

Summary

The quality of asylum decisions. A comparison between the previous and the new Aliens Act

Introduction

This report is part of the evaluation of the Aliens Act 2000 relating to the asylum procedure. It covers the extent to which two new statutory instruments in the Aliens Act 2000, the intention procedure and the individual extension to the decision period, affect the quality of asylum decisions. The term *procedural quality* is used as a measure of whether the (procedural) requirements laid down by law and subordinate legislation are met. In addition to this, research was carried out as to whether foreign nationals use the (legal) possibilities to supply information. The term *content-related quality* is used to indicate the way in which the position of the asylum seeker is dealt with (in the intention and/or decision). When investigating the influence of the decision period extension on the quality of asylum decisions, the question to what extent the decision is based on information that was made available during the extension period is relevant. When investigating the influence of the intention procedure, the situation under the Aliens Act 2000 is compared to the situation under the Aliens Act 1994. The intention procedure under the Aliens Act 2000 means that in cases in which the IND intends to reject the asylum request, this 'intention' is sent to the legal representative of the asylum seeker, who may submit a written response. Following this, the IND should decide on the asylum request taking the written response into account. Under the Aliens Act 1994, the IND decision at first instance was taken without such a procedure, but it was followed by the possibility in most cases to lodge an objection, after which the IND reached a second decision. In this study the asylum decision under the Aliens Act 2000 is compared to both the decision at first instance and the decision on an objection under the Aliens Act 1994. The government at the time was trying to improve the quality of decisions under the Aliens Act 2000 compared to the decisions at first instance under the previous law. In addition to this, the asylum decision under the Aliens Act 2000 was supposed to be 'as good as' the decision on an objection under the previous law, as the facts that did not become apparent until the objection stage under the Aliens Act 1994 should now already become apparent before the decision at first (and only) instance as a result of the intention procedure.

When comparing the Aliens Act 2000 and the Aliens Act 1994, cases are classified on the basis of the procedure followed (Application Centre (AC) procedure and normal procedure), due to the differences between the two procedures (for example, the periods used) that may affect the quality of asylum decisions. In addition to this, we compared the intention procedure

within the AC procedure to the one within the normal asylum procedure under the Aliens Act 2000, as the importance of the AC procedure under the Aliens Act 2000 has increased after the implementation of the Aliens Act 2000 in terms of the percentage of completed cases. In order to keep the comparisons pure, we investigated whether there are any differences in (the information obtained during) that part of the asylum procedure that precedes the intention procedure under the Aliens Act 2000 and the decision at first instance under the Aliens Act 1994 (the initial and in-depth interviews, and possibly an additional interview by the Immigration and Naturalisation Service IND).

During the investigation of the individual extension to the decision period, only the asylum decisions under the Aliens Act 2000 were studied. Here, we compared the situation at the end of the original decision period and the situation at the end of the extended decision period for one and the same case.

Research questions

The research questions relating to the *intention procedure* were as follows:

Background information

- 1 How many requests for asylum were rejected and how many were granted by decisions under the Aliens Act 2000 and by decisions on an objection under the Aliens Act 1994?
- 2 What are the (legal) arguments for the decisions made?

Procedural quality

- 3 Have the procedural requirements laid down by the Aliens Act (AA), the Aliens Decree (AD) and the Aliens Circular (AC) been met?
- 4 To what extent have the possibilities offered by the AA, the AD and the AC to supply information been used?

Content-related quality

- 5 What line of reasoning is used to reach the decision and build the arguments on which the decision is based?
- 6 What information is used to determine this line of reasoning? To what extent is the position of the asylum seeker taken into account?
- 7 Are any differences found as regards asylum decisions, arguments, lines of reasoning and information between the Aliens Act 1994 and the Aliens Act 2000?
- 8 If this is the case, what circumstances may explain these differences? Could these, for example, be due to differences in law or background characteristics?
- 9 How can we value these differences (quality issue)?

