



AD HOC QUERY ON 2019.50 LT AHQ on asylum applications submitted at the border or transit zones

Requested by EMN NCP Lithuania on 10 April 2019

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Sweden, United Kingdom plus Norway (24 in Total)

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1. Background information

On 20 December 2019, amendments to the Law of the Republic of Lithuania on the Legal Status of Aliens were adopted. According to the amendments, migration management functions are to be reallocated as of July 2019. The State Border Guard Service will be responsible for, inter alia, carrying out the control of irregular migration of aliens in the country's territory, implementing initial asylum procedures and providing accommodation for asylum seekers. In order to prepare for the upcoming changes, the State Board Guard Service would like to ask (Member) States the following:

2. Questions

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1. When an asylum application is submitted at the border or transit zone and is examined under the accelerated procedure, does your (Member) State apply the practice of transferring such asylum applicants to accommodation centre(s) in the territory of the MS, while applying the status of refusal of entry to such applicants?

2. If yes, are there any specific requirements applied to the accommodation centers and procedure described in the Question 1?

We would very much appreciate your responses by **8 May 2019**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Belgium	Yes	1. No. The asylum applicant will stay at a closed center at the border during the accelerated asylum procedure. If international protection is granted, he or she will get access to the Belgian territory. If the application is rejected, he or she will be turned back to the place of departure. If for some reason (lack of capacity in the closed center, state of health, family residing in Belgium, the application can't be

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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			<p>decided in a short term, ...) the asylum applicant can go to an (open) accommodation center, the refusal of entry doesn't apply anymore and the accelerated asylum procedure will become a regular procedure.</p> <p>2. Not applicable</p>
	EMN NCP Bulgaria	Yes	<p>1. Yes, when foreigners apply for international protection on the border checkpoints, including in the transit zones, they shall be transferred to the reception centers (some of these centers are situated inside the country). The accommodation continues until the procedure for considering the application is closed. The function of the border authorities is only to guard the state border but they can accept the applications for international protection and give the foreigners to the reception center of the State Agency for Refugees with the Council of Ministers (SAR). SAR is a specialized body which conducts the application procedure for granting international protection and manages the reception centers where foreigners seeking international protection are accommodated. SAR determines the type of proceeding for considering the international protection application – general proceeding or accelerated proceeding. Up to 10 working days since a foreigner has been registered, the interviewing authority may apply an accelerated procedure of the general proceeding as it decides to reject the application because it is unfounded. SAR accommodates foreigners seeking international protection in two types of centers: an open-type center, in which the accommodated foreigners have a free regime, and a closed-type center, in which the free movement of the accommodated foreigners seeking international protection is limited. According to the Asylum and Refugees Act, a foreigner seeking international protection can be accommodated in a close-type center in the following cases: 1. for establishing or verification of their identity or nationality; 2. for establishing of facts and circumstances based on which the application for international protection is filed, where this cannot be done in a different way and there is a risk that the foreigner can hide; 3. where this is required for the protection of national security or public order; 4. for establishing the state competent to consider the application for international protection and transferring of foreigner to the competent state, and where there is a serious risk that the foreigner can hide.</p>





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			<p>2. The national legislation of the Republic of Bulgaria allows a foreigner to apply for international protection to an official of SAR, as well as to other state authority, including in special homes for temporary accommodation of foreigners (SHTAF) or at border checkpoints and in transit zones. The accommodation in special homes for temporary accommodation of foreigners (detention center) is a measure for administrative coercion, which is applied against foreigners illegally passed the state border or foreigners who stay in the country for the purpose of return when there is entered into force decision to be returned. SHTAF are closed-type centers, managed by the Migration Directorate (structure of the Ministry of Interior) which performs activities connected with counteraction of illegal migration and return of illegal foreigners. During their stay in SHTAF foreigners have the right to apply for international protection. In this case, foreigners shall be released from the closed center and shall be given to officials of SAR to be accommodated in reception center for foreigners seeking international protection.</p>
	EMN NCP Croatia	Yes	<p>1. According to Article 42 of the Law on International and Temporary Protection, the procedure for approval of international protection following the expression of intention to apply for international protection or a subsequent application at a border crossing or in the transit zone of an airport, sea port or inland water port shall be undertaken at the border crossing or in the transit zone, where the entire procedure is conducted if the applicant is provided with the material reception conditions (accommodation in the Reception Centre, food and clothing provided in kind, remuneration of the cost of public transport for the purpose of the procedure for the approval international protection and financial assistance) and if the application or subsequent application may be rejected as manifestly unfounded pursuant to Article 38, paragraph 1, point 5 (Accelerated Procedure) of this Act, or dismissed pursuant to Article 43 of this Act. The Ministry of the Interior shall render a decision on the application in a procedure at the border crossing or in the transit zone no later than within 28 days from the day the application is lodged, and if no decision is rendered within the that time, the applicant shall be permitted to enter the Republic of Croatia in order for the procedure for the approval of international protection to be conducted. The Republic of Croatia has not yet carried out procedure at the border within the meaning of Article 42 of the Law on International and Temporary Protection.</p>


