



Ad-Hoc Query on Procedure on international protection at the airports in other member states

Requested by CZ EMN NCP on 4th August 2010

Compilation produced on 29th September 2010

Responses from Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (18 in Total)

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1. Background Information

Ministry of the Interior of the Czech Republic would like to ask Member States on their regulation of the so-called airport procedure, i.e. procedure on international protection if a foreigner asks for asylum at the airport and does not have documents (visa) for entering the territory. The purpose of our questions is to monitor the situation in MS and to find out how MS that do not apply airport procedure deals with foreigners who apply for asylum at the airport without valid documents for entering the territory.







It would be very much appreciated if we could receive your answers by the **19th of August 2010**.

2. Responses

		Wider	<i>Query 1: How do you proceed if a foreigner asks for international protection at the international airport and he/she does not have</i>
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		Dissemination?	valid visa/passport?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	Such person is placed in a detention facility near the airport. The asylum applicant, who made his claim at the airport, has the same procedural guarantees as a common asylum seeker who introduced his claim in the territory. The asylum applicant shall be given the opportunity on a personal interview on his/her application for international protection. During this interview there will be access to the services of an interpreter for submitting his/her case and the applicant has the right to be assisted by a lawyer. In case the decision on his claim is negative he/she has an effective remedy before a court (the Aliens Litigation council). The distinction between a procedure conducted in the territory and a procedure conducted at the airport is the duration of the entire procedure. The procedure of the applicant who made his application at the airport is accelerated; he/she will be interviewed and decided as soon as possible by the Commissioner General for Refugees and Stateless Persons. In case of a negative decision the applicant has 15 days to turn in the appeal (common procedure = 30 days). The appeal request is immediately transferred to the asylum instance (Commissioner General for Refugees and Stateless Persons) who has 3 working days to submit a written defense (common procedure = 15 days). Within 5 working days the parties are summoned by the court and within 5 working days after the court's session a judgement is pronounced.
	Cyprus	Yes	Firstly, it should be stated that most of the asylum seekers who arrive in the Republic are through the occupied areas and illegal. In the case that a person arrives in the airport and request for asylum, without him/her having legal documents, there are three possible procedures: According to the Refugee Laws of 2000 -2009, article 7 (4) (b) (i), a person could be detained after a Court order for reasons of verification of his/her identity and country of residence, where he/she doesn't have at his/her possession any documents to prove his/her identity, or he/she has destroyed any such documents. In any case the detention of that person could not exceed 8 days and where the Court sees it necessary could order for renewal of the detention for a period not exceeding 32 days. In the case that the person has in his/her possession identity documents, then he/she has the right to choose his/her own place of residence or he/she can apply for a residence at the Reception Centre.
	Czech Republic	Yes	Such person is placed at the reception centre at the airport. The Ministry decides on the refusal of entry into territory in 5 days and conducts an asylum procedure in 28 days. The maximum length of stay in the centre is 120 days. There are no differences in asylum procedure conducted here and in the territory besides the time limit of 28 days.
	Estonia	Yes	If an asylum seeker arrives to the international airport and expresses a wish to apply for international protection, the Border Guard Department of the Police and Border Guard Board accepts his/her application, helps to fill out the necessary forms, takes the photo and fingerprints of a person and sends the person to the reception centre. The file is then directly sent to the International Protection Division where it is being processed.
	Finland	Yes	The person is usually detained until his/her identity is confirmed. The detention centre is situated in the city of Helsinki about 10 km south of the airport. The preliminary asylum hearings are carried out by the border guard officers for the Finnish Immigration Authority which is the agency responsible for asylum proceedings here in Finland. If a person is detained based on Aliens Act, a court hearing must be arranged on 4 th day preceding the apprehension. Court hearings take place at the local district court. By a court order a person may be detained for 14 days at a time, after which a new hearing must be arranged at the court. A detained person has a right to have an attorney and an interpreter present during the hearings. According to the legal praxis a detention exceeding 90 days must be considered an