The following questions were posed relating to the *individual extension of the decision period*:

Procedural quality

- 1 Is the extension granted and completed in accordance with regulations (for example, timeliness)?
- 2 What type of investigation is carried out and does this provide new information?

Content-related quality

- 3 Was any information used for the decision under the Aliens Act 2000 that was not yet available at the end of the legal decision period (this concerns information that was obtained during the investigation)?

Method

The methods that were used for the investigation were case-file analysis and the policy-related Delphi method.

The *case-file analysis* was based on asylum case files held by the IND. The investigation into the intention and objection procedures covered 201 case files compiled under the Aliens Act 2000 (101 AC-procedure related; 100 normal-procedure related) and 147 case files compiled under the Aliens Act 1994 (71 AC-procedure related; 76 normal-procedure related). The investigation of the individual extension to the decision period covered 110 cases (30 with an extension and 80 without). The files were analysed on the basis of various checklists. These included questions with pre-printed answer categories that could be ticked ('quantitative scoring'). In addition to this, a number of descriptive questions was included ('qualitative questions') for the checklist relating to the analysis of the intention and objection procedure. This way, extensive descriptions of parts of the asylum procedure were produced to add to the information obtained from the quantitative questions. Three case-file analysts were trained, after which they determined the scores of the case files used for the investigation and described them on the basis of the checklists. The investigators based their analyses on the codes and descriptions given by the case-file analysts. This means that the conclusions of this investigation were mainly based on the written information in the case files. As a result of this, any interactions, activities and considerations not recorded in them were not taken into account. The conclusions relating to the content-related quality of rejections were partly based on a limited number of files with more elaborate descriptions (14 AC rejections under the Aliens Act 2000, 14 rejections in the normal procedure under the Aliens Act 2000 and 14 rejections following an objection under the Aliens Act 1994).

The case files to be analysed had to meet a number of criteria. They must have the following main characteristics. They must be cases involving asylum requests, completed under the Aliens Act 2000, for which the IND issued a decision no later than the middle of 2003. These are to be compared to cases completed under the Aliens Act 1994 that concern an asylum request submitted on or after 1 January 1998 and a decision on an objection issued before 1 April 2001. The results of the case-file investigation therefore cover the first years of the Aliens Act 2000 and the final years of the Aliens Act 1994. Any asylum requests that were subject to transitional law have not been taken into account. In view of the fact that the investigation mainly targeted the intention procedure, the case files to be investigated that were compiled under the Aliens Act 2000 were selected if they included an intention to reject. In order to carry out the comparison, case files compiled under the Aliens Act 1994 were selected if they contained a decision at first instance that constituted a rejection of the request to grant asylum as a refugee, and if no other form of asylum had been granted. When selecting case files that were compiled under both laws, the distribution of nationalities as a proxy to the reasons for the asylum request has been made comparable as much as possible. The *policy-related Delphi method* has been applied by having 26 experienced informers from several organisations that deal with asylum issues complete written questionnaires. After an initial round of open questions, a second round was held in which the respondents were asked to respond to each other's opinions. This information was gathered in 2004. Even though it is possible to identify certain response patterns, this method cannot be used to determine exactly which percentage of each professional group shares each other's experiences and opinions.

Results

Background information and procedural quality of decisions made under the Aliens Act 2000 and the Aliens Act 1994 (on an objection)

The files investigated that were compiled under the Aliens Act 2000 and the Aliens Act 1994 show comparable decision-making behaviour of the IND, as expressed in the percentage of acceptances and rejections. Under both legal regimes, the IND issues an acceptance in the normal asylum procedure in about one fifth of the cases investigated. As regards the arguments used to accept or reject cases, we also mostly found similarities between the Aliens Act 2000 and the Aliens Act 1994. It must, however, be noted that, in the normal procedure under the Aliens Act 2000, the absence of documents was argued in a much larger percentage of cases than in the procedure under the Aliens Act 1994 (this applies to both the decision at first instance and the decision on an objection). The

fact that the percentage of decisions under the Aliens Act 2000 (in the normal procedure) in which the IND argues that the case is implausible is larger than for both types of decisions under the Aliens Act 1994 (in the normal procedure) may be related to this. In view of the fact that the Undocumented Persons Act came into force quite a while before the Aliens Act 2000 was implemented, there is no reason to assume that this amendment is the cause of the difference. It is, however, possible that under the new law the IND pays more attention to arguing the absence of documents than before.

