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Author/s:

Tan, NF;Ineli-Ciger, M

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Beyond Derogations in the EU Crisis Regulation

Making Expedited Procedures for Manifestly Well-Founded Asylum Claims Work in Practice

Nikolas Feith Tan | ORCID: 0000-0001-7006-6097

Senior Lecturer, Melbourne Law School, University of Melbourne,
VIC, Australia

Corresponding author

nikolast@unimelb.edu.au

Meltem Ineli-Ciger | ORCID: 0000-0003-4440-4042

Associate Professor, Faculty of Law, Suleyman Demirel University,
Isparta, Türkiye

meltemciger@sdu.edu.tr

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Abstract

The recent Pact on Migration and Asylum, a package of legislative and policy reforms to the European Union (EU) asylum *acquis*, introduces the concept of expedited procedures for asylum seekers likely to be in need of international protection. These procedures can be implemented under the new Crisis Regulation, which can be triggered in situations of crisis and force majeure. Generally, the Crisis Regulation foresees a range of problematic derogations from the EU asylum system, while the potential use of expedited procedures presents more protective options for granting asylum in crisis and force majeure situations. This article explores the possibility of implementing *prima facie* or manifestly well-founded procedures under the new Crisis Regulation, arguing for creative, flexible and scaled-up use of expedited procedures, drawing on international practice, to provide fast, fair and efficient procedures to recognise the status of refugees entering the EU in times of crisis.

Keywords

Crisis and Force Majeure Regulation – accelerated procedures – asylum procedures – prima facie – group recognition – mass influx

1 Introduction

The institutional processes used to recognise refugees shape how states determine who requires international protection and who does not. Asylum systems in developed states have generally been defined by procedures that focus on the individual circumstances of the asylum seeker. However, there are other ways to carry out fair and effective asylum processes. Well-established alternatives are *prima facie* procedures, which recognise refugees ‘on the basis of readily apparent, objective circumstances in the country of origin.’¹ The *prima facie* method has historically been used in mass influx situations, primarily in Africa.² A related mechanism is the use of ‘manifestly well-founded’ procedures, which refer to asylum applications that clearly indicate that the individual meets the definition of a refugee under the Convention relating to the Status of Refugees (Refugee Convention) or complementary protection under international human rights law.

In many countries, administrative delays, backlogs, and the increased complexity of asylum flows resulting from mixed movements have led to restrictive measures to prevent asylum seekers from reaching the territory or accessing the procedures of asylum states.³ National asylum systems are a vital function of the global protection system in determining who needs protection and who does not, in an era characterised by high global displacement, with 43.4 million refugees and 6.9 million asylum seekers at the end of 2023.⁴ Currently, ineffective asylum systems leave protection seekers in limbo for years, become extremely resource-intensive and undermine trust in the integrity of asylum

1 UNHCR, ‘Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status’ (24 June 2015) HCR/GIP/15/11, para 1. See also UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees para 44.

2 Albert, M. (2010). Governance and Prima facie refugee status determination: clarifying the boundaries of temporary protection, group determination, and mass influx. *Refugee Survey Quarterly*, 29(1), 61–91.

3 Gammeltoft-Hansen, T., & Tan, N.F. (2017). The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy. *Journal on Migration and Human Security*, 5(1), 28.

4 UNHCR, Global Trends 2023 (2024).

procedures. As a result, fairer and more efficient asylum systems are urgently required to ensure refugees can access protection in a timely manner and governments can effectively control migration.

Within the EU, the Common European Asylum System (CEAS) sets out detailed procedures for determining, on an individual basis, whether an asylum seeker is in need of international protection. Hitherto, the use of *prima facie* or manifestly well-founded procedures has been considered legally remote due to the requirements of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive, APD)⁵ guaranteeing a personal interview and an individualised procedure.⁶ In practice, such individualised processes can lead to extended waiting times and backlogs of decisions on asylum applications.⁷ The recent adoption of the Pact on Migration and Asylum,⁸ a package of legislative and policy reforms, is relevant to the possibility of *prima facie* or manifestly well-founded procedures. Most notably, the new Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum⁹ (the Crisis Regulation) adopted in May 2024 can be activated in situations of exceptional mass influx of third-country nationals/stateless persons arriving irregularly in an EU Member State and threatening the functioning of that state's asylum, reception or return system as well as instrumentalisation and force majeure situations. The Crisis Regulation provides for a series of derogations from key parts of the EU asylum *acquis*, including rules with respect to the registration and processing of asylum applications provided under the Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union

5 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) OJ L 180, 29/06/2013.

6 Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

7 European Union Asylum Agency. 2024, Asylum Report 2024 Annual Report on the Situation of Asylum in the European Union (June 2024).

8 European Commission. 2024, Pact on Migration and Asylum, A common EU system to manage migration, <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en> accessed 15 July 2024.

9 Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, PE/19/2024/REV/1, OJ L, 2024/1359, 22.5.2024.

(Asylum Procedures Regulation, APR), replacing the existing APD.¹⁰ The Crisis Regulation introduces the discretionary use of an ‘expedited procedure’ where objective circumstances suggest applications are likely well-founded from groups of applicants from a specific country of origin or part of that country.¹¹ This expedited procedure omits the personal interview required by the APR and introduces a time limit of four weeks to decide on the merits of an international protection application. Hence, we argue that the expedited procedure regulated under Article 14 of the Crisis Regulation should be understood as a form of *prima facie* or manifestly well-founded asylum processing.¹²

In light of these EU asylum law developments, this article explores the possibility of using *prima facie* or manifestly well-founded procedures under the new Pact. It argues for creative, flexible and scaled-up use of *prima facie* or manifestly well-founded procedures, drawing on international practice, to rebalance the dominant focus of the Crisis Regulation on derogations from regular asylum procedures in the Union.¹³

This contribution proceeds in four parts. First, we offer a definition of *prima facie* and ‘manifestly well-founded’ procedures, noting that there is no existing generally accepted definition of these processing modalities and that the two exist on a spectrum of possible approaches. Second, we canvass existing international practice, both within and beyond EU Member States, in the use of manifestly well-founded procedures in the context of individual Refugee Status Determination (RSD) systems. This part also unpacks the operation of the ‘prioritised procedures’ in the APR. Third, we outline the operation of the Crisis Regulation through an overview of its drafting history, the broad (and problematic) definition of crisis and the role of ‘expedited procedures’ within the Regulation.¹⁴ In doing so, the article will also make a case for the application of expedited procedures to prevent human right violations and enable Member

10 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, OJ L, 2024/1348, 22.5.2024.

