EMN Ad-Hoc Query on PL Ad Hoc Query on procedure of issuing decisions for refusal of entry at the border

Requested by Joanna SOSNOWSKA on 29th June 2017

Border

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, Switzerland, United Kingdom, Norway (24 in total)

Background information:

According to Art. 14 of the Schengen Borders Code (the SBC) a third-country national who does not fulfil all the entry conditions laid down in Article 6(1) and does not belong to the categories of persons referred to in Article 6(5) shall be refused entry to the territories of the Member States. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.
The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse
entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.
Furthermore, Annex V, Part B of the SBC sets out the Procedures for refusing entry at the border.
In Poland elements of administartive procedure set out in the national law, namely the Code of Adminitsrtive Procedures, also apply.
In this context, Poland launches the present Ad Hoq Querry to collect relevant information on practises of the Memeber States bound by the Schengen acquis. The collected information will be used to possibly revise applied practice. It would therefore be highly welcome to receive feedback from the Member States fully implementing the Schengen acquis within the stipulated deadline (two weeks).

Questions

1. What is the practice in Your Member State concerning the procedure of issuing decision for refusal of entry at the border (in first instance) - do You apply any other national provisons, in particular concerning adminitrative procedure, or solely the provisions of the SBC apply when refusing entry at the border (in particular art. 14 and Annex V, part A)?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	**1.** Yes. In particular provisions of the General Administrative Procedures Act, the Security Police Act, the Aliens Police Act and the Border Control Act may apply with regard to refusal of entry at the border if this is in conformity with European Union law and particularly the Schengen Borders Code.

	Belgium	Yes	**1.** The Belgian policy reflects the provisions of the SBC, and the Belgian Immigration Act is consistent with the SBC. The decision is made using a standard form (Annex 11), as set out in Annex V of the SBC. This standard form (Annex 11) includes information inter alia about the person concerned, the reason for refusal of entry at the border and the procedure to appeal against the decision. An appeal with suspensive effect can be filed before the Belgian Council for Alien Law Litigation. Sources: • Belgian Immigration Act of 15.12.1980 (inter alia articles 3, 39/57 and 39/82) • Belgian Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners (article 14) • Belgian Immigration Office (border inspection unit)
	Bulgaria	Yes	**1.** In exercising its powers under Article 102 (2) of the Ministry of the Interior Act in carrying out border checks of third-country nationals at the border crossing points, the Border Police authorities fully implement the provisions of Article 14 Paragraph 2 (Annex 5, Part A and Part B) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). The provisions of the Code are introduced in Article 16, paragraph 3, of the Foreigners in the Republic of Bulgaria Act. The cited provision does not introduce additional administrative procedures related to the refusal of entry issued.
	Croatia	Yes	**1.** Yes. On the refusal of entry at the border the SBC applies, but the decision is made in accordance with the Administrative Procedure Act, including an appeal. Provisions of the Foreigners Act and Ordinance on Treatment of Foreigners may also be applied.
	Czech Republic	Yes	**1.** In practice of refusing entry at border crossing points, the Czech Republic applies procedures stated in the SBC. The procedure is regulated by an internal act of the director's direction of the Directorate of Alien Police Service. Generally, in cases of all proceedings within the Police, the procedure stated by the Act No. 500/2004 Coll., on Administrative Procedure, should be followed. Nevertheless, the Section 168 paragraph 1 of the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic, states that parts II and III of the Act on Administrative Procedure are not applied in cases of proceedings concerning refusal of entry. Moreover, Section 169 states other exemptions from the Act on Administrative Procedure, especially in the paragraph 3 where it is for example stated that the appeal against the refusal of entry decision has no suspensive effect. Foreign national cannot