Both under the Aliens Act 2000 and the Aliens Act 1994, case handling complies with the provision of the General Administrative Law Act that the decision must be justified. We also found that, for decisions under the Aliens Act 2000, the IND generally uses optional and other content-related grounds for rejection, as well as the verification order of the grounds for acceptance in accordance with the Aliens Circular. Under the Aliens Act 1994, only one third of the decisions on an objection explicitly state that no provisional residence permit was granted. This was, however, not required in all cases. We did not find any difference between the two laws relating to this part of procedural quality.

The asylum procedure up to the intention and the decision at first instance

Gathering of information by the IND

The IND gathers information from the asylum seeker at certain points in the asylum procedure relating to his or her identity, nationality, travel route and background of the asylum request. In any case, this is done under both laws and procedures by conducting the initial and the in-depth interviews. An important procedural rule of this is the fact that the asylum seeker must be interviewed in a language, which he/she can reasonably be assumed to understand. This rule is generally followed (procedural quality). Only for a very small percentage of the AC cases under the Aliens Act 2000 and the Aliens Act 1994 (relating to both procedures) an interpreter is not used during the initial interview. These cases constitute a threat to procedural quality. Under both laws and for both procedures, the in-depth interview is almost always held in the presence of an interpreter. Fewer initial or in-depth interviews are held in the asylum seeker's language of first preference; this endangers procedural quality in these cases.

Even though it is not a procedural rule, we believe that the quality of the in-depth interview in particular is also improved if the interviewer and the interpreter are of the same gender as the asylum seeker, especially for women who may be victims of sexual violence (procedural quality). As regards the in-depth interview, the interpreters have the same gender as the asylum seeker in more than half the cases under the Aliens Act 2000 for both procedures. This only applies to the AC procedure for a majority

of the cases under the Aliens Act 1994. As far as we can tell, the gender of the interviewer matches that of the asylum seeker in less than half the cases (under both laws and for both procedures). This may be due in part to a shortage of (female) interpreters and officials. These cases may constitute a threat to procedural quality.

In addition to the mandatory initial and in-depth interviews, information is also gathered in the preliminary stage at other moments that have not been laid down as such. We have gathered information about the additional interview and the in-depth investigation.

In cases under the Aliens Act 2000, an additional interview is frequently held as part of the normal procedure, but hardly ever in the AC procedure. This difference is probably due in part to the time pressure within the AC procedure and the fact that an additional interview is required for cases that have been transferred from an AC to the normal asylum procedure because of the nature of these cases. Under the Aliens Act 1994, additional interviews are hardly ever held, both for cases that follow the normal procedure and cases that follow the AC procedure. We do not know why this is the case.

Further investigation is mostly carried out in the normal procedure under both laws before the intention and the decision at first instance respectively (around 40%). Here, it may also be the case that further investigation is not possible within the short period of time available for the AC procedure.

Provision of information by the asylum seeker

The informational basis of the asylum decision and the extent to which the IND can take into account the position of the asylum seeker depends to a significant degree on the information provided by the asylum seeker himself or herself. The first instance at which the asylum seeker can (and must) provide information is at the time of registration at the AC. This concerns the submission of any documents in the possession of the asylum seeker. No documents were submitted in more than half the asylum cases investigated under both laws and for both procedures. In the normal asylum procedure under the Aliens Act 2000 and the Aliens Act 1994, documents are sometimes provided during the procedure. This only happens sporadically in the AC procedures, especially under the Aliens Act 2000, probably due to the short term of the AC procedure. It should be noted that no documents were submitted in about 40 percent of all the cases under both laws that eventually were accepted.