11 Article 14 (1) of the Crisis Regulation.

12 Article 14 (2) of the Crisis Regulation.

13 Ineli-Ciger M., ‘Navigating the Labyrinth of Derogations: A Critical Look at the Crisis Regulation’, (*EU Immigration and Asylum Law and Policy*, 10 June 2024) <<https://eumigrationlawblog.eu/navigating-the-labyrinth-of-derogations-a-critical-look-at-the-crisis-regulation/>> accessed 15 July 2024.

14 A previous version of the analysis in Section 4 ‘Prima Facie Approaches and the Crisis Regulation’ can be found in Ineli-Ciger M., ‘Navigating the Labyrinth of Derogations: A Critical Look at the Crisis Regulation’, (*EU Immigration and Asylum Law and Policy*, 10 June 2024) <<https://eumigrationlawblog.eu/navigating-the-labyrinth-of-derogations-a-critical-look-at-the-crisis-regulation/>> accessed 15 July 2024; Ineli Ciger, M., ‘Unpacking the crisis regulation: a valuable addition to the European legal framework governing mass

States to manage the exceptional migration situation at hand. Finally, we outline how expedited procedures could be meaningfully implemented, drawing on international practice, before making some conclusions on the advantages and disadvantages of *prima facie* and manifestly well-founded procedures within the future operation of EU asylum law.

2 Conceptualising *Prima Facie* and Manifestly Well-Founded Procedures

2.1 *Asylum Procedures in International Refugee Law*

Prior to the 1951 Convention, the processes used to recognise refugees were group-based.¹⁵ The early High Commissioners for Refugees, created by the League of Nations, were focused on specific national groups defined to be refugees.¹⁶ The first definition put forward in international law appeared in the 1926 Arrangement,¹⁷ which referred to just two national categories, Russians and Armenians, who ‘no longer enjoyed the protection of their “former” government, and had not acquired another nationality’.¹⁸ According to Kagan, therefore, the first basic approach to recognising refugees comprised ‘naming large groups of forced migrants by nationality because they were presumed to be deserving of special humanitarian protection.’¹⁹ As Durieux notes, ‘this group approach to refugeehood was the norm’ under the League of Nations regime.²⁰

The Refugee Convention, in turn, is silent on the question of how asylum procedures or RSD are to be carried out, leaving states with significant discretion

influx situations? EUI, RSC, Working Paper, 2024/40, Migration Policy Centre (2024), <<https://hdl.handle.net/1814/77282>>.

15 For an overview, see Jackson, I.C. (1999). *The refugee concept in group situations*. Martinus Nijhoff, Leiden, The Netherlands, pp. 1–25.

16 Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. *Georgetown Law Journal, Forthcoming*.

17 Arrangement of 12 May 1926 relating to the Issue of Identity Certificates to Russian and Armenian Refugees League of Nations, Treaty Series Vol. LXXXIX, No. 2004.

18 Goodwin-Gill, G.S. (2020). A short history of international refugee law: the early years.

19 Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. *Georgetown Law Journal, Forthcoming*. 30.

20 *Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954)* 189 UNTS 137 (*Refugee Convention*) 1951 (*‘Refugee Convention’*); Durieux, J.-F. (2008). The many faces of “prima facie”: group-based evidence in refugee status determination. *Refuge*, 25, 151.

in the processes used to recognise refugees.²¹ As Goodwin-Gill and McAdam note, the Convention ‘leaves to States the choice of means as to implementation at the national level’.²² The Convention is, however, generally accepted to include an implicit requirement that state parties provide ‘fair and effective’ processes to deal with asylum applications.²³ The principle of effectiveness of obligations provides the ‘outer limits’ of state discretion in implementing their Convention obligations vis-à-vis the recognition of refugees.²⁴

The Refugee Convention is thus agnostic on whether asylum procedures should necessarily be group or individual-based, although there is a long tradition of individual RSD in the Global North.²⁵ There is, simultaneously, an acknowledgement in the literature that individualised procedures are ‘not always practically feasible, and also not always necessary.’²⁶ Goodwin-Gill and McAdam note that individualistic status determination may prove ‘impractical in the face of large numbers’ while emphasising that in situations of mass influx, certain minimum procedural standards remain in place.²⁷

Today, many states use ‘hybrid forms of recognition’ combining individual RSD and group-based approaches, though typically those granted protection on a group basis benefit from lower levels of protection outside the Convention framework.²⁸ Türkiye, for example, uses group-based recognition to provide

21 Costello, C., Nalule, C., & Ozkul, D. (2020). Recognising refugees: understanding the real routes to recognition. *Forced Migration Review*, (65) 4.

22 Goodwin-Gill, G.S., McAdam, J., & Dunlop, E. (2021). *The refugee in international law*. Oxford University Press, 57.

23 UNHCR Executive Committee Conclusion No. 81 (XLVIII) (1997) para (h); Botero, Á., & Vedsted-Hansen, J. (2021). Asylum Procedures. In M. Foster, J. McAdam, & C. Costello (Eds.), *The Oxford Handbook of International Refugee Law*. Oxford University Press.

24 Goodwin-Gill, G.S., McAdam, J., & Dunlop, E. (2021). *The refugee in international law*. Oxford University Press, 601.

25 Botero, Á., & Vedsted-Hansen, J. (2021). Asylum Procedures. In M. Foster, J. McAdam, & C. Costello (Eds.), *The Oxford Handbook of International Refugee Law*. Oxford University Press, 591; Ozkul, D., & Nalule, C. (2023). Recognising Refugees: A Review of the Literature and Approaches (1990–2020). 19; UNHCR Guidelines on International Protection No. 11 (11) para 1; Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

26 Botero, Á., & Vedsted-Hansen, J. (2021). Asylum Procedures. In M. Foster, J. McAdam, & C. Costello (Eds.), *The Oxford Handbook of International Refugee Law*. Oxford University Press, 591.

27 Goodwin-Gill, G.S., McAdam, J., & Dunlop, E. (2021). *The refugee in international law*. Oxford University Press, 602.

28 Ozkul, D. and Nalule, C., ‘Recognising Refugees: A Review of the Literature and Approaches (1990–2020)’ (RefMig Working paper, 2023) 19.

temporary protection for 3.2 million Syrians it is hosting while maintaining individual RSD for asylum seekers from other nationalities.²⁹ The United States, similarly, has a highly developed individual RSD system for recognizing refugee status, while providing group-based protection to national groups who cannot return to the country of origin due to armed conflict and natural disasters via Temporary Protected Status (TPS).³⁰ Finally, the triggering of the Temporary Protection Directive (TPD) in the EU allowed for the rapid and efficient group-based protection of 4.2 million people displaced by Russia's war in Ukraine,³¹ while the rest of the CEAS remained focused on individual asylum procedures.

