



**Ad-Hoc Query on effective appeals against entry refusal decisions (borders).**

**Requested by BE EMN NCP on 9<sup>th</sup> April 2014**  
**Compilation (Open) produced on 5<sup>th</sup> June 2014**

**Responses from Austria, Belgium, Bulgaria, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (21 in Total)**

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**1. Background Information**

Belgium will change next month her legislation on effective appeals against return decisions, in accordance to national jurisprudence of the Constitutional Court (Court decision 1/2014 of 16/01/2014) but also in anticipation of the entry in force of the Procedures Directive. This means that no return can be organized within 10 days after a first return decision, or within 5 days after a second, third, decision, unless the returnee signs a voluntary return declaration, so that his return can be organized as soon as possible.

This law change has the same consequences for “inadmissible persons” (persons refused entry). This means that an INAD (first entry refusal decision at border) cannot be sent back at the border within 10 days unless the persons signs a voluntary return declaration.






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In order to have some qualitative comparative information, Belgium would like to be informed about the existing legislation on effective remedies for INADs in the EMN partner states as well as existing plans of law changes in this matter, linked to the entry in force of the Procedures Directive.

Please send answers to the Belgian National EMN contact point as well as to Mrs Nancy Bracke, Head of the Border Inspection Service of the Immigration Office ([nancy.bracke@ibz.fgov.be](mailto:nancy.bracke@ibz.fgov.be)).

**2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Austria</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>Belgium</b>	<b>Yes</b>	The current possible period of appeal is 3 working days but Belgium will change its legislation on effective appeals against return decisions in May 2014. In practice no return (also for people refused entry at the border – “Inadmissible”) can be organized within 10 days after a first return decision, or within 5 days after a second, third, ... decision, unless the returnee signs a voluntary return declaration.
	<b>Bulgaria</b>	<b>Yes</b>	According to the Administrative Procedure Code, Art. 84(1) “The complaint or the protest shall be lodged in written form through the administrative body, which act is contested, within 14 days period after its announcement to the interested persons and organisations”. So, the appeal period against entry refusal decision is 14 day in accordance with the APC.
	<b>Estonia</b>	<b>Yes</b>	A third-country national who has not been granted permission to enter Estonia may file an action with the administrative court in the procedure provided for in the Administrative Procedure Code, i.e. within 30 days after receiving the decision. However filing the appeal is not a basis for granting permission to the third-country national to enter Estonia.  Regarding the changes linked with the Procedures Directive, there is no concrete decision how this will affect the legislation yet.
	<b>Finland</b>	<b>Yes</b>	According to the Section 147 a §: Voluntary return A decision on refusal of entry or deportation sets a time limit of at least seven and no more than thirty days within which the alien may leave the country voluntarily. The time limit for voluntary return is counted from the day the decision is enforceable. The time limit may be extended for certain reasons. No time limit is set if the alien is refused entry immediately after crossing the border or if the alien is refused entry or deported because he or she is subject to a criminal penalty.  No time limit is set for voluntary return, if there is a risk of absconding, if the person is considered to present a danger to public order or security, if the residence permit application has been refused on the basis of an evasion of provisions on entry, or if the case comes down




