

Challenges and practices for establishing applicants' identity in the migration process

Common Template of EMN Focussed Study 2017

Final Version: 05/04/2017

Subject: Common Template for the EMN Focussed Study 2017 on "Challenges and practices for establishing applicants' identity in the migration process".

Action: EMN NCPs are invited to submit their completed Common Templates by 5th July 2017. If needed, further clarifications can be provided by directly contacting the EMN Service Provider (ICF) at emn@icf.com

1 STUDY AIMS AND RATIONALE

1.1 STUDY AIMS

The **overall aim** of the Study is to offer an overview of the important challenges faced by national authorities in their efforts to reliably establish and verify the identity of third-country nationals within the context of various migration procedures -namely those related to asylum, return and legal migration channels (including both short-stay and long-stay visas and residence permits)- and of national practices to address those challenges.

More specifically, the Study aims to:

- ★ Identify **common challenges** concerning the establishment and verification of a third-country national's identity when processing applications for international protection, managing return procedures and handling applications for short and long stay visas and residence permits;
- ★ Present available statistics on the **estimated scale** of the population of asylum applicants, irregular migrants and returnees lacking (reliable) identity documents, as well as the reasons why such statistics are not available or not published;
- ★ Document (Member) States' **policies and practices** in addressing identity issues (including the lack of satisfactorily documented identity) in the handling of migration procedures;
- ★ Map (Member) States' approaches to establish the identity of third-country nationals in **situations of disproportionate migratory pressure** at the external borders or on the national territory, including under the EU 'Hotspot' approach;
- ★ Gain an insight into the use of **innovative technologies and methodologies** (including e.g. biometrics, databases and language analysis) to support identification and identity verification processes;
- ★ Uncover any recent **changes in identity management policy and practice**, in particular in those (Member) States affected by the increasing number of arrivals within the context of the European migrant and asylum crisis;
- ★ Identify possible steps towards **further joint actions** in this area to make (Member) States' efforts more effective;

The Study will update and supplement the 2013 EMN Study on '[Establishing Identity for International Protection: Challenges and Practices](#)', especially in light of the application of the recast Directives on Qualification for

Challenges and practices for establishing applicants' identity in the migration process

international protection¹ and Asylum Procedures,² the experiences gained by some (Member) States since 2014 from handling higher numbers of asylum seekers and irregular migrants and the use of new identity management technologies and techniques. The Study will also explore identity management issues emerging within the context of legal migration channels, a thematic area which was not addressed in the 2013 EMN Study.

1.2 TARGET AUDIENCE

The **target audience** of the Study consists of national and EU officials/practitioners concerned with asylum, return and legal migration channels, and in particular with the establishment and verification of the identity of the third-country nationals concerned.

The results of the Study will assist the target audience in taking informed decisions on the need (or not) to introduce modifications to current policies and practices used to establish and verify the identity of third-country nationals within the context of migration procedures.

1.3 RATIONALE

Identity management in migration procedures has become ever more crucial in recent years in light of the increase in the number of applications for international protection since 2014/2015 and of current security challenges. The ability to unequivocally establish the identity of a third-country national is of key importance when considering applications for visas to legally enter the Member State both for short and long stays, or for asylum following irregular entry, as well as for the return of irregular migrants to third countries. It is also essential to ensure that vulnerable persons such as unaccompanied minors have access to adequate standards of care. Moreover, effective identity management policies and practices are a prerequisite not only for the proper functioning of the migration and asylum system but also for maintaining the citizen's trust in their integrity and reliability.³

Many applicants for international protection cannot provide documents substantiating their identity. Those who flee persecution often do not have the possibility to take identity documents with them when leaving their country of origin. Some of those who apply for protection may not want to reveal the identity by which they are known to the authorities in the country of origin, for valid fears or other reasons. It also appears that in some cases migrants are advised to destroy their identification documents upon arriving in the EU. Moreover, when third-country nationals do provide identity documents as part of their application for international protection, these documents are sometimes considered false or otherwise invalid by the responsible authorities in the (Member) States. These issues clearly limit the authorities' ability to assess the validity of the applicant's claims and to make decisions on their asylum cases. Without establishing the identity of an asylum seeker it can be very difficult for the authorities to determine the credibility of their asylum claim, and also whether responsibility for assessing such application lies with the (Member) State where this has been lodged in accordance with the rules governing the Dublin system.