			appeal against the decision on refusal of entry. In compliance with SBC, he/she may only request re-assessment of entry conditions.
	Estonia	Yes	**1.** According to the Estonian State Borders Act § 1 p 2 Schengen Borders Code shall be applied to crossing of the internal borders between the Member States of the European Union and the external borders of the European Union. This Act shall be applied to the extent not regulated by the Schengen Borders Code. Persons, means of transport and goods which have not been permitted to cross the border and persons who have illegally crossed the external border shall be detained and returned, pursuant to the procedure prescribed by the legislation of the European Union, international agreements and the law, into the state from or through which they arrived in or were conveyed into Estonia, taking account of the specifications provided for in the Citizen of the European Union Act. In practice Estonia applies the provisions of the SBC when refusing entry at the border. With regard to the refusal of entry, relevant cases will be stated to the person concerned and he/she has the right to appeal in accordance with national law (Act of Administration Proceedings). Lodging such an appeal does not have a suspensive effect on a decision to refuse entry. Information concerning the appeal against a decision is included to blank of refusal of entry at the border. Information is also presented verbally by the official proceeding the case before signing the decision by person concerned. Border guard official who is proceeding the case informs the person concerned about the right to appeal, timeframe and also about relevant contacts.
	Finland	Yes	**1.** The Finnish Aliens Act has provisions for refusal of entry at the border. According to Section 142, “pääsyn epääminen” (literally refusal of entry) refers to refusing the entry of a third-country national at the border as laid down in Article 13 of the Schengen Borders Code. The decision is made using a standard form, as set out in Annex V of SBC. The Aliens Act also has national provisions for refusal of entry (“käännyttäminen”). This refers to refusals of entry at the border when a third-country national is coming to Finland for a period of over three months, and removal of a third-country national who has already entered the country and has not been issued with a residence permit. Provisions on the crossing of the border are laid down in the Border Guard Act (578/2005).

	France	Yes	**1.** According to article 14 of the SBC, French border officers are in charge of performing controls and issuing refusal of entry when the conditions of article 6 of the SBC are not fulfilled. Article 16 of the SBC indicates that controls mentioned in articles 7 to 14 of this code are performed in compliance with the SBC measures and with the national law. The list of the national services in charge of border controls is sent by the Member States to the European Commission according to the article 39 of the SBC: for France it is the Border Police (PAF – police aux frontières) and the customs police. Only metropolitan France is concerned since overseas territories do not belong to the Schengen area and are only subject to the national law. Refusal at entry Article 14 of the SBC provides for refusal at entry on the territory of a Member State for third country national who does not fulfill the entry conditions listed in the article 6 of the SBC. Details for refusal at entry are mentioned in the French law, in the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). Article L.213-1 of CESEDA provides that the access to the French territory can be refused to all foreign national who would represent a threat to the public order or subject to either a ban decision, an expulsion decree, entry bans, circulation ban or administrative decision. Article L.213-2 of CESEDA provides that: - Any refusal decision at entry in the Schengen area through a border crossing point hold by France) has to be notified through a written and motivated decision by the border officer who has performed the control; - This decision has to be notified to the concerned third country national mentioning his/her right to warn or have warned the person to whom s/he has mentioned to go, his/her consulate or any advisor s/he has chosen and except in Mayotte, to refuse his/her repatriation before the expiry of one clear day; - An asylum application at the border can be filed. In this case, it is treated by the French Office for the Protection of Refugees and Stateless Persons (OFPRA); - s/he has been reminded of his/her rights in a language which s/he understands. S/he is invited to mention on the notification decision that s/he wants to benefit from the one clear day; - the minor who is not accompanied by a legal representative cannot be returned before the expiry of the one clear day; - the refusal decision at entry can be executed systematically by the administration. The third country national can file an appeal to cancel this refusal decision with the judge of the administrative court. Refusal decisions at entry lead to placement in waiting zones. Article L.221-1 of CESEDA provides that: - any foreign national arriving to France through train, sea or air route (it is not possible to proceed with placement in waiting zones for arrivals by road, since the French law does not provides for cases of a long period of reintroduction of controls at intern borders) and who is not authorized to enter on the French territory can be maintained in a waiting area located in a railway station open to international traffic

