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Access to remedies for international protection applicants

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Explanatory note

This inform was prepared on the basis of national contributions from 22 EMN NCPs (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, NL, PL, SE, SI, SK) collected via an AHQ developed by the EMN NCPs to ensure, to the extent possible, comparability. The information contained in this inform refers to the situation in the abovementioned EMN Member Countries up to November 2024.

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CONTENTS

1. KEY POINTS TO NOTE

- Appeal procedures against decisions issued in the regular asylum procedure are organised very differently across European Migration Network (EMN) Member Countries. Time limits to lodge appeals in the regular procedure range from one week to one month. In most EMN Member Countries, the appeal must be submitted in writing either on paper or electronically. In most cases, appeals are determined through a combination of written and oral procedures. While some EMN Member Countries do not establish a specific time limit to decide on appeals in the regular procedure, others have time limits that range from one to over five months. In most EMN Member Countries, lodging an appeal against a decision in the regular asylum procedure generally has an automatic suspensive effect, although some exceptions apply.
- Very few countries have specific first instance appeals procedures against decisions issued in the accelerated asylum procedure and/or inadmissibility decisions. In most countries, appeals against such decisions generally follow the same rules as the regular procedure, sometimes with shorter timelines and/or differences in the recognition of automatic suspensive effect.
- Only France has a specific appeals procedure for decisions issued in border procedures. Eleven EMN Member Countries do not operate border procedures under their national asylum legislation. Reporting countries that operate border procedures do not have a specific appeal procedure for those decisions. In most cases, however, there are shorter time limits to file the appeal and no automatic suspensive effect.
- In 16 EMN Member Countries – regardless of the type of appeal procedure – first instance appeals are heard by general administrative courts. In six countries, appeals are heard by specialised judicial or quasi-judicial bodies.
- In 18 EMN Member Countries, first instance appeals are generally heard by single judges/members of the competent body, although in some cases they are assigned to a panel. In six EMN Member Countries, appeals are typically heard by a panel of judges/members of the competent body (two or three members), with some exceptions.
- To ensure access to legal assistance and representation in first instance appeals procedures, all reporting EMN Member Countries provide for the possibility to access state-funded legal assistance and representation, often on request and subject to some conditions (e.g. financial circumstances of the applicant, applicant must be present in the territory, and the appeal must have sufficient prospects of success). In most cases, state-funded legal assistance and representation is provided by registered lawyers under the state legal aid system. The type of legal assistance most commonly includes assistance in preparing and filing the appeal, consultation with the applicant, and participation in the hearing on their behalf.
- Seventeen EMN Member Countries have specific guarantees in place to ensure the best interest of unaccompanied minors during the appeals procedures (e.g. appointment of a legal guardian, assignment of legal representation *ex officio,* processing appeals with more urgency). Twelve EMN Member Countries recognise special procedural guarantees for other groups with special needs (e.g. hearing procedures can be adjusted to accommodate specific needs or be heard by officials of their same gender; prioritisation of appeal applications from individuals with special needs).
- Twelve EMN Member Countries implemented operational changes in hearing first instance appeals between 2018 and June 2024 by introducing various digital technologies (e.g. oral hearings, submission/signing of documentation).
- Challenges with first instance appeals procedures include capacity constraints within competent bodies, increases in the number of appeals, backlogs, and applicants' access to legal assistance and representation.
- Good practices in first instance appeals procedures include measures to prevent backlogs, capacity-building for competent bodies, and increased digitalisation and modernisation of appeals procedures.

2. INTRODUCTION

2.1. Legal and Policy context

The right to an effective remedy is a fundamental right recognised under Article 47 of the European Union (EU) Charter of Fundamental Rights.[1] It is also protected across different international human rights law instruments, including Article 13 of the European Convention of Human Rights,[2] Article 8 of the Universal Declaration of Human Rights,[3] and Article 2(3) of the International Convention on Civil and Political Rights (ICCPR).[4]

In EU asylum law, the right to an effective remedy is recognised across all legislation, including the recast Asylum Procedures Directive (2013/32/EU[5]) (recast Asylum

1 Charter of Fundamental Rights of the European Union, C 326/391, OJ C 326, p.391, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT, last accessed on 19 June 2024.
2 European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_ENG, last accessed on 19 June 2024.
3 Universal Declaration of Human Rights, https://www.un.org/en/about-us/universal-declaration-of-human-rights, last accessed on 19 June 2024.
4 International Convention on Civil and Political Rights (ICCPR), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights, last accessed on 19 June 2024.
5 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (recast Asylum Procedures Directive), OJ L 180, p. 60, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032, last accessed on 3 July 2024.

Procedures Directive).[6] **Article 46 of the recast Asylum Procedures Directive** requires EU Member States to ensure that applicants for international protection have the right to an effective remedy before a court or tribunal against decisions taken on their application. This includes decisions considering an application unfounded in relation to refugee status and/or subsidiary protection status, as well as inadmissibility decisions, border procedure decisions, decisions not to examine an application due to the person's arrival from a European or safe third country, decisions refusing to reopen the examination of an application after its discontinuation, and decisions to withdraw international protection.[7] The recast Asylum Procedures Directive states that EU Member States have to provide a **reasonable time limit** for applicants to lodge an appeal.[8]

The Directive provides applicants with a right to a full **examination of points of fact and law**[9] and requires EU Member States to ensure that applicants for international protection have the right to remain on their territory until the end of the appeal proceedings.[10] Article 46(6) and (7) contain some exceptions to this **automatic suspensive effect,** allowing EU Member States to establish an appeal system where the competent court or tribunal has the power to rule on whether the applicant may remain on the territory. For border procedures, this possibility is only allowed where the person has been given access to the necessary interpretation and legal assistance to prepare the request at least one week in advance and the appeal is assessed on fact and law.[11]

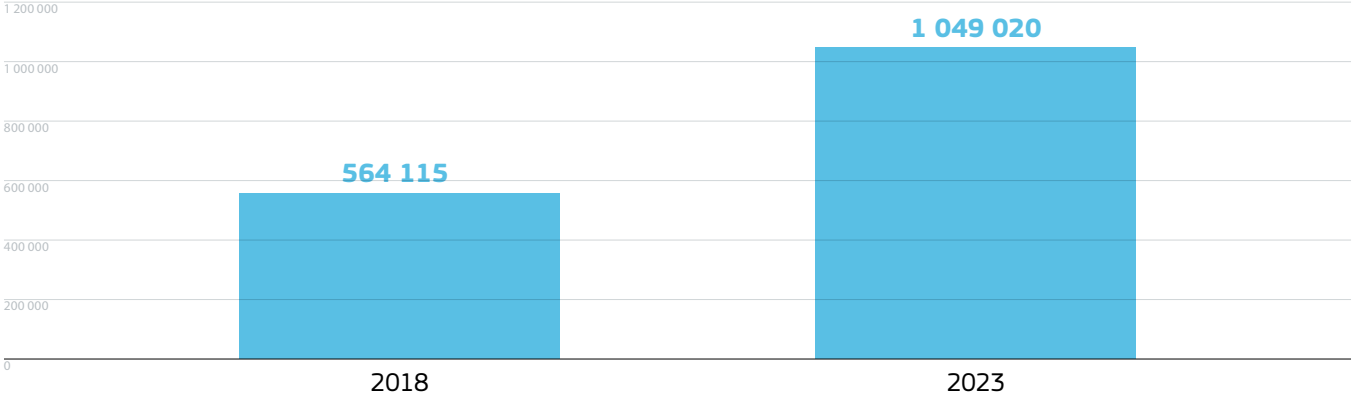
In asylum appeals procedures, **free legal assistance and representation is an important aspect of providing an effective remedy**. Under the recast Asylum Procedures Directive, it must be provided by EU Member States at the request of the applicant and subject to certain conditions.[12] While the Directive does not define legal assistance and representation, it stipulates that it should at least include the preparation of procedural documents, as well as participation in the hearing before a court or tribunal of first instance on behalf of the applicant.[13] Free legal assistance and representation can be provided by non-governmental organisations (NGOs), professionals from government authorities, or specialised services of the state.[14] Under Article 21 of the Directive, EU Member States can subject this free legal assistance and representation to certain conditions, including limiting its provision to applicants without sufficient resources or appeals of first instance decisions.[15]

While the recast Asylum Procedures Directive provides guidance on how appeals should be conducted and the procedural safeguards that should be guaranteed, it leaves a degree of discretion to **EU Member States on transposing its provisions into national law**, creating notable differences in appeals structures and procedures. These include the length of the time limits granted to lodge an appeal,[16] operation of border procedure appeals,[17] and the body designated to hear appeals.