These challenges are compounded by the surge in the number of asylum applications in recent years, especially since 2014/2015. Based on statistics provided to Eurostat, the number of applications for international protection more than doubled between 2009 (287,000) and 2014 (662,000), with a sharp increase witnessed especially since 2013. In 2015, more than double the number of applications for asylum were lodged compared to 2014, reaching a total of 1.39 million applications. At 1.26 million, the number of asylum applications remained similar in 2016.⁴ Against this background, establishing the identity of individual applicants for international protection often takes place in the face of the elevated migratory pressures manifested in very high numbers of migrants arriving in the

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) , OJ L 337, 20.12.2011.

² 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), OJ L 180, 29.6.2013.

³ For a reflection on these issues, see the Introduction to the proceedings of the Conference 'The Establishment of Identity in the Migration Process', Vienna (Austria), 2 May 2016, available at: <http://www.emn.at/en/national-emn-conference-austria-the-establishment-of-identity-in-the-migration-process/> [last accessed on 20 March 2017]

⁴ Eurostat, 'Asylum Statistics (Data extracted on 2 March 2016)', available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics [last accessed on 12 March 2016].

Challenges and practices for establishing applicants' identity in the migration process

EU irregularly. The EU has established the **'Hotspot' approach** to provide operational support to the Member States concerned, in particular in relation to the registration and identification processes.

In circumstances where the person's age is in doubt, **age assessment** constitutes an element of the identification procedure that the authorities may need to undertake. Establishing whether an individual is an adult or a child is essential to ensure that children are afforded the protection they are entitled to by law and also to prevent that adults are placed among children and have access to rights and services which are not intended for them.⁵ Over 96 thousand unaccompanied minors (UAMs) applied for asylum in the EU in 2015, with Sweden receiving around 36% of them.⁶ The Study will review the age assessment procedures followed by the (Member) States for UAMs when the date of birth is not credibly documented.

The Study also addresses the challenges associated with identity determination in the context of the **return of rejected applicants for international protection**, i.e. those who receive a negative decision, or who have exhausted or abandoned the asylum procedure. This group will be referred to in short as "rejected applicants" for international protection or "rejected asylum seekers". It is widely recognised that an efficient return policy is needed to safeguard the integrity of the common asylum procedure. However, effective returns are often complicated by the fact that only a small minority of applicants for international protection hold (valid) identity documents. In the absence of valid proof of identity, it is not possible to return rejected asylum seekers to their assumed country of origin since this may not then accept the person. While an important distinction exists between assisted (voluntary) and forced return of rejected applicants for international protection, this Focussed Study only addresses the regulations and procedures which exist in relation to forced return.

Identity management tasks are also performed at the Member States' embassies and consulates abroad. In 2015 almost 15.5 million applications for Schengen visas were processed at EU consulates in third countries and over 14 million visas were issued (up from around 12 million in 2011).⁷ Unlike in the asylum and return procedures, where credible identity documents are often lacking (see above), visa applicants are under a strong obligation to establish their identity by presenting a valid travel document. In order to ascertain whether the person concerned meets entry conditions, the competent consulate is responsible for verifying the authenticity of the travel document presented. However, before the Visa Information System (VIS) was in operation in November 2015, (Member) States faced important difficulties in ascertaining whether a visa applicant was using a false identity to obtain a Schengen visa.⁸

For stays longer than three months, third-country nationals should obtain a **long-stay visa and/or a residence permit** for the purposes of work, study or family reunification. Applicants for long-stay visas and/or residence permits are also required to provide credible and verifiable documentation of their identity,⁹ and to satisfy the other conditions applicable for the granting of the visa or permit. As in other migration procedures, however, the need to verify this documentation and link it to the applicant creates challenges for the responsible authorities. Moreover,

⁵ EASO, 'Age assessment practice in Europe, December 2013', available at:

<https://www.easo.europa.eu/sites/default/files/public/EASO-Age-assessment-practice-in-Europe1.pdf>, last accessed on 24th March 2017.

⁶ See Eurostat, 'Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded)', [migr_asyunaa], available at http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en, last accessed on 24th March 2017, last accessed on 24th March 2017.

⁷ See the Complete statistics on short-stay visas issued by the Schengen States available from the European Commission website at https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy_en#stats, last accessed on 5th April 2017.

⁸ European Commission, Commission Staff Working Document, 'Evaluation of the implementation of Regulation (EC) No 767/2008 of the European Parliament and Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) / REFIT Evaluation', SWD(2016) 328 final, 14.10.2016.

⁹ A partial exception to this rule concerns family reunification. While in family immigration cases the obligation for the applicant to establish and clarify the identity of the applicant is also stronger than in the asylum procedure, if it is impossible to get the requisite documents, the authorities may resort to other means in order to identify the person and ascertain the family relationship. See Oxford Research, 'Comparative study of ID management in immigration regulation – Norway, Sweden, the Netherlands and United Kingdom', 2013, available at: <https://www.udi.no/statistikk-og-analyse/forsknings-og-utviklingsrapporter/comparative-study-of-id-management-in-immigration-regulation.-norway-sweden-the-netherlands-and-united-kingdom-2013/>, last accessed on 5th April 2017.

