respect to their identity, if the application is essentially based on false or falsified evidence or when they breach the duty to cooperate in an intentional and serious manner.

Decision and time limits to decide

SEM should take a decision not to examine the case on merits within 5 days from the filling of the application.

Appeal

Applicants can submit an appeal to the Federal Administrative Court within five working days of the notification of the decision. The Court should in principle decide within five days. The Court gives three additional days for regularising the appeal, when it is necessary for completing the appeal file. The FAC examines only the legitimacy of the decision and sends it back for a new decision to the SEM, when the appeal is admitted.

Impact on reception conditions (restricted for some countries)

Information is currently not available.

Accelerated procedure

Legal basis and grounds

The accelerated asylum procedure under Swiss legislation cannot be aligned with the accelerated procedure under the recast APD.

The accelerated procedure is in principle the main rule for all asylum applications and can be considered as the regular procedure under EU terminology.

Article 20c of the Asylum Ordinance 1 lists the steps of the accelerated procedure: preparation for the personal interview on the merits of the case, personal interview on the merits of the case or granting the right to be heard, the legal representative’s opinion, continuation of the accelerated procedure or changing to the extended procedure, preparation of the draft decision, the legal

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representative's opinion on the negative draft decision, establishing the final decision and notification of the final decision.

Competent authority and other stakeholders

The State Secretariat for Migration (SEM) is responsible in matters related to accelerated procedure.

Procedural aspects

The accelerated procedure begins after the preparatory phase and lasts for 8 working days. The SEM decides whether the applicant receives international protection, the claim is rejected or further information is required for the decision and the applicant is channelled through the extended procedure.

The SEM invites the applicant at least once to allow them to present the reasons for the asylum application. A second personal interview may be organised, when some of the legally relevant facts cannot be established during a first interview. The first interview is considered to be part of the preparatory phase in this case.

External evaluators of the working group Egger, Dreher und Partner AG and Ecoplan AG, on behalf of the SEM in Switzerland, analysed the quality of asylum decisions in the accelerated procedure following the revision of the Asylum Act in March 2019. They concluded that the accelerated procedure took an average of 55 days and that generally the quality of asylum decisions was satisfactory. The study also looked at the rate of decisions appealed and concluded that approximately 96% of all negative, appealable asylum decisions became legally binding, either because they were not appealed or because they had been upheld by the Federal Administrative Court.

UNHCR also commented on this evaluation that the study does not offer a complete overview of the functioning of the new system because there were limited number of decisions included in the study.

Decision and time limits to decide

The accelerated procedure begins after the preparatory phase and lasts for eight working days. The SEM decides whether the applicant receives international protection, the claim is rejected or further information is required for the decision and the applicant is channeled through the extended procedure.

Appeal

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The decisions of SEM may be appealed before the Federal Administrative Court within seven days from their notification. The Court decides within 20 days on the appeal. Appeals against interim decisions (*décision incidente*) have shorter deadlines: five days from their notification. The Court decides within five days on these appeals.

Impact on reception conditions

Information is currently not available.

Border procedure

Legal basis and grounds

Article 22 of the Asylum Act provides for the airport procedure which applies to people asking for asylum at the airport in Zurich or Geneva. Persons applying at other airport are transferred to a federal asylum centre with processing facility and they go through the usual (accelerated) procedure.

Competent authority and other stakeholders

The State Secretariat for Migration (SEM) is responsible in matters related to borer procedure.

Procedural aspects

The airport procedure corresponds to the usual (accelerated) procedure, with shorter deadlines.

The airport police register the applicant's personal data, takes their fingerprint and photograph, may require other biometric data if necessary and it can also ask questions concerning the reasons for leaving the country of origin and on the travel route. It informs immediately the SEM, who verifies whether Switzerland is responsible for the asylum application, whether it is likely that the applicant qualifies for international protection and whether the person would be in danger of refoulement, if sent back to the country from where they directly arrived.