EMN Member Countries are experiencing an increase in numbers of applications for international protection.[18] In EU Member States, the number of first-time asylum applications rose from 564 115 in 2018 to 1 049 020 in 2023.[19] In 2023, EU Member States issued a total of 677 620 first instance decisions on applications for international protection, compared to 556 390 in 2018.[20] A total of 319 335 first instance applications for international protection in the EU were rejected in 2023.[21] The **Asylum Procedure Regulation (Regulation (EU) 2024/1348**[22]**)** entered into force on 11 June 2024 and will apply as of 12 June 2026, making it crucial to understand how countries organise their appeals procedures and ensure access to remedies.

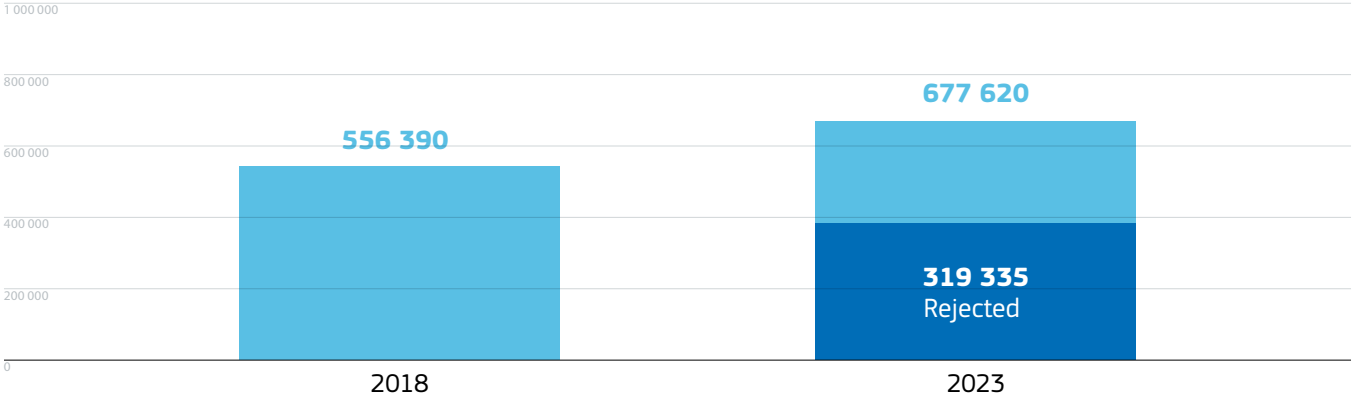
6 Ireland participates in the Asylum Procedures Directive (2005/85/EC) but not the recast Asylum Procedures Directive. In the Asylum Procedures Directive, the right to an affective remedy is regulated under Article 39. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, p. 13, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0085, last accessed on 10 December 2024.
7 Article 46(1)(a)-(c), recast Asylum Procedures Directive.
8 Article 46(4), recast Asylum Procedures Directive.
9 Article 46(3), recast Asylum Procedures Directive.
10 Article 46(5), recast Asylum Procedures Directive.
11 Article 46(7), recast Asylum Procedures Directive.
12 Recital 23, recast Asylum Procedures Directive.
13 Article 20(1), recast Asylum Procedures Directive.
14 Article 21(1), recast Asylum Procedures Directive
15 Article 21(2), recast Asylum Procedures Directive.
16 Court of Justice of the European Union (CJEU) case-law on time limits in appeals: Danqua (C-429/15), Diouf (C-69/10), JP (C-651/19), LH (C-564/18), Abboudnam (C-58/23).
17 European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 'Report on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection', 2021, https://www.europarl.europa.eu/doceo/document/A-9-2021-0005_EN.html, last accessed on 19 June 2024.
18 European Migration Network (EMN), 'Annual Report on Migration and Asylum 2022', 2023, https://home-affairs.ec.europa.eu/system/files/2023-07/00_eu_arm2022_report.pdf, last accessed on 19 June 2024.
19 Eurostat, Asylum applicants by type, citizenship, age and sex – annual aggregated data (migr_asyappctza, last accessed 25 June 2024).
20 Eurostat, First instance decisions on applications by type of decision, citizenship, age and sex - quarterly data (migr_asydcfstq, last accessed 19 November 2024).
21 Eurostat, First instance decisions on applications by type of decision, citizenship, age and sex - quarterly data (migr_asydcfstq, last accessed 19 November 2024).
22 Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, OJ L, 2024/1348, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401348, last accessed on 19 June 2024.

Figure 1. Number of first-time asylum applications



Source: Eurostat, annual aggregated data (migr_asyappctza, last accessed 25 June 2024)

Figure 2. First instance decisions



Source: Eurostat, annual aggregated data (migr_asydcfsta, last accessed 25 June 2024)

2.2. Aim and scope of the inform

This inform maps how EMN Member Countries organise their first instance appeals procedures. It aims to provide comparable information on the **current organisation** of appeals procedures to assist in the implementation of changes to appeals procedures in the context of the Pact on Migration and Asylum. This inform is based on responses from 22 EMN Member Countries.[23]

This inform outlines the differences in how EMN Member Countries organise their first instance appeals procedures. It provides a comparative overview of first instance international protection appeals structures and procedures currently in place across EMN Member Countries, including safeguards. It also reflects on good practices and challenges encountered by EMN Member Countries when operating their first instance appeals procedures.

The inform examines **first instance appeals in the international protection procedure,** including appeals within the regular procedure, the accelerated procedure, admissibility, and the border procedure. Further appeals are excluded from the scope of the inform, as are appeals under the Dublin III Regulation (Regulation (EU) No 604/2013).

The inform examines the **state of play of first instance appeals procedures** and **operational changes implemented between 2018 and 2024**.[24]

3. APPEALS PROCEDURES

This section presents an overview of how EMN Member Countries organise and operate their first instance appeal procedures. It looks at whether EMN Member Countries have one or more types of appeal procedures (or variations) depending on whether the decision was issued in a regular procedure, accelerated procedure or border

23 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, NL, PL, SE, SI, SK.
24 Until June 2024.

procedure, or for inadmissibility decisions, and highlights differences between procedures.

3.1. Appeal procedures against a decision issued in the regular asylum procedure

The organisation and functioning of first instance appeal procedures against decisions issued in the **regular asylum procedures varies considerably across EMN Member Countries.**[25]

The recast Asylum Procedures Directive states that EU Member States must provide a **reasonable time limit** for applicants to lodge an appeal, but does not specify a deadline.[26] EMN Member Countries have established very different **time limits for lodging appeals** against decisions issued in the regular asylum procedure and submitting supporting documents, ranging from one week to one month (see Table 1).