2.2 Working Definitions

While there is no universally accepted definition of manifestly well-founded or *prima facie* procedures, generally they refer to asylum applications that, on their face, clearly indicate that the individual meets the definition of a refugee under the Refugee Convention or complementary protection under international human rights law. We define the *prima facie* approach as *processes that recognize asylum seekers as in need of international protection on a group basis, based on a common risk of harm arising from circumstances in the country of origin*. The essence of the *prima facie* approach is thus a focus on the protection of similarly situated individuals who share a clear and common risk of harm.³² *Prima facie* processes generally do not include additional considerations, such as the exclusion grounds contained in Article 1F of the Refugee Convention. UNHCR's Handbook similarly provides:

While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been under circumstances indicating that members of the group could be considered

29 Ineli-Ciger, M. (2017). Protecting Syrians in Turkey: a legal analysis. *International Journal of Refugee Law*, 29(4), 555–579; Ozkul, D., & Nalule, C. (2023). Recognising Refugees: A Review of the Literature and Approaches (1990–2020) 25.

30 Ineli-Ciger, M. (2018). Temporary protection in law and practice (Vol. 10). Brill, 179–185; Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. *Georgetown Law Journal*, Forthcoming, 14.

31 Carrera, S., Ciger, M.I., Vosyliute, L., & Brumat, L. (2022). The EU grants temporary protection for people fleeing war in Ukraine. CEPS Policy Insights, 9.

32 UNHCR Guidelines on International Protection No. 11 (n 1) para 10.

individually as refugees ... whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.³³

UNHCR Guidelines on International Protection further define the approach as “the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin.”³⁴ As a result, *prima facie* recognition is usually associated with large scale movement of refugees, resulting in mass influx situations in a particular asylum state or region.³⁵ *Prima facie* approaches are routinely used by both states and UNHCR, particularly in Africa.³⁶ Durieux has argued, ‘group-based determination is not a mechanism reserved for mass influx situations.’³⁷ As we have argued elsewhere with respect to Afghan women and girls fleeing the Taliban, even in the absence of a mass influx, *prima facie* procedures may also be an appropriate response for the protection of certain groups of protection seekers.³⁸

Clearly, manifestly well-founded procedures are on the same spectrum as *prima facie* procedures,³⁹ but are defined here as *fast-track or accelerated individual asylum processes with a presumption of inclusion, based on belonging to a specific group or profile*. Manifestly well-founded procedures thus establish ‘a rebuttable presumption’ of a need for protection where a person belongs to a specific group or profile.⁴⁰ According to UNHCR, a manifestly well-founded claim refers to ‘an asylum claim, which, on its face, clearly indicates that the

33 UNHCR’s Handbook on Procedures and Criteria for Determining Refugee Status, para 44.

34 UNHCR, ‘Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status’ (24 June 2015) HCR/GIP/15/11, para 1.

35 UNHCR, ‘Guidelines on International Protection No. 11: Prima Facie Recognition of Refugee Status’ (24 June 2015) HCR/GIP/15/11, para 9; Albert, M. (2010). Governance and Prima facie refugee status determination: clarifying the boundaries of temporary protection, group determination, and mass influx. *Refugee Survey Quarterly*, 29(1), 61–91. 63; Durieux, J.-F. (2008). The many faces of “prima facie”: group-based evidence in refugee status determination. *Refugee*, 25, 151, 152.

36 Costello, C., Nalule, C., & Ozkul, D. (2020). Recognising refugees: understanding the real routes to recognition. *Forced Migration Review*, (65), 18.

37 Durieux, J.-F. (2008). The many faces of “prima facie”: group-based evidence in refugee status determination. *Refugee*, 25, 151, 152.

38 UNHCR Guidelines on International Protection No. 11 para 10; Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

39 Wood, T., and Elbasyouny, A. (2023). Analysing group refugee recognition in African states’ law and practice (RefMig Working Paper No. 11, 2023) 5–6.

40 UNHCR, Aide-Memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to RSD under UNHCR’s Mandate (2017).

individual meets the definition of a refugee under the 1951 Convention or under UNHCR's broader refugee criteria'.⁴¹

What then are the key distinctions between *prima facie* and manifestly well-founded approaches to asylum procedures? *Prima facie* approaches tend to be used in the context of mass influx situations where the national asylum system of the receiving state is incapable of carrying out individual RSD. In contrast, manifestly well-founded procedures may be just one track of a national asylum system channelling different asylum seeker nationalities and profiles into specific procedures. Nevertheless, both approaches share key similarities as methods to recognise refugees where a significant majority of asylum-seekers are likely to meet the refugee criteria, based on the situation in the country of origin.⁴²

3 Manifestly Well-Founded Procedures: Existing Practices and the New Asylum Procedures Regulation

3.1 *Existing Practices*

In recent years, some states such as Brazil, Canada, Denmark, Germany, and the United Kingdom have introduced manifestly well-founded procedures in the context of individual RSD systems through fast-track or simplified procedures with respect to specific nationalities or profiles likely to need international protection.⁴³

In some states, there is a permanent legislative or administrative basis for the rapid recognition of likely well-founded asylum claims. Most notably, Canada has a legislated *prima facie* procedure for manifestly well-founded claims, allowing for the paper-based adjudication of less complex asylum claims without an interview, based on a published list of countries of

41 UNHCR, Aide-Memoire & Glossary of Case Processing Modalities, Terms and Concepts Applicable to RSD under UNHCR's Mandate (2017) 21.

42 Asylum Capacity Support Group, Fair and Fast: Best practices in prima facie and manifestly well-founded asylum processing (September 2023) <https://acsg-portal.org/wp-content/uploads/2023/10/OutcomeReport_PrimaFacie_ManifestlyFounded-Final.pdf> accessed 15 July 2024.

43 UNHCR (2018) *Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union* 5.

origin and profiles.⁴⁴ Brazil's Law 9,474/97⁴⁵ also provides a legislative basis for *prima facie* recognition under the expanded Cartagena Declaration definition, implemented with respect to both Afghans and Venezuelans in recent years.⁴⁶ Denmark has a permanent administrative practice recognising manifestly well-founded asylum claims and recently started granting protection to Afghan women and girls on this basis.⁴⁷

Other examples of the practice of manifestly well-founded procedures are more ad hoc. In 2015, for example, Germany used paper-based procedures without an interview for Syrian asylum seekers, on the basis of the high likelihood of granting refugee or subsidiary protection status.⁴⁸ Faced with significant backlogs in 2023, the United Kingdom trialled manifestly well-founded procedures with respect to asylum seekers from nationalities with more than 90% recognition rate.⁴⁹

3.2 *Asylum Procedures Regulation*

The APR provides an option for EU Member States to 'prioritise the examination of certain asylum applications with a view to examining them before others', including where asylum authorities consider the application is likely to be well-founded.⁵⁰ This possibility of conducting 'prioritised procedures' repli-

44 Immigration and Refugee Board (Canada), Procedures for Implementing the Instructions Governing the Streaming of Less Complex Claims at the RPD, <<https://irb.gc.ca/en/legal-policy/procedures/Pages/procedures-less-complex-claimsrpd.aspx>> accessed 15 July 2024.