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			2. N/A
	EMN NCP Cyprus	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Czech Republic	Yes	1. CZ has external borders only at the international airports. There is a reception centre established at the Prague airport with sufficient capacity so all cases (if the conditions are fulfilled) are processed while applicants are staying at this centre. In case of pressure the law allows to transfer persons to a centre nearby airport but still these persons are considered as persons who were not granted entry into the territory. 2. No
	EMN NCP Estonia	Yes	1. According to the Act on granting international protection to aliens a clearly unfounded application for international protection may be reviewed under the accelerated procedure, including at the border. Nevertheless, in practice the Police and Border Guard Board does not examine asylum applications at the border. Hence, all the asylum seekers are transferred to accommodation center or if necessary to the detention center. 2. N/A
	EMN NCP Finland	Yes	1. Yes.



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			<p>2. No. The applicants are transferred to so called transit reception centers (5 in Finland) to await their first interview. Depending on the case processing the applicants may be transferred to other reception centres after that.</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. The Code of Entry and Residence of Foreigner and the Right of Asylum (CESEDA) provides that an asylum seeker arriving at the French border without any ID document or visa is issued a refusal of entry on the French territory. The third-country national is then maintained in a waiting zone located near his/her arrival point, for the duration of the processing of his/her application. If the TCN is granted entry into French territory, he/she is issued a regularisation visa valid for 8 days to enable him/her to file an asylum application with a prefecture. His/her application will then be processed pursuant to common law procedure. If his/her application is rejected, the TCN is issued a refusal of entry and an obligation to leave the French territory: he/she has to leave within 30 days of notification. During that period, the TCN may be kept under house arrest in a location decided by the competent administrative authority, or be placed in a dedicated accommodation centre ('DPAR - "preparation scheme for return") which aims to facilitate the voluntary return of rejected asylum applicants by assisting them to organize their departure. Finally, the TCN may be detained in premises that do not come under the authority of the prison administration if there is a well-founded risk of absconding.</p> <p>2. Waiting zones are located in or near the asylum seekers' arrival points, in international train stations (listed in a Decree), harbours or airports. While their application is being processed, TCNs may also be held in dedicated facilities or hotels located near the arrival point. The border police may hold TCNs in waiting zone for a period up to 4 days. While in a waiting zone, TCNs can benefit from rights and guarantees: they are informed of their rights pertaining to asylum claim, and of the possibility to request the assistance of an interpreter, a doctor or a lawyer, and to talk to a counsel or any other person of their choice. This information is communicated to them in a language they can understand. Furthermore, if an officer responsible for processing their application consider that s/he requires procedural guarantees that are incompatible with his/her stay in a waiting zone (due to his/her age, or</p>



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			psychological, physical, or sexual violence he/she endured before arriving to France), the protection officer may put an end to his/her holding in the waiting zone.
	EMN NCP Germany	Yes	<p>1. Under the responsibility of the Federal Office for Migration and Refugees, an accelerated procedure - so-called "airport procedure" (§ 18a AsylG) - applies to entry attempts by air. The asylum procedure is carried out before the decision of the Federal Police about the entry - so still in the transit area - if the applicants cannot prove after oral request for protection with a valid passport or passport substitute or come from a safe country of origin. The airport procedure is only implemented at airports that can accommodate asylum seekers at the airport.</p> <p>2. The airport procedure is subject to the so-called principle of promptness. After receiving the asylum application, the Federal Office must hear the applicants within two days and decide whether entry is permitted or if the asylum application is rejected as "of obvious unfounded". If the application for asylum cannot be decided in the short term, entry must be allowed and a decision taken in the regular asylum procedure. In case of refusal, the Federal Police may refuse entry. Urgent protection may be brought before the administrative court against this border police refusal of entry. Until the court decision, the applicants must remain in the transit area of the airport. In case of refusal, they will be returned to their place of departure or to their country of origin. The accommodation of asylum seekers during the airport procedure requires a decent treatment. In addition to the pure accommodation, the supply of the applicants must be ensured; In addition, the implementation of the accelerated procedure must be possible by the border authorities and the Federal Office. Using the example of the Frankfurt/M. airport, the accommodation is provided in an initial reception facility for applicants carried by the state of Hesse.</p>
	EMN NCP Hungary	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.