After the initial interview, some asylum seekers submit corrections and additions to the report. In both procedures under the Aliens Act 2000 and the Aliens Act 1994, this is done in roughly half the cases. Asylum seekers may also submit corrections and additions to the report of the in-depth interview. A large proportion of the asylum seekers in the normal procedure under both the Aliens Act 2000 and the Aliens Act 1994 avail

themselves of this possibility. In the AC procedure, this concerns slightly less (Aliens Act 2000) and slightly more (Aliens Act 1994) than one-third of the cases respectively. This may be done less frequently in the AC procedure, as asylum seekers have the opportunity to submit a written response at the same time.

Is anything done with the information?

The corrections and additions to the report of the initial interview do not contain any new information in most cases (under both laws and for both procedures). Under the Aliens Act 2000, the percentage of cases in which this *is* the case is higher than under the Aliens Act 1994. The information gathered from the corrections and additions to the report of the initial interview is hardly ever found in the intention under the Aliens Act 2000, both for the AC and the normal procedure. The reason for this may be the fact that the information was already known or that it was used in the in-depth interview.

The corrections and additions to the report of the in-depth interview include new information in more than half the cases (under both laws and for both procedures). In the normal asylum procedure under the Aliens Act 2000, these corrections and additions are only taken into account in almost one quarter of the intentions; under the Aliens Act 1994, this is done for thirty percent of the decisions at first instance.

If an additional interview is held, which is almost exclusively done in the normal asylum procedure under the Aliens Act 2000, it usually provides new information. This can be found often, but not always, in the intention issued under the Aliens Act 2000.

Under both laws and for both procedures, further investigation does not yield any new information more often than it does yield anything. This is one of the reasons why the results are often not explicitly used for the intention or the decision at first instance. A different reason for this is the fact that the results of the investigation have not yet become available. It is not clear why the intention or decision is still issued in those cases. If this is only due to time pressure, it will cause the content-related quality to suffer.

For all types of information gathering or provision mentioned, it appears that the information obtained is not always included in the intention or decision at first instance. In this regard, we did not find any differences between the two laws or both types of procedures. We do not know why the information is not included, except for the cases in which further investigation was carried out. It may be that the information was already known, was not considered to be relevant by the IND or was not sufficiently studied by the IND. If the information was already known, we believe it to be conceivable that no response was given. If this is not the case, then not responding to the information provided by the asylum seeker is detrimental to the content-related quality.

The intention under the Aliens Act 2000 and the decision at first instance under the Aliens Act 1994

Aliens Act 2000: intention in normal procedure versus AC procedure

As part of the intention procedure under the Aliens Act 2000, the IND sends a draft rejection (the 'intention') to the legal representative of the asylum seeker in cases in which the IND intends to reject the asylum request. We found that in the normal procedure, the intention consists of a line of reasoning that partly applies to the individual, which usually starts by arguing the absence of (original) documents relating to identity, nationality, travel route and/or background of the asylum request. This is often accompanied by the objection that the reasons given for asylum were insufficient or contradictory. After this, the reasons are given why the residence permit is not granted on the basis of Article 29, paragraph 1, under a to f inclusive. Here, terms such as 'unreliable', 'implausible' and 'not sufficiently important' are used. In the AC procedure, on the other hand, a so-called intention form is used on which, among other things, the above terms are pre-printed. These may then be ticked by the IND official without the need to link them to the grounds for acceptance as stipulated by Article 29, paragraph 1 of the Aliens Act 2000 (this concerns the intention form found by the case-file analysts in the files relating to the investigation period mentioned above; meanwhile, a new version of the intention forms is being used in AC Schiphol and AC Ter Apel on which the grounds for acceptance as stipulated by Article 29 paragraph 1 of the Aliens Act 2000 *are* pre-printed). The IND may provide a further explanation on the form, but does not always do this. This sometimes causes confusion as to what exactly the objections are against the asylum seeker. In cases where an explanation *is* given, the reasons provided have a lot in common with the line of reasoning used in the normal procedure. For both procedures, 'unreliability' as a result of the absence of documents relating to identity, nationality, travel route and/or background of the asylum request, and the provision of unsatisfactory reasons with regard to these matters is never used as the only reason for rejection: this reason is always used in combination with other reasons. As far as the motivation not to grant asylum on the basis of the grounds for acceptance is concerned, in some cases not all of the grounds for acceptance as stipulated by Article 29, paragraph 1, under a to f inclusive are mentioned; this is the case in both the AC procedure and the normal procedure. In the intentions of the AC procedure, Article 29, paragraph 1, under f is only stated in less than half the cases. The fact that this reason is not stated probably means that it does not apply, as the case does not concern a partner or a child that has come of age.