Challenges and practices for establishing applicants' identity in the migration process

the EU rules on free movement within the Union mean that this is not only a national concern but one in which national capacities and practices have consequences for all (Member) States.

The Study will also look into the **technical solutions and methodologies** used by the Member States to support the identification process. Identity management is an area where technical innovations are occurring at a fast pace. To support the identification of third-country nationals in the immigration process, the EU has three main centralised information systems (i) the Schengen Information System (SIS) with a broad spectrum of alerts on persons and objects, (ii) the Visa Information System (VIS) with information on short-stay visas, and (iii) the EURODAC system with fingerprint information of applicants of international protection and third-country nationals who have crossed the external borders irregularly. All three systems work on the basis of biometric technology, whereby unique identifiable attributes of people are used for identification and authentication.¹⁰ In addition, at the national level Member States use various methods to help establish migrants' identity or, at the very least, their nationality, such as language analysis and interviews.

2 SCOPE OF THE STUDY

2.1 IDENTITY MANAGEMENT TASKS COVERED

The Study examines (Member) States approaches to establish the identity of third-country nationals within the migration process in a broad sense, covering both identification and identity verification related tasks:¹¹

- ★ **Identification:** Identification procedures and systems (e.g. biometric systems) are different from identity verification systems in that they seek to identify an unknown person or biometric. The identification procedure/system aims to answer the question: "Who is this person?" Biometric identification systems are characterised as 1-to-n matching systems where n is the total number of biometrics in the database against which the person's biometric characteristics are checked.
- ★ **Identity verification:** Identity verification procedures and systems seek to answer the question: "Is this person who they say they are?" Biometric verification systems are generally described as 1-to-1 matching systems because they try to match the biometric presented by the individual against a specific biometric already on file.

2.2 MIGRATION PROCEDURES COVERED

The Study will address identity management issues within the context of the following migration procedures:

- ★ Asylum procedure;
- ★ Return procedure;
- ★ Legal migration channels:
 - > Applications for short-stay visas;
 - > Applications for long-stay visas/ residence permit for study, work and family purposes.

Identity management issues related to naturalisation procedures are outside the scope of the Study.

3 EU LEGAL AND POLICY CONTEXT

3.1 COMMON EUROPEAN ASYLUM SYSTEM

The **Common European Asylum System (CEAS)** requires inter alia Member States: "to verify the identity of the applicant in order to produce a legally correct decision based on the facts and circumstances in the individual case". More specifically, Article 4 paragraph 2 (b) of the **Recast Qualification Directive**¹² introduces a duty for Member

¹⁰ Biometric institute: Definition of biometrics, available at: <http://www.biometricsinstitute.org/pages/definition-of-biometrics.html>, last accessed on 24th March 2017.

¹¹ See for example, BiometricUpdate.com: 'Explainer: Verification vs. Identification Systems', available at: <https://www.biometricupdate.com/201206/explainer-verification-vs-identification-systems>, last accessed on 24th March 2017.

¹² Directive 2011/95/EU, op. cit. (see footnote 1 above)

Challenges and practices for establishing applicants' identity in the migration process

States to assess the identity of asylum seekers, while Article 13 of the **Recast Asylum Procedures Directive**¹³ imposes an obligation upon applicants to cooperate with the competent authorities with a view to establishing their identity.

The **Dublin III Regulation**¹⁴ establishes the rules for determining which Member State is responsible for examining an application for international protection that has been lodged in one of the Member States by a third country national or a stateless person. The Dublin III Regulation is complemented by the EURODAC Regulation (EU) No. 603/2013,¹⁵ which set up an EU asylum fingerprint database in order to establish the identity of applicants for international protection and of persons apprehended crossing the external border irregularly. EURODAC facilitates the application of the Dublin III Regulation by providing fingerprint evidence to facilitate the determination of the (Member) State responsible.¹⁶

The Dublin system (Dublin III Regulation and EURODAC Regulation) is currently undergoing a process of reform, as proposed by the European Commission in May 2016.¹⁷

3.2 RETURN

The **Return Directive** sets out common EU standards and procedures on voluntary and forced return of illegally staying third-country nationals.¹⁸ Although not bound by these provisions, Ireland and the United Kingdom provide in their policy for the possibility of voluntarily returning irregular migrants. Iceland, Liechtenstein, Norway and Switzerland while not members of the EU, implement the Return Directive as part of the Schengen acquis.

