



AD HOC QUERY ON 2021.54 Ad hoc query on submission of asylum applications at representations of Member State

Requested by EMN NCP Latvia on 20 August 2021

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (23 in Total)

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1. Background information

Asylum authorities of Latvia would like to find out Member States` practice regarding applying for asylum at representations of Member States (e.g. embassies and other diplomatic missions). Taking into account the situation at the external border with Belarus, we kindly invite you to share your responses as soon as possible.

2. Questions

1. Does your national legislation allow a third country national to apply for asylum at the representation of Member State (e.g. embassy and other diplomatic missions) in the third country?

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2. If yes, are there any limitations for applying? For example, criteria of citizenship, vulnerability or other.

3. Please shortly describe what are the following procedures and steps (regarding the asylum procedure, accommodation and departure) after the submission of the asylum application at the representation of the MS. Please mention the involved/ responsible institutions.

We would very much appreciate your responses by **8 October 2021**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	Yes	1. No. Art. 17 para 1 of the Asylum Act 2005 requires that the application for asylum be filed in Austria (see also Peyrl/Neugschwendtner/Schmaus, Fremdenrecht p. 257). 2. n/a 3. n/a

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.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "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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	<p>EMN NCP Belgium</p>	<p>Yes</p>	<p>1. Article 50, §1 of the Belgian Aliens Law provides that the foreigner must submit his application in person to the designated authorities, namely: at the Belgian border (to the authorities in charge of border control or the agents of the Aliens Office) or inside the Kingdom (the agents of the Aliens Office or the directors of penitentiary establishments). Therefore, such an application cannot be made from abroad from a Belgian diplomatic or consular post.</p> <p>2. Belgium's national legislation does not allow a TCN to apply for international protection at the representation in a Third Country.</p> <p>3. Belgium's national legislation does not allow a TCN to apply for international protection at the representation in a Third Country.</p>
	<p>EMN NCP Bulgaria</p>	<p>Yes</p>	<p>1. No</p> <p>2. N/A</p> <p>3. N/A</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. No.</p> <p>2. N/A</p> <p>3. N/A</p>

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	EMN NCP Cyprus	Yes	1. No. 2. N/A 3. N/A
	EMN NCP Czech Republic	Yes	1. No 2. N/A 3. N/A
	EMN NCP Estonia	Yes	1. No. 2. N/A 3. N/A
	EMN NCP Finland	Yes	1. No. 2. - 3. -

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	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. French law does not allow a person in need of protection to seek asylum from a French embassy or consular post abroad. To apply for asylum in France, you must be on French territory. On the other hand, a person abroad may apply for an asylum visa, which will enable him or her to return to France on a regular basis, in order to lodge his or her asylum application. Visa for asylum is a specific French procedure, which is not provided for by national law and falls within the discretion of the Minister for the Interior. The Council of State, in an order of 9 July 2015, recalled that while the constitutional right to asylum has the right to apply in France for refugee status, the guarantees attached to this fundamental right do not entail any right to the issue of a visa with a view to lodging an application for asylum in France.</p> <p>Persons wishing to apply for asylum in France while in their country of nationality or in a third country may apply to the French consulate of that country in order to apply for an asylum visa.</p> <p>It is the responsibility of the Asylum Directorate (Directorate-General for Foreigners in France, Ministry of the Interior) to examine the asylum visa application and forward its opinion to the consular post, after carrying out security checks and consulting the Ministry of Europe and Foreign Affairs (MEAE).</p> <p>2. Asylum visas are granted to persons who are in need of international protection and whose asylum application in France can succeed. Thus, such visas may be granted either to any person persecuted by reason of his or her action for freedom (constitutional asylum) or to persons who fear being persecuted in their country on one of the grounds referred to in Article 1A2 of the Geneva Convention and who, for those in a third country, cannot avail themselves of the protection of the authorities there. In addition, these persons must have a link with France, or claim a particular vulnerability. The asylum visa scheme has been implemented mainly for Syrian refugees in countries bordering Syria since 2012, and for Iraqis belonging to religious minorities persecuted in Iraq since 2014.</p>
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			<p>3. Beneficiaries of an asylum visa are responsible for their journey to France and their accommodation upon arrival. After arrival in France, beneficiaries follow the same path and have access to the same rights as all asylum seekers in France: Thus, they must apply to the county prefecture in the place where they reside in order to apply for asylum. They are then issued with a certificate of application for asylum, which is equivalent to a temporary residence permit, renewable until the end of the procedure. Their asylum application is examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), the authority responsible for determining refugee status. Once international protection has been acquired, they enjoy the same rights (residence, social rights, etc.) as all persons protected by asylum in France.</p>
	EMN NCP Germany	Yes	<p>1. No. Asylum may only be applied for when the applicant is in Germany. It is not possible to apply for asylum at a German diplomatic mission. According to EU legislation, the member states are also not obliged to issue a humanitarian visa to enable persons who intend to apply for asylum to travel to the visa issuing member state to file an asylum application. The Union law solely determines the proceedings and the preconditions for the issuance of transit visa or for planned stay of up to 90 days.</p> <p>Diplomatic asylum (also extraterritorial asylum) is granted when a state opens its diplomatic missions abroad for persecuted persons for asylum purposes. Under customary international law and treaty law, however, no general authority of states to grant diplomatic asylum can be established. The Geneva Convention obliges most receiving countries to grant asylum. However, the individual person is not entitled to asylum.</p> <p>2. n/a</p>