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			exception. However, exceptional circumstances may lead to a longer detention term than aforementioned general practice.
	Germany	Yes	For foreigners not having a valid passport and asking for asylum in a transit - non Schengen - area, the asylum procedure is carried out before his entry on German territory, at the airport, according to § 18a AsylVfG (Asylum Procedure Act). If the passport is valid but not the visa, the asylum seeker may enter German territory for the asylum procedure to be carried out.
	Italy	Yes	In this case, the Border police sends the applicant to the competent Police headquarter (so called Questura), which initiates the procedures. The applicant shall be so placed temporarily in one of the ad hoc facilities for asylum seekers (so called CARA). After identification, the applicant enters the national system of protection for asylum seekers (so called SPRAR), which provides a decentralized territorial reception, the provision of all health and social services and the implementation of integrated projects with associations and NGOs. For more information see the national study on Organization of immigration and asylum policies.
	Latvia	Yes	There is no special procedure for situation when a person applies for asylum in airport and does not have any identity documents.
	Lithuania	Yes	For foreigners who ask for international protection at the airport and do not have valid visa/passport a general procedure applies. All decisions regarding asylum are taken by the Migration Department. The Department within 48 hours takes a decision regarding granting (refusal to grant) temporary territorial asylum to the asylum applicant and regarding his/her accommodation. Until this decision is taken an asylum applicant is accommodated at the State border guard facility at the airport. After the decision is taken an asylum applicant is accommodated at the Foreigners' Registration Centre.
	Malta	Yes	Such person is placed in a reception centre until his asylum case is decided. His entry into Malta will depend on the decision of the asylum claim.
	Netherlands	Yes	Asylum applicants who arrive in the Netherlands at Schiphol Airport will be refused entry on the basis of the Schengen Borders Code. They can apply for asylum at the application centre at Schiphol and a custodial measure will be imposed upon them. If it is not possible to take a careful decision within the timelimits of the regular asylum procedure (in which a decision has to be taken with eight working days), their application will be dealt with in the extended asylum procedure. In that case, they will only remain in custody in a limited number of cases, for example in the case of 1F, Dublin, or a suspicion of fraude. In these cases the extended procedure can take a maximum of six weeks.
	Poland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Portugal	Yes	The entry is refused and the applicant placed in the airport's accommodation center during the instruction of the admissibility procedure (5 days). If the request is accepted, he is admitted in the country. When denied, in case of judicial appeal, the applicant may stay in the accommodation center for 60 days maximum. Basically, there are no differences in asylum procedures conducted in a border post and inside the territory, besides the time limit.
	Slovak Republic	Yes	1. In case a foreign national applies for asylum directly after entering the territory of the Slovak Republic at an international airport, the competent Border Control Department accepts a declaration on asylum application submitted by the foreigner and performs all activities related to the declaration receipt, issues the foreign national a document for transport and informs the foreign national about his/her duty to appear in the Reception Centre of the Migration Office of the Ministry of the Interior. After performing all activities related to application for asylum receipt, the Police Department forwards the case documentation to the Migration Office of the Ministry of Interior, which is the factually competent authority to decide on international protection.










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	Slovenia	Yes	<p>After the police procedure (for persons who express an intention to apply for IP) had been conducted, such person is IN PRACTICE transferred to the Asylum Home by the police and subjected to the same (before and after lodging the application for IP) procedure, as applies for any other IP seeker (in the same/similar circumstances, where relevant). For example, if there is an existent alert issued in the SIS for the purposes of refusing entry in the Schengen Area, such person is transferred to the police Centre for Foreigners in Postojna where his/her freedom of movement is restricted, and where the procedure of lodging an IP application is conducted by the Asylum Home (Operative Service) personnel.</p> <p>When a person at the airport express an intention to apply for IP after forged visa/passport had been presented as authentic, he/she is in general subjected to criminal procedure and the restriction of movement in the police Centre for Foreigners in Postojna is normally ordered by the judge. The procedure of lodging an IP application is then also conducted in that Centre and the applicant is also staying there during the procedure for granting IP (or Dublin procedure). Except above stated, there are no other differences in the procedure for granting IP.</p> <p>THE LEGISLATION - the Slovenian International Protection Act – <u>IPA</u> (Official Gazette, No. 111/07, 111/08 – Constitutional Court decision, and 58/2009) in Article 58 (paragraph 1) does provides for special airports/seaports procedure and states, that “<i>an alien which had expressed the intention to file an application while staying in the airport transit zone ... the person remains in this area until the decision has been issued in the accelerated procedure or until a final decision in the Dublin procedure, the national and European safe third country procedure and in the procedure regarding the first country of asylum has been taken. If the application is examined in the regular procedure, the applicant is accommodated in the Asylum Centre after the sanitary-disinfection preventive medical examination.</i>” The deadline for making a decision is not defined, but the IPA states (same article and paragraph), that “<i>the competent authority receives the application and decides the case in the shortest possible time.</i>”</p> <p>Detailed requirements and modalities regarding the stay in airport transit zones and ports shall be, according to the Article 135 in relation to Article 58, paragraph 4 of the IPA, issued by the Minister’s executive act in 6 months after the establishment of adequate accommodation facilities at the airport or seaport. The reason for inapplicability of special airports procedure in practise is in non-establishment of such accommodation facilities.</p>
	Sweden	Yes	<p>The person is handed over by the Swedish border police to the Swedish Migration Board and is brought to the Swedish Migration Board’s facilities. His/her application for asylum is registered and fingerprints and photo is taken. A shorter interview takes place and the Migration Board decides if the person is to be allowed entry and sent open centre (or to live with relatives) or if the person is to be taken into detention. The normal asylum procedure then follows.</p>
	United Kingdom	No	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>