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			<p>to dismissing an application for international protection or applying an accelerated procedure under section 103.</p> <p>This section is not applied if a decision on refusal of entry or deportation is made under Chapter 10 (EU-citizens or similar status).</p> <p>According to Section 190 §, a decision of the Border Guard, Police or the Finnish Immigration Service can be appealed to the Administrative Court within 30 days of having received notice of the decision (according to Section 22 § of the Administrative Judicial Procedures Act).</p> <p>Section 200</p> <p>Enforceability</p> <p>A decision on removal from the country referred to in this Act, which may be appealed, may not be enforced until a final decision has been issued on the matter, unless otherwise provided in this Act. Where a right of appeal is needed from the Supreme Administrative Court, the appeal does not prevent enforcement unless otherwise ordered by the Supreme Administrative Court.</p> <p>A decision on refusal of entry based on the Schengen Borders Code can be enforced, even if it has been appealed against, unless the Administrative Court decides otherwise.</p> <p>However, a final decision or a decision that is otherwise enforceable under this Act must not be enforced if there is reason to believe that returning the alien to his or her country of origin or another country may expose him or her to danger referred to in section 147.</p> <p>A decision on removal from the country must not be enforced under section 147a within the time limit set out for voluntary return. A decision may be enforced if there is a risk of absconding or the alien is considered a danger to public order or security.</p> <p>Section 201</p> <p>Enforcing decisions on refusal of entry</p> <p>(1) A decision on refusal of entry may be enforced regardless of appeal, unless otherwise ordered by an administrative court. However, a decision of the Finnish Immigration Service on refusal of entry concerning an alien who has applied for a residence permit on the basis of international protection may not be enforced until a final decision has been issued on the matter, unless otherwise provided in subsection 2 or 3. Where a right of appeal is needed from the Supreme Administrative Court, the appeal does not prevent enforcement unless otherwise ordered by the Supreme Administrative Court.</p> <p>(2) If a decision on refusal of entry has been issued under section 95b, 103(1)(2) or 103(2)(3), the decision may be enforced after service on the applicant, unless otherwise ordered by an administrative court. (432/2009)</p> <p>(3) A decision issued under section 103(1)(1) on refusal of entry concerning an alien who has arrived from a safe country of asylum, or under section 103(2) on refusal of entry concerning an alien who has arrived from a safe country of origin, or a decision under section 103(2)(2) on refusal of entry concerning an alien whose application is considered manifestly unfounded, may be enforced at the earliest on the eighth day from service of the decision on the applicant, unless otherwise ordered by an administrative court. Before the enforcement, it shall be ensured that the eight-day period contains at least five working days.</p> <p>A person who has received a decision to be removed/deported can make an application to the Court that processes his/her appeal against the mentioned decision, which asks for the enforcement of the removal decision to be halted. The legislation does not include provisions that would oblige to wait with the enforcement until this application has been processed by the Court. According to the principles of good</p>
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			governance, the person facing removal must be given an actual possibility to use all judicial means at his/her disposal. If it is known that the person has submitted an application against the enforcement of a removal decision, the authorities that are enforcing the removal have to consult the Court in question either by telephone or by other means to inquire whether it is about to halt the enforcement of the removal. The European Court of Human Rights can also order that the enforcement of a removal decision is halted while the removal decision has been appealed against.
	<b>France</b>	<b>Yes</b>	<p>In France, the legislation relating to effective appeals against return decisions and the delay of return differs whether it concerns a third country national or an asylum seeker.</p> <p>In the first case, return can be organized just after the first return decision has been pronounced, except if the third country national wants to benefit from one clear day before the return or if he/she makes an appeal against the entry refusal decision. The legislation does not specify a special period of appeal, so it is the common law which is applicable (2 months). Three kinds of appeals against an entry refusal decision exist:</p> <ul style="list-style-type: none"> <li>- action for annulment</li> <li>- action for annulment with a suspensive effect</li> <li>- “référé-liberté”, an appeal in case of violation of fundamental rights.</li> </ul> <p>In the second case, asylum seekers can make an appeal within 48 hours following the notification of the return decision. The administrative court has 72hours to rule on it. The judicial remedy has a suspensive effect towards the execution of the return decision.</p> <p>A bill on the asylum system in France, which transposes the Reception and Procedures Directives, is currently being drawn up. Plans of law changes regarding the period of appeal are then not known yet.</p>
	<b>Germany</b>	<b>Yes</b>	Lodging an appeal does not have a suspensive effect on a decision to refuse entry at the land border. In order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned is to be taken into custody (detention pending removal) by virtue of a judicial order (§ 15 para. 5 Residence Act).
	<b>Hungary</b>	<b>Yes</b>	<p>The following provisions are set in Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. *Please note that hence an in-kind translation is provided.*</p> <p><i>Section 40</i></p> <p>(1) The authority carrying out border checks shall refuse the entry of third-country nationals seeking admission for stays for an intended duration of no more than ninety days according to the provisions of the Schengen Borders Code, and shall return such persons - in due observance of its interests:</p> <ul style="list-style-type: none"> <li>a) to the country of origin of the third-country national in question;</li> <li>b) to the country that is liable to accept the third-country national in question;</li> <li>c) to the country where the customary residence of the third-country national in question is located;</li> </ul>