45 Brazil: Law No. 9,474 of 1997, establishing arrangements for the implementation of the 1951 Status of Refugees and related provisions, <<https://www.refworld.org/legal/legislation/natlegbod/1997/en/18339>> accessed 15 July 2024.

46 Natália Medina Araújo and Patrícia Ramos Barros, Country Report: Brazil (ASILE project, 2022) <https://www.asileproject.eu/wp-content/uploads/2022/05/D4.2_Brazil_Interim-Country-Report-Final.pdf> accessed 15 July 2024; UNHCR, 'Brazil: Simplified *prima facie* recognition of Afghan refugees' <<https://acsg-portal.org/tools/brazil-simplified-prima-facie-recognition-of-afghan-refugees/>> accessed 15 July 2024.

47 Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

48 Germany recognised 95.8% of Syrian applicants in that year, Ozkul, D., & Nalule, C. (2023). Recognising Refugees: A Review of the Literature and Approaches (1990–2020) 19; AIDA, *Country Report: Germany, 2016 Update* (2016) 11, 84.

49 Asylum Capacity Support Group, Fair and Fast: Best practices in *prima facie* and manifestly well-founded asylum processing (September 2023).

50 Article 34(5) of the Asylum Procedures Regulation; Vedsted-Hansen J., 'Harmonisation of types of asylum procedures: new Regulation, old dilemmas' (*EU Immigration and Asylum Law and Policy*, 17 May 2024) <<https://eumigrationlawblog.eu/harmonisation-of-types-of-asylum-procedures-new-regulation-old-dilemmas/>> accessed 15 July 2024.

cates existing provisions in the APD.⁵¹ This has previously led to the introduction of simplified and fast-track procedures in Greece, Italy, the Netherlands, Sweden and Switzerland, though the effectiveness and use of these procedures have yet to be systematically analysed.⁵²

Rather than a focus on well-founded claims, the key innovations of the APR relate to the acceleration of claims *unlikely* to lead to protection. The APR introduces two kinds of accelerated procedures and in certain cases makes their application mandatory: border procedures and accelerated procedures. Border procedure aims to enable a quick assessment at the external borders of whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, without admitting them to the Member State territory.⁵³ Throughout the border procedures, Member States are to require international protection applicants to reside at or in proximity of the external border or in a transit zone as a general rule, or in other designated locations within their territory.⁵⁴ Border procedures apply to certain categories of international protection applicants, including those who pose a security risk, who mislead the authorities by providing false information or withholding information, or who are coming from countries with a low recognition rate (below 20%). Under the APR, for border procedures, there is a five-day deadline to lodge international protection applications and a 12-week deadline (starting from when the application is registered) to decide on these asylum applications.⁵⁵ If the Member State does not observe these deadlines, then the asylum seeker can enter the Union territories. For persons whose asylum applications are rejected in the border procedure, the Return Border Procedure Regulation (EU) 2024/1349 would apply.

Article 42(1) of the APR requires that Member States apply accelerated procedures on ten grounds including: a) where the applicant misleads the authorities with regard to his or her identity or nationality, b) where the applicant is considered a danger to national security or public order, and c) where applications falling under the acceleration ground based on an average recognition rate at 20% or lower, d) the claim is irrelevant to the grounds of international protection or it includes obviously false or contradictory claims, e) the asylum

51 Article 31(7) of the Asylum Procedures Directive.

52 For an overview of European approaches, see UNHCR, *Fair and Fast: UNHCR Discussion Paper on Accelerated and Simplified Procedures in the European Union* (2018).

53 Preamble 58 and Article 43 of the Asylum Procedures Regulation.

54 Preamble 59 and Article 43 of the Asylum Procedures Regulation.

55 Article 51 of the Asylum Procedures Regulation (EU) 2024/1348; Peers, S., 'The new EU asylum laws: taking rights half-seriously!' *Yearbook of European Law* (2024) 1–71, pp. 44–47, 55.

seeker acting in bad faith, f) the asylum seeker entered or stayed ‘unlawfully’ and ‘without good reason’ did not present themselves to the authorities ‘as soon as possible, given the circumstances of’ their entry.⁵⁶

The implicit focus of these accelerated procedure provisions is that such situations are more likely to lead to a rapid rejection of the asylum claim.

At the same time, the APR sets out a series of procedural guarantees applicable to all asylum applications, both accelerated and otherwise. These provide a minimum benchmark to protect the rights of asylum seekers. With respect to the provision of information, Article 30(1) requires Member States to provide information to applicants, including in detention facilities and border crossing points, ‘in a language which they understand or are reasonably supposed to understand.’⁵⁷ Free legal assistance and representation to applicants is required on the part of Member States at the appeal stage, but not at the first instance, where only legal counselling is provided for free.⁵⁸ Article 8(3) of the APR also provides for free interpretation services during registration, lodging an application and the applicant’s interview, with Article 67(4) providing for free interpretation at the appeals level as required. Article 67 further provides for the right to effective remedy via appeal to a domestic court or tribunal.

In sum, the APR provides only modest possibilities for expanded use of manifestly well-founded or *prima facie* procedures. Accelerated procedures and border procedures which focus on prioritising processes for likely *unfounded* claims with a view to rapid rejection of persons not in need of international protection are largely mandatory, while prioritised procedures for likely *well-founded* claims remains optional.

4 *Prima Facie* Approaches and the Crisis Regulation

4.1 *Definition of Crisis and Force Majeure*

The European Commission, as part of its New Pact on Migration and Asylum, proposed a Regulation addressing situations of crisis and force majeure in migration and asylum.⁵⁹ In May 2024, the Council adopted the Crisis Regulation

56 Article 45(1) taken together with Article 42(1)(c), (f) and (j) of the Asylum Procedures Regulation; Peers, S., ‘The new EU asylum laws: taking rights half-seriously.’ *Yearbook of European Law* (2024) 1–71, pp. 47, 48.

