

KEY POINTS TO NOTE

- ★ *All five Member States that provided information (**BE, DE, FR, NL and SE**) have reported that there is no objection procedure in place after the first instance decision. The applicant can directly appeal a rejection notice at the court.*
- ★ *Three out of five Member States (**FR, DE and NL**) do not require more than one immigration officer to be involved in the procedure leading to the decision. **Belgium** and **Sweden** require that more than one officer is involved.*
- ★ ***Belgium** and **Sweden** state that it is not possible that personal interviews and final decisions are taken by one immigration officer, while other Member States (**FR, DE and NL**) do allow this.*

BACKGROUND

The Dutch Council of State (the highest court in immigration matters) has raised questions regarding the practice of the Dutch Immigration- and Naturalization Service (IND) 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 of the asylum seeker (Article 14, Directive 2013/32/EU) and the decision on the application for international protection.

In the **Netherlands** caseworkers are responsible for a certain amount of cases. Each case is awarded to a caseworker who is the contact person for both the asylum seeker and the lawyer. Due to practical and logistical problems it is not always possible to allocate both the personal interview and the

decision making to 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 has EMN ad-hoc query to obtain an overview of the applicable policy in several other Member States, on which this summary is based.

MAIN FINDINGS

1. Describe your procedure (in short) of making decisions on applications for international protection: (a) is there a first instance decision¹ 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?

Asylum decisions can be distinguished according to the stage in the procedure when they are taken. After the first instance decision, there is no possibility of an objection procedure in **Belgium, France, Germany, the Netherlands and Sweden**. The applicant can immediately appeal the decision.

In **Germany**, the Federal Office, the decision-makers (case workers) are responsible for carrying out interviews and reaching decisions.

Belgium states that first instance decisions are carried out by The Office of the Commissioner

¹ According to EUROSTAT definitions: First instance decision means a decision granted by the respective authority acting as a first instance of the administrative/judicial asylum procedure in the receiving country.

https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Asylum_decision

General for Refugees and Stateless persons (CGRS). Although there is no objection procedure, *before* 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. In **Netherlands** this opportunity exist as well. In **France**, 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. In **Sweden** the asylum seeker can object to the content of the material of the case before a decision is made.

In the Netherlands there is no objection procedure in place against the decision. Nevertheless, there is the possibility for the applicant to react to a concept / intended decision as follows: if the application does not merit a positive decision, the applicant will then receive a concept / intended decision on the application and will be given the opportunity to give a reaction to this concept / intended decision. The immigration officer who did the personal interview can be involved in the making of this intended decision. If the reaction of the applicant does not give cause for a positive decision, a (final) decision is then taken in which the reaction of the applicant is also taken in account. If the applicant does not agree with the decision, he has the right to immediate appeal (court) and, subsequently, higher appeal (Council of State).

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).*

Of all the Member States that provided information, two Member States (**BE** and **SE**) state that their national procedure does require more than one immigration officer to be involved in the procedure leading to the decision. **Belgium** states that the administrative practice of the CGRS requires that a protection officer conducts the interview and drafts a decision, a supervisor reviews and approves this draft decision and the Commissioner-general takes the final decision. In **Sweden**, a decision by a Government agency shall be taken after presentation of the case by the case worker to the decision maker (according to the Government Agencies Ordinance). The decision is signed by the caseworker and the decision maker.

Contrarily, in **France**, **Germany** and **the Netherlands** it is not required that more than one immigration officer is involved in this procedure. **France** national law does not provide for more than one immigration officer to be involved in the process. 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. Then After the protection officers submit their decision for signature to their section manager. In some cases, some experienced protection officers can sign their decisions themselves, provided they have obtained the signature delegation from the director-general of the OFPRA (French Office for the protection of refugees and stateless people). **Germany** states that although it is preferred practice at the Federal Office for one person to perform both roles, the German national law does not make any stipulations as to the identity of the interviewer and decision-maker. This way, the decision-maker can interview an applicant and also decide on the asylum application concerned. Nevertheless, this is not always feasible in practice (for example in cases of vulnerable categories of applicants for which trained decision-makers might be involved). In the **Netherlands** there also is no (legal) procedure that requires that the officer of the personal interview cannot be the person who makes the decision on the application for international protection.

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)?*

Only **Belgium** and **Sweden** state that it is not possible that the personal interviews and final decisions are taken by one immigration officer. **Sweden** stated that although it is possible in Sweden that interviews can be handled by one case worker alone, the decision has to be signed by both the case worker as well as the decision maker.

Contrarily **France**, **Germany** and **the Netherlands** allow that decisions are taken by one immigration officer. **Germany** mentions that the decision-maker can interview an applicant and also decide on the asylum application concerned. The **Netherlands** allows for the same process. 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, under the condition that a caseworker has fulfilled all the necessary training and is qualified to make decisions on international protection.

EMN NCPs participating:

Responses from Belgium, France, Germany, the Netherlands and Sweden (5 in total).

Disclaimer:

The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN

National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is (to the best of their knowledge) 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. The responses are interpreted by the EMN to write this summary.