



SUMMARY

EMN Ad hoc query on effective remedies regarding a refusal to accept subsequent applications from unsuccessful asylum applicants

Requested by IE EMN NCP on 25 November 2015

Summary updated on 22 February 2016 (based on open compilation)

Responses were received from **23 (Member) States** out of 29: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway.

1. Effective remedy to the decision to refuse to further examine a subsequent application for asylum:

In relation to the issue of challenging decisions to not consider a subsequent application for international protection, an appeals procedure is the most common remedy (AT, BG, CZ, EE, ES, FI, FR, HU, LT, LV, MT, PL, SE, SI, SK and NO) noted in the responses of Member States. In three Member States (DE, LU and UK) Judicial Review is the route for applicants to challenge these decisions. In Spain, it is possible to judicially review the appeal decision. It should be noted, Cyprus considers only the application of the law in its appeals procedure.

Submitting an appeal against the decision does not have automatic suspensive effect to any return or removal procedures which may be in operation in the Member States which discussed this point. However, it is possible to make an application for the appeal to have suspensive effect in 7 Member States (BE, CY, CZ, DE, NL, NO, HR).

A deadline for the submission of a subsequent application was noted in 6 Member States (BE, HR, FR, DE, HU, NO). These deadlines range from between 8 to 75 days from the receipt of the final decision on their international protection application.

In 8 Member States, new information will be taken into account in the consideration of the subsequent application. Indeed, in Member States such as Luxembourg and the UK, a right of appeal against a refusal to consider the subsequent application will only arise where there is new information which is likely to significantly add to the likelihood of the applicant qualifying for international protection.



2. Appellate Body Types:

- AT: Federal Administrative Court, a tribunal within the meaning of Art. 6 ECHR
- BE: Council for Aliens Law Litigation, a judicial administrative court, appeals are dealt with by chambers specialised in the field of asylum
- BU: Administrative Court of Sofia City
- HR: Administrative Court
- CZ: Administrative court of first instance
- EE: Administrative court of first instance, appeal to second instance court and appeal in cassation to Supreme Court
- FI: Administrative court with possibility to appeal to Supreme Administrative Court
- FR: National Court of Asylum; specialised administrative court
- LT: Vilnius Regional Administrative Court, whose decision may also be appealed to Supreme Administrative Court of Lithuania
- LU: First Instance Administrative Court
- LV: District Administrative Court
- MT: Refugee Appeals Board
- NL: Appeal to District Court, with Judicial Review of that decision to High Court possible
- PL: Refugee Council
- SE: Migration Court, division of the administrative court which handles appeals regarding asylum decisions - with appeal to Migration Court of Appeal possible
- SI: Administrative Court
- SK: Appeal to the Regional Court, with an appeal of that decision to Supreme Court possible
- UK: First-tier of the Tribunal (Immigration and Asylum Chamber), judicial review
- NO: Norwegian Appeals Board, with Judicial Review of that decision to courts possible

3. Scope of the powers of the appellate body:

There is a divide among Member States as to the scope of the appellate body's jurisdiction. In 10 Member States (AT, EE, FR, HU, LU, LT, PL, SE, SI and SK), the appellate body has the power to annul the decision and return it to the initial decision-maker for review. Four Member States (FI, FR, DE and NL) have the power to substitute their own finding as to whether or not to grant or refuse refugee status to the applicant.