57 Article 8(2) of the Asylum Procedures Regulation.

58 Article 15(2) of the Asylum Procedures Regulation.

59 Proposal for a Regulation of the European Parliament and of the Council Addressing Situations of Crisis and Force Majeure in the field of Migration and Asylum [2020] COM/2020/613 final Article 34(5).

establishing rules on asylum procedures and solidarity in order to ensure that Member States are able to address situations of crisis and force majeure in the field of asylum and migration management. The new Regulation enables Member States to derogate from certain EU asylum and migration instruments to address situations of crisis, characterised as exceptional mass influx and force majeure situations (in addition to politically motivated manipulation of migratory movements which is defined as instrumentalisation).

The Crisis Regulation will enter into force in June 2026 and will complement the Council Directive 2001/55/EC (Temporary Protection Directive),⁶⁰ which foresees granting temporary protection status to third-country nationals and stateless persons seeking refuge from conflict, violence and systematic human rights violations on a group basis when there is a large-scale influx of third-country nationals or stateless persons in the EU. This is a stark difference from the Commission's initial plan to repeal the Temporary Protection Directive and insert a new protection status called 'immediate protection', which was provided under Article 11 of the 2020 Commission Proposal. The Temporary Protection Directive proved its usefulness in managing mass influx situations in 2022 when it was activated for the first time for the protection of those fleeing the full-scale invasion of Ukraine.⁶¹ Today, the Temporary Protection Directive is still in force, with protection for Ukrainians recently extended to March 2026.

Crisis is defined in Article 1(4)(a) of the Crisis Regulation as: "an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional, including as a result of a situation at a local or regional level, such that there could be serious consequences for the functioning of the Common European Asylum System" or "a situation of instrumentalisation". The concept of crisis, leaving to one side situations of instrumentalisation, is thus characterised by the following elements: a) large-scale

60 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof OJ L 212, 7.8.2001.

61 Carrera, S. and Ineli-Ciger, M., *EU responses to the large-scale refugee displacement from Ukraine: An analysis on the temporary protection directive and its implications for the future EU asylum policy* (European University Institute, Migration Policy Centre, 2023).

arrivals of third-country nationals or stateless persons in a Member State, b) these arrivals must render the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional;⁶² and c) the situation may (but not must) have serious consequences for the functioning of the CEAS.

As opposed to crisis, force majeure is defined as: "abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with obligations under Asylum and Migration Management Regulation (EU) 2024/1351⁶³ and APR.

4.2 *The Trigger/Activation Mechanism of the Crisis Regulation*

A three-step process is foreseen for the determination of the existence of a crisis and force majeure in Articles 2–5 of the Crisis Regulation, which triggers measures to deal with the exceptional circumstances identified above. First, a Member State needs to request help from the Commission: if a Member State feels overwhelmed by mass arrivals of third-country nationals or stateless persons (crisis) or unforeseen events outside a Member States' control that significantly disrupt their ability to respond to the arrival of asylum seekers (force majeure), the Member State can request the Commission to determine the existence of a crisis or force majeure situation.⁶⁴ The request of the Member State should include a description of the situation, which measures it requests in order to address the specific situation and the reasoning as to why the situation requires it to resort to those measures and, where relevant, indicate which measures have already been taken to address the situation.⁶⁵ Without a request from a Member State, the Commission cannot take action and declare the existence of a crisis or force majeure.⁶⁶ Second, Article 3(1) of the Crisis Regulation foresees that the Commission determine whether a crisis exists. When such a determination is made, the Commission should also indicate which measures foreseen in the Regulation be adopted – be it derogation, solidarity measures or application of an expedited asylum recognition procedure to certain categories of asylum applicants.⁶⁷ When assessing the situation, the Commission is

62 The population, GDP and geographical specificities of the Member State, including the size of the territory, are to be taken into account in this determination.

63 Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, OJ L, 2024/1351, 22.5.2024.

64 Article 2 of the Crisis Regulation.

65 Preamble 21 of the Crisis Regulation.

66 Article 3(1) of the Crisis Regulation.

67 Article 3(1) of the Crisis Regulation.

expected to consult with the requesting Member State, the relevant European Union agencies such as EUAA and international organisations, in particular UNHCR and IOM.⁶⁸ The Commission has two weeks to decide if the situation qualifies as one of crisis or force majeure.⁶⁹

The Regulation provides objective and detailed criteria in Article 3(6) for the Commission to assess the situation at hand. When determining whether a crisis indeed exists, the Commission is to assess a) whether the requesting Member State's asylum, reception (including child protection), or return system, despite being well-prepared, becomes overwhelmed by the large-scale arrival of third-country nationals and stateless persons and b) whether the Member States is unable to manage the situation. When determining the existence of a force majeure situation, the Commission is also to take into account two main criteria: a) whether the Member State faces abnormal and unforeseeable events beyond its control and b) whether these circumstances prevent the Member State from fulfilling its asylum-related obligations under EU regulations.

If the Commission declares the existence of a situation of crisis or force majeure, the Council comes into the picture for the third and final step of the triggering process. The Council needs to approve or reject the Commission's Proposal within two weeks. The Council has the final say through the adoption of an implementing decision in determining which derogations provided for in Articles 10 to 13 of the Regulation would apply and identifying the solidarity measures that the Member State can benefit from in order to address the situation.⁷⁰ Moreover, the Commission may recommend Member States implement an expedited asylum process for specific nationalities or asylum seeker groups.⁷¹

4.3 *Derogations under the Crisis Regulation*

The Crisis Regulation includes various ways to derogate from different EU migration instruments.⁷² According to Article 5(3) of the Crisis Regulation,

68 Article 3(1) of the Crisis Regulation.

69 Article 3(8) of the Crisis Regulation.

70 Article 4(3) of the Crisis Regulation.

71 Article 4 (4) of the Crisis Regulation.

72 For a detailed analysis of derogations provided under the Crisis Regulation, cf. Apatzidou, V. (2024). Derogations in Exchange of Increased Responsibility: How Can This Fix the Broken Promise for More Solidarity in the EU?. *European Journal of Migration and Law*, 26(3), 317, pp. 330–336; Ineli Ciger, Meltem. 'Unpacking the crisis regulation: a valuable addition to the European legal framework governing mass influx situations?' EUI, RSC, Working Paper, 2024/40, Migration Policy Centre (2024), <<https://hdl.handle.net/1814/77282>>, pp. 10–13; For the increasing use of crisisfication in EU law cf. Campesi, G.

the derogation regime provided under the Crisis Regulation can continue only for a year in total and cannot be extended.⁷³ However, the concern is that the Commission might extend the Crisis Regulation's derogations beyond one year by following its legally problematic interpretation of the time limit provided in Article 4(2) of the Temporary Protection Directive.⁷⁴

Article 1(2) of the Crisis Regulation provides that any derogation must be necessary, and proportionate and should not undermine the Refugee Convention and other international and EU law instruments. There are three main derogations and exceptional rules foreseen to manage a situation of crisis and force majeure, notably a) delaying registration of asylum applications, b) derogations relating to border procedures and c) deadline extensions and derogations concerning Dublin take charge requests, take back notifications and transfers.