The intention under the Aliens Act 2000 versus the decision at first instance under the Aliens Act 1994 (normal procedure)

For the decision at first instance under the Aliens Act 1994, we found that almost all files include the statement that asylum will in any case not be granted on the basis of recognition as a Convention refugee (A-status) or any urgent humanitarian reason. The fact that no provisional residence permit was granted was, however, only stated in one-fifth of the cases. IND sources informed us that this was not required in all cases. An analogy with the intention issued in the normal asylum procedure under the Aliens Act 2000 is the fact that the decision at first instance is justified by using a combination of standard sentences and individualised reasons that cover the specific aspects of the background to the asylum request, whereby the latter is used more often to justify a rejection of a request for asylum as a refugee. The absence of any (original) documents relating to identity, nationality, travel route and/or background of the asylum request in the normal procedure is argued much less frequently under the Aliens Act 1994 than under the Aliens Act 2000. Our qualitative analyses also show that, under both laws, the fact that an asylum seeker is unable to provide extensive or detailed statements with regard to his or her journey, his or her region of origin or ethnic group as stated by himself/herself is often used as an objection. Similar to asylum requests submitted under the Aliens Act 2000, asylum requests submitted under the Aliens Act 1994 are, however, not only rejected on the basis of this circumstance. The other types of reasons that the IND uses for the intention in the normal asylum procedure under the Aliens Act 2000 and the decision at first instance under the Aliens Act 1994 are also largely the same. Some differences in the phraseology of the reasons for rejection are related to amendments to the text of the law.

The response of the asylum seeker to the intention and the decision at first instance

The content-related quality of the asylum decision (to what extent the position of the asylum seeker is taken into account when determining the asylum decision) should be guaranteed under the Aliens Act 2000 through the intention procedure, in which the asylum seeker submits a written response to the intention, after which the IND addresses the written response in the decision. Under the Aliens Act 1994, the asylum seeker had the opportunity to respond to the decision at first instance by means of a letter of objection. The decision on an objection could then address this letter of objection. The following paragraphs cover the situation relating to the written responses and the grounds for objection.

Written response: normal versus AC procedure

A written response is not always submitted after an intention to reject has been issued: a quarter of the files investigated that were completed in the normal asylum procedure under the Aliens Act 2000 show that no written response was submitted. We found that 25% of the asylum requests for which a written response was submitted were granted and 75% were rejected (completed in the normal procedure only). The former percentage is higher than the Delphi respondents estimated in mid-2004, possibly due to the fact that they did not all have a clear notion of the number of cases granted because of their specific job. For all cases completed in the AC- and normal procedure taken together 15% of the asylum requests for which a written response was submitted were granted.