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		Wider Dissemination?	Query 2: Do you have a special procedure for these cases with regard to their detention/limiting their freedom of movement?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	During the application the person is placed in a detention facility near the airport. The duration of detention in such a specific place at the border may not be longer than two months. This can be extended, if the necessary measures for return have been taken. The total duration of the detention may not exceed the duration of five months. (Eight months in case of reasons for national security or public order). However, when removal fails due to a lack of cooperation of the asylum seeker whose claim for international protection has been rejected, the detention period can be renewed. For vulnerable groups, such as unaccompanied minors, the detention in the detention facility or so called closed centre is limited to a couple of days during the age determination process. In case of a positive outcome, or in case it is obvious that the unaccompanied minor is not yet 18, he/she is placed in an Observation and Orientation Centre (OOC).
	Cyprus	Yes	Asylum seekers have the right to freely reside in the territory of the Republic. They are not detained except for in three cases: for verification of their identity after a Court Order or in the case that the persons' application has been rejected on first as well as on second instance and there is already an Order for expulsion against him/her and that person wishes to lodge new documents for examination by the competent authorities.
	Czech Republic	Yes	Yes. With the exception of vulnerable groups, unaccompanied minors and families the procedure described above is applied. These special categories are always granted entry into territory.
	Estonia	Yes	No detention measures are being applied towards an international protection applicant if he/she expresses a wish to apply for asylum upon arrival to the international airport.
	Finland	Yes	Yes. However, every case is considered individually. Legal basis for detention and other such procedures are stated in the Aliens Act and the facts of an individual case determine the actions to be taken by the authorities. The vulnerable groups are placed at family shelters and at other such more humane installations. In general, matters related to vulnerable groups are considered of utmost importance and procedures, are carried out urgently.
	Germany	Yes	These asylum seekers have to stay at the airport during the airport procedure as far as their accommodation is possible or is simply not possible because of a necessary inpatient hospital treatment, § 18a(1) AsylVfG (Asylum Procedure Act). They may not enter German territory, but may always leave voluntarily if possible to them. At the latest 30 days after the arrival at the airport, a further detention in the transit area of an asylum seeker who is to be refused requires a judicial examination as well as the order "to ensure the foreigners due exit", § 15 (6) AufenthG (Residence Act).
	Italy	Yes	See answer No. 1
	Latvia	Yes	According to the Asylum Law in case when the identity of the asylum seeker has not been established the State Border Guard has the right to detain an asylum seeker for a period up to seven days. Following the judge takes a decision regarding to the detention of asylum seeker.

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	Lithuania	Yes	No. The Migration Department considers every case individually and takes a decision within 3 months. During this time asylum applicants' free movement is not limited.
	Malta	Yes	The same policy applies for all illegally arriving migrants. All are placed in reception centres until their case is decided except for the vulnerable groups, families with children and unaccompanied minors.
	Netherlands	Yes	Yes, a custodial measure is imposed on them (see answer to question 1).
	Poland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Portugal	Yes	See answer No. 1
	Slovak Republic	Yes	2. According to Article 3, Section. 2 Letter c) of Act No. 480/2002 Coll. on Asylum, a foreign national who has been air transported to the Slovak Republic and he/she does not fulfil the conditions for entering the territory of the Slovak Republic, the Police Department in the transit area of an international airport is responsible for accepting the declaration. According to Article 4, Section 3, Letter a), b) the Ministry of Interior ceases the placement of the applicant under Article 3, Section. 2 Letter c) in a Reception Centre and places him/her into a Detention Facility, in case a) The Ministry of Interior shall not decide on his/her asylum application within seven days from completion of the questionnaire, or b) The Court shall not decide within 30 days from delivery of the remedial measure against the decision of the Ministry of Interior in the asylum proceeding.
	Slovenia	Yes	See answer No. 1
	Sweden	Yes	No.
	United Kingdom	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.