4.3.1 Delaying Registration of Asylum Applications

Under Article 27 of the APR, the asylum application must be registered within five days starting from when the authority receives the information on the asylum application, when the application is made to an authority which is responsible for registering applications.⁷⁵ In a situation of crisis or force majeure, Member States can derogate from Article 27 of APR and register an asylum claim up to four weeks after the applications are made.⁷⁶ Article 10 introduces certain safeguards to make sure asylum applicants, especially those with special needs, can still benefit from certain services. For instance, Member States should prioritise the registration of applications for persons with special needs, minors, and their family members. Registration applications that are likely to be well-founded can also be prioritised. Moreover, the Regulation reiterates the duty of Member States to inform the asylum seeker in a language they understand, or are reasonably supposed to understand, about the measure applied,

(2024). Defining "Crisis" in Migration Governance: a Critical Legal Mapping of EU Crisis Response Mechanisms. *European Journal of Migration and Law*, 26(1), 26–54; Moreno-Lax, V. (2023). The "Crisification" of Migration Law: Insights from the EU External Border. *Queen Mary Law Research Paper*, 403.

73 Preamble 31 and Article 5(3) of the Crisis Regulation.

74 Ineli-Ciger, M. (2024, May 31). Legal landmine: the risky proposition of extending the application of the EU Temporary Protection Directive beyond March 2025. *EU Law Analysis*. <<https://eulawanalysis.blogspot.com/2024/05/legal-landmine-risky-proposition-of.html>>.

75 This time limit is extended when the application is made to an authority which is not responsible for registering applications. Cf. Article 27 of the Asylum Procedures Regulation.

76 Article 10(1) of the Crisis Regulation.

the location of the registration points, including border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure.⁷⁷

4.3.2 Derogations Relating to Border Procedures

The Crisis Regulation enables a Member State experiencing a crisis or force majeure situation to prolong the duration of the border procedure and change the rules on how it operates. A Member State facing a crisis can decide not to implement mandatory border procedures for the majority of arrivals or, on the contrary, Member States can expand groups that are subjected to mandatory procedures and apply mandatory border procedures for up to 18 weeks.⁷⁸

First of all, Article 11(1) of the Crisis Regulation enables Member State/s in situations of crisis and force majeure to extend the maximum duration of the border procedure by an additional period of a maximum of six weeks. This means mandatory border procedures can be extended up to 18 weeks when there is a situation of crisis or force majeure. This also means detention and processing of asylum applications of third-country nationals at the borders when there is a mass influx can take up to 18 weeks.

Second, Article 11(2–3) enables a Member State to not apply mandatory border procedures for applicants that belong to a nationality for which the proportion of decisions by the determining authority granting international protection is 5% or lower (not 20% as the usual rule). This means a Member State can cease applying mandatory border procedures for a considerable number of asylum seekers.

Third, and perhaps much more problematically, according to Article 11(4), in situations of crisis (not force majeure), Member States may, in a border procedure, take decisions on the merits of an application in cases where the applicant is a national of a third country for which the proportion of decisions granting international protection is 50% or lower, again substantially expanding the potential pool of asylum seekers subject to border procedures. If this situation of crisis is caused by instrumentalisation, Article 11(6) of the Crisis Regulation gives discretion to the Member State to decide on the merits of all asylum applications through border procedures that are made by any

77 Article 10(5) of the Crisis Regulation.

78 European Council of Refugees and Exiles (ECRE). (2024, May). ECRE Comments on the Regulation of the European Parliament and of the Council Addressing Situations of Crisis And Force Majeure in the Field of Migration and Asylum and Amending Regulation (EU) 2021/1147. Retrieved from https://ecre.org/wp-content/uploads/2024/05/ECRE_Comments_Crisis-and-Force-Majeure-Regulation.pdf, p. 42.

third-country national or stateless person with the border procedures with the exception of minors under the age of 12 and their family members, and persons with special procedural or special reception needs.

These three main derogations concerning border procedures can be legally problematic since they can enable detention for more than four months at the border areas, transit zones and other limited places designated by the Member States for such purposes and can violate fundamental rights enshrined in the EU Charter of Fundamental Rights and relevant international conventions including the Refugee Convention. In a crisis scenario, Member States may subject hundreds and sometimes thousands of third-country nationals and stateless persons arriving at their borders to prolonged border procedures. This raises critical questions about the feasibility of maintaining humane conditions, adequate reception and detention standards, and procedural safeguards over an extended period exceeding four months. Additionally, it calls into question whether the right to humane treatment, as well as the right to liberty and security, can be effectively upheld for all asylum seekers undergoing prolonged border procedures. Moreover, as noted by Neidhardt,⁷⁹ since appeals against negative decisions in border procedures do not have a suspensive effect this may also pose a risk for asylum seekers who are subject to border procedures accessing the right to an effective remedy and protection from *refoulement*. The application of the proposed derogations may, depending on their implementation, impose restrictions or result in violations of the right to seek asylum, the rights to liberty and security, the right to an effective remedy, and the right to humane treatment.

4.4 *Prima Facie Procedures in the Crisis Regulation*

There was no mention of expedited procedures for applications that seem well founded in the Commission's initial proposal of 2020. The Commission's initial plan was to repeal the Temporary Protection Directive and insert a new protection status called 'immediate protection', which was provided under Article 11 of the 2020 Commission Proposal.⁸⁰ Yet, the Temporary Protection Directive's

79 Neidhardt, A.-H. (2024). *The Crisis and Force Majeure Regulation: Towards Future-Proof Crisis Management and Responses?* Policy Study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, p. 19.

80 Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, COM/2020/613 final; Ineli-Ciger, M. (2022). *Immediate Protection in the New Pact on Migration and Asylum: A Viable Substitute for Temporary Protection?* In D. Thym (Ed.), *Reforming the Common European Asylum System* (pp. 152–155). Nomos Verlagsgesellschaft mbH & Co. KG.

successful implementation in response to the Ukrainian displacement led to its preservation.