For AC-related cases, no written response is submitted in more than half of the cases investigated. Legal representatives themselves indicate that they do not always submit a written response if they consider a case to have no chance of succeeding, but some do apparently lodge an appeal. Logically speaking, the position of the asylum seeker as regards the intention to reject cannot influence the line of reasoning in the decision and cannot contribute to the build-up of a complete file if the legal representative does not submit a written response. For cases in which asylum is eventually granted under the Aliens Act 2000, the legal representatives have almost always submitted a written response. The following aspects emerged from the files with a qualitative description. If a written response is submitted, the legal representatives respond to a variable selection of the arguments stated in the intention (for the normal procedure) or in the intention form (for the AC procedure). In both procedures, the statements in the written response often concern both information that was already available, but that, according to the legal representatives, should be interpreted or weighed in a different manner than the IND has done and additional information or an explanation relating to certain aspects of the refugee's story. This often includes an explanation of why certain documents are missing, but in both procedures no documents were submitted after all in our selection. This is followed by an explanation of varying length as to why the conclusions of the IND are incorrect according to the legal representative or the asylum seeker. One of the differences between the two procedures is the fact that, for the AC cases investigated, the written responses more often relate to the objections of unreliability, implausibility and suchlike, and much less frequently to the rejection of the asylum request on the basis of one of the stipulations of Article 29 of the Aliens Act 2000. This is probably due to the fact that the aspects stated on the AC intention forms are to a lesser extent linked by the IND to these grounds for acceptance as in the intentions in the normal procedure. Our files contained no cases in which an asylum seeker was interviewed again

and/or the IND issued a new intention as a result of the written response in either of the procedures.

Grounds for objection versus written response (normal procedure)

Of all the asylum requests completed in the normal procedure for which grounds for objections were submitted 23% was accepted after all, and 77% was rejected again by the IND or the court (interim injunction). For all cases completed in the AC- and normal procedure taken together 14% of the asylum requests for which grounds for objections were submitted were granted. This means that the chances of asylum being granted after grounds for objection have been submitted under the Aliens Act 1994 are equal to those after a written response has been issued under the Aliens Act 2000 (normal procedure).

The files that received a qualitative description reveal that legal representatives who write the grounds for objection on behalf of the asylum seeker respond to part of the arguments stated in the decision at first instance. The responses are mainly aimed at the arguments used by the IND to reject a request for the 'A-Status'. In less than half the cases, a response is submitted to the rejection of a request for one of the other statuses. Legal representatives state that certain arguments used by the IND are not sustainable. Just as for written responses under the Aliens Act 2000, legal representatives almost always present a combination of information provided earlier that should be interpreted or weighed differently, and supplementary information or an additional explanation relating to certain aspects of the refugee's story. The types of statements are very similar to the types of statements used in the written responses under the Aliens Act 2000, but the letters of objection appear to be slightly more elaborate than the written responses. A different similarity is the fact that a new document is hardly ever submitted in these cases as well. Because the argument as regards the absence of documents relating to identity, nationality, travel route and/or asylum story is clearly used more often against an asylum seeker in our selection of cases under the Aliens Act 2000 than in the cases under the Aliens Act 1994, more reactions are found in the written responses to these arguments under the Aliens Act 2000 than in the grounds for objection under the Aliens Act 1994.

Quality of the asylum decision under the Aliens Act 2000: normal versus AC procedure

The qualitative case descriptions show that, for most of the rejections that follow the written response in the normal procedure, the intention is considered to be repeated and inserted in the decision and/or most of the intention is repeated. In the other decisions, no explicit referral to the intention is provided and the decision is merely a response to the written response, whereby the intention is basically upheld. A rejection

