



**Ad-Hoc Query on the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection**

**Requested by PL EMN NCP on 27<sup>th</sup> October 2014**

**Compilation produced on 3<sup>rd</sup> December 2014**

**Responses from Austria, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Sweden (17 in Total)**

*Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

**1. Background Information**

According to the art. 43 par. 1 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 (recast) the Member States may provide for procedures, in accordance with the basic principles and guarantees (referred in Chapter II of this directive), in order to decide at the border or transit zones of the Member State on:

- the admissibility of an application (pursuant to art. 33) made at such locations; and/or
- the substance of an application in a procedure (pursuant to art. 31 par. 8).

The Republic of Poland has not incorporated the border procedures into Polish legal order, but we consider such implementation.

**EMN Ad-Hoc Query: the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection.**

***Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.***


We would like to ask the following questions:

Do the Member States apply the border procedure? If yes – please answer to the following questions:

- 1) Where a foreigner for whom such procedure was applied stays?
- 2) What kind of an administrative procedure shall apply to a foreigner who received a refusal on granting any protection (i.e. refusal of entry, return procedure)?







We would very much appreciate your responses by **24<sup>th</sup> November 2014**.

**2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Austria</b>	<b>Yes</b>	<p>1. and 2.</p> <p>Austria has no land border with third countries. Asylum-seekers who apply for international protection at the airport are transferred to the initial reception centre at the airport, if the entry to the Austrian territory is not admitted based on the information available. Admission to the territory shall be granted in the framework of the airport procedure if, according to the state of the investigations, rejection at the border or rejection within the airport procedure is not or no longer likely.</p> <p>A foreigner who is brought to the initial reception centre at the airport can be requested to stay at a particular place of the border control area or in the area of the initial reception centre for the purpose of securing rejection, as long as entry to the territory is not permitted.</p> <p>The intended rejection of admission to the territory in first instance has to be communicated to the UNHCR within one week after the foreigner was brought to the initial reception centre. If the application shall be rejected based on the Dublin Regulation, consultations have to be initiated within one week and the asylum-seeker has to be informed thereof.</p> <p>Securing rejection at the airport must be abandoned if the asylum authority informs that the asylum-seeker is admitted to the territory. Securing rejection at the airport can only be upheld for a maximum of six weeks.</p> <p>Rejecting the asylum application at the border is only admissible if: the asylum-seeker has tried to mislead the authority with regard to his or her identity, nationality or documents; the statements of the asylum-seeker with regard to threats are manifestly wrong; the asylum-seeker does not claim to be persecuted in the country of origin; the asylum-seeker is from a safe third country.</p>


**EMN Ad-Hoc Query: the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection.**

***Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.***

			<p>Rejecting the application is only possible with the consent of the UNHCR.</p> <p>Against the decision of the authority in the framework of the airport procedure, an appeal can be submitted within one week. The court has to decide on the appeal within two weeks.</p> <p>Source: Art. 31-33 Asylum Act.</p>
	<b>Bulgaria</b>	<b>Yes</b>	The national legislation does not envisage the carrying out of a border procedure.
	<b>Croatia</b>	<b>Yes</b>	Croatian Asylum Act prescribes possibility to apply border procedure when foreigner makes application for international protection at a border crossing point or in a transit zone of an airport, sea port or internal water port and does not fulfil the conditions for entering the Republic of Croatia stipulated by provisions of the Aliens Act, if a foreigner is provided with adequate accommodation and food at the border crossing point or in the transit zone. Unfortunately, we do not implement above mentioned regulation in practice, since we do not have adequate accommodation facilities at the border or in the transit zone.
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Estonia</b>	<b>Yes</b>	<p>1. Yes, Estonia applies the border procedure. After the asylum application has been lodged, the alien goes to the reception centre where one stays until the decision about one's application will be done.</p> <p>2. Started from 2013 there has not done negative decisions on the asylum applications lodged on the border. The applications are proceeded during 6 months in the asylum unit of Police and Border Guard Board.</p>
	<b>France</b>	<b>Yes</b>	<p>In France, third-country nationals may exceptionally apply for asylum at the border. They are interviewed by officers from the French Office of the Protection of Refugees and Stateless Persons (OFPRA) to ensure that their application is not manifestly unfounded. An application is considered as such if the applicant's statements make it possible to determine that he/she does clearly not run any risk in his/her country of origin. The final decision for admission to the territory or refusal of entry is taken by the Minister of Interior.</p> <p>1. If a decision cannot be immediately taken, third-country nationals who have requested admission for asylum at the border are placed in a waiting area located in station, port or airport at the French border.</p> <p>2. A third-country national whose admission for asylum has been refused is subject to a decision for refusal of entry.</p>
	<b>Germany</b>	<b>Yes</b>	1. When arriving e.g. in Frankfurt/Main, the foreigner is required to remain in a self-contained building situated on the land of the airport, the area has been declared as transit area by the German Federal Police and is therefore guarded by the German Federal Police. The Federal




