



EMN Ad-Hoc Query on AHQ on Time Limit to reopen Applications(Directive 2013/32/EU)

Requested by Heiko HECHT on 9th January 2018

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Slovenia, Sweden, United Kingdom (22 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.

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 question is merely theoretical as Germany became responsible and any removal to a Member State is no longer possible, but the Federal Office faces jurisdiction that emphasizes the question if a 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. Therefore, it is essential for the Federal Office to know if an application has been finally rejected or discontinued by a Member State or if there is still the possibility to reopen the application after its abandonment or withdrawal. 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.

Questions

1. 1.Has Art. 28 par. 2 of the directive 2013/32/EU been transposed into your national law?
2. 2.Please state the specific act, article and paragraph.
3. 3.What time limit is provided to reopen a case?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	<p>1. Yes, the Austrian asylum legislation includes a provision which corresponds to Art. 28 par. 2 of the direction 2013/32/EU.</p> <p>2. According to Art. 24 para 2 Settlement and Residence Act, the procedure on an asylum application is to be closed in case an asylum seeker absconds and the case is not ready for</p>

			<p>decision without further interrogation or hearings. One option of fulfilling the definition of absconding is to voluntarily leave the Austrian territory (Art. 24 para 1 subpara 2 Settlement and Residence Act).</p> <p>3. The time limit for reopening a case is two years (Art. 24 para 2 Settlement and Residence Act). --- Source: AT EMN NCP</p>
	Belgium	Yes	<p>1. Belgian law does not provide a possibility as such to reopen the case after an implicit withdrawal or abandoned his or her application. However, the idea of Article 28, §2 APD is transposed in article 57/6/2 of the Belgian Immigration Act (Law of 15 December 1980). Article 28,§1 APD is transposed in article 57/6/5 of the Immigration Act. When an asylum applicant has implicitly withdrawn his or her application, a decision is taken to close the case (a so called technical refusal). This decision can be challenged with the Council for Aliens Law Litigation (CALL), which provides an effective remedy. After the period of appeal, the decision becomes final. However, the asylum applicant can always (without time limit) introduce a subsequent application. Since the subsequent asylum application follows a decision where the asylum motives have not yet been assessed on the merits, the Belgian law provides that this subsequent application shall always be considered as admissible.</p> <p>2. See reply to question 1. The exact wording in our Aliens Act is as follows: In French: - Art. 57/6/2. § 1er. Après réception de la demande ultérieure transmise par le ministre ou son délégué sur la base de l'article 51/8, le Commissaire général aux réfugiés et aux apatrides examine en priorité si de nouveaux éléments ou faits apparaissent, ou sont présentés par le demandeur, qui augmentent de manière significative la probabilité qu'il puisse prétendre à la reconnaissance comme réfugié au sens de l'article 48/3 ou à la protection subsidiaire au sens de l'article 48/4. En l'absence de ces éléments ou faits, le Commissaire général aux réfugiés et aux apatrides déclare la demande irrecevable. Dans le cas contraire, ou si le demandeur a uniquement fait auparavant l'objet d'une décision de clôture prise en application de l'article 57/6/5, § 1er, 1°, 2°, 3°, 4° ou 5° le Commissaire général aux réfugiés et aux apatrides déclare la demande recevable. In Dutch: - Art. 57/6/2. § 1. Na ontvangst van het volgend verzoek dat door de minister of diens gemachtigde werd overgezonden op grond van artikel 51/8, onderzoekt de Commissaris-generaal voor de</p>