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			<p>d) to any third country prepared to accept the third-country national in question.                  (2) If entry is refused because the third-country national is under exclusion, the visa issued in accordance with this Act shall be void.                  (3) The decision for the refusal of entry may not be appealed.</p> <p><i>Section 41</i>                  (1) A third-country national whose entry was refused and is turned back shall:                  a) remain for a maximum period of eight hours on the means of transport that is scheduled to depart to the point of origin or another destination of transit;                  b) remain in a designated place located in the frontier zone for a maximum period of seventy-two hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days; or                  c) transfer onto another means of transport of the carrier that is liable to provide return transport.                  (2) If the return procedure cannot be carried out within the time limit specified in Paragraph <i>b</i>) of Subsection (1), the third-country national shall be expelled. If expulsion is ordered for reasons other than what is contained in Paragraph <i>d</i>) of Subsection (2) of Section 43, the third-country national in question may not be excluded.</p> <p>The decision on the refusal of entry may be challenged by submitting a form at the border crossing point, which is decided by the county police departments (assigned due to county state administrative territorial arrangements). The secondary decision might be challenged before the court according to the general provisions of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services. The judgment is final.</p>
	<p><b>Italy</b></p>	<p align="center"><b>Yes</b></p>	<p>The removal decision is immediately enforceable even if the TCN lodges an appeal. The appeal can be lodged within 30 days from reception of the removal decision if the TCN is in Italy or 60 days if the TCN is abroad. The return can be organised immediately, in different ways, depending on the TCN's legal status. Italian legislation does not explicitly provide that a court can suspend the enforcement of a removal decision.</p>
	<p><b>Latvia</b></p>	<p align="center"><b>Yes</b></p>	<p>While transposing the Return Directive Latvia decided not to apply this Directive to the third country nationals mentioned in Article 2(2):</p> <ul style="list-style-type: none"> <li>- who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, ... (Article 2(2) a),</li> <li>- who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction... (Article 2(2) b).</li> </ul> <p>So it means that if a decision on refusal of entry is taken, the provisions of Return Directive are not applied and the return decision is not issued. In accordance with Immigration law: <i>if it is not possible for the State Border Guard officer, while taking a decision to refuse a foreigner to enter the Republic of Latvia, to send him or her immediately back to the country from which the foreigner comes, the State Border Guard has the right to detain the foreigner until it can be done, but not more than for 48 hours".</i> In case if it is not possible to return the foreigner within 48 hours the foreigner becomes a subject of Return Directive and his/her return will be organized in accordance with provisions of Return Directive. A foreigner can appeal a decision on refusal of entry within 30 days in the diplomatic representation of the Republic of Latvia.</p> <p>With regard to Procedure Directive the transposition procedure in Latvia is still on-going.</p>





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	<b>Lithuania</b>	<b>Yes</b>	In Lithuania, each decision related to the migratory procedures can be appealed against to the administrative court within 14 days. The implementation of the decision appealed against is automatically suspended, among other cases, when a TCN who has lodged an asylum application is not granted temporary territorial asylum in Lithuania and he is returned or expelled from Lithuania to a safe third country or the country of origin; or when the TCN is expelled from the Republic of Lithuania. If the decision is not automatically suspended, the TCN may ask the court to suspend the decision appealed against. The decision can be implemented only if its' implementation was not suspended or when the court rejects the appeal.
	<b>Luxembourg</b>	<b>Yes</b>	In Luxembourg the decision that refuses entry at the border (“Inadmissibles”) has to be notified to the TCN. S/he can introduce an annulment action against this decision at the First instance Administrative Court in accordance with article 105 of the modified law of 29 August 2008 on free movement of persons and immigration. The possible period of appeal is of 3 months (article 113 in relation with article 16 of the Law of 21 June 1999). However, this annulment action does not have a suspensive effect. However, in accordance with article 114 of the modified law of 29 August 2008 if the annulment action is accompanied by an application of stay of execution (postponement of execution) the removal from national territory cannot be carried out until a decision by the First instance Administrative Court is taken.
	<b>Netherlands</b>	<b>Yes</b>	After the decision to refuse the entry at the border, the alien is immediately removable. Please note that NL has made use of the possibility under article 2(2a) of the return directive to exclude border cases from the scope of the return directive. The alien can bring a complaint against the refusal of entry to the administrative authority within 28 days. The decision of the administrative body can be brought before the district court and then the Counsel of State (the high administrative court). To stall an imminent removal, the alien can request an injunction from the president of the district court (administrative chamber). If the alien applies for asylum, the asylum procedure will of course halt the removal, and the application will be taken under consideration with due regard for the requirements stemming from the procedures directive.. We are currently studying the possibility to introduce a system where the decision on the refusal of entry is postponed until the merits of the asylum application have been looked into. This will coincide with the introduction of an border procedure.
	<b>Poland</b>	<b>Yes</b>	Procedures for refusing entry shall be made on the basis of Article 13 and Annex V, Part A, "Procedures for refusing entry at the border" of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code <i>on the rules governing the movement of persons across borders</i> (Schengen Borders Code) and Articles 28-34 of the Aliens Act of 12 December 2013. Poland does not apply the provisions of Directive of the European Parliament and of the Council 2008/115/EC of 16 December 2008 <i>on common standards and procedures for returning illegally staying third country nationals</i> to third-country nationals who are subject to a refusal of entry in accordance with Art. 13 of the Schengen Borders Code. Refusal of entry is realized by way of a decision. It shall take effect immediately. Persons refused entry shall have the right to appeal (lodging an appeal does not make the decision unenforceable). Appeals shall be conducted in accordance with national law.  Furthermore, according to Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 <i>on the gradual abolition</i>




