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Ad-Hoc Query on 2023.10 Time limit to reopen an application in the event of implicit withdrawal or abandonment of the application according to the directive 2013/32/EU

Requested by EMN Germany on 1 March 2023

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (25 in Total)

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1. BACKGROUND INFORMATION

In the processing of asylum applications for which Germany is or becomes responsible in line with the Dublin regulation, the German asylum act provides a different treatment according to the fact whether or not the application already concluded in the Member State is definitely closed or could still be reopened. The German Federal Office for Migration and Refugees faces jurisdiction that emphasizes the question if a

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case could hypothetically be reopened in the Member State following an implicit withdrawal or abandonment of the application. According to the German Asylum Act, the kind of procedure depends on the final rejection or discontinuance of the application by another Member State. Under Art. 28 par. 2 of the asylum procedure directive 2013/32/EU, this is a question of the stipulated time limit. In the event of implicit withdrawal or abandonment of the application, Art. 28 par. 2 of the directive 2013/32/EU allows Member States to determine in their legislation a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application.

We would like to ask the following questions:

1. Did your Member State transpose article 28 par. 2 of the directive 2013/32/EU?

Available choices: Yes, No

2. If you answer YES to Q.1, can you please indicate what is the time limit to reopen an application in the event of implicit withdrawal or abandonment of the application?

3. If your country chose not to transpose art. 28 par. 2 of the directive 2013/32/EU, are there other possibilities (with or without time limit) in national law to reopen the case besides filing a new application?


We would very much appreciate your responses by **29 March 2023**.

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2. RESPONSES


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		Wider Dissemination	
	EMN NCP Austria	Yes	<p>1. Yes</p> <p>2. In Austria, the discontinuation of an international protection procedure as well as the resumption of a discontinued procedure are regulated in Article 24 Asylum Act 2005. According to Article 24 para 2 Asylum Act 2005, the procedure shall be discontinued if an asylum seeker has evaded the procedure and a decision cannot be taken without a further interview or hearing. According to Article 24 para 1 Asylum Act 2005, an asylum seeker evades the procedure if:</p> <ul style="list-style-type: none"> • the whereabouts of the asylum seeker are neither known to the Federal Administrative Court or the Federal Office for Immigration and Asylum due to a violation of the asylum seeker's duties to cooperate nor can they be easily established by the authority; or • they leave the federal territory voluntarily and the procedure is not to be dismissed as irrelevant under Article 25 Asylum Act 2005; or • they do not appear to the appointments set for them by the Federal Office for Immigration and Asylum in the admission procedure despite being requested to do so. <p>Article 24 para 2 Asylum Act 2005 stipulates that a discontinued procedure shall be resumed ex officio as soon as the determination of the relevant facts is possible. After two years, the procedure can no longer be resumed.</p> <p>The EU Directive 2013/32/EU was transposed into Austrian national law with the Act Amending the Aliens Law 2015 which amended, among others, the Asylum Act 2005 (Government Proposal – Explanatory Notes, 582 of</p>

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.





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			<p>the supporting documents XXV. Legislative Term, available at https://www.parlament.gv.at). The discontinuation of the procedure and the resumption of a discontinued procedure, including the two-year period, had already been regulated in Article 24 Asylum Act 2005 prior to the Act Amending the Aliens Law 2015.</p> <p>Please note that the withdrawal of an application for international protection in proceedings before the Federal Office for Immigration and Asylum is generally not possible in Austria according to Article 25 para 2 Asylum Act 2005 (unless the asylum seeker is lawfully settled in Austria). The withdrawal of an application in proceedings before the Federal Administrative Court is deemed to be a withdrawal of the appeal.</p> <p>Source: Ministry of the Interior</p> <p>3. n/a</p>
	EMN NCP Belgium	Yes	<p>1. No</p> <p>2. N/A</p> <p>3. After a negative decision has been taken, the applicant can always ask the Commissioner General for Refugees and Stateless persons to reopen the assessment before lodging an appeal against the decision or, within the framework of his/her appeal, present elements that could shed a different light on the decision. It is then up to the CGRS to decide whether or not to reopen/revoke the decision or to leave the assessment to the appreciation of the Council. Obviously, the decision will only be reopened/withdrawn if the applicant provides elements relating to decisive factors.</p> <ul style="list-style-type: none"> - For example, in the case of a decision to terminate, the situation may arise that the applicant was absent from his/her interview, and did not submit a valid reason for his/her absence within the legally prescribed period. If the applicant then demonstrates that he/she did submit a medical certificate (but an error was made at the post, for example), the procedure will be reopened or the decision will be withdrawn. - Once the decision is final (i.e. the appeal period has expired or the Council has rendered a judgment confirming/reforming the decision), the CGRS will no longer withdraw the decision and the applicant must