Table 1. Time limits for lodging and deciding first instance appeals against decisions issued in the regular asylum procedure

EMN Member Country	Time limit for lodging the appeal under the regular procedure	Deadline to issue decision on appeal under regular procedure
AT	Two weeks (four weeks for unaccompanied minors)	Without undue delay, but no later than six months after receipt of the appeal
BE	30 days after notification of the decision[27]	Within three months[28]
BG	Within 14 days of notification of the decision	Within one month of initiation of the case
CY	Within 30 calendar days of notification of the decision	Within a reasonable time (no specific deadline)[29]
CZ	One month from date of delivery of the decision (or two months from date of delivery of the decision for missing, incomplete or incorrect notices)	No fixed time limit is set out in legislation, but asylum cases are decided in a priority regime according to the law[30]
DE	When appealing a rejection of an application as 'unfounded' (simple rejection) or a decision to revoke or withdraw international protection, the appeal has to be submitted within two weeks (14 calendar days) after the decision is delivered	No time limit provided in law
EE	Within 10 days of notification of the decision	No fixed deadline, but the law states that these cases shall be considered a priority by the court
EL	30 days from date of notification of the decision or the time it is presumed that the appellant was informed	As soon as possible and in any case within 30 days of the hearing
ES	Within two months of receipt of notification of refusal or tacit rejection is verified	No fixed deadline, but the law states that these cases shall be considered a priority by the court
FI	Within 30 days of notification of the decision[31]	The law does not set a specific deadline, but appeals against decisions issued in regular asylum procedures shall be considered urgently
FR	One month from notification of the decision	Within five months when reviewing an appeal against a decision
HR	30 days from date of delivery of decision to the applicant	Within a reasonable period
IE	Within 15 working days of sending of negative recommendation by the International Protection Officer	No time limit provided in law
LT	14 days from date of receiving the decision	Within two months of the date of acceptance of appeal for consideration
LU	One month after notification of the decision	No time limit provided in law

25 All EMN Member Countries reported having first instance appeal procedures against a decision issued in the regular asylum procedures, except Hungary. Under Hungarian asylum legislation, a claim to the court (not an appeal) can be brought against a decision issued in a regular asylum procedure (the court makes a decision in administrative litigation).
26 Article 46(4), recast Asylum Procedures Directive.
27 The method of notification affects the specific start of the appeal period: Via registered letter with acknowledgment of receipt: from the first day following the day the letter was delivered to the recipient's residence or, if applicable, to their place of stay or chosen domicile; via registered letter or ordinary letter: from the third working day following the day the letter was handed over to the postal services, unless the recipient proves otherwise; by delivery against receipt: from the first day following the delivery or the refusal to accept; by fax: from the first day following the day of transmission.
28 These are procedural deadlines with no sanctions if the Council for Alien Law Litigation (CALL) exceeds these deadlines.
29 According to the Rules of Procedure of the Prompt Delivery of Judicial Decisions (R.11/1986), as subsequently amended, the issuance of a decision from the date that the appeal was withheld shall be within a maximum of six months.
30 The law only imposes time limits in specific cases (i.e. detention, extradition).
31 The appeal may be submitted on the following weekday if the last day of the appeal period is a Saturday or Sunday or an official holiday (other than a business day).

EMN Member Country	Time limit for lodging the appeal under the regular procedure	Deadline to issue decision on appeal under regular procedure
LV	Within one month of the day the decision of first instance entered into effect	Within three months of the date of taking the decision to accept the appeal and initiate the matter
NL	In the general asylum procedure, the appeal has to be lodged within one week of rejection of the application by the Dutch Immigration and Naturalisation Service (IND). In the extended asylum procedure, the appeal has to be lodged within four weeks of the rejection of the application by the IND	Four weeks in the general asylum procedure and 23 weeks in the extended asylum procedure, from the day the appeal was lodged
PL	Within 14 days of date of delivery of the decision	Without unnecessary delay. However, the general law on administrative procedure states that the appeal authority should settle the case within one month, and a particularly complex case no later than within two months
SE	Within three weeks of the appellant being notified of the decision	No time limit is provided in law for the decision
SI	15 days	30 days
SK	30 days[32]	90 days

The type of **documentation submitted as part of the appeal** can include a copy of the decision contested,[33] evidence of notification of the decision,[34] and any supporting documents appellants wish to submit as evidence to substantiate their claims.[35] While some countries require supporting documents to be submitted together with the appeal,[36] other countries[37] allow for additional time to submit supporting documentation following formal submission of the appeal. In Germany, for example, the appeal must be submitted within 14 days of notification of the decision, but appellants have a month to submit evidence to substantiate their claims. Similarly, in the Netherlands, an appeal does not have to be substantiated at the time it is submitted. In practice, the IND is informed by the district court that an appeal is submitted and the district court gives the applicant the opportunity to submit the grounds for the appeal, in writing, within one to four weeks. In France, appeals must be submitted within one month of notification of the decision, but supporting documents may be submitted to the court at any time before the delivery of a motivated ruling or before the closing order. In the Slovak Republic, supporting documents can be submitted by the applicant during the proceedings before the administrative court until the completion of the evidence-making process.

In most EMN Member Countries, **the appeal must be submitted in writing in paper** (either in person at the relevant office or through certified mail)[38] or **electronically** by email and/or through a dedicated online platform.[39] In the Netherlands, when the applicant is represented by a lawyer, the lawyer is obliged to submit a digital appeal. Croatia, Germany and Poland are the only EMN Member Countries where appeals can be submitted **orally for the record**.

In most cases, **appeals must be submitted before the general administrative court**[40] **or specialised judicial or quasi-judicial bodies**[41] **competent to hear the appeals** (see Section 4). In six EMN Member Countries, appeals are submitted to bodies other than the authorities competent to hear the appeal (e.g. staff in detention centres, migration and asylum authorities), who then forward it to those authorities.[42] In Austria, the appeal must be filed before the Federal Office for Immigration and Asylum, in Sweden to the Migration Agency, and in Bulgaria before the State Agency for Refugees. In Finland, the appeal can be submitted before the Finnish Immigration Service or directly before the Administrative Court competent to hear the appeal.

Appeals are determined in varying ways across EMN Member and Observer Countries, depending on the specific circumstances of the case. In most cases, a combination of written procedures and oral hearings is possible.

In ten EMN Member Countries, appeals are generally determined in **written procedures** based on the documents submitted, although an oral hearing can be held in some cases, at the request of the parties or when deemed necessary by the competent body.[43] In Greece, the procedure before the Independent Appeals Committee is in writing and appeals are heard based on the elements in

32 20 days for administrative action (appeals) against: Decisions on rejection of the application as manifestly unfounded or inadmissible; Decisions on the discontinuation of the asylum procedure.
33 BE, CY, CZ, EE, ES, FI, FR, LU, NL, SE.
34 DE, EE, ES, FI.
35 BE, CY, CZ, DE, EE, ES, FI, FR, IE, LU, LV, NL, SE, SK.
36 CY, CZ, EE, ES, FI (if the appeal submitted to the administrative court is incomplete, the court must give an opportunity to supplement it within a reasonable time limit), LU.
37 BE, CZ (in principle documents must be submitted with the appeal but this time can be extended), DE, EE, FR, HR, IE, NL, SK.
38 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK.
39 BE, BG, EE, ES, FI, FR, HR, IE, LT, LU, NL, PL, SE, SK.
40 BE, CZ, DE, EE, ES, FI, HR, LT, LU, LV, NL, SI, SK.
41 CY, FR, IE.
42 AT, BG, EL, FI, PL, SE.
43 AT, CZ, EL, ES, FI, FR, IE, LU (an oral hearing is mandatory), LV, SE.

the file. However, the Independent Appeals Committee shall invite the appellant to an oral hearing in certain circumstances: when the appeal is brought against a decision to withdraw international protection status; when questions or doubts arise as to the completeness of the interview at first instance; when the appellant claims important new elements on subsequent statements. In Sweden, the court can include an oral hearing where it is considered advantageous for the investigation or to expedite the case.