Within the framework of the Return Directive, identity management issues emerge in relation to Article 15, which establishes the grounds for detention. According to this provision, Member States may keep in detention a third-country national who is subject to a return procedure in order to prepare the return and/or carry out the removal process when there is a risk of absconding or when the third-country national concerned avoids or hampers the preparation of return or the removal process. The Return Handbook further elaborates on the criteria used at the national level to assess the whether a risk of absconding exist. Among others, these include lack of documentation and the absence of cooperation to determinate identity.¹⁹ The Handbook clarifies, however, that 'the length of the initial apprehension period during which suspected irregular migrants may be kept in detention should be brief but reasonable for the purpose of identification', as stated in the answer provided by the Court of Justice of the European Union in Achughbabian.²⁰

3.3 EU 'HOTSPOT' APPROACH

¹³ Directive 2013/32/EU, op. cit. (see footnote 2 above)

¹⁴ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.6.2013.

¹⁵ Regulation (EU) No 603/2013 of the European Parliament and of the Council of on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L 180, 29.6.2013.

¹⁶ European Commission, 'Identification of applicants (EURODAC)', available at: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en, last accessed on 24th March 2016.

¹⁷ Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM (2016) 270 final, 4.5.2016.

¹⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008.

¹⁹ Return Handbook, point 1.6, p.11.

²⁰ Alexandre Achughbabian c. Préfet du Val-de-Marne, C-329/11, European Union: Court of Justice of the European Union, 6 December 2011,

Challenges and practices for establishing applicants' identity in the migration process

Following the unprecedented migration flows registered in 2015, the European Commission proposed to develop a new 'Hotspot' approach. **Hotspots** are located in frontline Member States facing disproportionate migratory pressure and are designed to help national authorities 'swiftly identify, register and fingerprint incoming migrants'.²¹ Member States' authorities are supported on the ground by officers from EU Agencies, including the European Asylum Support Office (EASO), EU Border and Coast Guard Agency (Frontex), the EU Police Cooperation Agency (Europol) and EU Judicial Cooperation Agency (Eurojust). Currently, the Hotspot approach is being implemented in Italy and Greece. Other Member States can request the set-up of Hotspots on their territory.²²

As regards the identity management related tasks carried out in Hotspots, these are mainly undertaken by Frontex, who supports Member States in identifying migrants (including by performing 'nationality screening') and provides assistance with registration and fingerprinting. Identification and registration is undertaken by Frontex Joint Screening Teams and fingerprinting officers, while Joint Debriefing Teams are in charge of interviewing migrants and gathering intelligence on smuggling routes and networks.

3.4 PROCESSING OF SHORT STAY VISAS

The **Visa Code**²³ establishes the procedures and conditions for issuing visas for short stays in and transit through the Schengen States and applies to nationals of third countries that need a visa when crossing the external border of the Union, based on Regulation (EC) No 539/2001.²⁴ National authorities have to verify the admissibility of the application by checking the identity of the visa holder and the authenticity and reliability of the documents submitted. After performing this task, they must create an application file in the VIS, following the procedures set out in the VIS Regulation.²⁵

The **Visa Information System (VIS)** is the European information management system for the exchange of data on short stay visas between Schengen States. It consists of a central database, a national interface in each Schengen State and a communication infrastructure that enables to process data on visa applications and on visa issued, refused, annulled, revoked or extended. The system also performs biometric matching, primarily of fingerprints, for identification and verification purposes.²⁶

3.5 FAMILY REUNIFICATION

The **Family Reunification Directive** aims to establish harmonised rules relating to the right of third-country nationals to be reunited with their family.²⁷ It applies to third-country nationals who have a residence permit valid for at least one year and who have a genuine option of long-term residence. The Directive sets the conditions and procedure for family reunification as well as rights to be granted to the family members of third-country nationals. In accordance with Article 5(2), an application for family reunification shall be accompanied, among others, by documentary evidence to prove the family relationship, and certified copies of the family member(s)' travel documents. The European Commission has noted that Member States have a certain margin of appreciation in

²¹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European Agenda on Migration', COM(2015) 240, 13.05.2015.

²² Ibid.

²³ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009.

²⁴ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81, 21.3.2001, p. 1-7.

²⁵ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008

²⁶ European Commission, VIS, available at: http://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en, last accessed on 24th March 2017.

²⁷ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251 3.10.2003.

deciding whether it is appropriate and necessary to verify evidence of the family relationship through interviews or other investigations, including DNA testing.²⁸

3.6 OTHER LEGAL MIGRATION CHANNELS

The **Single Permit Directive** establishes a single residence and work permit for third-country nationals who are seeking to be admitted to a Member State to stay and work or third-country nationals who are already residing in a Member State and have access to the labour market or are already working in a Member State.²⁹ It also defines a set of common rights to be offered to third-country nationals covered by the Directive.