			<p>Vluchtelingen en de Staatlozen bij voorrang of er nieuwe elementen of feiten aan de orde zijn, of door de verzoeker zijn voorgelegd, die de kans aanzienlijk groter maken dat de verzoeker voor erkenning als vluchteling in de zin van artikel 48/3 of voor subsidiaire bescherming in de zin van artikel 48/4 in aanmerking komt. Bij gebrek aan dergelijke elementen of feiten verklaart de Commissaris-generaal voor de Vluchtelingen en de Staatlozen het verzoek nietontvankelijk. In het andere geval, of indien de verzoeker voorheen enkel het voorwerp heeft uitgemaakt van een beslissing tot beëindiging bij toepassing van artikel 57/6/5, § 1, 1°, 2°, 3°, 4° of 5° verklaart de Commissarisgeneraal voor de Vluchtelingen en de Staatlozen het verzoek ontvankelijk.</p> <p>3. None</p>
	Bulgaria	Yes	<p>1. Yes.</p> <p>2. Law on Asylum and Refugees, art. 77 (4) (new – SG 101/15) The Chair of the State Agency for Refugees shall take a decision for proceedings terminated on the grounds of Art. 15, par. 1, item 7 to be reopened if before the expiration of 6 months after the termination, the foreigner appears and provides objective reasons for changing of the address or objective hindrances for not-appearing or non-assistance to officials. Proceedings terminated on the grounds of Art. 15, par. 1, item 7 shall be reopened for examination of the merits of the application in take back cases according to the rules of Chapter Six, Section Ia. Proceedings can be reopened only once.</p> <p>3. Six months.</p>
	Croatia	Yes	<p>1. Yes, the Art. 28 par. 2 of the directive 2013/32/EU has been transposed into Croatian national law, The International and Temporary Protection Act, 2105.</p> <p>2. The Act on International and Temporary Protection, Article 39, paragraph 2, point 1, 2, 3 and Article 47, paragraph 1, point 2.</p> <p>3. Subsequent applications shall be lodged by a third-country national or a stateless person after the decision has become final. After the implicit withdrawal of the application the applicant may</p>

			submit a new application (without any time limits) which is handled through the regular procedure and is not considered a subsequent request. In a case when the previous procedure has been discontinued because the applicant withdrew the request, the new application is considered a subsequent request.
	Cyprus	Yes	<ol style="list-style-type: none"> 1. Yes 2. Yes 3. Cyprus Refugee Law, Article 16E 4. Cyprus Refugee Law, Article 16E 5. If a request to reopen a case is submitted within 9 months from the date the applicant was informed about the implicit withdrawal, the file is re-opened automatically. If the request is submitted after the 9 month period, then the Head of the Asylum Service will decide based on the merits of each case. 6. If a request to reopen a case is submitted within 9 months from the date the applicant was informed about the implicit withdrawal, the file is re-opened automatically. If the request is submitted after the 9 month period, then the Head of the Asylum Service will decide based on the merits of each case.
	Czech Republic	Yes	<ol style="list-style-type: none"> 1. Yes, it is a „shall“ clause. 2. Act No. 325/1999 Coll. On Asylum, art. 11c par. 1. : Article 11c (1) The first repeat application for international protection made within 9 months of a decision concluding preceding international protection proceedings gains legal effect does not constitute a repeat application for international protection, if international protection proceedings were suspended pursuant to Article 25 letters d), e), f), h) or j). Article 25 Discontinuation of Proceedings The proceedings shall be discontinued if: a) an applicant for international protection withdraws his/her application for international protection, b) the grounds for proceedings commenced on the Ministry's