When the SEM cannot make these conclusions immediately (within 2 days from the filing of the application) based on the available evidence, the applicant's entry to the Swiss territory is temporarily refused. The SEM notifies the applicant about this decision and assigns them to a federal asylum centre within the transit zone.

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The applicant has the right to be heard concerning the refusal to enter the territory and they can also lodge a separate appeal contesting the refusal.

The applicant undergoes a first (Dublin) interview, which aims to clarify issues concerning their identity, nationality, family ties and family members present in Switzerland or in other countries, travel route, the circumstances and reasons of leaving the country of origin and other issues which might be relevant for determining the responsible Member State to examine the application.

The airport police conduct this interview in Zurich, while the SEM carries it out in Geneva. The interview can also be carried out over the phone. The SEM categorises the cases based on this interview. Some applications continue within the framework of the airport procedure with a second personal interview, on the merits of the case.

The SEM categorises the cases following a first (Dublin) interview:

1. UAMs under the age of 14 are transferred to the regional federal reception centre with processing facilities;
2. Dublin procedure;
3. The airport procedure continues with the examination of the merits of the case and a personal interview on the merits of the application is organised;
4. Granting the authorisation to enter the territory of Switzerland, with or without a personal interview on the merits of the application, and assigning the applicant to a canton or to a federal reception centre with processing facilities.

Applicants are entitled to legal assistance throughout the entire procedure and a legal advisor assists them, similarly to the usual (accelerated) procedure.

Decision and time limits to decide

The SEM may take the following decisions after the personal interview on the merits:

1. Negative decision with removal order;
2. Decision on not examining the merits of the case with removal order,
3. Authorisation to enter the territory of Switzerland (positive asylum decision or channelling the case to the accelerated or extended procedure on the territory of Switzerland)

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The applicant may remain in the transit zone for maximum 60 days. The SEM needs to decide within 20 days from the lodging of the application. The applicant is granted the authorisation to enter the territory of Switzerland, when any of these time limits are exceeded.

Appeal

The applicant can appeal to the Federal Administrative Court within five working days, and the Court decides within five working days on the appeal.

Impact on reception conditions

Applicants are accommodated in a federal reception centre with processing facilities within the transit zone of the airports in Geneva and Zurich for a maximum period of 60 days.

Subsequent application procedure

Legal basis and grounds

Article 111c of the Asylum Act defines ‘multiple applications’ as applications submitted within five years of a final asylum and return decision. A separate procedure exists for applications for re-examination, under Article 111b of the Asylum Act, as these applications concern obstacles for return and not the grounds for asylum. The two procedures are often difficult to differentiate in practice.

Competent authority and other stakeholders

The State Secretariat for Migration (SEM) is responsible in matters related to subsequent application procedure.

Procedural aspects

The new application needs to be submitted in writing, stating the reasons for the new claim. There is no personal interview, as SEM decides on the admissibility of the new claim based on the written application.

After SEM accepts the examination of the new application, the same rules apply in principle as for the usual (accelerated) procedure. No preparatory phase is organised and otherwise the general time-limits apply.

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Decision and time limits to decide

The SEM takes a decision not to examine the merits of the case when the written application does not provide for sufficient reasons for the new application. It does not need to take a new removal order and examine again the eventual obstacles for removal, except when the applicant has already left Switzerland after a first removal order or when new reasons emerge, which might prevent the enforcement of removal.

Appeal

The time limits for appeals follow the corresponding time limits within the usual (accelerated) procedure: five days for decisions not to examine the merits of the case, 30 days in other cases.

Impact on reception conditions

The applicant is not allowed to stay in the federal reception and processing centre during the examination. They are also not entitled to take up gainful employment.

Last-minute application pending removal

Last-minute applications lodged by first time applicants pending a removal

Information is currently not available.

Last-minute applications lodged as subsequent applications pending a removal

Information is currently not available.