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			3. n/a
	EMN NCP Greece	Yes	<p>1. No. (It should be noted that the Directive on the Asylum Procedures implemented by Greece shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States)</p> <p>2.</p> <p>3.</p>
	EMN NCP Hungary	Yes	<p>1. Yes, the national legislation allows third country nationals, who does not reside on the territory of Hungary to apply for asylum at the embassies, however only a declaration of intent can be handed in, the application has to be made at the asylum authority (National Directorate-General for Aliens Policing, NDGAP).</p> <p>When the applicant resides outside of the territory of Hungary, the whole application procedure starts with the declaration of intent of the applicant („szándéknyilatkozat”), which has to be handed in at the Hungarian embassy in the surrounding non-EU countries (Ukraine or Serbia), according to <i>Government Decree 292/2020. (VI. 17.)</i> - on the designation of embassies for the purpose of lodging applications for asylum. Please note that this procedure applies to declarations of intent submitted after 17 June 2020. The declaration of intent has to be addressed to the NDGAP, and it is forwarded by the embassy. The NDGAP examines the document and if the conditions are met, issues a travel document that gives permission to a single entry.</p>

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			<p>After the entry, the application for recognition as asylum seeker should be submitted. The Asylum Act (Act LXXX. of 2007) Section 35. paragraph 1) sets out that the applications must be handed in at the asylum authority by the applicant in person.</p> <p>2. No.</p> <p>3. As provided in Q1 above, the Hungarian embassy forwards declaration of the intent of the applicant to the asylum authority (NDGAP). The NDGAP examines the document, during which the authority may interview the third country national - who in this case has to appear in person at the embassy - by remote hearing. If, as a result of the examination carried out by the asylum authority, the foreigner becomes entitled to a document granting him/her to a single journey to Hungary (hereinafter referred to as the "travel document") issued for the purpose of lodging an application for asylum, the asylum authority shall inform the Embassy of this fact within 60 days in order to issue the travel document. Based on the information provided by the asylum authority, the embassy will issue a travel document, which is valid for 30 days, if the foreigner does not otherwise have a permit entitling him/her to enter Hungary.</p> <p>If - on the basis of the examination carried out by the asylum authority - the authority does not recommend the issuance of a travel document, the authority shall inform the person concerned through the embassy. During the procedure, the asylum authority's contact with third country nationals is exclusively through the embassies.</p> <p>A third country national in possession of a travel document shall immediately confirm his/her intention to lodge an asylum application to the police and border authority upon entering the country. The asylum authority may order a designated accommodation in a closed reception centre for the applicant. Four weeks after the application has been lodged, provided that the conditions for detention have not been met, the determining</p>
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			authority shall determine the further accommodation in accordance with the general rules on asylum procedure.
	EMN NCP Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Italy	Yes	<ol style="list-style-type: none"> 1. No, the submission of asylum applications at our diplomatic representations is not allowed. 2. 3.
	EMN NCP Lithuania	Yes	<ol style="list-style-type: none"> 1. In general, no. According to Paragraph 1 of Article 67 of the Law on the Legal Status of Aliens, foreigners may submit their asylum applications to the State Border Guard Service at border crossing points and in areas under the legal border regime or to the State Border Guard Service and the Migration Department on the territory of Lithuania. However, a recent amendment to the law (Amendment No. XIV-515 of 10 August 2021) introduced the possibility to apply for asylum at diplomatic missions and consular institutions in foreign states specified by the Minister of Foreign Affairs under certain exceptional circumstances - when a state of war or a state of emergency has been declared or when there is an extreme situation or extreme event taking place due to a mass influx of foreigners.