			<p>initiative cease to exist, c) the participant in proceedings dies during the course of proceedings, d) without good reason, the applicant for international protection fails to appear to provide information in support of his/her application for international protection or fails to provide information essential for establishing the state of affairs beyond reasonable doubt, e) an applicant for international protection fails to eliminate an error in a submission by the deadline set by the Ministry and proceedings cannot continue for this reason, f) the period for which the proceedings were suspended pursuant to Section 26 subs. 1 letter a) expires to no avail and if a decision on the case cannot be made on the basis of the documents on file, g) the applicant for international protection is granted citizenship of the Czech Republic or of another EU member state in the course of the proceedings, h) the applicant for international protection without good reason enters or attempts to enter the territory of another state in the course of the proceedings, i) the application for international protection is inadmissible, or j) the whereabouts of the applicant for international protection are unknown and a decision on the case cannot be made on the basis of the documents on file.</p> <p>3. The time limit is 9 months. It is not a reopening but a new non-subsequent application. Remark: CZ opposed this provision (art.28/2 APD) during negotiations.</p>
	Estonia	Yes	<p>1. Yes.</p> <p>2. Art 28 (2) has been transposed to Article 23 of the Act on Granting International Protection to Alien, more precisely in Article 23 (6). § 23. Withdrawal of application for granting international protection and waiver of application (1) An applicant has the right to withdraw the application for international protection throughout the proceedings for the granting of international protection. In such case the proceedings for the granting of international protection terminate. 2) The Police and Border Guard Board presumes that the application has been withdrawn or waived if the applicant: 1) has not fulfilled the obligation provided for in clauses 11 (2) 2) and 3) of this Act unless he or she proves within a reasonable period of time that he or she was unable to fulfil the specified obligations with good reason; 2) applicant is in hiding or has left his or her residence, the detention centre or accommodation centre for applicants for international protection without permission, without having informed the Police and Border Guard Board, the</p>

			<p>detention centre or the accommodation centre for applicants for international protection thereof within a reasonable period of time; 3) has not appeared at the Police and Border Guard Board for performance of a procedural act within one month without good reason. (3) If an applicant has withdrawn the application indirectly or has waived it, the Police and Border Guard Board shall make a decision on the rejection of the application in accordance with Article 4 of Directive 2011/95/EU of the European Parliament and of the Council. (4) The applicant has the right to request a new review of the application for international protection, except if the application for international protection was reviewed pursuant to the proceedings provided for in § 24 of this Act (viewed as a subsequent application) (5) In the case specified in subsection (4) of this section the Police and Border Guard Board shall cancel the decision of rejection and continue review of the application, renewing the previous proceedings concerning international protection. (6) If the application specified in subsection (4) of this section has been submitted more than nine months after the decision specified in subsection (3) of this section has been made, a new application may be treated as the subsequent application with regard to which the provisions of § 24 of this Act apply.</p> <p>3. The new application may be treated as a subsequent application, if the request to review the application is submitted more than nine months after the decision to reject the application was issued due to the fact that the applicant had withdrawn the application or waived it.</p>
	Finland	Yes	<p>1. No.</p> <p>2. According to the Aliens' Act Section 95 c paragraph 2, an applicant who reports again to the competent authority after a decision to discontinue as referred to in the Aliens' Act Section 95 c paragraph 1, is informed about his/her right to submit a new application. After a decision to discontinue the application has been made, the case cannot be reopened, and the applicant is advised to submit a new application.</p> <p>3. N/a</p>

	France	Yes	<p>1. Yes</p> <p>2. Article L. 723-14 of the Code on Entry and Residence of Foreign Nationals and Right of Asylum (CESEDA) set up under the law no. 2015-925 of 29 July 2015 on the reform of the right of asylum.</p> <p>3. The applicant can request to reopen his/her case within a time-limit of less than nine months.</p>
	Germany	Yes	<p>1. Yes, Art.28 par.2 of the directive 2013/32/EU has been transposed in the German Asylum Act.</p> <p>2. The provisions of Art 28 par 2 of the asylum procedure directive have already been transposed into Art. 33 par. 5 of the German Asylum Act .</p> <p>3. 3. 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>
	Hungary	Yes	<p>1. The relevant part of the EU directive has been transposed into national law.</p> <p>2. Act LXXX of 2007 on Asylum Section 66 (2) The refugee authority shall decide based on data already available, or shall terminate the procedure if: a) the applicant withdraws his/her application in writing; b) the applicant fails to respond to requests to provide information, and hence constituting an obstacle for the examination of the application; c) the applicant fails to appear at the interview in person in spite of written notice, and fails to give justification for his/her absence; d) the applicant leaves the assigned or designated place of residence without authorization for over 48 hours, and absconded, and fails to properly verify his absence; e) the applicant has been expelled or extradited under Subsections (2)-(3) of Section 54; or f) the applicant fails to cooperate or otherwise prevented the taking of his/her fingerprint or facial image. (6) The applicant is entitled to request within nine months after the decision to discontinue the procedure pursuant to Paragraphs b)-d) of Subsection (2) that his/her case be</p>