In 10 EMN Member Countries, **first instance appeals are generally determined in an oral hearing, with some exceptions**.[44] In Cyprus, once the appeal is lodged, a hearing date is set (within 27 days), but procedural steps are determined on a case-by-case basis, at the court's discretion, including whether to admit oral or written testimony or other evidence that it deems relevant and fair. In Belgium and Lithuania, there is generally an oral hearing, but the case may proceed in written form at the petitioner's request, if other parties do not object. In Germany, the court shall rule on the basis of an oral hearing but may rule only based on written exchanges with the consent of the parties.

In nine EMN Member Countries where oral hearings are foreseen, these **can be held online through videoconference**.[45]

The recast Asylum Procedures Directive states that EU Member States may lay down time limits for the competent body to examine the appeal, but does not require them to do so, nor establish specific deadlines.[46] **EMN Member Countries have adopted very different approaches to the establishment of deadlines for competent bodies to decide on first instance appeals**. In nine EMN Member Countries, the law does not establish a specific time limit to decide on the appeal.[47] Where a deadline is set, this varies from one to four months (see Table 1).

In most EMN Member Countries, lodging an appeal against a decision in the regular asylum procedure generally has an **automatic suspensive effect** that allows the applicant to remain in the territory of the country until a decision is issued on the appeal.[48] Some exceptions apply, however,[49] such as appeals against decisions that have been rejected as manifestly unfounded,[50] appeals of subsequent applications that do not introduce new elements,[51] or cases of withdrawal of an application for international protection.[52] In France, the automatic suspensive effective does not apply when the person is subject to a final extradition order to a state other than their country of origin or to a surrender decision based on a European Arrest Warrant (EAW) or a request from the International Criminal Court. In Austria, automatic suspensive effect does not apply to decisions that: reject an application for international protection and are linked to a measure terminating residence; reject an application for international protection and an enforceable return decision already exists; or issue an order of removal from the country, as well as an application for referral in this regard, unless suspensive effect is granted by the Federal Administrative Court.

Exceptions to the automatic suspensive effect of appeals may also apply in decisions issued in accelerated and border procedures or appeals of inadmissibility decisions.

3.2. Appeals procedures against decisions issued in the accelerated asylum procedure

Five EMN Member Countries have a **specific first instance appeals procedure against decisions issued in the accelerated asylum procedure**.[53] Others[54] do not have a specific first instance appeals procedure in this context, but may differ from the regular procedure in relation to time limits and automatic suspensive effect. Regardless of whether there is a specific procedure to decide on appeals in the accelerated procedure or not, the differences over the regular procedure centre on: shorter timeframes to lodge the appeal; different rules on timeframes to decide on the appeal; differences in deciding on the appeal; and differences in the recognition of automatic suspensive effect.

Shorter timeframes to lodge the appeal

Most EMN Member Countries[55] have established **shorter deadlines to file appeals** against decisions in accelerated procedures (see Table 2).

44 BE, BG, CY, DE, EE, HR, LT, NL, SI, SK.
45 DE, EE, FR, IE, LT, LV, NL, SE, SI.
46 Article 46 (10), recast Asylum Procedures Directive.
47 CY, DE, EE, ES, FI, HR, IE, LU, PL.
48 AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK.
49 AT, DE, EE, EL, FR, NL, SE, SK (request for granting of suspensive effect should be submitted together with the appeal).
50 DE, EE, EL, NL, SE, SK.
51 EE, EL, FR, NL, SK.
52 DE, EE, FR.
53 BG, CY, IE, LU, PL.
54 AT, BE, CZ, DE, EE, EL, ES, FI, FR, HR, HU, LT, LV, NL, SE, SI, SK.
55 BE, BG, CY, CZ, DE, EL, HR, IE, LT, LU, LV, PL, SI.

Table 2. Time limits for lodging first instance appeals against decisions issued in the accelerated asylum procedure

Same time limit | Shorter time limit | Longer time limit

EMN Member Country	Time limit for lodging appeal under accelerated procedure	Comparison with regular procedure
AT	Four weeks	Longer
BE	10 days since notification of the decision if the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) respected the processing period of 15 working days. Otherwise, 30 days	Shorter
BG	Within seven days of delivery of the decision	Shorter
CY	15 calendar days after notification of contested decision	Shorter
CZ	15 days from date of delivery of the decision	Shorter
DE	When appealing a 'manifestly unfounded' rejection, the timeframe for submitting an appeal is one week. The appellant has to submit reasons and evidence within one month of the decision	Shorter
EE	Within 10 days of notification of the decision	Same
EL	20 days from notification of the asylum claim being rejected or from presumption of appellant being informed	Shorter
FI	Within 30 days[56]	Same
FR	One month from notification of the decision	Same
HR	Eight days from date of delivery of the decision	Shorter
IE	10 working days from date of sending notification of the recommendation	Shorter
LT	Seven days from date the expedited asylum denial decision is served	Shorter
LU	15 days from notification of the decision	Shorter
LV	Within 15 working days of the day the decision entered into effect	Shorter
NL	One week from the decision being issued by the IND	Same
PL	Within 7 days of the date of delivery	Shorter
SE	Within three weeks of appellant being notified of the decision	Same
SI	Three days	Shorter
SK	30 days[57]	Same

Different rules on timeframes to decide on the appeal

Six EMN Member Countries have adopted a **different approach to time limits for decisions on appeals** under the accelerated procedure compared to the regular procedure[58] by establishing a time limit (where this was not established under the regular procedure)[59] or adopting a shorter deadline to decide on the appeal[60] (see Table 3).

56 An application for the prohibition or suspension of enforcement must be made within seven days from the notification of the asylum decision.
57 20 days for administrative action (appeals) against: Decision on rejection of the application as manifestly unfounded or inadmissible; Decision on discontinuation of the asylum procedure.
58 BE, EL, FR, LU, LV, SI.
59 LU.
60 BE, EL, FR, LV, SI.

Table 3. Different time limit for issuing a decision on an appeal, accelerated vs regular asylum procedure

EMN Member Country	Deadline for decision in accelerated procedure	Deadline for decision in regular procedure
BE	Within two months	Within three months
EL	Decision delivered as soon as possible and in any case within 20 days of the hearing	As soon as possible and in any case within 30 days of the hearing
FR	Within five weeks of the date of submission. However, if the case is referred to a collegiate formation (three-member panel), the court has five months to rule	Within five months of being seized when reviewing an appeal against a decision
LU	Within one month of lodging the application[61]	No time limit provided in law
LV	Within 20 working days of the date of the decision to accept the appeal and initiate the matter	Within three months of the date of taking the decision to accept the appeal and initiate the matter
SI	Seven days	30 days

Differences in deciding on appeals

In most of the EMN Member Countries[62] with a specific first instance appeals procedure against decisions issued in the accelerated asylum procedure, one of the main differences from the regular procedure is **how appeals are decided.** In Ireland, applicants do not have the option of an oral hearing unless the tribunal decides that it is necessary in the interests of justice. In Finland, those appeals can be considered by a single judge (instead of a panel of judges). Similarly, in Luxembourg and Poland, these appeals are heard by a single judge/member[63] instead of a panel.

Differences in recognition of automatic suspensive effect[64]

When it comes to the suspensive effect of the appeal, **nine EMN Member Countries do not recognise the automatic suspensive effect** of appeals against decisions issued in the accelerated procedures,[65] which is instead decided by the court at the request of the appellant[66] or *ex officio*.[67] Seven EMN Member Countries recognise the automatic suspensive effect of appeals against decisions issued in the accelerated procedure.[68]

3.3. Appeals procedures against an inadmissibility decision

Only Ireland and Luxembourg have a **specific first instance appeals procedure against inadmissibility decisions**. In other EMN Member Countries,[69] appeals against inadmissibility decisions follow the same rules to submit and decide on the appeal as the regular procedure, albeit with different time limits and recognition of automatic suspensive effect in some cases. Regardless of whether there is a specific procedure to decide on appeals against inadmissibility decisions or not, the main differences of appeals against inadmissibility decisions as compared to appeals in the regular procedure include: shorter timeframes to lodge the appeal; different rules on timeframes to decide on the appeal; differences in deciding on the appeal; and differences in the recognition of automatic suspensive effect.