			mentioned in a list defined by regulation, in a harbor or near a disembarking place or in an airport during the time strictly necessary for his departure. - Also applies to foreign national applying for asylum at the border the time period strictly necessary for checking if his application depends on another Member State in compliance with Dublin regulation. - When the OFPRA, while determining whether the asylum application is not inadmissible or clearly unfounded, considers that the asylum seeker, especially because of his age (minor) or because s/he was victim of torture, rape or other form of serious physical, psychological or sexual violence, requires specific procedural guarantees which cannot be respected in waiting zone, the placement in waiting zone is terminated. Then the foreign national is issued with a 8 days regularization visa. During this period, the competent administrative authority can issue, on his request, a statement of asylum application allowing him to file this application with the OFPRA. Article L.221-3 of CESEDA provides that initial placement in waiting zones cannot exceed 4 days. In compliance with article L. 222-1 of CESEDA, placement in waiting zone after 4 days after the initial decision can be authorized by the Freedom and Detention Judge for a period which cannot exceed 8 days. Article L.222-2 of CESEDA provides that exceptionally or in case of deliberate attempt to escape the return order, placement in waiting zones after 12 days can be renewed by the Freedom and Detention Judge for a period to determine and which cannot exceed 8 days, or a maximum of 20 days in waiting zones. The Freedom and Detention Judge is a judiciary judge who can decide on the placement or not of persons in waiting zones, which are places of deprivation of liberty. When the foreign national whose entry has been refused files an asylum application within the last 6 days of the last period of placement in waiting zone, this period is automatically extended for 6 days as from the date of filing of the asylum application, which in this case increases the maximum period to 26 days. Article L.221-4 of CESEDA provides for information to the foreign national on the following rights as soon as possible: - Possibility to ask for a translator or a doctor; - Contact any advisor or person he has identified and leave at any moment the waiting zone for any destination out of France; - Information on all his/her rights related to asylum application; - Communication of this information in a language which s/he understands; - Reference shall be made in a register mentioned in second paragraph of article L.221-3 which is signed by the concerned person.
	Germany	Yes	**1.** Persons shall be refused entry at the border by virtue of Article 14 of the Schengen Borders Code in conjunction with Section 15 of the Residence Act (Aufenthaltsgesetz), if it is established within the

			framework of border checks that they do not meet the entry requirements set forth in Article 6 of the Schengen Borders Code, highlighting the fact that the refusal of entry is admissible and necessary if the entry requirements set forth in Article 6 of the Schengen Borders Code are not met. This conclusively describes the prerequisites. The preconditions set forth in Section 15 subsections 1 to 3 of the Residence Act are not listed as they do not apply. The prerequisites for refusing third-country nationals entry are conclusively regulated in Article 14 of the Schengen Borders Code, this applies regardless of the length of time they intend to stay in the federal territory. The legal basis created by Article 14 of the Schengen Borders Code in conjunction with Section 15 of the Residence Act is only intended to highlight the continued permissible application of non-refoulement, detention pending exit from the federal territory and foreigner's stay in the transit area of an airport or in accommodation, that is either not or is not conclusively regulated in the Schengen Borders Code, clarifying that any reference made to returns, for instance, in Section 64 of the Residence Act is now aimed at refusal of entry. In addition, reference is made to the judgment handed down by the European Court of Justice (C 606/10 of 14 June 2012). In the explanations given, it is established unequivocally that Article 14 of the Schengen Borders Code provides the legal basis for refusal of entry and also applies to situations involving intended long-term stays and stays for purely national motives.
	Hungary	Yes	**1.** The competent authorties of the Hungarian Police execute the refusal procedure according to the art. 14 and Annex V, part A and B, Schengen Borders Code and in additional according to the national law. According to the Hungarian national law, the competent authorities of the Hungarian Police carrying out border checks shall refuse the entry of third-country nationals according to the provisions of the Schengen Borders Code, and shall return such persons - in due observation of its interests: a) to the country of origin of the third-country national in question; b) to the country that is liable to accept the third-country national in question; c) to the country where the customary residence of the third-country national in question is located; d) to any third country prepared to accept the third-country national in question. A third-country national whose entry was refused and is turned back shall: a) remain for a maximum period of eight hours on the means of transport that is scheduled to depart to the point of origin or another destination of transit; b) remain in a designated place located in the frontier zone for a maximum period of seventytwo hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days; or c) transfer onto