			<p>reopened. Such request shall be submitted by the applicant in person, before the refugee authority. If the request for having the case reopened is submitted in due time, the refugee authority shall resume the procedure from the procedural step taken immediately before the decision for terminating the procedure was adopted. Reopening the case may be requested by the applicant once.</p> <p>3. Within 9 months.</p>
	Ireland	No	
	Italy	Yes	<p>1. Partially. In fact, the Italian legislator took into account only the specific case of implicit withdrawal or abandonment of the application by the applicant's unjustified departure from the reception centres or his/her avoidance of the detention measure in the CPR, permanent centres for repatriation (previously CIE, centres for identification and expulsion). Moreover, the Italian legislation provides for the case of explicit withdrawal of the application which is formally recorded in writing and it results in the declaration of extinction of the application by the competent authority (Commissione territoriale).</p> <p>2. Article 23 of the D. Lgs. No. 25/2008 provides for the explicit withdrawal of the application, while article 23 bis of D. Lgs. No. 25/2008, introduced by D. Lgs. No. 142/2015, takes into consideration the event of the implicit withdrawal or abandonment of the application.</p> <p>3. Article 23 bis provides for a time limit of twelve months for the applicant to ask for the reopening of his/her case and can do so just once. Beyond this deadline, the authority competent for the examination of the application (Commissione territoriale) declares the extinction of the application.</p>
	Latvia	Yes	<p>1. Yes.</p> <p>2. 2. Article 34. of the Asylum Law stipulates the following: (1) A decision to discontinue examination of the application shall be taken, if: 1) a request of the asylum seeker to discontinue</p>

			<p>examination of the application has been received at the Office; 2) there is a substantial reason to assume that the asylum seeker has indirectly revoked his or her application or refused from it, because he or she has not fulfilled the duties to cooperate with institutions involved in asylum procedure, has not participated in the interview, has not informed responsible institutions regarding the address of the place of residence and its change, has left the accommodation centre of asylum seekers without warning or has escaped from the State Border Guard accommodation premises for asylum seekers (detention centre). (2) A decision to discontinue examination of the application shall be taken not later than within three months from the day when any of the circumstances referred to in Paragr.1 of this Article became known, unless the asylum seeker has proved in a timely manner that it has happened due to circumstances independent from him or her. (3) 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 (hereinafter - reopened). This time period shall not apply to cases when the Republic of Latvia, in accordance with Regulation 604/2013, is accepting back an asylum seeker who has revoked his or her application during its examination, prior to taking of a decision to grant refugee or alternative status or to refuse to grant it, and has drawn up an application in another Member State or is residing in the territory of another Member State without a residence permit. (4) If the asylum seeker requests more than once to reopen examination of his or her application, it shall be examined in accordance with the procedures laid down in Article 35 of this Law (Subsequent application), except the case when the Republic of Latvia, in accordance with Regulation 604/2013, is accepting back an asylum seeker who has revoked his or her application during its examination, prior to taking a decision to grant refugee or alternative status or to refuse to grant it, and has drawn up an application in another Member State or is residing in the territory of another Member State without a residence permit. (5) If the asylum seeker has requested more than once that examination of his or her application is reopened mainly in order to hinder or prevent carrying out of such decision, by which his or her movement from the Republic of Latvia would be implemented without delay, such person shall not be deemed an asylum seeker during examination of the application. In previously mentioned situation due to the Article 3. Paragr.4 of the Asylum Law an asylum seeker may be returned if it is not in contradiction with the international obligations of the Republic of Latvia. (6) An official authorised by the head of the Office shall take a decision to reopen examination of the</p>
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	Lithuania	Yes	<p>1. Yes.</p> <p>2. The provisions of art. 28 par. 2 of the directive have been transposed in article 84 (p. 3, p. 5); article 85 (p. 1.2) and article 130 (p. 1, p. 2) of the Republic of Lithuania Law on the Legal Status of Aliens.</p> <p>3. There is a possibility to reopen an application within 9 months following an implicit withdrawal or abandonment of the application.</p>
	Luxembourg	Yes	<p>1. Yes. Article 28 par. 2 of the Directive 2013/32/EU has been transposed in the Law of 18 December 2015 on international protection and temporary protection (Asylum Law).</p> <p>2. The provisions of art. 28 par. 2 of the directive have been transposed in article 23 (3) of the Asylum Law.</p> <p>3. 3. The Luxembourgish Asylum Law foreseen the possibility to reopen an application at the request of the applicant or if s/he files a new application less than 9 months after the closure of the application. The Minister in charge of Immigration and Asylum will retake the evaluation of the application in the state it was, at the moment of the closure. The reopening of the file can only be done once. After 9 months, the file cannot be reopened.</p>
	Malta	Yes	<p>1. Yes.</p>