Shorter time limits to submit the appeal

Similar to procedures to appeal decisions issued in accelerated procedures, appeals against inadmissibility decisions have **shorter time limits to submit the appeal** than in the regular procedure (see Table 4).[70]

61 Time limit suspended between 16 July and 15 September, without prejudice to the judge's right to rule at an earlier date.
62 CY, IE, LU, PL.
63 In Luxembourg, the president of the chamber of the First instance Administrative Tribunal, or the judge who replaces them, will take the decision.
64 CY, CZ, DE, EE, EL, FI, HR, LT, NL, SE.
65 CY, DE, EE, EL, FI, HR, LT, NL, SE.
66 CY, DE, EE, EL, FI, HR, LT, NL.
67 SE.
68 BE, BG, FR, IE, LU, PL, SI.
69 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, LT, LV, NL, PL, SE, SI, SK.
70 BE, BG, CY (if issued under accelerated procedure), CZ, DE, EL, FI, HR, IE, LT, LU, LV, SI, SK.

Table 4. Time limits for lodging first instance appeals against inadmissibility decisions

|| Same time limit →| Shorter time limit

EMN Member Country	Time limit for lodging appeal against inadmissibility decisions	Comparison with regular procedure
AT	Two weeks (four weeks for unaccompanied minors)	|● |
BE	10 days or 5 days where the applicant is in detention at the time of their application	→● ←
BG	Within seven days	→● ←
CY	Within 30 calendar days of notification of the contested decision if issued under the regular procedure Within 15 calendar days of notification of the contested decision if issued under the accelerated procedure	|● | (*) Depending on whether it is issued under the accelerated procedure
CZ	15 days from date of delivery of the decision	→● ←
DE	One week. Appellant has to submit reasons and evidence within one month of decision being delivered	→● ←
EE	Within 10 days of notification of the decision	|● |
EL	Time limit for the appeal is 20 days from notification for asylum claims rejected as inadmissible or from presumed time appellant was informed	→● ←
FI	Within 30 days[71]	|● |
FR	One month from notification	|● |
HR	Eight days from date of delivery of the decision	→● ←
IE	10 working days from date of sending of notification of the recommendation	→● ←
LT	Seven days from date of receiving the inadmissibility decision	→● ←
LU	Within 15 days of notification	→● ←
LV	Within 15 working days (or five working days if the asylum seeker is in detention) of the day the inadmissibility decision entered into effect	→● ←
NL	One week from decision being issued by the IND	|● |
PL	Within 14 days of date of delivery of the decision	|● |
SE	Within three weeks of appellant being notified of the decision	|● |
SI	Three days	→● ←
SK	20 days[72]	|● |

Different rules on timeframes to decide on the appeal

Six EMN Member Countries have adopted a **different approach to time limits for decisions on appeals** against inadmissibility decisions compared to the regular procedure (see Table 5).[73]

71 If the application is inadmissible because the applicant has arrived from a safe country of asylum, an application for the prohibition or suspension of enforcement must be made within seven days from the notification of the asylum decision.
72 20 days for administrative action (appeals) against: Decision on rejection of the application as manifestly unfounded or inadmissible; Decision on discontinuation of the asylum procedure.
73 BE, CZ, EL, LU, LV, SI.

Table 5. Time limits for decisions on appeals against inadmissibility decisions vs regular procedure

EMN Member Country	Deadline for decision on appeal against inadmissibility decisions	Deadline in regular procedure
BE	Within two months	Within three months
CZ	No time limit, but with several exceptions: 60 days if the international protection applicant is not allowed entry to the territory of the Czech Republic; if the applicant is detained; if the applicant has received the penalty of expulsion from the territory of the Czech Republic; or if there are proceedings to extradite the applicant to another EU Member State	No fixed time limit is set out in legislation, but asylum cases are decided in a priority regime according to the law
EL	Decision on appeal delivered as soon as possible and in any case within 20 days of the hearing	As soon as possible and in any case within 30 days of the hearing
LU	Within two months of the lodging of the appeal. Automatically reduced to one month if applicant is subject to a placement measure in a detention centre	No time limit provided in law
LV	Within five working days of date of decision to accept the appeal and initiate the matter	Within three months of date of decision to accept the appeal and initiate the matter
SI	Seven days	30 days

Differences in deciding on appeals[74]

Ireland and Finland have different rules to decide on the appeal compared to the regular procedure. In Finland, these appeals can be considered by a single judge (instead of a panel of judges), while in Ireland, applicants do not have the option of an oral hearing.

Differences in recognition of automatic suspensive effect

Most EMN Member Countries apply different rules to the suspensive effect of appeals against inadmissibility decisions compared to the regular (or accelerated) procedure.[75]

In most cases, the application of automatic suspensive effect depends on the ground of inadmissibility.[76] Seven EMN Member Countries recognise the automatic suspensive effect of an appeal against an inadmissibility decision issued on the ground that the applicant has come from a safe third country.[77]

Some of the inadmissibility grounds that do not typically trigger the automatic suspensive effect of the appeal include when the application has been declared inadmissible for being a subsequent application, with no new elements or findings introduced[78] and when the application has been declared inadmissible because the individual has received international protection in another EU Member State[79] or in a third country.[80] France does not grant suspensive effect when the application has been rejected under the accelerated procedure for refusal to provide fingerprints, for having provided forged identity/travel documents, where the asylum application is filed more than 90 days after entry, or for reasons related to security and public order.

In Cyprus, Luxembourg and Sweden, appeals against inadmissibility decisions do not have automatic suspensive effect, regardless of the grounds of inadmissibility. By contrast, Ireland recognises automatic suspensive effect for all appeals against inadmissibility decisions.

Where the automatic suspensive effect does not apply, the competent body can apply it at the request of the applicant[81] or *ex officio*,[82] depending on the circumstances.

3.4. Appeals procedure against decisions issued in the border procedure

Only France has a **specific appeals procedure for decisions in border procedures.** A decision refusing entry to France for asylum purposes – as well as any associated transfer decision – can be appealed within 48 hours of notification of the refusal decision. The appeal is heard by an Administrative Tribunal, which must issue a ruling within 96 hours of expiration of the appeal period.

None of the other reporting countries have specific appeals procedures against decisions issued in the border procedure.[83] Eleven EMN Member Countries do not operate border procedures under their national asylum legislation,

74 FI, IE,
75 BE, BG, CY, DE, EE, FI, FR, HR, LT, NL, SE, SI, SK.
76 BE, BG, DE, EE, FR, HR, LT, NL, SI, SK.
77 EE, FI (if the application is considered inadmissible because the applicant has arrived from a safe country of asylum, the decision may be enforced no earlier than the eighth day after the decision), FR (under accelerated the procedure), HR, LT, NL, SI, SK.
78 BE, BG, DE, EE, FI, FR, HR, NL, SK.
79 DE, EE, FI, HR, NL, SK.
80 FR.
81 BG, CY, CZ, DE, EE, FI, HR, LT, LU, NL, SE, SI, SK.
82 BG, FI, LT, SE.
83 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, IE, LT, LU, LV, NL, PL, SE, SI, SK.

thus do not have such appeals.[84] Nine EMN Member Countries have border procedures, but do not have a specific appeals procedure for these decisions.[85] In the case of Greece, it does not have a specific first instance appeal procedure against a decision issued in the border procedure. However, the existing procedure is differentiated in some provisions regarding time limts for the appeal procedure. In fact, most reporting countries impose more rigid time limits to file the appeal (see Table 6).[86] In Latvia and Croatia, a considerably shorter time limit is established to issue a decision on the appeal (five and eight working days, respectively). Similarly, in Lithuania, applications at the border are generally processed under the accelerated procedure, following the rules for appeals against decisions issued in that kind of procedures. In the Netherlands, applications at the border are processed under the border procedure, provided it can be reasonably assumed that the application can be rejected as manifestly unfounded or is declared inadmissible, in which case the general rules applicable to these types of appeals procedures apply.