Safe country concept

Safe country of origin

Switzerland is not bound by the recast APD, but a similar national legal framework applies.

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The concept of a safe country of origin is defined in the Asylum Act , Article 6a(2a). It is applied in practice via an accelerated procedure. Swiss legislation foresees that all asylum applications are treated in the framework of the accelerated procedure (and could be considered as the regular procedure under EU legislative terminology).

The Federal Council is the authority that proposes and adopts the list of safe countries of origin.

The following aspects are taken into account:

- Political stability;
- Respect for human rights;
- Assessment of other EU Member States, EFTA countries and UNHCR; and
- Other particular characteristics of the country.

Swiss legislation uses a slightly different terminology, *pays d'origine ou de provenance sûr* (safe countries of origin or provenance).

National list of safe countries of origin:

1. Albania
2. Bosnia and Herzegovina
3. EU+ countries
4. Georgia
5. Ghana
6. India
7. Kosovo
8. Liechtenstein
9. Moldova (without Transnistria)
10. Mongolia
11. Montenegro
12. North Macedonia
13. Senegal
14. Serbia
15. United Kingdom

The list was last updated on 01 February 2024 by Asylum Ordinance 1 relating to the asylum procedure (RO 2021 205). Benin was removed.

The list is updated each year as provided by the Asylum Act, Article 6a(4).

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The list with all envisaged modifications must be submitted to the Parliament at least once per year (based on the Asylum Act, Article 6a(3) and (4).

The first list (Annex 2) was adopted on 12 June 2015 by Asylum Ordinance 1 relating to the asylum procedure (RO 2015 1873).

Safe third country

The concept of a safe third country is defined in the Asylum Act, Articles 6a(2b) and 31a(1). The concept is applied in practice via an admissibility procedure/preparatory phase (decision not to examine the merits of the case, Art. 31a Asylum Act) at the end of the preparatory phase.

The Federal Council is responsible for the designation of countries as safe third countries where there is sufficient protection against refoulement. The State Secretariat for Migration (SEM) determines its application on a case-by-case basis.

A country is considered to be a safe third country where the principle of non-refoulement is effectively respected (Asylum Act, Article 6a(2b)). The Asylum Act, Article 31a(2) adds the following criteria for case-by-case considerations:

- The third country accepts the applicant; or
- The applicant has a visa for a country where they can seek protection.

According to the Federal Council, the following requirements must be met by the safe third country:

- Ratification of and compliance with the ECHR, the Refugee Convention, the UN Convention against Torture and the UN Covenant on Civil and Political Rights;
- Political stability which guarantees the compliance with the mentioned legal standards; and
- Compliance with the principle of a state governed by the rule of law.

The Federal Council mentioned when preparing this legislative provision that it is also necessary for that third country to accept.

The national list of safe third countries was initially established for the purposes of the Dublin Association Agreement, and the provisions of the Dublin III Regulation apply for transfers.

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The SEM always examines whether the applicant's removal would be lawful, reasonable and possible - including also when it applies the safe third country principle on a case-by-case basis, which encompasses the eventual check whether a third country accepts the readmission.

The SEM takes a decision not to examine the merits of the case at the end of the preparatory phase, when the safe third country concept applies.

First country of asylum

The concept of a first country of asylum is not defined by law.

European safe third country

The concept of European safe third country is defined in the Asylum Act, Article 6a(2). This concept is applied in practice, and it is examined during the preparatory phase.

At the reception and administration centre in Basel, an initial decision is made within 48 hours on all cases for which no further information is required after the interview.

All procedural safeguards apply, including the possibility to appeal against, before the Federal Administrative Court.

The same rules of designation for safe third countries apply to European safe third countries.

Assessment of an application at first instance

Legal provisions relevant for an assessment

The assessment of asylum applications is regulated by the Asylum Act (AsylA) of 28 June 1998.