		Wider Dissemination?	Query 3: Do you have a special centre at the airport or nearby (article 35 of the Asylum Procedures Directive)?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	Yes, there are three special centers at the airport and nearby. There is the INAD-centre (INAD stands for Inadmissible Passengers) at Brussels Airport and the detention facilities nearby the airport: CT127 (Melsbroek) en CR127bis (Steenokkerzeel).
	Cyprus	Yes	No.
	Czech Republic	Yes	Yes. CZ has a special centre directly at the airport and the law allows for establishing a centre nearby the airport according to the

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			Asylum Procedures Directive.
	Estonia	Yes	The reception centre for international protection seekers is located approximately 180 km from Tallinn International Airport. There is no special centre for asylum seekers directly at the airport.
	Finland	Yes	The detention center is situated in the city of Helsinki, not at the airport. Furthermore, the court of law decides whether a person is detained after initial procedures.
	Germany	Yes	There is a special centre directly at the airport Frankfurt/Main for asylum seekers getting into the airport procedure that is held by the federal state of Hesse. Nearby the airport there is also a Federal Police department as well as a branch of the Federal Office for Migration and Refugees who are both responsible for the procedure according to § 18a AsylVfG (Asylum Procedure Act).
	Italy	Yes	See answer No. 1
	Latvia	Yes	No, there is no special centre directly or nearby at the airport.
	Lithuania	Yes	At the airport State border guard service has a special facility where asylum applicants can be accommodated until the Migration Department takes a decision in respect of granting (refusal to grant) temporary territorial asylum to the asylum applicant and accommodating him/her. The Foreigners Reception Centre where generally all asylum applicants are accommodated until their applications are examined as to the substance is approx. 65 km from the Vilnius international airport.
	Malta	Yes	However this centre is only used for the first 48 hours. After this period, the asylum seeker is transferred to another centre.
	Netherlands	Yes	Yes, there is a special detention centre at Schiphol Airport.
	Poland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Portugal	Yes	See answer No. 1
	Slovak Republic	Yes	3. The national legislation stipulates the existence and operation of the special centre, i.e. the “Reception Centre” at the M. R. Štefánik International Airport of Bratislava, whereas the operation of this centre is in competence of the Migration Office of the Ministry of Interior of the Slovak Republic.
	Slovenia	Yes	See answer No. 1
	Sweden	Yes	A centre is located appr. 7 km from Stockholm-Arlanda airport. The centre is both an open centre and closed centre (detention). Both facilities are administrated by the Swedish Migration Board. The centres are not only for persons who have applied for asylum at the border, but also for persons whom applied after entering the border.
	United Kingdom	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.

		Wider	Query 4: If you do not have a special procedure and special centre, how do you consider these persons?
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		Dissemination?	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	Not applicable
	Cyprus	Yes	n/a
	Czech Republic	Yes	Not applicable in CZ
	Estonia	Yes	Upon arrival to the international airport and applying for protection, a person is being transferred to the reception centre.
	Finland	Yes	See answer No. 1
	Germany	Yes	n.a.
	Italy	Yes	See answer No. 1
	Latvia	Yes	According to the Asylum Law any asylum applications can be examined under the accelerated or normal procedure. There is no special procedure relating to the applications made at the airport (at a State border control point).
	Lithuania	Yes	Not applicable.
	Malta	Yes	The procedure followed in the case of arriving undocumented migrants claiming asylum is the same for the airport as it is for other border crossing points.
	Netherlands	Yes	Not applicable in NL.
	Poland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Portugal	Yes	See answer No. 1
	Slovak Republic	Yes	Not applicable in SR
	Slovenia	Yes	See answer No. 1
	Sweden	Yes	They are regarded as asylum seekers once there application is registered and are handled in the “normal” asylum procedure.
	United Kingdom	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