Table 6. Different time limits for lodging an appeal against decisions issued in the border procedure

EMN Member Country	Time limit for lodging an appeal against a decision issued in the border procedure
AT	One week
BE	10 days 5 days for a second or further order to leave the territory
CZ	15 days from delivery of the decision
DE	Two weeks
EL	10 days from notification of the decision or presumption that appellant was informed
FR	Within 48 hours of notification of the decision to refuse entry to France for asylum purposes
HR	Five days from date of delivery of the decision
LV	Within five working days of inadmissibility decision entering into effect

In most countries that foresee border procedures in the legislation, **appeals against such decisions do not have an automatic suspensive effect**.[87] In Croatia, the applicant must file a request for the suspensive effect of the appeal. In Germany, the time limit to submit an application for interim relief is shorter than in other types of procedures (three days after delivery of the decisions of the Federal Office for Migration and Refugees (BAMF) and the border authority). In Greece, in the border procedure, the law requires that applicants are given at least one full week, during which they will have access to interpretation and legal assistance to enable them to submit a request for suspensive effect and remain in the territory. In the Netherlands, appeals against a decision issued in the border procedure only have automatic suspensive effect where applications are rejected on the grounds that the applicant can return to a safe third country.

In France, lodging an appeal against a decision issued in the border procedure has automatic suspensive effect.

4. COMPETENT BODIES TO HEAR FIRST INSTANCE APPEALS

In 16 EMN Member Countries, first instance appeals in international protection procedures are heard by general administrative courts.[88] **In six EMN Member Countries, first assistance appeals are heard by specialised judicial or quasi-judicial bodies.**[89] In Cyprus, the International Protection Administrative Court (IPAC) is the competent body to hear first instance appeals. In Greece, this competence is held by the Appeals Authority, which reports to the Secretary General of Migration Policy. In Sweden, it is held by regional migration courts. In Ireland, the International Protection Appeals Tribunal is the competent body to hear first instance appeals,[90] while in Poland, the Refugee Council is the competent body.[91]

In all EMN Member Countries, the same body decides on first instance appeals in international protection procedures, regardless of the type of appeal procedure. The exception is France, where appeals in border procedures are decided by a general administrative court and appeals in decisions issued in regular and accelerated procedures are decided by the National Court of Asylum (CNDA), a specialised administrative court responsible for reviewing appeals against decisions made by the French Office for the Protection of Refugees and Stateless people (OFPRA).

84 BG, CY, ES,HU, IE, LT, LU, PL, SE, SI, SK.
85 AT, BE, CZ, DE, EE, EL, FI, HR, HU, LV, NL. In EE, HR, LV, the border procedure is foreseen in the law, but not implemented in practice.
86 AT, BE, DE, HR, EL, LV.
87 DE, EL, FI, HR.
88 AT, BE, BG, CZ, DE, EE, ES, FI, FR (border procedures only), HR, LT, LU, LV, NL, SI, SK.
89 CY, EL, FR, IE, PL, SE.
90 Even though under Irish law, the tribunal is not a court, it has been recognised by the CJEU as a court or tribunal of first instance for the purposes of Directive 2005/85/EU.
91 The Refugee Council is a public administration body that has the rights of a higher-level body within the meaning of the provisions of the Code of Administrative Procedure.

The institutional set up of the competent bodies deciding first instance appeals varies considerably between EMN Member Countries, and, in some cases, between different types of appeals procedures.

In most EMN Member Countries,[92] **first instance appeals are generally heard by single judges/tribunal members.** In Luxembourg and Poland, this is only the case for first instance appeals against decisions in accelerated procedures, while other types of appeals are decided by a panel of judges. Similarly, in Finland, this is only the case for first instance appeals against inadmissibility decisions or decisions issued in accelerated procedures. In Greece too appeals are usually heard by a panel of three judges, however, they can be exceptionally heard by a single-member panel, for example, in accelerated procedures or where applications have been judged to be manifestly unfounded or inadmissible.

Even where the general rule is that appeals are decided by a single judge, **appeals can be heard by a panel of judges in some cases, such as complex cases or at the discretion of the court**.[93] In Belgium, one judge is usually present at a hearing, but in complex or significant matters, the appeal can be heard by a panel of judges. Similarly, in Estonia, the chief judge of the court may assign the case to a three-member judicial panel if the case is particularly complicated or if a point of principle is at issue in the case, or in the interests of administration of justice. In France, at the judge's own initiative or at the applicant's request, the president of the CNDA or the judgment panel may assign the case to a three-judge panel. The CNDA can also issue decisions in the form of grand formations, consisting of nine members (three presidents (including the CNDA president), three assessors nominated by the Vice-President of the Council of State, three assessors proposed by the United Nations Refugee Agency (UNHCR)). In Latvia, particularly complex cases may be considered by a panel of three judges, at the discretion of the president of the court. Similarly, in the Netherlands, if the single chamber considers a case unsuitable for adjudication by a single judge, it may refer the case to a three-judge chamber. In Germany, appeals are referred to a single judge, unless the case presents particular difficulties of a factual or legal nature, or the legal matter is of fundamental significance, in which case the appeal is examined by the chamber (composed of three judges and two honorary judges).

In six EMN Member Countries, appeals are heard by a panel of judges/members (generally composed of two or three members) although some exceptions may apply.[94] In Finland, Luxembourg and Poland, this is the case for appeals procedures other than those against decisions in accelerated procedures. In Sweden, simpler cases may be decided by a single judge, while in Poland, the Chairman of the Council may order the case to be heard by a single person.

5. PROCEDURAL SAFEGUARDS

This section presents an overview of the main procedural safeguards in first instance appeals procedures, with a particular focus on how EMN Member Countries ensure access to legal assistance and representation and the types of procedural guarantees for applicants with special procedural needs.

5.1. Legal assistance and representation

Access to legal assistance and representation is a key procedural safeguard in first instance appeal procedures, as it is fundamental to ensure that applicants know their rights, understand the appeal process, and submit an appeal that is complete and accurate.[95] The recast Asylum Procedures Directive requires EU Member States to make free legal assistance and representation available on request during appeals procedures.[96]

To ensure access to legal assistance and representation in first instance appeals procedures, all reporting EMN Member Countries provide for the possibility – under some conditions – to access state-funded legal aid, with no differences between different types of appeal procedures.[97]

In nine EMN Member Countries, **information on how to access state-funded legal assistance and representation for appeals procedures** is provided by the competent migration and asylum authorities when issuing the decision on the application for international protection.[98] In Austria, for example, the Federal Office for Immigration and Asylum must (with some exceptions) inform applicants for international protection in writing when issuing a decision that a legal advisor will be provided to them free of charge. In Bulgaria, the State Agency for Refugees provides information to rejected applicants on where and how they can receive legal aid. In Lithuania, every asylum decision issued by the Migration Department includes information on the procedure for appealing the decision. Similarly, in Luxembourg, the applicant is immediately informed by the minister in charge of asylum and immigration about the possibility of legal assistance and representation when applying for international protection.

