



EMN Ad-Hoc Query on NO EMN limited AHQ on transferring applicants to Hungary under the Dublin III Regulation (only AT, BE, DE, NL, UK, NO)

Requested by Kathleen CHAPMAN on 9th June 2016

Protection

Responses from Austria, Belgium, Germany, Netherlands, United Kingdom, Norway (6 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.



Background information:

In light of the general migration situation in Europe and the recent changes in Hungarian asylum law, Norwegian authorities are evaluating our practice under the Dublin III Regulation. In this regard, we kindly ask you to answer a few questions regarding transfers to Hungary under the Dublin III Regulation. See attachment - it has better graphics.

(This query was originally sent June 9th, but was taken down and one question was edited. So sorry about inconvenience. The system has been down, so we could not resend through IES.)

Summary

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Conclusions and Highlights

In mid-June it seems Hungary started announcing to individual MS (re this AHQ: BE, NL, UK) that they would not accept any more transfers.

BE and DE were, as of 06.07.2016 still able to transfer to Hungary, though the vast majority of applicants have not actually been transferred. Neither BE nor DE require guarantees and do not require any special accommodations for the returnees. *The UK reported that on June 14, 2016 Hungary announced that they would not accept any more transfers from the UK.* One other reporting MS indicated the same, but cannot go public with this information at this time. July 19th, BE updated their information and indicated that most recently, the Belgian authorities who submitted take charge requests to Hungarian authorities either obtained a reply which says that Greece is responsible or don't receive any reply at all.

NO, and UK are not for the time being returning to Hungary. *The UK was informed on 13/6/16 by Hungary that they will not accept any more transfers.* It started with refusal to accept applicants that had a Eurodac hit in Greece. The UK had approximately 1,267 applicants and 216 accepted for transfer, while only 54 applicants were actually removed to Hungary during the period of 2014 – April 2016.

NL indicated that Due to a verdict of the Council of State (highest administrative court) on November 26th 2015, the Secretary of State for Justice and Security decided to investigate issues concerning Dublin transfers to Hungary. This investigation is still on-going. Since the ruling of the State Council, The Netherlands have continued to send 'take back and take charge' requests to Hungary. Since May 2016, the Hungarians have been rejecting these requests based on the fact that the Hungarians consider Greece the responsible member State. "While investigating if transfers are possible again, Hungary informed us on June 14th that they do not accept any transfers anymore."

Since December 2015 the Norwegian Immigration Appeals Board (UNE) has revoked decisions by the Norwegian Immigration Directorate to transfer asylum seekers to Hungary under the Dublin III-regulation in 68 cases. The Appeals Board found that the recent changes in Hungarian asylum law mean that Hungary can no longer be presumed to uphold the principle of non-refoulement. Norway had 820 applicants considered for transfer and 60 actually transferred during 2014 and 2015.

Germany proves every case in accordance with the sovereignty clause, but does not apply the sovereignty clause generally; BE applies the sovereignty clause in Article 17 (1f) for families with minor children, and for vulnerable asylum seekers and single mothers. The German administrative courts as well as of the European Court of Human Rights do not generally apply Art. 3 (2) Dublin III-Regulation. In some cases, individual Courts can decide against a transfer decision made by the German authorities in legal protection procedures.

BE had limited data: there were 113 outgoing requests; 83 accepted and 32 transfers to Hungary in 2014. Germany reported that during the past approximate 2 and ½ years there have been 11,681 applicants considered for transfer to Hungary and 470 took place. No groups were generally exempted by Germany.

Please see compilation for full details.

Questions

1. 1.

**Does your MS transfer applicants to Hungary under the Dublin III Regulation?
YES/NO**

If yes:

a. Does your MS require individual guarantees from Hungarian authorities that the applicant will be received in accordance with the relevant Directives (2003/03/EC, 2011/95/EU, and 2013/32/EU) as well as accommodating the personal circumstances of the person in question?
YES/NO

b. Does your MS apply the sovereignty clause in Article 17 (1) for specific groups (vulnerable asylum seekers, families with minor children etc.) even though Hungary is responsible for the applicants pursuant to the criteria in Chapter III of the Dublin III Regulation?
YES/ NO

2.

2.

If your MS does NOT transfer applicants to Hungary under the Dublin III Regulation:

Please briefly describe the grounds for the decision NOT to do so, for example, if you apply Article 3 of the European Convention on Human Rights, Article 3 (2) of the Dublin III Regulation, or if your MS rather applies a national regulation. If you can, please indicate which ground is the most common.

If your MS does not apply Article 3 (2) of the Dublin III Regulation, *referring to systemic flaws in the asylum procedure and in the reception conditions for applicants in Hungary*, please briefly describe the reasons for not applying this article.

If your MS does apply Article 3 (2) of the Dublin III Regulation, has the decision to do so been made at the level of case processing, or has this decision been issued by a higher authority such as the through the court system?