			another means of transport of the carrier that is liable to provide return transport.
	Ireland	Yes	**1.** Ireland is not bound by the Schengen Borders Code. A non-national may be refused leave to land under the provisions of section 4(3) of the Immigration Act 2004.
	Italy	Yes	**1.** In Italy, the procedure of issuing decision for refusal of entry is regulated by national and supranational laws. At national level, Legislative Decree 286/1998 foresees that border Police rejects foreigners who show up at border crossing points without the requirements for legal entry in the territory. Therefore, the assumption for rejecting the entry is the lack of one of the requirements foreseen in Legislative Decree 286/1998 and in SBC; the requirements are: - to have valid passport or other equivalent document; - to have an entry visa, if required; - to have appropriate documents showing the aim and the conditions of entry; - to have sufficient livelihood for all the duration of the stay and for the return in the country of origin; - not been flagged in SIS for the purpose of refusing the entry; - not been considered as threat for public order or security of the Italy, or for public order, national security, public health or international relations of another Member State; - not being recipient of a measure of expulsion; - not being recipient of a prohibition of re-entry when expelled, unless having the authorization of Ministry of Interior (Legislative Decree 286/1998). The decision is carried out immediately and the border police office returns immediately the foreign to the State he/she comes from and prevent the entry in Italy. Furthermore, the measure does not involve a prohibition of re-entry, neither the reporting to SIS: everyone who has been rejected at the border can re-entry the State, if he has all the requirement that were missing.
	Latvia	Yes	**1.** In the Republic of Latvia the provisions of the SBG which relates to the refusals of entry are applied directly by the State Border Guard officials. The Immigration Law of the Republic of Latvia includes a Chapter III “Refusal for a Foreigner to Enter the Republic of Latvia”. Article 18 of Chapter III of the Immigration Law defines that “An official of the State Border Guard shall take and draw up a decision on the refusal to enter the Republic of Latvia in accordance with Regulation No.2016/399 of the European Parliament and of the Council of 9 March 2016.” The above-mentioned Chapter includes the provisions on the procedure of appeals for refusals of entry. The State Border Guard has adopted internal instructions on the procedure of application of SBG provisions. The mentioned instructions defines the officials of the State Border Guard entitled to take a decision on refusal for entry, on the

			procedure of issuing of refusal of entry by use of the standard form set out in Annex V Part B of SBG instructions.
	Lithuania	Yes	**1.** The procedure of refusal of entry is carried out in accordance with the Schengen Borders Code. If alien does not fulfill the conditions for entry that are indicated in the Schengen Borders Code, an officer from Lithuanian State Border Guard Service takes the decision of refusal of entry to the Republic of Lithuania and fills in the standard form for refusing entry, as it is indicated in the Schengen Borders Code Annex V, Part B. The official also carries out other actions that are indicated in the Schengen Borders Code Annex V, Part A: affix an entry stamp on the passport, cancelled by a cross in indelible black ink and records every refusal of entry in a register. If a third-country national who has been refused entry is brought to the border by a carrier, he has to take charge of the third-country national and transport him or her without delay to the country from which he or she was brought or to the country where he or she is guaranteed admittance (applicable to air carriers). Administrative liability does not apply for the alien.
	Luxembourg	Yes	**1.** The decision of refusal of entry can be executed ex-officio by the agents of the Airport Police Control Unit (UCPA) (Article 105 of the amended law of 29 August 2008 on free movement of persons and immigration) The agents will draw a written report on the notification of the decision and the execution of it. This report is sent to the Minister in charge of Immigration (article 105 (1)). Against the refusal decision an annulment appeal can be filed before the First instance Administrative Court in a deadline of 30 days after the notification of the decision (article 105 (2)). However, the filing of the appeal does not have suspensive effect (article 105 (2)).
	Malta	Yes	**1.** Our legislation and policy reflects the provisions of the SBC and there are no additional administrative procedures.
	Netherlands	Yes	**1.** The provisions of the SBC apply when refusing entry at the border. Next to these provisions there are also national provisions. These are laid down in the Alien Law 2000 (article 3 to 7), The Aliens Decree 2000 (chapter 2 and 4) and the Aliens Act Implementation Guidelines (Vreemdelingencirculaire) 2000. Finally there is also a General Administrative Law Act in which