In most cases, state-funded legal assistance and representation is provided **on request** and when some

92 AT, BE, BG, CY, CZ, DE, EE (in exceptional cases including inter alia accelerated procedure, manifestly unfounded cases or inadmissible applications), EL, FI (accelerated procedure), FR, HR, IE, LU (accelerated procedure), LV, NL, PL (accelerated procedure), SI, SK.
93 AT, BE, DE, EE, EL, FI, FR, LV, NL, SI.
94 ES, FI (regular procedure), LU (regular and inadmissibility procedures), LT, PL (except accelerated procedure), SE.
95 European Union Agency for Asylum (EUAA), 'Asylum Report 2020, Legal assistance and representation', 2020, https://euaa.europa.eu/asylum-report-2020/73-legal-assistance-and-representation, last accessed on 6 December 2022.
96 Recital 23, Article 20 and Article 21, recast Asylum Procedures Directive.
97 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU (a claim to the court (not an appeal) can be brought against a decision issued in a regular asylum procedure (court makes decisions in administrative litigation)), IE, LT, LU, LV, NL, PL, SE, SI, SK.
98 AT, BG, CY, ES, FI, HR, LT, LU, SI.

conditions are met.[99] Five EMN Member Countries reported that free legal assistance and representation is (or can be) provided *ex officio*.[100] The most common **requirements to grant state-funded legal assistance and representation** include: financial circumstances of the applicant (e.g. not having enough resources, income, rent);[101] applicant must be present in the territory;[102] and the appeal must have sufficient prospects of success.[103] Ireland generally requires applicants for international protection to pay a financial contribution of €10 for legal aid and advice, but this can be waived on the grounds of hardship at the discretion of the Legal Aid Board.

In most cases, state-funded legal assistance and representation is provided by **registered lawyers under the state legal aid system** (e.g. from national legal aid institutions, *pro bono* lawyers from Bar associations).[104] Applicants may be automatically assigned a lawyer from the state system[105] or choose from a list of lawyers offered by the state.[106] In some EMN Member Countries, free legal assistance and representation is provided by and/or in cooperation with **NGOs**.[107] In Austria, free legal assistance and representation in appeals procedures is provided by legal advisers in the Federal Agency for Reception and Support Services. In Slovenia, it is provided by refugee counsellors selected through a special procedure, officially appointed, and specifically trained. Only some of these counsellors are lawyers, but all have undergone legal education.

The **type of legal assistance and representation provided** most commonly includes: assistance in preparing the required procedural documents and filing the appeal;[108] consultation with the applicant and general provision of legal advice on the appeal;[109] and participation in the hearing on behalf of the applicant.[110] In Greece, appellants are also supported to file requests for suspensive effect where this is not automatic, and in Austria with the procurement of interpreters.

5.2. Procedural guarantees for applicants with special procedural needs

Ensuring that applicants with special procedural needs[111] have access to adequate procedural guarantees is central to ensuring their right to an effective remedy in international protection procedures.

Most EMN Member Countries have **specific guarantees to ensure the best interest of unaccompanied minors** during the appeals procedures.[112] These guarantees primarily consist of the **appointment of a legal guardian**[113] – normally appointed earlier in the asylum procedure and maintained during the appeal phase – and the **assignment of legal representation** *ex officio*.[114] Another procedural guarantee for unaccompanied minors is the **processing of appeals with more urgency or within shorter timeframes**.[115] In Sweden, for example, processing time for cases involving unaccompanied minors is reduced to a maximum of two months. In Austria, unaccompanied children also have a longer time limit to lodge an appeal (four weeks instead of two weeks).

Twelve EMN Member Countries have **special procedural guarantees for other groups with special needs** (e.g. children (not unaccompanied minors), applicants with mental disabilities, victims of torture or severe violence) in appeals procedures.[116]

The possibility to **adjust hearing procedures to accommodate specific needs** is foreseen by eight EMN Member Countries.[117] Greece offers the possibility of additional breaks during the hearing and allows applicants to move during the interview/questioning if their health condition so requires. In Belgium, in 2023, the CALL decided to create a hearing room specifically for minor applicants. In France, judges adapt their approach to account for the applicant's specific circumstances, ensuring that proceedings are accessible and sensitive. To ensure a more thorough and comprehensive evaluation of the appeal, the vulnerability of an applicant can also prompt the CNDA's president or a presiding judge to assign the case to a three-member panel (collegiate formation), even if the case was initially slated for review by a single judge. In Sweden, the court may adapt the process to the applicant's needs, for example in respect of the hearing duration. Lithuania foresees the possibility to adjust the hearing procedure to reduce trauma. In Ireland, the Tribunal has guidance on the informal layout of the room for children, as well as ensuring the format is child-friendly.

Poland offers applicants with specific needs the **possibility to be heard by individuals of their same gender**. The **prioritisation of appeal applications** from individuals with special needs is foreseen in Cyprus, France and Ireland.[118] Other examples of special procedural guarantees granted in first instance appeals procedures include:

99 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, PL, SE, SI, SK.
100 AT, BG, ES, NL, SE.
101 BG, CY, CZ, DE, EE, ES, FI, HR, IE, LU, LV, SK (only where an asylum seeker had been granted a residence permit before being issued a decision on their asylum application).
102 EL, ES, LT, LU.
103 CZ, DE, ES, FR, LU, SK (dispute not obviously unsuccessful).
104 BE, BG, CY, CZ, DE, EE, FR, HR, IE, LT, LU, LV, NL, PL, SE (Migration Agency maintains a registry of vetted lawyers who are automatically assigned unless the applicant proposes their own representation, who is then vetted and, if found sufficiently experienced and skilled, receives the same compensation), SK.
105 EE, EL, ES, LV, NL, SE.
106 CY, HR, LU.
107 CZ, DE, EE (Project based), FI, NL, PL, SK.
108 AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, IE, LT, LV, NL, PL, SE, SK.
109 BE, BG, CY, CZ, EE, EL, ES, FI, HR, IE, LV, NL, SE, SK.
110 AT, BE, BG, CY, CZ, EE, ES, FI, HR, IE, LT, LU, LV, NL, PL, SE, SK.
111 Article 2(d), recast Asylum Procedure Directive defines applicants in need of special procedural guarantees as those with a limited ability to benefit from rights and fulfil the obligations granted in the directive due to individual circumstances. Recital 29 provides some examples of these circumstances: age; gender; sexual orientation; gender identity; disability; serious illness; mental disorders; consequences of torture, rape or other serious forms of psychological; and physical or sexual violence.
112 AT, BE, BG, CY, CZ, DE, EE, FI, HR, IE, LT, LU, LV, NL, SE, SI, SK.
113 AT, BE, BG, CY, CZ, DE, EE, FI, HR, IE, LT, LU (the Youth Court appoints an ad hoc administrator, who is a lawyer, to represent the minor throughout the asylum procedure, the appeal procedure, and even through the return procedure), LV, NL, SE, SI, SK.
114 AT, BG, CY, ES, LU, NL, SE.
115 FI, IE, SE.
116 BE, CY, CZ, DE, EL, FI, FR, IE, LT, LV, PL, SI.
117 BE, CZ, EL, ES, FR, LT, NL, PL, SE.
118 FR, IE: only for applications lodged by children.

- Appointing a legal representative where needed (e.g. for applicants with mental disabilities);[119]
- Leniency on non-major inaccuracies and contradictions, as long as they relate to the applicant's state of health;[120]
- Ensuring that the competent authorities deciding on the appeals have access to adequate training.[121]

6. EVOLUTION OF FIRST INSTANCE APPEALS PROCEDURES: OPERATIONAL CHANGES

Twelve EMN Member Countries implemented operational changes in hearing first instance appeals in international protection procedures between 2018 and June 2024.[122] These consisted of the **introduction of digital technologies** for different purposes.