The **Students Directive** sets harmonised rules and conditions concerning the admission of third-country nationals to the Member States, for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service, as well as the minimum rights to be granted to those admitted.³⁰ The **Researchers Directive** introduces a special procedure governing the entry and residence of third-country nationals coming to carry out a research project in the EU for a period of more than three months.³¹

On 11 May 2016, the European Parliament and the Council of the EU approved amendments to the **Visa Directive** that harmonises entry and residence rules for non-EU students and researchers.³² The recast Visa Directive allows non-EU students and researchers to stay in the territory of the Member State for at least nine months after finishing their studies or research in order to look for a job or set up a business. It also grants them a right to move within the EU during their stay without having to file a new visa application when moving from one Member State to another, and provides a right to work for at least 15 hours a week during their studies. Researchers are entitled to bring their family members with them, and those family members will be allowed to work during their time in Europe.³³ Member States should transpose the Directive within two years of its entry into force, i.e. by 22nd May 2018.

The **Blue Card Directive** applies to highly qualified third-country nationals seeking to be admitted for more than three months for the purpose of employment to the Member States, including their family members.³⁴ It sets the entry conditions, details the admission procedure and the lays down minimum rights to be granted.

The **Seasonal Workers Directive** applies to non-EU workers whose principal place of residence is in a non-EU country and who enter an EU Member State to work there temporarily.³⁵ The Directive requires each Member State to draw up a list of sectors that are dependent on seasonal conditions (for example, summer tourism and harvesting of certain crops). Member States were required to transpose the Directive by 30th September 2016.

²⁸ European Commission, 'Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification', COM(2014) 210 final, 3.4.2014.

²⁹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011.

³⁰ Directive 2004/114/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0114&from=EN>

³¹ Council Directive of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, L 375, 23.12.2004.

³² Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, OJ L 132, 21.5.2016

³³ European Parliament, Press release (11 May 2016): New rules to attract non-EU students, researchers and interns to the EU, available at: <http://www.europarl.europa.eu/news/en/newsroom/20160504IPR25749/New-rule>, last accessed on 24th March 2017.

³⁴ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.6.2009.

³⁵ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014

Challenges and practices for establishing applicants' identity in the migration process

The **Intra-corporate Transferees Directive** applies to third-country nationals and their families who are transferred by their company to work in one or more of its centres inside the EU for more than three months.³⁶ The Directive provides a mechanism by which the transferee can carry out his/her assignment in multiple EU Member States without interruption and without the need to re-apply for admission each time s/he moves country. Member States were required to transpose the Directive by 29th November 2016.

All the legal instruments regulating the legal migration channels specified in this subsection require the applicant to present a travel document and, in some cases, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa.

3.7 EU INFORMATION MANAGEMENT SYSTEMS

The absence of internal borders in the Schengen area requires strong and reliable management of the movement of persons across the external borders, including through robust identity management. As noted in subsection 1.3 above, the three main centralised information systems developed by the EU are the SIS, VIS and EURODAC, all of which support identity management in the migration process. A EU regulatory agency, **eu-LISA**, is responsible for the operational management of all three systems.³⁷

The **Schengen Information System (SIS)** allows the exchange of information between national border control authorities, customs and police authorities on persons who may have been involved in a serious crime.³⁸ It also contains alerts on missing persons, in particular children, as well as information on certain property, such as banknotes, cars, vans, firearms and identity documents that may have been stolen, misappropriated or lost. The second generation Schengen Information System (SIS II) entered into operation on 9th April 2013. The system enhanced the functionalities of the original SIS among others by including the possibility to enter biometric data (fingerprints and photographs).

The **Visa Information System (VIS)** allows Schengen States to exchange visa data.³⁹ It consists of a central IT system and of a communication infrastructure that links this central system to national systems. VIS connects consulates in non-EU countries and all external border crossing points of Schengen States. It processes data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area. The system can perform biometric matching, primarily of fingerprints, for identification and verification purposes. Among other aims, the VIS facilitates checks and the issuance of visas by enabling border guards to verify that a person presenting a visa is its rightful holder and to identify persons found on the Schengen territory with no or fraudulent documents. The VIS was progressively deployed to consulates in third countries across several pre-defined regions in a progressive manner on the basis of three criteria defined by Article 48(4) of the VIS Regulation: the risk of irregular immigration, the threats to the internal security of the Schengen States, and the feasibility for collecting biometrics from all locations in the respective region. The rollout to consulates was completed in November 2015.