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			submit a subsequent application.
	EMN NCP Bulgaria	Yes	<p>1. Yes</p> <p>2. The proceedings shall be considered resumed if the foreigner appears within 9 months of the discontinuation and wishes his application for protection to be examined. (Article 77 Law on Asylum and Refugees)</p> <p>3.N/A</p>
	EMN NCP Croatia	Yes	<p>1. Yes</p> <p>2. There is no time limit.</p> <p>3. N/A.</p>
	EMN NCP Cyprus	Yes	<p>1. Yes</p> <p>2. The file of an application is reopened automatically as long as the applicant's request is within the time frame of 9 months; that is from the date of the decision for implicit withdrawal to the date the applicant applied for reopening his/her application. If the time limit of 9 months is exceeded, then the application is examined on an individual basis and needs a prior approval from the Head of the Asylum Service to be reopened.</p> <p>3. N/A</p>
	EMN NCP Czech Republic	Yes	<p>1. Yes</p> <p>2. In CZ the period to reopen an application is 9 months. According to sec. 11c par. 1 of Asylum Act the</p>




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			<p>application for international protection lodged 9 months following implicit withdrawal or abandonment of the previous application at the latest shall not be treated as subsequent.</p> <p>It is necessary to point out that article 28/2 of the directive provides for the possibility for MSs either to set the time limit to reopen the case or not to treat the second application as subsequent (this is the case of CZ).</p> <p>3. No.</p>
	EMN NCP Estonia	Yes	<p>1. Yes</p> <p>2. Conditions regarding withdrawal of application for international protection and waiver of application are regulated with § 23 of the Act on Granting International Protection to Aliens (AGIPA). According to the same paragraph subsection 6, the time limit is 9 months.</p> <p>This means that the applicant has the right to request a new review of the application for international protection. Police and Border Guard Board will cancel the decision of rejection and continue review of the application by renewing the previous proceedings concerning international protection.</p> <p>3. N/A</p>
	EMN NCP Finland	Yes	<p>1. Yes</p> <p>2. According to Art. 28 (2), Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.</p> <p>Finland transposed the article by ensuring that the applicant is entitled to make a new application which is not subject to the procedure referred to in Articles 40 and 41. Reopening the case is not possible. (Aliens Act, Section 95 c (2): If the applicant reports to the competent authority after the Finnish Immigration Service has made a decision on the expiry of his or her application under section 1, he or she will be informed of the right</p>

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			<p>to file a new application.) The application cannot be reopened. The applicant is entitled to file a new application. There is no time limit for filing a new application.</p> <p>3. No, in Finland the only possibility to have the case of the applicant in question examined is by filing a new application.</p>
	EMN NCP France	Yes	<p>1. Yes</p> <p>2. According to Article L531-40 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum, the asylum seeker has a period of nine months (starting from the closure decision taken in the case of implicit withdrawal or abandonment), to request the reopening of his or her file or to submit a new application, so that the French Office for the Protection of Refugees and Stateless Persons (OFPRA) reopens the file and resumes the examination of the application at the stage at which it was interrupted. Once the nine-month period has elapsed, the decision to close the file is final and the new application is considered a request for re-examination.</p> <p>3. N/A.</p>
	EMN NCP Germany	Yes	<p>1. Yes</p> <p>2. The German Asylum Act provides the possibility to reopen an application within 9 months following the abandonment of the application. Once this period has expired, the application will be treated as a subsequent application. Art. 33 par. 5 of the German Asylum Act thus stipulates the shortest possible time limit allowed by the directive 2013/32/EU.</p> <p>3. n/a</p>
	EMN NCP	Yes	<p>1. Yes</p>