**EMN Ad-Hoc Query: the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection.**

***Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.***

			<p>State of Hesse takes care of the overnight accommodation, food, medical care etc. (§ 18a, German Asylum Procedure Act (AsylVfG), § 65, German Residence Act (AufenthG), § 44 German Asylum Procedure Act (AsylVfG).</p> <p>(Only those who have filed an application for asylum with the German Federal Police will be dealt with on the basis of the so-called airport procedure and who cannot identify themselves with a valid passport or a travel document issued in lieu of a passport or who have arrived from a safe country of origin.)</p> <p>2.</p> <p>a.) Should the Federal Office refuse the application of someone within 2 days as „manifestly unfounded“, the German Federal Police is obliged to refuse entry for the person concerned. After the „manifestly unfounded rejection“ of the application, the person concerned can receive legal assistance free of charge, unless such applicants have already appointed a lawyer beforehand. The person concerned can make application for an expedited procedure for legal protection before the administrative court against the refusal of entry pronounced by the German Federal Police. The administrative court then has 14 days during which it must reach a decision on such an expedited application. Should the 3 days allocated not be sufficient for the person concerned to substantiate the expedited application, the administrative court can, upon request, allow for a further 4 days for the substantiation of the application. However, such further 4 days shall be borne by the administrative court with regards to the „14-day-term“.</p> <p>b.) The period after any concluded airport procedure, <i>that is after 19 days</i>, falls within the jurisdiction of the German Federal Police. (Procurement of travel documents issued in lieu of passports, formal refoulement).</p> <p>After the final conclusion of the airport procedure, the German Federal Police is required to procure the travel documents issued in lieu of passports if entry is not to be allowed and if the administrative court is also of the view that entry should be refused.</p> <p>During the course of the airport procedure, the stay in the transit area does neither represent any detention nor any restriction on liberty (Federal Constitutional Court, (BVerfG), judgement dated 14 May 1996). However, any order for a further period to remain within the transit area of the airport, falls within the judicial review of the District Court at the latest as of 30 days from the arrival in the transit area (or if such a point in time cannot be fixed, in accordance with the information of the time of arrival as known to the authorities (§ 15, section 6, subsection 2, number German Residence Act (AufenthG).</p>
	<p><b>Hungary</b></p>	<p><b>Yes</b></p>	<p>1. The only type of border procedure is the so called "airport procedure" regulated in Section 72 of the Asylum Act and Section 93 of the Government Decree no. 301/2007. There are special accommodation premises both in Terminal 1 and Terminal 2 of the Budapest airport for the duration of the procedure. Asylum seekers may not be held in the holding facility at the Budapest international airport transit zone for more than 8 calendar days. If the application is not deemed inadmissible or manifestly ill-founded in the admissibility procedure or 8 calendar days have passed, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out. During</p>