Competent authority for the assessment

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The Asylum Directorate of the State Secretariat for Migration (SEM) (about 500 staff) is the competent authority for the assessment of the asylum application at first instance.

Required qualifications: About 200 staff members are qualified to do RSD after a specialised training.

Training: Information is currently not available.

Grounds

Article 3 of the Asylum Act states:

1. Refugees are persons who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions.
2. Serious disadvantages include a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure. Motives for seeking asylum specific to women must be taken into account.
3. Persons who are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages because they have refused to perform military service or have deserted are not refugees. The provisions of the Convention of 28 July 1951 relating to the Status of Refugees are reserved.
4. Persons who claim grounds based on their conduct following their departure that are neither an expression nor a continuation of a conviction already held in their native country or country of origin are not refugees. The provisions of the Convention of Refugee Convention are reserved.

Article 4 of the Asylum Act states:

Switzerland may grant temporary protection to persons in need of protection as long as they are exposed to a serious general danger, in particular during a war or civil war as well as in situations of general violence.

Guidelines for case officers

Information is currently not available.

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Credibility assessment

The Federal Council adopted a parliamentary initiative on the obligation to cooperate in the asylum procedure, which includes the possibility of checking an applicant's mobile phone. On 12 October 2021, the Swiss Federal Assembly adopted amendments to the Asylum Act (LASi) which adds a legal obligation on the asylum applicant to cooperate with the authorities by temporarily handing over any electronic devices when the identity cannot be established based on documents, or the itinerary could not be established by other means.

Assessment of facts and circumstances when aspects of the applicant's statements are not supported by documentary or other evidence

Swiss legislation does not provide for a detailed criteria - such as the criteria listed under Article 4(5) of the recast QD within the EU context - concerning this issue. The SEM published a relevant manual (in French and in German), which assumes that the assessment is based essentially on the applicants' statements and it provides general guidance on the assessment of applications in the absence of documentary or other evidence.

Time limit for submitting evidence during credibility

Art. 8(1), Asylum Act underlines that the applicant has to state the reasons for seeking asylum at the personal interview and has to indicate any evidence in full and submit it without delay. Any late submission or any late allegations for seeking asylum (for example, presented during a second personal interview) have an overall negative effect on the credibility of the applicant.

COI research

SEM case workers have access to the KOMPASS database, which includes the COI produced by the SEM Analysis Section. They can also send specific requests to this section, when some of the elements are still missing or still needs to be clarified.

Decision and outcomes

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Types of decisions:

- **Intended decision:** The SEM drafts an intended decision, when the application can be concluded within the foreseen 8 working days in the framework of the accelerated procedure and the decision is projected to be negative. The decision not to examine the merits of the case is considered to be a negative one in this context - except for the case when the basis of this decision is the fact that the applicant can be transferred to a third country responsible for the asylum procedure and return, based on an international agreement (such as the Dublin Association Agreement). The SEM does not draft an intended decision when the decision is positive. This intended decision is notified to the legal advisor, who has one working day to deliver their opinion on the intended decision to SEM. The deadline finishes on the next working day, at the same hour when the intended decision was notified.
- **Decision:** The SEM drafts the definitive decision within 24 hours:
  - Decision not to examine the merits of the case
  - Rejection of the application for refugee status: when the applicant does not qualify for refugee status or when there are grounds for exclusion;
  - Granting refugee status.

The decision includes the reasoning and in case of a negative decision, the ways of appeal (the means of ordinary appeal, the name of the appeal authority and the deadline for appeal).

The decisions are delivered to the federal reception centre where the applicant is accommodated or to the service provide who employs the applicant's assigned legal advisor. The service provider must transfer the decision to the assigned legal advisor on the same day. The decisions are directly notified to the applicant, when they do not have an assigned legal advisor, or to their attorney, when the applicant assigned one. Decisions are sent to applicants' or their attorney's last known address by the authorities, when applicants are already assigned to a canton. The decision is legally notified after a deadline of seven days, even if the applicant does not acknowledge its receipt. Decisions may also be communicated and reasoned in person, when the circumstances justify: an officer transcribes the notification and the reasoning and the applicant or their attorney receives a copy of this report.

