



AD HOC QUERY ON 2019.64 Administrative procedure when taking decisions on applications for international protection (only for BE, DE, FR, SE)

Requested by Dylano de Wilde on 20 June 2019

Compilation produced on 28 August 2019

Responses from Belgium, France, Germany, Netherlands, Sweden (5 in Total)

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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.

1. Background information

The Dutch Council of State has raised questions regarding the practices of the Dutch Immigration- and Naturalization Service when taking a decision on applications for asylum. In particular, the Council wishes to discuss whether it is permissible that one immigration officer is responsible for both the personal interview (Article 14, Directive 2013/32/EU) and the decision on the application for international protection.

In general, the Dutch Immigration- and Naturalization Service considers it permissible that all relevant steps in the Dutch procedure (interview, intended decision and final decision) are carried out by one and the same immigration officer. This does not only apply for 'easy' cases, but also for the more complicated cases. In the Netherlands caseworkers are responsible for a certain amount of cases. Each case is awarded to a caseworker who is the point of

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contact for both the asylum seeker and the lawyer. Out of efficiency both the personal interview and the decision making can be done by the same caseworker. The idea behind this is that the more people who are involved in a file the more time it will take because every caseworker had to read the whole file. However, it should be noted that due to practical and logistical problems it is not always possible to plan both the personal interview and the decision making on the same caseworker. Also every caseworker has the possibility to ask another caseworker to make the decision if he or she feels uncomfortable. Our Court has raised questions about the possibility that one case worker can do both the decision making and the interview. Therefore, the Netherlands would like to ask several short questions to create an overview of the applicable policy in several other Member States. The Council of State will hold a hearing on July 8 and therefore answer before this date would be appreciated. We hope that you could give permission to share your answer with the Council of State. The Netherlands would like to ask the following questions.

2. Questions

1. Describe your procedure (in short) of making decisions on applications for international protection: (a) is there a first instance decision and the possibility of an objection procedure or can the asylum seeker immediately appeal the decision? (b) When there is a possibility for objection can the immigration officer (i.e. case worker) of the first instance decision also be involved in the objection procedure?

2. Does your national procedure (formally) require that more than one immigration officer (i.e. case worker) is involved in the procedure leading to the decision (most importantly: interview and decision)? Yes/No. Please indicate the source where this stems from (i.e. law, administrative practice, et cetera).

3. Is it possible in your Member State that the personal interviews and decisions are taken by one immigration officer (i.e. case worker)? If so, is there any legal basis for this? If not, what is the basis for this (practice, et cetera)?

We would very much appreciate your responses by **8 July 2019**.


3. Responses

1

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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		Wider Dissemination ²	
	EMN NCP Belgium	Yes	<p>1. (a) There is no objection procedure. The Office of the Commissioner General for Refugees and Stateless persons (CGRS) takes the first instance decision. The appeal court, the Council of Alien Law Litigation (CALL), can confirm, reform or annul the decision by the CGRS (Art. 57/6, Art. 39/2 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals).</p> <p>Though there is no true objection procedure, <i>before</i> receiving a decision by the CGRS the applicant or his/her lawyer does have the opportunity to ask for a copy of the interview notes and to make remarks on these notes. The CGRS has the obligation to take these remarks into account before taking a decision (Art. 57/5quater, §3 Immigration Act, inserted by the Law of 21 November 2017).</p> <p>(b) n/a</p> <p>2. Yes. According to the administrative practice of the CGRS, more than one officer is involved in the decision-making process regarding applications for international protection. All these officers have a thorough knowledge of both asylum law and the situation in the country of origin of the applicants.</p> <p>Art. 2 of the Royal Decree of 1st July 2003 regulating the functioning and procedures of the Office of the Commissioner General for Refugees and Stateless persons stipulates that civil servants at the master level are responsible for "interviewing asylum seekers", "writing draft decisions" and "supervising draft decisions", but does not prescribe a division of duties. In practice, a first officer will interview the asylum seeker and draft a decision, a second officer will supervise the draft decision, and ultimately the Commissioner General or another person in charge will take the final</p>

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>decision.</p> <p>The CGRS consists of five geographical sections directed by a “geographical coordinator”. In each section, so-called “supervisors”, themselves experienced case workers, select the cases and plan the interviews for the “protection officers”, taking into account their expertise and availability. The protection officer prepares the case, interviews the asylum seeker, assesses the evidence and statements of the applicant and drafts a decision. For complex questions, s/he may consult with his/her supervisor or geographical coordinator prior to drafting a decision. S/he can also contact a researcher at the documentation centre “Cedoca” for detailed country of origin information, or plan a second interview if more information about the personal situation of the applicant is needed. In exceptional circumstances, for instance in case of a conflict of interests (Art. 4 Royal Decree) or absence of the assigned case worker, the file will be handed over to another protection officer. The protection officer sends the draft decision to his/her supervisor. The supervisor reviews and eventually approves the draft decision and submits it to the Commissioner General, his deputy or a geographical coordinator. One of these persons in charge takes the final decision. The procedure is also set out in the brochure “The asylum procedure at the CGRS” (see attachment, p. 18-19). asylum-procedure-at-the-cgrs.pdf</p> <p>3. No.</p>
	EMN NCP France	Yes	<p>1. Upon their arrival in France, asylum seekers present themselves to a reception centre for asylum seekers who collects information about their intention to lodge an asylum claim, and provides them with an appointment to the “single desk” (guichet unique de demande d’asile, GUDA) of the prefecture of their place of residence. There, an agent of the prefecture reviews the information submitted by the reception centre, collects asylum seekers’ fingerprints, and conducts an interview to assess which country is responsible to process their asylum claim.</p> <p>If France is responsible, the French Office for refugees and stateless people (Office français de protection des réfugiés et apatrides, OFPRA) is competent to process the application, under regular or accelerated procedures. The prefecture issues a form for asylum application that asylum</p>