EURODAC is a large database of fingerprints of applicants for international protection and irregular immigrants found within the EU whose primary objective is to serve the implementation of Regulation (EU) No. 604/2013 ('the Dublin Regulation') (see subsection 3.1 above). EURODAC also allows Member States' law enforcement authorities and Europol to compare fingerprints linked to criminal investigations with those contained in EURODAC, only for the

³⁶ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014

³⁷ Further information is available at: <http://www.eulisa.europa.eu/AboutUs/MandateAndActivities/CoreActivities/Pages/default.aspx>, last accessed on 24th March 2017.

³⁸ See European Commission, 'Schengen Information System', available at: http://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en, last accessed on 24th March 2017.

³⁹ European Commission, VIS, available at: http://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en, last accessed on 24th March 2017.

Challenges and practices for establishing applicants' identity in the migration process

purpose of the prevention, detection and investigation of serious crimes and terrorism and under strictly controlled circumstances and specific safeguards.

In April 2016 the European Commission published a **Communication on 'Stronger and Smarter Information Systems for Borders and Security'** to launch a reflection on how existing and future EU information management systems could enhance both external border management and internal security in the EU.⁴⁰

4 PRIMARY QUESTIONS TO BE ADDRESSED

The primary questions to be addressed by the Study are:

- ★ What are the main challenges, scale and scope of the issues faced by the (Member) States?
- ★ What is the national framework and capacity for establishing the identity of applicants for international protection, visa and residence permits, including the legislative framework, organisational structure, methods and processes applied?
- ★ How are decisions made with regard to cases of international protection where identity can at best be only partially determined?
- ★ How do national authorities proceed regarding rejected applicants for international protection with an obligation to return, when evidence regarding identity is missing or scarce?
- ★ How are identity management tasks approached in situations of disproportionate migratory pressure at the external borders or on the national territory, including under the EU 'Hotspot' approach?
- ★ To what extent are there similar identity management practices in the (Member) States in relation to applications for long-stay visas/ residence permits?
- ★ What is the added value of innovative technologies in supporting the identification and identity verification processes?
- ★ Has identity management policy and practice changed in the (Member) States in recent years, in particular in those affected by the increasing number of migrant arrivals?
- ★ Are there any good practices in the (Member) States as regards identity management within the context of migration procedures?

5 RELEVANT SOURCES AND LITERATURE

Where relevant, your National Contribution may refer to, or incorporate information from the national contribution to the following **EMN Studies**:

- ★ EMN Study on 'Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study', May 2010;⁴¹
- ★ EMN Study on 'Establishing Identity for International Protection: Challenges and Practices', February 2013;⁴²

⁴⁰ European Commission, 'Stronger and Smarter Information Systems for Borders and Security', Brussels, COM(2016) 205 final, 6.4.2016.

⁴¹ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/0_emn_synthesis_report_unaccompanied_minors_publication_sept10_en.pdf, last accessed on 27th March 2017.

⁴² Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/0_emn_id_study_synthesis_migr280_finalversion_2002013_en.pdf, last accessed on 27th March 2017.

Challenges and practices for establishing applicants' identity in the migration process

- ★ EMN Study on 'The Return of Rejected Asylum Seekers: Challenges and Good Practices', November 2016;⁴³
- ★ EMN Study on 'Family reunification of third-country nationals in the EU', to be published in 2017.

The detailed planning of the Study as well as the template for the national contributions will also take into account the information provided in (Member) States' replies to the following **EMN Ad-hoc Queries**:

- ★ EMN Ad-Hoc Query on 'Control and verification of biometric data of biometric documents', requested by LU NCP on 16th September 2013;⁴⁴
- ★ EMN Ad-Hoc Query on 'The mode of issuing the identity documents and resident permits', requested by BG NCP on 23rd April 2014;⁴⁵
- ★ EMN Ad-Hoc Query on 'Recent or planned developments in the field of identity documents and information systems', requested by EE NCP on 16th June 2014;⁴⁶
- ★ EMN Ad-Hoc Query on 'Proof of identity regarding third-country nationals who apply for residence permit', requested by FR NCP on 18th June 2014;⁴⁷
- ★ EMN Ad-Hoc Query on 'Member States' Experiences with the use of the Visa Information System (VIS) for Return Purposes', requested by the European Commission on 18th March 2016.⁴⁸

Other relevant sources include:

- ★ Oxford Research, 'Comparative study of ID management in immigration regulation – Norway, Sweden, the Netherlands and United Kingdom', 2013;⁴⁹
- ★ The Conference Proceedings of the AT EMN NCP Conference on 'The Establishment of Identity in the Migration Process', held on 2nd May 2016;⁵⁰
- ★ The national contributions and the conclusions of the IGC Workshop on Identity Establishment in Immigration Processing, held on 26th-27th October 2016.