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	Greece		<p>2. In the event of an implicit withdrawal or abandonment of an application for international protection, article 28 par. 2 of Directive 2013/32/EU provides as follows:</p> <p>'2. Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.</p> <p>Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.</p> <p>Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement. Member States may allow the determining authority to resume the examination at the stage where it was discontinued.'</p> <p>The aforementioned provision of Directive 2013/32/EU was transposed in the Greek legislation by virtue of article 47 par. 4, 5 of Law 4375/2016 (Official Gazette A 51), as follows: '4. Applicants against whom a discontinuation act or a decision to file the application has been issued following a withdrawal have the right, within 9 (nine) months from the date of the discontinuation act or submission of the withdrawal to request from the authority which took the decision, to continue the examination of his/her case. Until the final decision on the above application, the applicant shall not be deported from the country nor shall a return decision be executed. The applicant may ask only once for the continuation of the examination of his/her case. 5. An application for international protection submitted after 9 (nine) months from the date of publication of the discontinuation act or the submission of the withdrawal shall be treated in accordance with the provisions on subsequent applications referred to in Article 59.'</p> <p>Furthermore, the presently applying Law 4939/22 (Official Gazette A 111), which codifies the Greek legislation on reception, international protection of third country nationals and non-nationals and temporary protection in the case of a massive influx of exported aliens, in article 86 paragraph 4 provides for the following: "4. In cases that a decision to discontinue [the examination of the application for international protection] has been</p>
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			<p>issued, according to the provision of paragraph 1, the applicant has, only once and within a time limit of nine (9) months from the date that the decision to discontinue was issued, the right to request from the authority which has made the decision that the examination of his/her case be continued, or to lodge a new application, which shall not be subject to the procedure referred to in article 94. Until the final decision on the above application, the applicant shall not be deported from the country nor shall a return decision be executed.”</p> <p>3. N/A</p>
	EMN NCP Hungary	Yes	<p>1. Yes</p> <p>2. The time limit is 9 months after implicit withdrawal or abandonment of application in line with the Directive</p> <p>3. N/A</p>
	EMN NCP Ireland	Yes	<p>1. No Ireland does not participate in Directive 2013/32/EU</p> <p>2. Not applicable.</p> <p>3. Ireland does not participate in Directive 2013/32/EU. Under national legislation, section 22 of the International Protection Act 2015 provides for subsequent applications. An applicant may apply to the Minister for consent to make a subsequent application if their application has been withdrawn or deemed withdrawn and must provide a written explanation of the reasons for the withdrawal/deemed withdrawal. The consent to make a subsequent application may be granted in circumstances where at the time of the withdrawal/deemed withdrawal the applicant was incapable of pursuing the application through no fault of the applicant. There are no other provisions relating to the re-opening of a withdrawn application.</p>
	EMN NCP Italy	Yes	<p>1. No</p>




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			<p>2. N.A.</p> <p>3. Article 12, paragraph 5 of the Legislative Decree no. 25/2008 states that: "In the event that the convocation has not been notified to the asylum seeker who is not hosted in a reception or detention facility and a decision granting the relevant application has not already been issued against him/her, the competent Territorial Commission or the National Commission shall order, on a single occasion and within ten days from the cessation of the case which did not allow the interview to take place, a new convocation of the person concerned, according to the terms set out in paragraph 1, in order to reactivate the procedure". Moreover, the subsequent Article 23 bis of the quoted legislative decree provides that: "In the event that the applicant leaves the reception facilities without a justified reason and withdraws from the measure of detention in the centres referred to in Article 14 of the Legislative Decree no. 286 of 25 July 1998, without having attended the interview referred to in Article 12, the Territorial Commission shall suspend the examination of the application. 2. The applicant may request once to reopen the procedure suspended in accordance with paragraph 1, within twelve months of the suspension. After this period has expired, the Territorial Commission shall declare the proceedings closed. The request submitted by the applicant after the declaration of the extinction of the proceedings shall be subject to a preliminary examination pursuant to Article 29 (1-bis). During the preliminary examination, the arguments put forward in support of the admissibility of the application, including the reasons for expulsion, shall be assessed."</p>
	EMN NCP Latvia	Yes	<p>1. Yes</p> <p>2. The time limit to reopen an application in the event of implicit withdrawal or abandonment of the application is determined in the Article 34 (3) of the Asylum Law - the asylum seeker has the right within nine months from the day when the decision to discontinue examination of the application has entered into effect to request that examination of his or her application is resumed. After this period the application is considered as a subsequent application.</p> <p>3. N/a</p>