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			<p>seekers must complete and send to the OFPRA within 21 days after receiving their asylum claim certification.</p> <p>Asylum seekers are summoned to the OFPRA by a protection officer in charge of conducting a personal interview, processing and deciding on their asylum application.</p> <p>The interview provides asylum seekers with the opportunity to explain the reasons for their claim, to complete or rectify their written testimony, and to clarify any grey area.</p> <p>They are notified with the final decision of the OFPRA by any communication mean certifying the confidentiality and the personal reception of the decision by the concerned applicant.</p> <p>If their application is rejected, the decision states the legal and factual basis for the refusal to issue a refugee / subsidiary protection status, and informs them about available means to appeal the decision. Asylum seekers have a month to lodge an appeal to the National court of asylum right.</p> <p>2. The instruction is the step during which protection officers identify the relevant elements of the applications submitted to them, and assess the internal and external credibility of the testimonies of asylum seekers, the documents attached to their application, and the legal classification of the facts exposed to them in order to draft a decision.</p> <p>Protection officers may ask for the help of the Division of information, documentation and research (DIDR) to verify the situation in the country of origin of asylum seekers, or the Division of legal, European, and international affairs (DAJEI) to answer a legal question.</p> <p>3. Protection officers submit their decision for signature to their section manager. Since the reform of the OFPRA in 2013, some experienced protection officers can sign their decisions themselves, provided they have obtained the signature delegation from the director-general of the OFPRA.</p>
	EMN NCP Germany	Yes	<p>1. 1. At the Federal Office, the decision-makers (case workers) are responsible for carrying out interviews and reaching decisions. Although the law does not make any stipulations as to the identity of the interviewer and decision-maker, it is preferred practice at the Federal Office for one person to perform both roles. However, as this is not always feasible, in the course of the interview the interviewing decision-maker is required to document the facts of the case in such detail as to</p>


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			<p>enable a decision-maker who did not carry out the interview to reach a decision without having to undertake any further measures to establish relevant facts. The grounds for the decision on the outcome of the asylum process are stated in writing and notice of the decision is served on the applicant together with the statement of grounds and, if applicable, information on the applicant's rights of appeal.</p> <p>The applicant can appeal against a rejection notice. It is not possible to file an objection against the Federal Office's decision. The applicant can take legal action against the Federal Office's decision before an administrative court. A judge then rules on the case concerned. The judge is independent, forms part of the judiciary and is subject solely to the law.</p> <p>The court duly reviews the Federal Office's decision. If the court finds that the conditions qualifying for the granting of protection are met, it will revoke the rejection notice and bind the Federal Office to grant protection. If the rejection of all forms of protection is affirmed, the case will be dismissed and the obligation to leave the federal territory will be upheld.</p> <p>2. 2. No. Although the law does not make any stipulations as to the identity of the interviewer and decision-maker, it is preferred practice at the Federal Office for one person to perform both roles. This is not always feasible, however. In the case of vulnerable categories of applicants, several decision-makers may be involved in the asylum process, as in such cases specially trained decision-makers may additionally be involved in the process or may be required to take over interviewing or further processing of the case concerned.</p> <p>3. 3. Yes, the decision-maker can interview an applicant and also decide on the asylum application concerned. (cf. answer to 2)</p>
	EMN NCP Netherlands	Yes	2. No, there is no formal (legal) procedure in the Netherlands that requires that the officer of the

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			<p>personal interview cannot be the person who makes the decision on the application for international protection.</p> <p>3. Yes, when a caseworker has fulfilled all the necessary training and is qualified to make decisions on international protection is it possible to do both the personal interview and to make an examination on the application for international protection. There is of course always the possibility to discuss the case with a senior caseworker or other experienced caseworkers. When there are doubts about the decision a caseworker may always ask for a peer review on the case. In practice however it is not always possible that a caseworker does both the personal interview and the decision making. Sometimes a case worker who is the point of contact is has a day off when the personal interview is scheduled or had to do other activities. Or the personal interview is done by a caseworker who is in training to be qualified as a caseworker.</p>
	EMN NCP Sweden	Yes	<p>1. In Sweden, the case officer that conducts the personal interview is the same as the one who is involved in the writing of the decision. However, Sweden has a system where both the case officer and, more importantly, a ranking decision maker have to sign off the decision, with the decision maker being the ranking figure in the process. It should be noted that, for logistical reasons, a case can be handed from one case officer to another after the interview.</p> <p>a) The asylum seeker will have the opportunity to see the material of the case before a decision is made, and object to its content. After a decision is made, there is the possibility of immediately appealing the decision.</p> <p>b) If possible, the original case officer can be involved in the objection procedure as well, if the case is referred back to the Migration Agency from the court.</p> <p>2. Yes. According to the Government Agencies Ordinance (2007:515), paragraphs 19 and 20, a decision by a Government agency shall be taken after a presentation of the case by the case worker to the decision maker. The decision is signed by the caseworker and the decision maker.</p> <p>3. The interviews can be held by one case worker alone. However, a case must always be</p>

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			presented to a decision maker before a decision is taken. As for the legal basis, please see answer above under (2).
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