			<p>2. This provision has been transposed in Article 13(4) of Subsidiary Legislation 420.07 (Refugees Act, Chapter 420 of the Laws of Malta).</p> <p>3. The time limit for re-opening a case is set at 9 months from the date a decision was taken to discontinue the examination of the application.</p>
	Netherlands	Yes	<p>1. Yes, Article 28, paragraph 2, has been transposed in our national law.</p> <p>2. Article 30c, paragraph 2, Aliens Act 2000. This article states that if an foreign national submits a new application after a previous application was disregarded, this application will be processed as a first application, unless the foreign national has previously submitted an application that has been rejected.</p> <p>3. There is no time limit provided in the Netherlands.</p>
	Slovak Republic	Yes	<p>1. Yes, though the part related to reopening of applicant's case has not been transposed into the Slovak legislation. However, the part which regulates the applicant's right to submit a new application not subjected to the procedure under art. 40 and 41 of the Directive 2013/32/EU has been transposed (i.e. the rules on subsequent applications are not applied in such cases).</p> <p>2. Article 28 par. 2 of the Directive 2013/32/EU has been transposed into art. 11 par. 1 letter f) of the Act on asylum n. 480/2002 Coll. Art. 11 para 1 letter f) as follows: „Ministry of interior shall reject the application for asylum as inadmissible, if this is a recurring application for asylum; it has already been finally decided in the asylum procedure that the application is rejected as being manifestly unfounded; asylum has not been granted; asylum has been withdrawn; subsidiary protection has not been prolonged or it has been abolished and since the decision became enforceable, no substantial change of the factual situation has occurred; ministry can decide whether the application for asylum was lodged solely for the purpose to avert the imminent enforcement of the decision on expulsion from the Slovak Republic.“ Art. 28 (Procedure in the event of implicit withdrawal or abandonment of the application) par. 1 of the directive 2013/32/EU has been transposed into Art. 19 par. 1 letters a), b), f) and g) of the Act on asylum,</p>

			<p>which regulates the reasons for discontinuation of the procedure on granting asylum. This means that if the ministry has discontinued the asylum procedure (e.g. in this case due to reasons of “implicit withdrawal or abandonment of the application”) and the person re-submits another application for asylum - to such application art.11 par. 1 letter f) cannot be applied, it follows that such an application is not rejected as inadmissible (i.e. it is not assessed as a “subsequent application” in the sense of the Directive 2013/32/EU).</p> <p>3. As stated in the answer to Question 1, in the legislation of the SR the possibility of reopening the case is not regulated, thus neither the time limit is defined.</p>
	Slovenia	Yes	<p>1. Yes.</p> <p>2. International Protection Act, Article 50, paragraph 3</p> <p>3. 9 months</p>
	Sweden	Yes	<p>1. Sweden has not transposed Art. 28 par. 2 of the directive 2013/32/EU into our national law.</p> <p>2. NA</p> <p>3. NA</p>
	United Kingdom	Yes	<p>1. No. The United Kingdom are not taking part in the adoption of this Directive and are not bound by it or subject to its application.</p> <p>2. N/A</p> <p>3. N/A</p>