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	EMN NCP Lithuania	Yes	<p>1. Yes</p> <p>2. According to Article 85.2 of the Law on the Legal Status of Foreigners, an application can be reopened once so long as less than 9 months have elapsed from the decision to discontinue its examination for reasons listed in 85.1.2 (applicants who have been provided accommodation at the facilities of the Refugee Reception Center or the State Border Guard Service leave without authorization or fail to return to within 72 hours) and 85.1.3 (applicants who are allowed to live in a place of their choice cannot be reached for 72 hours).</p> <p>3. N/A</p>
	EMN NCP Luxembourg	Yes	<p>1. Yes</p> <p>2. Article 23 (3) of the amended law of 18 December 2015 on international protection and temporary protection states that if, within less than nine months of the decision to close the file, the applicant requests that the file be reopened or submits a new application, the Minister shall reopen the file and resume consideration of the application at the stage at which it was interrupted. The decision to close the file can only be challenged by filing an application to reopen the file. An applicant's file may be reopened under the preceding paragraph only once. Once the nine-month period has elapsed, the decision to close the file is final and the new application is considered a subsequent application.</p> <p>3. N/A.</p>
	EMN NCP Malta	Yes	<p>1. Yes</p> <p>2. 9 months from the date of the decision to discontinue the application.</p> <p>3. N/A</p>






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	EMN NCP Netherlands	Yes	<p>1. Yes</p> <p>2. Article 28 par. 2 of the directive 2013/32/EU is transposed in article 30c par. 2 of the Aliens Act (Vreemdelingenwet, Vw) 2000. Based on article 28 par. 2 of the directive 2013/32/EU, Article 30c (Vw) 2000 states that if the foreign national makes a new application after the decision to discontinue the examination, it shall be treated as a first application, unless the foreign national has previously made an application that has been rejected.[1] In the Netherlands the legislature has chosen not to implement the option in the legislation whereby a time limit is given to resume the examination of the application. If the first application is (implicitly) withdrawn by the applicant, the applicant has to submit a new application for international protection.</p> <p>According to Section C1/2.3 and C2/8 of the Aliens Act Implementation Guidelines (Vreemdelingencirculaire, Vc) 2000, if a foreign national cannot be reached and/or the place of residence of the foreign national is not known, the Immigration and Naturalisation Service (Immigratie en Naturalisatie Dienst, IND) will issue an intended decision to reject the application under simultaneous extension of the general asylum procedure. The IND will withdraw the intention to disregard the application if the foreign national reports to the application center again, generally within the period of two weeks, and is available for a continuation of the processing of the application in the general asylum procedure.</p> <p>Article 30c of the Aliens Act (Vw) 2000 regulates (within the terms of article 28 of the 2013/32/EU directive) when the examination of an application for international protection is discontinued. Namely, when the foreign national has failed to respond to requests to provide information essential to his application; the foreign national has failed to appear at an interview and has not demonstrated within a two-week period that this is not attributable to him; or the foreign national has disappeared or left without our Minister's permission and has failed to contact the responsible authorities within a period of two weeks to show that this is not attributable to him.</p> <p>[1] Parliamentary Papers II , 2014-2015, 34088, nr. 3, (p. 48)</p> <p>3. There are no other options than filing a new application.</p>
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	EMN NCP Poland	Yes	<ol style="list-style-type: none"> 1. Yes 2. 9 months 3. N/a
	EMN NCP Portugal	Yes	<ol style="list-style-type: none"> 1. Yes, the applicant can always reopen the application (if it is not closed with a decision), or make a new application (subsequent). 2. No time limits. 3. N/A
	EMN NCP Slovakia	Yes	<ol style="list-style-type: none"> 1. No 2. NA 3. In the Slovak Republic there is no possibility to reopen the application. The applicant has the possibility to submit a new application.
	EMN NCP Slovenia	Yes	<ol style="list-style-type: none"> 1. Yes 2. A person may file a new application for international protection within nine months of the issuance of an order discontinuing the procedure after withdrawal of an application. Every further application or application filed after the expiry of the nine-month time limit shall be examined pursuant to the provisions regulating subsequent applications. 3. No.
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> 1. No

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			<p>2. No, but the former applicant can present a new application in any moment</p> <p>3.</p>
	EMN NCP Sweden	Yes	<p>1. No</p> <p>2. Not applicable.</p> <p>3. Sweden has not implemented Article 28 of the directive 2013/32/EU (APD) in national legislation, but the proceedings are similar. If the Swedish Migration Agency (the determining authority) considers that the applicant has implicitly withdrawn his/her application for international protection, e.g. by not appearing to the personal interview or by not responding to requests of his/her whereabouts or other questions, a decision of discontinuation may be taken. If the applicant after that decision reports to the Agency, a new application is filed and a search in Eurodac is made, in order to control whether another MS has become responsible. If SE still is responsible, the case is reopened for further examination. There is no time limit, as we control that the responsibility has not shifted. The provisions on subsequent applications in APD (2013/32) are not applicable in this case.</p>