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			of checks at common borders if aliens are refused entry, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again.
	<b>Portugal</b>	<b>Yes</b>	The right of appeal in case of inadmissible persons does not inhibit removals.
	<b>Romania</b>	<b>Yes</b>	<p>The applicable legal framework (Government Emergency Ordinance no. 194/2002 on aliens' regime in Romania, republished, further modified) provides for that against illegally staying aliens and rejected asylum seekers, the General Inspectorate for Immigration may decide the measure of return from the Romanian territory.</p> <p>Effective return can be done by granting a return decision which is the administrative act of the General Inspectorate for Immigration or its territorial branches which oblige the illegally staying aliens and rejected asylum seekers to leave the Romanian territory.</p> <p>The aliens who crossed or attempted to cross the borders illegally, entered Romania during the entry ban period, present a risk of absconding and those whose identity cannot be established are granted an escorted return decision, which is accompanied by measure of taking the person into public custody.</p> <p>The return decision may be contested within 10 days from the communication date at the Court of Appeal in Bucharest, in case it was issued by the General Inspectorate for Immigration, or at the Court of Appeal territorially competent, in case it was issued by the territorial branches. The court decides on the case within 30 days from the date of submission. The decision of the court is irrevocable.</p> <p>Escorted return decision may be contested at the Appeal Court which is territorially competent for the Custody Centre within 3 days from the date of communication, the courts decide within 5 days and the decision is irrevocable.</p> <p>The appeal against return decision and escorted return decision suspends implementation of the removal measure.</p> <p>Simultaneously with issuance of return decision the General Inspectorate for Immigration may order an entry ban for a limited period between 3 months and 5 years.</p> <p>Entry ban may be contested within 10 days from the communication date at the Court of Appeal territorially competent. The appeal doesn't suspend implementation of the removal measures. The court decision is irrevocable.</p> <p>Currently Romania is in the legislative process of amending the Government Emergency Ordinance no. 194/2002 on aliens' regime in Romania, which will modify also the provisions on removal from the territory.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	This area has not been regulated by the national legislation. It is subject to the Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). According to the Article 13 (3) of this regulation, lodging an appeal shall not have a suspensive effect on a decision to refuse entry. Due to this fact, it was not necessary to regulate this area by the national legislation. According to the Act No 71/1967 on Administrative Procedure, a notice of an appeal shall be filed within 15 days.
	<b>Spain</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.

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	<b>Sweden</b>	<b>Yes</b>	Current legislation says that removal can be executed principally at once after the decision. The revised Asylum Procedure Directive will not be implemented this year.
	<b>United Kingdom</b>	<b>Yes</b>	<p>Currently section 82 of the Nationality, Immigration and Asylum Act 2002 provides for the majority of rights of appeal. A right of appeal exists against the specified types of immigration decisions set out in that section. Most appeals relating to refusal of entry at the UK border involve cancellation of UK Entry Clearances. Depending on the circumstances involved, appeals can either be made from within the UK or have to be made from abroad.</p> <p>Persons wishing to appeal must do so within 10 working days of being served with a decision, unless they are outside the UK (28 calendar days) or in detention (5 working days). Where a person is entitled to bring an appeal under section 82(1) while he is in the UK and that appeal is pending he may not be removed or required to leave the UK, unless he has chosen not to appeal and has signed an appeal waiver form. Where an individual has an in-country right of appeal, Border Force will make an assessment on whether or not the individual may be granted temporary admission or detained.</p>
	<b>Norway</b>	<b>Yes</b>	An entry refusal decision/administrative decision regarding rejection at the border can be appealed. The police have the authority to make this decision (to refuse entry) while the actual appeal has to be addressed to the Directorate of Immigration, which in this case handles appeals. The police also decide whether it is possible to postpone carrying out the decision to refuse entry. Otherwise, there are rules and regulations in place that determine deadlines for lodging complaints etc.

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