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	<p>EMN NCP Ireland</p>	<p>Yes</p>	<p>1. Ireland does not have a border or accelerated procedure for protection applications made at the border.</p> <p>2. N/a</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. According to art. 28-bis comma 1-ter of law 25/2008, if an applicant applies for asylum at the border or transit zone – after being stopped for having eluded or tried to elude the border control or soon after – the claim should be examined with accelerated procedure (Police headquarter sends documentations about the claim to the competent administrative authority – Commissione Territoriale – which sets up the interview of the applicant within 7 days and then decides within the following 2 days). In these cases, the procedure may be carried out directly at the border or transit zone. Otherwise, the foreigner can be conducted for first aid in the hotspots or in the emergency first reception centers (art. 10-ter law 286/1998) where they are identified according to the photodactyloscopic and signaling operations, in line with articles 9 and 14 of the EU regulation 603/2013.</p> <p>2. First at all, an applicant shall not be detained for the sole purpose of examining the asylum claim (art. 6 comma 1 law 142/2015). Detention is allowed only in certain cases established by art. 6 of law 142/2015, such as: flight risk, reasons of public order and security, terrorism, serious reasons for considering the foreigner guilty of a crime against peace, a war crime and a crime against humanity. So, in absence of the abovementioned requirements, if a foreigner has been stopped for having eluded or tried to elude the border control or soon after, he has to be housed in a reception center. As said in the Q.1, in these cases the competent authority applies the accelerated procedure. Accelerated procedures also apply if (see art. 28 bis of law 25/2008 as modified by law 132/2018):- the foreigner is coming from a safe country;- his claim is manifestly unfounded or subsequent;- he applies for international protection merely to delay or frustrate the enforcement of return decisions;- the foreigner is detained in a permanent center for return.</p>



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	EMN NCP Latvia	Yes	<ol style="list-style-type: none"> 1. According to the Asylum Law if the asylum application is submitted at the border or transit zone before entering the territory decision on admisibility/inadmissibility of the application should be taken by the Office of Citizenship and Migration Affairs (hereinafter – the Office). The State Border Guard carry out the initial interview with applicant in order to obtain necessary information for decision on admisibility/inadmissibility. The decision on inadmissibility is taken if there is a reason to consider that any of grounds for inadmissibility according to the Article 33 parag. 2.a), b), c) of the Directive 2013/32/EU exist. The Office takes the decision on admisibility/inadmissibility of the application within 5 working days. During the application of border procedure including the stage of appeal when the application is submitted at the border or transit zone the applicant is detained and accommodated in premises specially equipped for this purpose in a unit of the State Border Guard. It means that the applicant can be tranfered to the State Border Guard Accomodation centre for detained asylum seekers in the territory. 2. There are no specific requirements for the accommodation centres in cases the border procedure is applied.
	EMN NCP Lithuania	Yes	<ol style="list-style-type: none"> 1. Currently, the Law of the Republic of Lithuania on the Legal Status of Aliens does not stipulate the possibility to asylum applicants whose asylum applications are examined under the accelerated procedure and who are not admitted to the territory of the Republic of Lithuania to be transferred to an accommodation center in the territory of Lithuania. Such asylum applicants are accommodated at a state border crossing point while their application is being examined. 2. N/A
	EMN NCP Luxembourg	Yes	<ol style="list-style-type: none"> 1. . Luxembourg does not have external borders with the exception of the Luxembourg International Airport. In case the third-country national indicates that s/he wants to make an international protection application to the police agent at the airport, in accordance with article 4 (1) of the amended Law of 18 December 2015 on international protection and temporary protection, this agent will refer the




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			<p>applicant to the Directorate of Immigration to make the application at the Directorate of Immigration (the maximum delay for registering the application is of 6 days). Once the application is registered and lodged, it is up to the Minister in charge of Asylum and Immigration to decide whether the application will be processed under the normal international protection procedure or under the accelerated procedure. During the examination procedure the international protection applicants will be accommodated in a reception center where they will remain until a decision is issued. In practice, if the application is made at night or during the weekend, the international protection applicant will be driven by the police to a reception center. The following working day s/he is required to make the application at the Directorate of Immigration.</p> <p>2. N/A</p>
	EMN NCP Malta	Yes	<p>1. Yes but they cannot be processed with refusal of entry procedure until they remain in the asylum system.</p> <p>2. An assessment will need to be carried out in order to establish if detention is required in line with the Reception Conditions Directive as transposed in local legislation.</p>
	EMN NCP Netherlands	Yes	<p>1. If an asylum application is submitted at the border, it will be processed in the border procedure as long as it is expected that this application is apparently unfounded, inadmissible or a Dublin-case. During the border procedure the alien will be kept in detention in Judicial Complex Schiphol, which is located near the external border. When a decision has been made regarding the asylum application, the alien will be transferred to detention centre Rotterdam. If an asylum application is rejected, an entry refusal will be given on the basis of the Schengen Borders Code.</p> <p>2. When an asylum application is submitted at an external border, it is always assessed whether detention is disproportionately onerous for the alien. If that is the case, the application will not be</p>