6 AVAILABLE STATISTICS

EU level

The following statistics are available through **Eurostat**, and may be indicative of the scale of the issue:

- ★ Number of asylum applications;
- ★ Number of rejected asylum applications;
- ★ Number of return decisions;

⁴³ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf, last accessed on 27th March 2017.

⁴⁴ Available at: https://www.udi.no/globalassets/global/european-migration-network_i/ad-hoc-queries/ad-hoc-query-on-control-and-verification-of-biometric-data-of-biometric-documents.pdf, last accessed on 27th March 2017.

⁴⁵ Available at: http://www.emn.fi/files/1177/Compilation_BG_AHQ_mode_of_issuing_of_identity_documents_and_residence_permits_WIDER.pdf, last accessed on 27th March 2017.

⁴⁶ Available at: http://emn.ee/wp-content/uploads/2016/02/577_emn_ahq_planned_developments_id_22september2014_en.pdf, last accessed on 27th March 2017.

⁴⁷ Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/residence/580_emn_ahq_proof_of_identity_18june2014_en.pdf, last accessed on 27th March 2017.

⁴⁸ Available at: http://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2016.1042_com_ahq_on_member_states_experiences_with_the_use_of_the_visa.pdf, last accessed on 27th March 2017.

⁴⁹ Op. cit. (see footnote 9 above).

⁵⁰ Op. cit. (see footnote 3 above).

Challenges and practices for establishing applicants' identity in the migration process

- ★ Number of return decisions effectively carried out;
- ★ Number of forced returns;
- ★ Number of first residence permits, by reason:
 - > Number of first residence permits for family reasons;
 - > Number of first residence permits for study reasons;
 - > Number of first residence permits for the purposes of remunerated activity.

The EU also collects statistics on short-term **visas issued by the Schengen states**, including the following:

- ★ Uniform visas applied for in Schengen States' consulates in third countries;
- ★ Total uniform visas issued (including multiple entry visas) in Schengen States' consulates in third countries;
- ★ Total uniform visas not issued in Schengen States' consulates in third countries.

National level

The Study also requests national-level data (see subsection 1.2 below), although EMN NCPs' feedback indicate that these data may be difficult to provide. Should the requested statistics not be available in their (Member) State, EMN NCPs are asked to indicate this and specify, to the extent possible, the reasons why this is the case.

7 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v4.0⁵¹ unless specified otherwise in footnotes.

The EU acquis does not give a definition of "identity." Whilst, for the purposes of this study, identity is also understood to include a person's nationality, more specific criteria used by the (Member) States are requested in Section 1.3. On the basis of the responses received, the Synthesis Report will then consider commonalities amongst the (different) definitions used. As a starting point, within the context of this Study, **identity** is defined as follows: "a unique set of characteristics related to a person such as name, date of birth, place of birth, nationality, biometric characteristics, etc. making it possible to individualize a person." For a definition of **identification** and **identity verification**, see subsection 2.1 above.

Other relevant definitions are:

'Applicant for international protection': is defined as "a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken".

'Application for international protection': is defined as "a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU,⁵² that can be applied for separately".

'Asylum seeker' is defined in the global context as "a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments; and in the EU context as a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken."

⁵¹ Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf, last accessed on 24th March 2017.

⁵² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011.

Challenges and practices for establishing applicants' identity in the migration process

'Compulsory return' in the EU context is defined as "the process of going back – whether in voluntary or enforced compliance with an obligation to return– to:

- one's country of origin; or
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Synonym: Forced return

'Forced return' is defined in the EU context as "the process of going back – whether in voluntary or enforced compliance with an obligation to return– to: one's country of origin; or a country of transiting accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted."

Synonym(s): compulsory return, removal, refoulement

'Irregular stay': is defined as "the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State".

'Rejected applicant for international protection': is defined as "a person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period".

'Residence permit': is defined as "any authorisation issued by the authorities of an EU Member State allowing a non-EU national to stay legally in its territory, in accordance with the provisions of Regulation 265/2010 (Long Stay Visa Regulation)."⁵³

'Return decision': is defined as "an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return".

'Return': is defined as "the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous".

'Risk of absconding': is defined as "in the EU context, existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is subject to return procedures may abscond".

'Third-country national': is defined as "any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code".

'Unaccompanied minor': is defined as "a minor who arrives on the territory of the Member States unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person. It includes a minor who is left unaccompanied after they have entered the territory of the Member States."