			national administrative procedures are laid down.
	Poland	Yes	**1.** In Poland elements of administrative procedure set out in the national law, namely the Code of Administrative Procedures, also apply. In particular the notice of initiation of the proceedings is issued and - where needed - the evidences for the proceedeings are collected. The third-country national concerned has also the right to appoint the proxy/attorney.
	Slovak Republic	Yes	**1.** Yes, solely the provisions of the Schengen Borders Code are applied. The decision is issued as a standard form as stated in the Annex V. As for the national legislation of the Slovak Republic, the footnote of the standard form refers to the Article 53 of the Act No. 71/1967 Coll. on Administrative Procedure according to which a third-country national can appeal this decision for refusal of entry within 15 days at the office which issued the decision. At the same time the third-country national is informed in writing that he/she can be represented by a lawyer or other representative according to his/her choice (there is a reference to the list of lawyers kept by the Slovak Bar Association).
	Slovenia	Yes	**1.** We fully apply provisions of Schengen Borders Code. The foreigner is given the respective form. No other provisions are in place. We only apply some additional rules how to apply the respective provisions of Schengen Borders Code in terms of refusal of entry. Provisions are laid as follows: http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV10881 Procedure is fully IT supported, including printout of the form.
	Sweden	Yes	**1.** In addition to the provisions according to the SBC Sweden also apply the national provisions concerning refusal of entry. A decision according to Article 14 and Annex V must be combined with a decision on refusal of entry according to the Swedish Aliens Act (2005:716). However, the use of the national provisions is only an administrative procedure since the grounds for refusal of entry at the border according to the Aliens Act refers to the grounds according to the SBC
	Switzerland	Yes	**1.** Relating the refusal of entry, Switzerland does not make use of the exemptions of Directive 2008/115/EC. The procedures are based on the procedure according Annex V, Part A Schengen Borders Code as well as the Foreign Nationals Act of 16 December 2005 (FNA), the corresponding

			implementation ordinance and the directives of the State Secretariat for Migration (SEM). If a person is apprehended because she or he does not, or no longer fulfil the conditions of entry, she or he is first granted the right to a legal hearing by means of a standard form. This form draws the person's attention to the prospect that he/she may be refused entry. The person is able to state on this form whether or not he/she would like to receive a written order. The option to waive a written order is standard practice in Switzerland and is based on national codes of procedure. If a written order is requested, the border control authorities will issue a standard order (cf. Annex V, Part B Schengen Borders Code) on behalf of the SEM. This order can be executed immediately. The person may also stay for up to 15 days in the transit area of the airport according the national Law. This period gives the person concerned the opportunity to organise a return flight for herself or himself. An appeal against the refusal of entry order may be made to the Federal Administrative Court within 48 hours. A written indication of contact points able to provide information on representatives competent to act on behalf of the third country national in accordance with the national law is automatically given to the third country national (cf. Art. 14 para 3 Schengen Borders Code).
	United Kingdom	Yes	**1.** If an EU national does not qualify for admission to the UK then they are generally refused entry under the EEA regulations 2016 and would be served with a written notice (form IS82 EEA) confirming refusal of admission. There are limited grounds on which an EU national can be refused admission; these include public policy, public security and public health; if the person is subject to a deportation or exclusion order or their admission would lead to the misuse of a right to reside. If there is reason to believe that an individual does not qualify for admission to the UK under the EEA Regulations 2016 on the grounds of public health, public security or public policy, they may be subject to further examination under the Immigration Act 1971 and can be refused entry. If refused entry, they would be served with written notice of that refusal (form IS82) detailing the reasons for refusal.
	Norway	Yes	**1.** In Norway it is the police that has the authority to refuse entry at the border, with reference to the national legislation. Each case is considered on its merits and given an individual reason, with reference to our national legislation, which is consistent with the Schengen Border Code. Annex V is not used.