If your MS does NOT transfer applicants to Hungary under the Dublin III Regulation (re: question 2a. above) AND applies either Article 3 of the European Convention on Human Rights, or Article 3 (2) of the Dublin III Regulation;

... at what level is the decision made to exempt cases from the Dublin III Regulation because of the situation in Hungary?

... please indicate which authority, and whether this is common practice or occurs only in rare cases.

3. **3. Please provide some basic statistics when possible:**

a.

How many applicants were considered for transfer to Hungary per year since 2014?

b.

Which groups were exempted and how many were exempted since 2014?

c.

If any applicants were transferred, please indicate how many were transferred to Hungary under the Dublin III Regulation in 2014, 2015

and thus far in 2016?

Responses

	Country	Wider Dissemination	Response
	Austria	No	
	Belgium	No	
	Germany	Yes	<p>1. a. Germany realizes transfers to Hungary. However we do not require individual guarantees from Hungarian authorities. In procedures of vulnerable persons we contact our Liaison Officer in Hungary to check the accommodation situation before the transfer will take place. b. Germany proves every case in according to the sovereignty clause but we do not apply the sovereignty clause generally.</p> <p>2. a. n/a b. According to the jurisprudence of German administrative courts as well as of the European Court of Human Rights generally does not apply Art. 3 (2) Dublin III-Regulation. Individual Courts decide against a transfer decision of the German authorities in legal protection procedures. However this are individual cases. c. n/a d. n/a</p>

			<p>3. a. In total: 11681 applicants were considered for transfer to Hungary. 2014: 555 2015: 9.303 2016 until April: 1.823 b. No groups were generally exempted for transfer to Hungary since 2014. c. In 2014: 178 transfers took place. In 2015: 192 transfers took place. Until April 2016:100 transfers took place</p>
	Netherlands	Yes	<p>1. Answer to question 1: No</p> <p>2. Answer to first sub-question: Due to a verdict of our Council of State (highest administrative court) on November 26th 2015, the Secretary of State for Justice and Security has to investigate the following issues concerning Dublin transfers to Hungary: 1) the procedure in Hungary after the person has been transferred 2) the capacity and the living conditions of the reception facilities in Hungary 3) the safeguards of the asylum procedure 4) the penalization of irregular entry and return to Serbia on the basis of third country concept This investigation is still going on. During the investigation, no transfers to Hungary have taken place. Answer to second sub-question: See above (investigation is still going on.)</p> <p>3. Answer to sub-question a: Data not yet available. Answer to sub-question b: Not applicable. Answer to sub-question c: Data not yet available.</p>
	United Kingdom	No	
	Norway	Yes	<p>1. 1. a) N/A 1. b) N/A</p> <p>2. 2 a) Since December 2015 the Norwegian Immigration Appeals Board (UNE) has revoked decisions by the Norwegian Immigration Directorate to transfer asylum seekers to Hungary under the Dublin III-regulation in 68 cases. The decisions are based on national regulation, in Immigration Act section 73 that sets out an absolute protection against refoulement. The content in this provision is consistent with the wording of article 3 of the European Convention of Human Rights. The Appeals Board found that the recent changes in Hungarian asylum law mean that Hungary can no longer be presumed to uphold the principle of non-refoulement. The Appeals Board has suspended returns,</p>

effective in all cases from Hungary since September 2015, but has only made decisions in cases where the applicant has been/transited through Serbia and Greece before he/she applied for asylum/ was taken for irregular border crossing in Hungary. It is particularly the application of the inadmissibility procedure on the grounds of the Safe Third Country concept, which has been at the forefront of most decisions, and the Board concluded that there is risk of chain refoulement to Serbia and Greece. The Appeals Board do not consider Serbia and Greece to be safe third countries for asylum seekers. 2b) This question has been answered above (in question 2 a). 2c) The decision has been issued by the Immigration Appeals Board (UNE), an independent quasi-judicial appeals board. 2d) Norwegian authorities do not transfer applicants to Hungary under the Dublin III regulation. The decision is made by the Norwegian Immigration Appeals Board. The Immigration Appeals Board is an independent quasi-judicial appeals board that handles appeals of rejections by the Directorate of Immigration pursuant to the Immigration Act. Decisions made in individual cases cannot be reviewed by the Ministry, Government or Appeal Board's administration, but can be appealed through the regular judicial system. All cases that involve material questions of doubts are decided at Appeals Board hearings. At such hearings, decisions are made jointly by three people: one board chair together with two lay board members. Six cases concerning transfer under Dublin III regulation to Hungary were decided at Appeals Board hearings in December 2015 and their decisions laid down the practice in the Immigration Appeals Board.

3. a) 2014: 53 2015: 719 2016: 48 b) N/A c) 2014: 32 2015: 28 2016: 0