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			<p>2. According to Paragraph 7 of Article 67 of the Law on the Legal Status of Aliens, the procedure for the submission of asylum applications at diplomatic missions and consular institutions is set by the Minister of Foreign Affairs. The procedure has not been specified yet and is reported to be in preparation.</p> <p>UPDATE 09/21</p> <p>According to <u>Order No. Nr. V-392 of 21 September 2021 of the Minister of Foreign Affairs Regarding the Procedure for the Submission of Asylum Applications at the Diplomatic Missions and Consular Institutions of the Republic of Lithuania</u>, asylum applications must be submitted in person. Adult members of the family can apply on behalf of the family members who are minors. Applications of unaccompanied minors must be submitted by their legal representatives in their presence. Other than this requirement, there are no limitations for applying. In addition to the application form, the applicant must submit a copy of a valid travel document, copies of documents confirming that the applicant's presence in the country is legal, and documents in support of the need for asylum.</p> <p>3. All of these documents must be placed in an envelope addressed to the Migration Department. Personal data relating to an asylum application shall not be collected or stored in representations.</p> <p>Thee envelope containing application documents will be sent to the Migration Department by diplomatic mail within a month (latest) and Migration Department starts examining asylum application.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. No, Luxembourg does not allow a third country national to apply for asylum at its representation in the third country. According to Article 3 of the Directive 2013/32 EU on common procedures for granting and withdrawing international protection, the Directive shall not apply to requests for diplomatic or territorial asylum submitted to</p>

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			<p>representations of Member States. Luxembourg has transposed this provision in its entirety into its national Law. Hence, the Luxembourgish amended law of 18 December 2015 on international protection and temporary protection does not provide for any exceptions in this context.</p> <p>2. N/A.</p> <p>3. N/A.</p>
	EMN NCP Netherlands	Yes	<p>1. It is not possible for third-country nationals to apply for asylum at the representation of Member States.^[1] Asylum applications can only be issued once a TCN is present in the Netherlands. Subsequently, he or she must report him/herself at the reception center in Ter Apel, where he/she can start the asylum procedure.</p> <p>^[1] Nederlandwereldwijd. 'Wonen in Nederland', https://www.nederlandwereldwijd.nl/wonen-werken/wonen-in-nederland, last accessed on 27 August 2021.</p> <p>2. N/A</p> <p>3. N/A</p>
	EMN NCP Poland	Yes	<p>1. No, it does not.</p> <p>2.</p>

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			3.
	EMN NCP Portugal	Yes	1. NO. 2. _ 3. _
	EMN NCP Slovakia	Yes	1. No. 2. NA 3. NA
	EMN NCP Slovenia	Yes	1. No. 2. / 3. /

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	<p>EMN NCP Spain</p>	<p>Yes</p>	<p>1. Yes, but not in the same country of nationality or residence of the applicant. This is provided for in article 38 of the Law 12/2009, of 30th October, on the right of asylum and subsidiary protection.</p> <p>It is important to note that article 38 does not allow to apply for international protection at diplomatic representations of Spain in other countries. It only provides for the transfer and legal entry of the person to Spain so that he or she can formally apply for asylum once in the Spanish territory.</p> <p>2. The main limitation is to be in a country other than the one of citizenship or residence of the applicant. Secondly, the applicant 's life or physical integrity has to be endangered. According to the ruling of the Spanish Supreme Court of 15th October, 2020, it is the risk in the country of origin, not in the country of the diplomatic mission, the one that matters.</p> <p>The Ambassador assesses the risk the asylum seeker may face and may advise he or she be transferred to Spain in order for him or her to make an application for international protection. Only Ambassadors have this prerogative. Consular offices cannot make this assessment and issue recommendations for the applicant 's transfer to Spain.</p> <p>Further criteria may be laid down in the regulation of the legal provision, which is still pending.</p> <p>3. Normally, the Ministry of Foreign Affairs, European Union and Cooperation would consult with the Ministry of Home Affairs (Spanish Office of Asylum) about the prospects of the would-be application for asylum. If the Ministry of Home Affairs ' preliminary analysis is positive, the transfer may be approved. The applicant must cater for his own needs and transfer to Spain. Should the person cannot afford it, the Ministry of Foreign Affairs, European Union and Cooperation may defray some of the costs.</p>
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			<p>The person at hand would receive a visa or a “laissez-passer” for their legal entry into Spain. Border Police and, if need be, reception services would be advised of the applicant ‘s arrival so that he or she can make and lodge his or her application and have decent living conditions throughout the process, in case the person cannot pay for it.</p>
	EMN NCP Sweden	Yes	<p>1. No. A person who wants to apply for asylum in Sweden has to lodge their application with the Swedish Border Police upon entry into Sweden or at one of the Swedish Migration Agency's application units within the country. The Migration Agency cannot accept asylum applications lodged at a Swedish mission abroad.</p> <p>2. -</p> <p>3. -</p>