in AC cases roughly constitutes a repetition of the intention in the same or other, and sometimes more elaborate, terms. In both procedures, a reason is withdrawn only every now and then, and does not lead to a change in the conclusion. In the normal procedure, the decision covers more reasons given in the written response: more than three quarters of the decisions with a qualitative description respond to (almost) all the statements in the written response, the others respond to part of them. In the AC procedure, half of the decisions cover most of the statements of the legal representatives, the other half only cover part of them. It must also be noted that the response of the IND to the written response is more elaborate for cases that follow the normal procedure than for cases that follow the AC procedure. The quantitative analyses show that in both procedures a combination of individual and standard arguments is mainly used when a request for asylum as a Convention refugee is rejected, whilst standard phraseology is generally used when an asylum request on other grounds is rejected. Both for the asylum decisions studied qualitatively that follow the normal procedure and those that follow the AC procedure, it appears that the IND argues that the asylum seeker's story is still not considered to be plausible or reliable, and that the explanations and the general information from external sources provided is insufficient. The conclusion of these rejections is always the fact that the IND has not been convinced by the reasons, statements and explanation given by the legal representatives, which, sometimes, are also rather brief. Only in highly exceptional cases does the IND withdraw a reason, and this is done without any changes to the conclusion. The above shows that the response to the written response is more elaborate for cases that follow the normal procedure than for cases that follow the AC procedure. *The content-related quality of the rejection in the normal asylum procedure under the Aliens Act 2000 is therefore greater than in the AC procedure under the Aliens Act 2000.* Most of the informants of the Delphi study, including a number of IND officials, have the same opinion.

Quality of the asylum decision under the Aliens Act 2000 versus the decision at first instance under the Aliens Act 1994

We established that there is little difference between the Aliens Act 2000 and the Aliens Act 1994 in terms of the extent to which information provided by the asylum seeker is used for the intention under the Aliens Act 2000 and the decision at first instance under the Aliens Act 1994. This means that we found no difference in content-related quality as far as this part of the procedure is concerned. A major difference between the Aliens Act 2000 and the decision at first instance under the Aliens Act 1994, is the fact that an intention procedure is followed under the Aliens Act 2000. We stated above that no written response was submitted for one quarter

of the cases that follow the normal asylum procedure and for more than half the cases that follow the AC procedure. In these cases, it is obvious that the intention procedure does not lead to the written response of the asylum seeker being used for the decision. *This leads to the conclusion that, if no written response is submitted, the content-related quality of a rejection under the Aliens Act 2000 is equal to that of a decision at first instance containing a rejection under the Aliens Act 1994.* The situation is different for cases in which a written response is submitted. Although the decisions in the normal and the AC procedure under the Aliens Act 2000 differ in the size of the reaction to the written response, the IND does react to the written response in all cases, even though this is sometimes done using standard phraseology. *This leads to the conclusion that, if a written response is submitted, the content-related quality of a rejection under the Aliens Act 2000 is greater than that of a decision at first instance containing a rejection under the Aliens Act 1994.* In these cases, the aim of the law to have a judge handle a case that includes the written response of the asylum seeker with regard to the intended rejection in the event of a final rejection is also achieved. These aims would be achieved in more cases if the legal representatives acting on behalf of the asylum seeker were to submit a written response in all cases in which they do not agree with the intended rejection. The Delphi respondents also generally consider the written response to have a positive effect on the motivation of the decision under the Aliens Act 2000 in comparison with the decision at first instance under the Aliens Act 1994.

Quality of the asylum decision under the Aliens Act 2000 versus the decision on an objection under the Aliens Act 1994 (in the normal procedure)

Parallel to the situation under the Aliens Act 2000, the decision on an objection in the normal procedure under the Aliens Act 1994 can be considered to be a repetition of the decision at first instance, supplemented by a response to part of the grounds for objection. Both in the asylum decision under the Aliens Act 2000 and the decision on an objection under the Aliens Act 1994, the motivation to reject a request for asylum as a Convention refugee usually consists of a combination of individualised and standard arguments. This also occurs relatively frequently for ‘compelling grounds of a humanitarian nature’. For the latter and the other grounds for acceptance, the motivation of the final decision in most cases only consists of standard phraseology under both laws.