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			<p>processed in the border procedure. In addition, families with minor children and unaccompanied alien minors who submit an asylum application at the external border, will get access to the Netherlands and will be referred to the application centre in the country. The border accommodation regulations (https://wetten.overheid.nl/BWBR0005848/2001-04-01) apply in detention centre Rotterdam and Judicial Complex Schiphol. It states for example that aliens have freedom of movement within the border accommodation and that they could receive visitors, send and receive mail and, at their own cost, make phone calls.</p>
	EMN NCP Poland	Yes	<p>1. The current law of the Republic of Poland does not provide for application of the border procedure. All foreigners who submit an application for international protection are directed to one of the reception centers. Work is ongoing at the moment to introduce a border procedure into the Polish law but the final content of the legislation is still unknown.</p> <p>2. N/A</p>
	EMN NCP Portugal	Yes	<p>1. Applicants for international protection subject to accelerated procedures at border posts are not transferred to accommodation Centers in the national territory.</p> <p>2. NA</p>
	EMN NCP Slovakia	Yes	<p>1. In the Slovak Republic, there is a difference whether an application for international protection is filed in a border zone or in transit zone of an international airport. In the Slovak Republic, proceeding at the border is not carried out in a specific way, nor is it regulated in any way. A standard procedure is conducted with the applicant who submits his/her application at the border. As far as the procedure in the international airport transit zone is concerned, the person is placed in the reception center of the international airport. Taking into account that only a minimum number of applicants for international</p>


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			<p>protection arrives in Slovakia via international airports, these reception centers, although built, are not currently operated. The national legislation reflects this matter and the transit area is dislocated in another asylum facility. Being placed in the reception center (including the transit area in another asylum facility) is not considered an entry and residence of the applicant in the territory of the Slovak Republic. The transport of the applicant to the premises set up in another asylum facility during his/her placement in the reception center is carried out in the company of a policeman, while the transport is not considered to be an entry or stay of an alien in the SR. The placement of the applicant in the reception center is terminated and s/he placed in a standard asylum facility if (a) his/her application is not decided upon within seven days of completion of the questionnaire; or (b) court does not decide within 30 days from the delivery of the appeal against the decision in the asylum procedure. In the event that a decision is made in accordance with the Act within the aforementioned time frames, the person is considered to be an alien who has not entered the territory of the SR.</p> <p>2. Reception facility in which an international airport transit area is established does not apply any special procedures to applicants located there. Such a center is located in a separate part of the facility and the only exception to the other asylum seekers is that such an applicant is obliged to stay at the reception center. So s/he has limited movement within the SR, and is required to stay exclusively in that facility.</p>
	EMN NCP Sweden	Yes	<p>1. The applicant will be taken to the closest office of the Swedish Migration Agency to submit his/her asylum application. There it will also be decided where the applicant will be accommodated.</p> <p>2. not applicable</p>
	EMN NCP United Kingdom	Yes	<p>1. The United Kingdom does not operate accelerated asylum procedures</p> <p>2. N/A</p>

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	<p>EMN NCP Norway</p>	<p>Yes</p>	<p>1. Yes. They are either sent to a detention center, or to a short term arrival center for clearance. If a foreign national applies for asylum at the border he/she will first be transported to the National Police Immigration Service (offices) for registration. This includes single adults, families and unaccompanied minors. Where the applicant goes after registration depends on whether a positive ID has been made, and whether the application is considered manifestly unfounded or not.</p> <p>2. Foreign nationals may be placed in a detention/holding centre when it's considered necessary to arrest or detain the foreign national to either clarify his/her identity, or to secure a removal in cases where there is a risk of absconding. The Immigration Detention Centre Regulations regulate the operation of the detention centre. In addition, foreign nationals who are considered to have no grounds for protection are examined under the 48-hour procedure and are placed at the immigration detention centre. The conditions are adequate but very simple. Transit/detention center: https://www.politiet.no/en/om/organisasjonen/specialist-agencies/politiets-utlendingsenhet/national-police-immigration-detention-centre-and-family-detention-centre/arrival-center-in-southern-Norway https://heromottak.no/location/ankomstsenter-ostfold/</p>
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