The idea to include the possibility to follow *prima facie* recognition of international protection was inserted into the text by the Parliament. Preamble para 6 and 55–58 and Article 14 of the Crisis Regulation concern expedited procedures. When objective circumstances suggest that groups of international protection applicants from a specific country of origin or a part of such a country could be well-founded, the Commission may adopt a recommendation for the application of an expedited asylum procedure. As discussed above, this expedited procedure falls under our definition of *prima facie* procedures.

Member States are not obliged to follow this procedure but if they choose to do so, they are bound by Article 14 of the Crisis Regulation. For those Member States following this recommendation, the expedited procedure would mean: first, for the applications that are accepted as well-founded, there should be no personal interview as a rule (though interviews may be conducted to ensure the applicants fall within the asylum seeker group recommended for the expedited procedures or whether they fall within the scope of exclusion categories), their applications are to be prioritised, and that examination of the merits of the application should be concluded as soon as possible and no later than four weeks from the lodging of the application. However, if the applicant is identified by a Member State as a threat to national security, the expedited procedure will not apply.⁸¹ Moreover, applicants whose applications are examined in the context of the expedited procedure should receive a document certifying their status in a language they can understand or can reasonably be supposed to understand.⁸² Finally, throughout the implementation of the expedited procedures, the EU agencies, such as EUAA, and UNHCR may be consulted.⁸³

The possibility of granting *prima facie* international protection to groups deemed to have well-founded claims is considered a positive development, aligning with the spirit and text of the Refugee Convention. However, uncertainty surrounds the actual implementation of this new clause. Member States might choose to activate the Temporary Protection Directive instead, thereby granting temporary protection status to individuals considered to have a good prospect of receiving international protection. This would allow them to wait and observe how the situation unfolds rather than granting the more durable and expansive set of rights flowing from refugee status.

81 Preamble 55–57 and Article 14 of the Crisis Regulation.

82 Preamble para 57 and Article 14 of the Crisis Regulation.

83 Preamble para 58 and Article 14 of the Crisis Regulation.

4.5 *The Case for Expedited Procedures in Crisis Situations*

The Crisis Regulation provides for derogations that potentially impose limits on the rights to seek asylum, freedom and security, effective remedy and humane treatment. Unlike the Temporary Protection Directive, which foresees immediate access to temporary protection and certain rights in return for derogations from specific EU asylum instruments, the Crisis Regulation does not automatically provide protection status or rights for those fleeing crisis situations. The only option is the Commission recommending expedited procedures for all or some third-country nationals and stateless persons. While this is a recommendation, not an obligation, Member States can grant refugee or subsidiary protection status in less than a month if they follow it.

Following a *prima facie* approach through expedited procedures can contribute to efficiency, consistency and fairness in asylum procedures. As Article 14 of the Crisis Regulation envisions, expedited procedures for well-founded claims can reduce the asylum caseload for Member States facing migratory pressures and offer quicker access to protection status. In contrast, applying the Crisis Regulation instead of the Temporary Protection Directive without group recognition procedures crucial to manage mass influx situations effectively could lead to inefficiencies and legal challenges. Moreover, focusing solely on border procedures and potentially rejecting valid claims through accelerated border processes could violate the fundamental rights of third-country nationals and stateless persons seeking refuge.

Derogations that expand the scope and duration of border procedures are unlikely to be a sustainable solution for mass migratory movements. Without expedited procedures and a *prima facie* approach, they may hinder the effective management of large-scale influx situations by creating bottlenecks and compromising essential safeguards, such as access to fair asylum procedures and protection from refoulement. The implementation of expedited procedures in crisis situations would enable the Crisis Regulation to serve as a meaningful and legally sound alternative to the Temporary Protection Directive and other derogations. It would also help to prevent violations of the rights of asylum seekers and mitigate administrative burdens during exceptional migration events.

5 How Can Expedited Procedures Work in Situations of Crisis and Force Majeure?

Let us assume it is 2027. Facing a mass influx of third-country nationals seeking protection from a neighbouring country in the midst of armed conflict, the asylum systems of several EU Member States at the external borders are stretched to breaking point. The majority of asylum seekers are found to require international protection under the APR, but wait times for individual asylum procedures balloon, with concomitant pressures on Member State' reception resources. Upon request by the most affected EU Member States, the Commission declares the existence of a crisis for the purposes of the Crisis Regulation. How could expedited procedures be applied to respond to this situation?

We foresee three possible scenarios for the use of expedited procedures in such a crisis that would utilise (at least to some extent) the potential for this approach to RSD to provide rapid and effective access to protection. The first is *group-based determination*, drawing from the experiences of the Temporary Protection Directive's activation for refugees fleeing the Ukraine conflict.⁸⁴ In case of mass displacement from Ukraine, those seeking protection from the full-scale invasion of Russia were immediately admitted to EU territory. In many Member States, their temporary protection status was registered on the same day or after only a few days.⁸⁵ This is a good example of how group recognition can be used protectively to respond to crisis situations.

Similar to this approach, refugees reaching the EU in our future scenario would be recognised on a group basis by virtue of their citizenship, having received international protection or long-term residence in the specific country of origin. In this scenario, nationals, international protection status holders and permanent residents residing in the country of origin at the time of

84 Carrera, S., & Ineli-Ciger, M. (2023). *EU responses to the large-scale refugee displacement from Ukraine: An analysis on the temporary protection directive and its implications for the future EU asylum policy*; Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. *Georgetown Law Journal*, Forthcoming.

85 Cf. EUAA, Providing Temporary Protection to Displaced Persons from Ukraine A Year in Review, (2023) <https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_temporary_protection_year_in_review_EN.pdf> accessed 15 July 2024; For lessons learned from Türkiye's registration of temporary protection status of Syrians cf. Yigit Kader, 'Registration Insights from Türkiye's Temporary Protection Experience', in Sergio Carrera and Meltem Ineli-Ciger eds., *EU responses to the large-scale refugee displacement from Ukraine: An analysis on the temporary protection directive and its implications for the future EU asylum policy* (EUI 2023) 318–336.

the outbreak of the conflict would *ipso facto* be eligible for refugee or subsidiary protection status under the APR. Rather than a resource-heavy individual assessment, protection would be granted within the four-week time period provided by Article 14 of the Crisis Regulation on the basis of proof of nationality and residence in the country at the relevant time.

This group-based approach would be sufficiently quick and straightforward to be applied in border zones and adjudicated by EU Member State authorities without expertise in the field of RSD (such as police or border authorities). This would also eliminate the need to make use of mandatory border procedures for long periods for the designated groups that are subject to expedited procedures. Refugee status and/or subsidiary protection status could be granted via paper-based procedures only, foregoing the need for asylum interviews. Asylum seekers with potential exclusion risks, for example, where a person is filed in a EUROPOL database or has a criminal or military background, would be channelled into the normal asylum procedure for nationals from other countries.