**EMN Ad-Hoc Query: the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection.**

***Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.***

			<p>the regular procedure, these applicants are detained in asylum detention (The maximum period of asylum detention is 6 months. Families with children under 18 years of age may not be detained for more than 30 days).</p> <p>2. Both third country nationals and persons having the right to free movement may be refused entry to Hungary and be subjected to a return procedure at the border if they do not meet the conditions for entering the country. In the case of third country nationals, the reasons for refusal of entry are prescribed by the Schengen Borders Code. There are various reasons for refusal: lack of a valid travel document, lack of valid visa/permit, forged travel document, forged visa, etc. The refusal of entry and return is ordered in the form of an official decision which has to be translated into the language the person concerned understands. The return procedure has to be completed within eight days (within 72 hours in case of a person having the right to free movement). If this period expires, the person must be allowed to enter the country even though the expulsion procedure has to start simultaneously (in the case of a person having the right to free movement, it is just an option, not an obligation). During the return procedure (until the return is completed, or if the above deadlines expire), the person has to stay at the premises designated by the authority. There are special accommodation premises both in Terminal 1 and Terminal 2 of the Budapest airport for this purpose. The proceeding authority has no obligation to conduct an interview during the return procedure. The person can be sent to the country of departure, the country which is obliged to accept him/her, the country of his/her habitual residence or to any other country where the person may be allowed entry.</p>
	<b>Italy</b>	<b>Yes</b>	<p>No, to date Italy does not apply the procedure provided for by Article 43(1) of Directive 2013/32/EU. The Directive was transposed in Italy by Law No 154 of 7 October 2014; however Articles 32 to 46 should be transposed by 20 July 2015.</p> <p>An application for international protection must be submitted individually to the <i>Border Police</i> on arrival in Italy; or to the <i>Questura</i> (Provincial Police Headquarters), Police Immigration Office, if the applicant is already in Italy. After taking the police photographs, the <i>Questura</i> sends the application to a Territorial Commission, which has the sole responsibility for deciding on status recognition. It also grants the TCN a “residence permit for asylum application” pending the asylum procedure.</p> <p>The following documents must be submitted to the Immigration Office of the <i>Questura</i> to complete the application: the application form stating the reasons why the TCN is applying for asylum (in the language known by the TCN), a copy of his/her passport (if they have one) and any other documents providing evidence of the reasons for applying. The Prefect establishes where the applicant can stay until the examination procedure of the application for international protection is completed. The Territorial Commission is responsible for deciding when to interview the applicant, whereas it is up to the <i>Questura</i> to notify them.</p>
	<b>Latvia</b>	<b>Yes</b>	<p>No, at the moment the border procedure is not applicable in Latvia but it is planned to make amendments in the national legislation in connection to transposition of EU provisions, including 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). It is planned to implement this procedure in the new Asylum Law.</p>
	<b>Lithuania</b>	<b>Yes</b>	<p>Lithuania has certain procedures which are conducted at the border and which, according to the Directive, could be called “border procedures”.</p> <p>1. such TCN stays in the border area (at the border guards’ service) and awaits for the decision.</p>

**EMN Ad-Hoc Query: the legal situation of a foreigner to whom the border procedure has been applied and as a result of which s/he was refused any form of protection.**

***Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.***

			2. a refused asylum seeker is either returned or expelled to a safe third country – it depends on the particular case. In individual cases, entry bans can also be imposed, according to the Law.
	<b>Luxembourg</b>	<b>Yes</b>	No. For now and under the current legislation, Luxembourg doesn't have a border procedure. Nevertheless, the work on the transposition of the directive concerning this matter is in progress.
	<b>Netherlands</b>	<b>Yes</b>	Yes. At the border we have an asylum procedure similar to the border procedure according to art. 43 of the Directive 2013/32/EU.  1. Where a foreigner for whom such procedure was applied stays? During this special procedure applicants have a stay at Schiphol Criminal Justice Complex.  2. What kind of an administrative procedure shall apply to a foreigner who received a refusal on granting any protection (i.e. refusal of entry, return procedure)? Together with the negative decision the applicant will also receive a return decision. The further consequences of the negative decision will depend on the individual case.
	<b>Poland</b>	<b>Yes</b>	No, but we consider implementation of this solution.
	<b>Slovak Republic</b>	<b>Yes</b>	No, Slovak Republic does not apply this procedure.
	<b>Slovenia</b>	<b>Yes</b>	The Republic of Slovenia has not incorporated the so called "border procedures" into its legislation. All applications for international protection including those presented at the points of entry are processed in regular procedures by a competent body.
	<b>Sweden</b>	<b>Yes</b>	SE has implemented directive 2013/32/EU. 1. A foreigner stays at a reception center awaiting a return to the country the decision refers to.  2. The administrative process is that the Swedish Migration Board takes the decision in all cases as Dublin, manifestly unfounded cases and all other asylum cases. After a decision has gained legal status the return process starts. During the decision process the foreigner has been prepared for a return.

\*\*\*\*\*