Minors and unaccompanied minors:

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Information is currently not available.

COI units

Background information

COI unit: The COI Unit, the Analysis Unit, is part of the Federal Department for Justice and Police, State Secretariat for Migration (SEM), Directorate Asylum. The unit is located in Berne-Wabern.

Legal basis: Information is currently not available.

Structure and capacity

Organisation: Currently, the Analysis Unit is comprised of 18 members. It is formed by the Country Analysis and Migration Analysis Team plus Specialist for MedCOI and a Database Manager.

Mandate and tasks: the main tasks of the unit are to provide COI for asylum procedures and legal migration, analyse migration and provide prognosis about Switzerland's intake asylum requests, and run an internal COI database. The unit provides information on general facts, examines the political, economic and human rights situation, and offers an in-depth view of gender-based issues and health care in countries of origin. It also produces a wide range of publications, often in cooperation with its international partners.

The main task is to provide information on the approximately 120 countries of origin of asylum seekers who have filed an application in Switzerland. Specialists offer research assistance and provide situation reports on the current situation in applicant's countries of origin. A further task is the analysis of identity cards and administrative documents.

Staff capacity: Information is currently not available.

Requirements: COI specialists are recruited individually for particular regions or topical specialisation. They preferably understand local languages of their region and have experience in the field. The specialist for medical COI (focal point for MedCOI) needs a medical background. Migration analysts need strong skills in interpreting statistics.

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Regular training and updates: Regular training and updates are provided both on an individual and team basis.

The team is highly specialised. COI analysts cover a certain region for the asylum and legal migration directorates. Migration analysts provide Dublin COI and regular reporting to the director's board on migration trends and implication for Switzerland. Specialist for medical COI exclusively treats individual requests concerning medical treatment in countries of origin. Database manager runs the COI database for SEM and is Focal Point to EUAA COI Portal.

COI products

Type of COI products produced and frequency: The work of the unit is customer-driven and does not have fixed output quotas. They are mainly topical reports and analyses upon request from policy units.

Different types of maps of security levels in countries of origin are produced. No maps with security levels in different parts of a country are produced.

Languages: COI products are produced in German, French, Italian or English. Each analyst drafts in his/her mother language. Within SEM, COI is not translated into other official languages of Switzerland.

Methodology and sources: The sources consulted are in local and European languages.

Sources used vary depending on the terms of reference for a topical paper or individual research. Generally, researchers are requested to consult many different sources including local and governmental sources. They do desk-based research, maintain networks of sources to be contacted by phone/mail, and occasionally conduct fact finding-missions. The chapter on source assessment is mandatory for larger topical reports.

Country guidance / policy explicitly is not part of the task of the COI unit. Analysts are not entitled to give their opinion on policy matters. COI of national unit serves as basis for internal discussions about policy.

The creation of EUAA led to an additional heavy burden without additional resources made available.

Quality check: COI products undertake a mandatory internal peer review according to internal quality standards; public reports are additionally reviewed

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by the Head of Unit. Occasionally external peer review is undertaken by specialists and/or Swiss Embassies.

Other aspects of COI units

COI Information and Country Guidance Information interplay and support of the work of the case workers and judges. When specific policy needs arise, policy units submit targeted requests for COI. In response, the COI unit conducts independent research and delivers information in line with international standards of accuracy, impartiality, and relevance. Once the COI is provided, it is the role of the policy unit to analyse the findings and draw conclusions that may inform operational guidelines or country-specific policy positions.

To maintain alignment and ensure the COI remains fit for purpose, regular meetings are held at both the management and specialist levels.

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