Eight EMN Member Countries introduced the **possibility to conduct hearings online**.[123] In Ireland and Lithuania, these changes were implemented and expanded, respectively, following restrictions on in-person hearings imposed by the COVID-19 pandemic. In the Netherlands, the possibility to conduct remote hearings was introduced following the COVID-19 pandemic but removed shortly after. In France, two asylum litigation reforms expanded the use of video hearings in mainland France by eliminating provisions that allowed an applicant to refuse "to be heard by audiovisual communication means" if they wished to "be summoned, at their request, to the Court's premises". As a result, since 2021, video hearings have been developed in Lyon and Nancy.

Seven EMN Member Countries **increased the digitalisation of the first instance appeals procedures** by allowing the submission of appeal forms and relevant documentation by electronic means or digitalising other administrative tasks (e.g. signature of documents, distribution of court documentation).[124] Ireland has moved towards a paperless office and streamlining administrative tasks so that the International Protection Appeals Tribunal could meet the increased workload. For example, the appeal forms were digitalised into editable PDFs that appellants and their legal representatives fill in online and submit by email (see Box 3). In Luxembourg, since the COVID-19 pandemic, it became possible to file appeals via electronic means. This procedure was maintained after the end of the pandemic. In 2018, the Netherlands implemented a new digital system to simplify the distribution of (legal) documents between litigants.

Box 3: Paperless digital appeals in Ireland

In 2024, the International Protection Appeals Tribunal started a process to move to digital appeals. This followed the International Protection Office's digitalisation of new applications for international protection and paper applications already received. The Tribunal then developed a method of receiving the digital information from those international protection applicants who appealed their first instance decision, creating a paperless file that could be assigned to a Tribunal Member for decision and supplemented by additional information provided by relevant parties after the initial Notice of Appeal is accepted. In addition, the digitisation of existing paper files will be completed shortly.

Benefits of the paperless appeals process include:

- A more agile administrative support mechanism assigning appeals, reassigning appeals, and providing submissions and documentation;
- Quicker handover of required data from the first instance decision maker (International Protection Office) to the Tribunal;
- Tribunal Members are located across the State and digital appeals allow required data to be shared easily, without having to travel to the Tribunal Office in Dublin or incurring courier costs;
- Enables the Tribunal to manage its data protection obligations effectively.

7. CHALLENGES AND GOOD PRACTICES

7.1. Challenges

Twelve EMN Member Countries identified challenges with first instance appeals procedures.[125] These included challenges associated with **capacity constraints within competent bodies.**[126] Cyprus, for example, reported that the IPAC is severely understaffed and most employees are temporarily employed under

119 DE, SI.
120 EL, NL.
121 IE.
122 AT, BE, BG, CZ, ES, FR, IE, LT, LU, LV, NL, SK.
123 AT, BG, CZ, FR, IE, LT, LV, NL.
124 BE, BG, ES, IE, LU, NL, SK.
125 BE, CY, DE, EE, FR, IE, LT, LU, LV, NL, PL, SI.
126 CY, IE, LU, LV, NL.

fixed-term contracts, creating challenges for deciding appeals. In the Netherlands, judicial courts report a high volume of extra caseload due to IND delays in deciding on asylum applications. These late decisions result in applicants appealing, with the court setting a legally binding deadline for the IND to make a decision. This extra caseload brings challenges for the courts regarding matching the workload for the courts to the available judges and supporting staff. Luxembourg highlighted the First Instance Administrative Tribunal's difficulty in meeting deadlines for decisions on appeals with existing resources. According to the relevant authority, this circumstance will likely intensify with the implementation of the Pact on Migration and Asylum.

Eight EMN Member Countries reported that **an increase in the number of appeals (coupled with resource constraints)** has hindered the optimal functioning of the appeal system.[127] Ireland highlighted the difficulties in meeting increased demand to decide on appeals, while Latvia found it challenging to comply with the time limits for decisions on appeals set out in the law due to the rise in the number of asylum applicants and associated appeals. Germany and Lithuania reported a similar challenge associated with the high increase in the number of asylum cases, especially since 2019.

Seven EMN Member Countries reported challenges associated with existing **backlogs on appeals**.[128] These backlogs were associated with a rise in the number of appeals, the short time limits to issue a decision established in the legislation, or the lack of human resources within the competent bodies.

Estonia and Lithuania mentioned challenges in **access to legal assistance and representation during the appeals procedure**. In Estonia, there are not enough lawyers providing state legal aid for asylum applicants. In Lithuania, in 2021 and 2022, several NGOs highlighted major obstacles in accessing effective legal representation. For example, a 2022 report from the Lithuanian Red Cross identified several shortcomings in the provision of state-guaranteed legal aid to asylum applicants, including a lack of information on whether requests for state-guaranteed legal aid had been accepted, the fact that only a small number of applicants had direct contact with their appointed attorney, with most first meeting them during remote court hearings, and difficulties in reaching out to appointed attorneys.

France and Luxembourg identified difficulties stemming from the **lack of specialised judges** to deal with appeals in asylum procedures or the **need for more training and capacity-building**. Luxembourg mentioned that judges at the Administrative Court do not receive any specific training in international protection matters. France also noted the need to strengthen judges' training.

Difficulties in ensuring the availability of translators at court hearings was reported as a challenge by the Netherlands and Lithuania.

7.2. Good practices

Twelve EMN Member Countries highlighted good practices in first instance appeals procedures.[129] Five countries identified specific **good practices in preventing backlogs.**[130] In Finland, for example, when the backlog of appeals was at its worst, the Administrative Court of Helsinki developed practices to recognise the need for an oral hearing early in the process and categorise appeals according to country of origin, the basis of the asylum claim, to maximise synergies in preparing and presenting similar matters to judges. To accelerate court proceedings, Germany concentrated the jurisdiction of first instance administrative courts at state level by pooling knowledge on specific countries of origin in specific courts. France developed a system to track older cases, which halved the proportion of appeals older than a year. They also implemented a quarterly monitoring and clearing-of-backlogs system implemented by court services and chambers to ensure swift registration of appeals. In the Netherlands, the sharing of best practices among courts on how to handle cases more efficiently was identified as a good practice to reduce backlogs.

Four EMN Member Countries[131] recognised efforts to **increase existing capacity within competent bodies** as a good practice. In Cyprus, an increase in the administrative capacity of the Registry and adequate support for judges with court assistants and legal researchers was seen as a good practice.

Box 4: Planning tool in the Netherlands

To forecast (potential) mismatches in available staff capacity and the inflow of judicial cases, the Legal Directorate of the IND has implemented a central planning tool that generates data on the amount of cases that need to be prepared, the number of scheduled court hearings, and the available staff at a certain time. Early identification of capacity mismatches allows the IND to trigger a set of mechanisms to adapt work processes to litigate the mismatch. When litigation does not lead to a desired result, the IND can inform the parties to the proceedings and the court in due time to seek a solution.

Germany, Ireland, Lithuania and Spain saw **increased digitalisation and modernisation of appeals procedures** as good practices. Germany and Lithuania highlighted the possibility of remote hearings as a good practice, while Ireland reported the introduction of paperless digital appeals (see Box 3).

Some countries identified **specific procedural good practices,** such as the development of standard operating procedures (SOPS) to guide staff,[132] strict legal time limits to issue a decision on the appeal,[133] or the creation of specialised territorial chambers in various cities to reduce the cost of appeals for applicants.[134]

127 BE, DE, EE, IE, LT, LV, NL, SI.
128 BE, CY, EE, FI, IE, NL, SI.
129 BE, CY, DE, EL, FR, IE, LT, LV, NL, SE, SI, SK.
130 BE, DE, FI, FR, NL.
131 CY, IE, NL, SK.
132 CY.
133 LV.
134 FR.

For more information

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Greece https://migration.gov.gr/emn/
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North Macedonia