The second approach is *legislative individual fast-track determination*, drawing on the Canadian model which provides a permanent, legislated procedure for 'less complex' claims. Under one strand of this procedure, the Immigration and Refugee Board carries out paper-based adjudication for specific claim types based on a published list of countries and profiles generally considered appropriate for such a fast-track procedure.⁸⁶ On this basis, refugee status is granted based on 'file review' only, without an interview.

Under this approach, the EU Member States affected by the crisis or even those Member States which are not directly affected would legislate expedited procedures into their national asylum law, creating the legal and administrative basis for fast-track determinations on an individual basis. A list of eligible asylum profiles would be published, including nationals residing in the country of origin at the time of the outbreak of the conflict. Upon arrival to the EU, nationals of this state would undergo registration and an initial interview providing their reasons for seeking protection. The asylum authorities of the EU Member State would then notify the applicant of their intention to render a paper-based decision and the opportunity to provide any supporting documentation. Asylum authorities would then either grant protection on the basis

86 Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. *Georgetown Law Journal, Forthcoming*, p. 14; Immigration and Refugee Board (Canada), Procedures for Implementing the Instructions Governing the Streaming of Less Complex Claims at the <<https://irb.gc.ca/en/legal-policy/procedures/Pages/procedures-less-complex-claimsrpd.aspx>> accessed 15 July 2024.

of the paper application or, if there is insufficient evidence on which to base a positive decision, channel the claim into the regular asylum procedure.⁸⁷ As above, asylum seekers presenting exclusion risks would be channelled into the normal asylum procedure for nationals from other countries.

Third, the least effective use of expedited procedures is an *administrative individual fast-track model*, based on existing practices in a number of EU member states, notably Denmark. The Danish manifestly well-founded practice operates at the administrative (rather than legislative) level and is based on precedent-setting by the Refugee Appeals Board. For example, since January 2023 Denmark has recognised that Afghan women and girls, as a group, face persecution leading to the grant of refugee status under the 1951 Convention.⁸⁸ Since then, asylum applicants falling under this profile have entered the manifestly well-founded procedure which, according to Danish NGOs, involves a single interview and generally leads to a decision within a few months.⁸⁹

Following this example, EU Member States in times of mass influx would implement expedited procedures for asylum seekers from the country in conflict. This administrative practice would be based on existing guidance or precedent from the national asylum authorities recognising that conditions in the country of origin give rise to international protection needs. Such an expedited procedure may still require a personal interview (and the resources and expertise this requires) but operate with a rebuttable presumption of inclusion for nationals from the specific state. In order to meet the objective of relieving pressure on the EU Member States' asylum system, decisions should be rendered within four weeks and may include negative decisions (rather than just channelling into the normal procedure), provided the right to appeal is upheld for all applicants. However, in this third scenario, it is crucial that such an approach to expedited procedure is not implemented as part of border procedures but asylum seekers are admitted to the Member State territories during these procedures.

Depending on the scale and nature of the crisis and force majeure situations, we argue that the first and second approaches would be preferable to

87 Immigration and Refugee Board (Canada), Procedures for Implementing the Instructions Governing the Streaming of Less Complex Claims at the <<https://irb.gc.ca/en/legal-policy/procedures/Pages/procedures-less-complex-claims-rpd.aspx>>.

88 Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

89 Bendixen, M.C., The Three Phases of the Asylum Procedure, <<http://refugees.dk/en/facts/theasylum-procedure-in-denmark/the-three-phases-of-the-asylum-procedure/>>.

manage crisis situations. In our view, such straightforward application of the expedited procedure on the basis of nationality or country/region of origin can be instrumental in addressing the crisis, force majeure and even instrumentalisation situations and would be helpful to render the Crisis Regulation a legally sound alternative to the Temporary Protection Directive.

6 Conclusions

The use of *prima facie* and manifestly well-founded asylum procedures has several potential advantages. For EU Member States, such procedures can help to reduce backlogs and processing costs and may also enhance the fairness of asylum procedures by increasing decision-making consistency.⁹⁰ *Prima facie* or manifestly well-founded procedures allow applicants to quickly access the rights that flow from refugee or subsidiary protection status and avoid the stresses associated with full asylum procedures, which often include uncertainty, lengthy wait times, and multiple interviews.

At the same time, such procedures may risk overlooking security concerns where, for example, an asylum seeker has a history of serious criminality, which may exclude them from receiving refugee protection under Article 1F of the Refugee Convention. Moreover, the use of such procedures may raise issues of fraud, where applicants claim to have a more favourable nationality to access faster, less rigorous procedures with a presumption of receiving refugee protection. Such procedures may further risk double standards for certain asylum-seeker groups, leading to discrimination based on nationality or other grounds. However, emerging technologies such as artificial intelligence (AI) can assist in mitigating these risks in the future.⁹¹

It is critical to note that while both the APR and Crisis Regulation introduce mandatory specialised procedures for asylum claims considered unlikely to give rise to protection needs, the accelerated or prioritised procedures for likely well-founded claims remain discretionary and optional. In our view, the use of *prima facie* or manifestly well-founded procedures under the future EU asylum *acquis* can play a role in rebalancing the reforms of the APR and

90 Tan, N.F., & Ineli-Ciger, M. (2023). Group-based protection of Afghan women and girls under the 1951 refugee convention. *International & Comparative Law Quarterly*, 72(3), 793–817.

91 N. Kinchin, 'Technology, displaced?: The risks and potential of artificial intelligence for fair, effective, and efficient refugee status determination' (2021) 37(3) *Law in Context* pp. 50, 51.

Crisis Regulation beyond a focus on restriction and exclusion from access to protection in the EU.⁹² This rebalancing should recognise that there are many asylum claims that are indeed well-founded and deserving of fast, fair and efficient procedures to recognise the status of refugees.⁹³

Author Note

Nickolas Feith Tan is also Senior Protection Officer, United Nations High Commissioner for Refugees (UNHCR). The views expressed in this article are those of the author and do not necessarily reflect those of the United Nations or UNHCR.

92 Chetail, V. and Vallandro do Valle, M.F., 'The Asylum Procedure Regulation and the Erosion of Refugee's Rights', (EU Immigration and Asylum Law and Policy, 17 May 2024) <<https://eumigrationlawblog.eu/the-asylum-procedure-regulation-and-the-erosion-of-refugees-rights/>> accessed 15 July 2024.

93 Kagan, M. (2024). A Faster Way To Yes: Re-Balancing American Asylum Procedures. (*Georgetown Law Journal, Forthcoming*).