The following aspects emerged from the files with a qualitative description. A response to (almost) all the statements in the written response is provided in more than three quarters of the decisions in the normal procedure under the Aliens Act 2000, the others only respond

to part of them. Under the Aliens Act 1994, the decisions of the IND include a response to part of the grounds for objection, but they hardly ever cover them all. The content of the IND responses are similar under both laws: the response of the IND to the various positions of the legal representatives generally states that certain parts of the asylum seeker's story are still not considered to be reliable, plausible or sufficiently important under both legal regimes. Any explanation as to why certain documents are missing are also rejected. In addition to this, in many cases under the Aliens Act 1994, information taken from an official country report issued by the Ministry of Foreign Affairs is often used against the asylum seeker. A reason is very rarely withdrawn under both laws, and even if this is done, it does not lead to any change in the conclusion. The differences of opinion with the legal representatives are mainly focussed on reliability and the weighing of certain aspects of the asylum seeker's story. The legal representatives may consider certain events to be plausible or important, but the IND may not agree. It is rather difficult to make a case for either of these positions, and the exchange of positions may resemble a 'did he or didn't he' discussion. The chances of a change to the intended or first decision (rejection) respectively after a written report has or the grounds for objection have been submitted is more or less the same for the entire group of cases (about 25% for cases completed in the normal asylum procedure; about 15% for all cases completed in de AC and normal procedure taken together).

Under the Aliens Act 2000, the rejections by the IND respond to a larger part of the statements of the asylum seeker than the decisions on an objection under the Aliens Act 1994. This is why *the content-related quality of a decision under the Aliens Act 2000 is greater than that of a decision on an objection under the Aliens Act 1994*. It must, however, be noted that the number of cases with an elaborate description in which a hearing has taken place is too small in this investigation to determine its effect on the decision on an objection. The conclusion therefore mainly applies to cases *without a hearing*. This may explain why the conclusion mentioned above is not supported by the Delphi respondents unequivocally.

The effect of an extension to the decision period

The government at the time wanted to introduce the possibility to extend the decision period, to avoid the situation in which the IND would be forced to make a decision within the legal six-month decision period every time, even if this were not yet possible. The extension had to provide a wider information basis for asylum decisions in cases for which insufficient information was still available at the end of the regular decision period. Our study shows, however, that the IND does not extend the decision period in many cases even if it has not come to a decision on an asylum request within six months (see also the report entitled

'processing times'). In this way, the instrument does not function as intended.

In all the cases studied that do include an extension, the decision period was extended by the maximum period of six months. The asylum seeker was notified of this in writing in almost all cases. The asylum seeker was also generally given notice of the extension before the end of the original decision period. In almost all cases, a more detailed investigation into the asylum seeker's case was carried out by 'a third party' during the extension period, in accordance with its description in the 2000 Aliens Circular. The procedural rules were therefore followed as far as this is concerned. In contrast to this, the decision period extension came too late in a number of cases and the decision was not taken until the extended decision period had passed in some of the cases. In these cases, the procedural quality is not as good as it should be.

The investigations that were carried out during the extended decision period concerned language analysis, investigations by the Ministry of Foreign Affairs, dactyloscopic investigations with regard to possible Dublin claims and 1F investigations. In most cases, this provided relevant information in a timely manner. This information sometimes confirmed the facts as stated by the asylum seeker and it sometimes contradicted them.

In view of the fact that a dactylographic investigation is only used to determine whether the asylum seeker has not submitted a previous asylum request in a different EU Member State, the results of this only affect whether or not a 'Dublin claim' is issued, and they do not affect the content-related assessment of the asylum request. The other types of investigation may have an effect on this.

Eventually, one part of the requests was granted and the other part was rejected. If an asylum request is granted, the precise effect of the information gathered during the extension period can hardly ever be traced, due to the fact that no justification is given in the decision. In the event of a rejection, the information gathered is used to explain the unreliability of the asylum seeker's story. In view of the fact that the more detailed investigation that is carried out during an extension of the decision period reveals relevant information in a timely manner in most of the cases investigated, which at least is used to explain rejections, we may conclude that the information basis of asylum decisions is wider in these cases. The content-related quality of the asylum decisions is therefore greater in these cases than if a decision would have been taken immediately after the initial decision period. As an instrument, individual extension does increase the quality of asylum decisions in this sense. The effect is, however, limited as this instrument has not been applied consistently in the past in appropriate situations.