Synonym(s): UASC, unaccompanied and separated child

In addition, the forthcoming EMN Glossary 5.0 (2017) includes the following entries that may be relevant:

'Establishment of identity of individuals in international protection': is defined as "process which is commonly carried out on the basis of a review of documentary evidence, but which makes use of different procedures and

⁵³ Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ L 85, 31.3.2010

Challenges and practices for establishing applicants' identity in the migration process

methods e.g. a physical-technical examinations of the documents, investigations in the country of origin via the embassies, the taking of finger prints, speech-text-analysis and age assessment, when documentary evidence is inauthentic, inadequate, insufficient or absent."

'False and Authentic Documents Online': is defined as "a European Union internet-based image-archiving system set up to support the rapid sharing between EU Member States of images of genuine, false and forged documents in order to aid the combating of irregular migration and the use of fraudulent documents."

'Language analysis for the determination of origin':, is defined as "analysis of mainly spoken, but also written, language as a method for helping to establish the nationality, region or ethnic origin of applicants for international protection."

'Public Register of Authentic Travel and Identity Documents Online':, is defined as "a reference database containing information about authentic travel and identity documents and other important documents issued by authorities from EU Member States and Schengen countries and some third countries."

8 ADVISORY GROUP

For the purpose of providing support to EMN NCPs while undertaking this focussed study and for developing the Synthesis Report, an "Advisory Group" has been established.

The members of the Advisory Group for this study, in addition to COM and EMN Service Provider (ICF), are the original study proposers, i.e. NO EMN NCP, and interested EMN NCPs, i.e. AT/BE/EE/LU/NL/PL/SE/UK EMN NCPs, the Commission and the EMN Service Provider (ICF). EMN NCPs are thus invited to send any requests for clarification or further information on the study to the following "Advisory Group" members:

- ★ AT NCP: rlukits@iom.int
- ★ BE NCP: emn@ibz.fgov.be; peter.vancostenoble@ibz.fgov.be; Alexandra.Laine@ibz.fgov.be; Yael.Chemin@ibz.fgov.be; ina.vandenberghe@ibz.fgov.be; martine.hendrickx@ibz.fgov.be; Elisa.Vandervalk@ibz.fgov.be; Bram.devos@ibz.fgov.be.
- ★ EE NCP: emn@tlu.ee; eike.luik@tlu.ee; marion.pajumets@tlu.ee; barbara.orloff@tlu.ee; silver.stoun@tlu.ee
- ★ LU NCP: birte.nienaber@uni.lu; marc.hayot@olai.etat.lu; Adolfo.sommarribas@uni.lu; christiane.martin@mae.etat.lu; aurelija@iom.lt; david.petry@uni.lu; ralph.petry@uni.lu; ascal.schumacher@mae.etat.lu; jai.rpue@mae.etat.lu; emn@uni.lu; francois.peltier@statec.etat.lu; germaine.thill@statec.etat.lu; jean-marc.kirsch@mae.etat.lu; romain.modert@mae.etat.lu; catherine.stronck@mae.etat.lu; sarah.jacobs@uni.lu;
- ★ NL NCP : EMN@ind.minvenj.nl; hpm.lemmens@ind.minvenj.nl; d.diepenhorst@ind.minvenj.nl; H.Wormann@ind.minvenj.nl; P.Brouwer@ind.minvenj.nl; L.Seiffert@ind.minvenj.nl; TC.vd.miesen@ind.minvenj.nl; M.Besters@ind.minvenj.nl; AFD.d.wilde@ind.minvenj.nl
- ★ NO NCP: eho@udi.no; magne.holter@jd.dep.no; tmh@udi.no; kac@udi.no; Ane-Kristine.Djupedal@jd.dep.no; torill.myhren@mfa.no; ssh@udi.no; kjkl@udi.no.
- ★ PL NCP: aleksandra.lange@mpips.gov.pl; d.szaltys@stat.gov.pl; magdalena.kozlowska@udsc.gov.pl; grzegorz.niemiec@strazgraniczna.pl; joanna.sosnowska@msw.gov.pl; daria.szurpicka@mswia.gov.pl; radoslaw.kardas@mswia.gov.pl; justyna.jarzabska@mswia.gov.pl; marcin.wrona@mswia.gov.pl.
- ★ SE NCP: EMN@migrationsverket.se; bernd.parusel@migrationsverket.se; marie.bengtsson@migrationsverket.se; jonas.hols@migrationsverket.se.
- ★ UK NCP: emn@homeoffice.gsi.gov.uk; jon.simmons@homeoffice.gsi.gov.uk; Erica.Moser@homeoffice.gsi.gov.uk; Carolyne.Tah@homeoffice.gsi.gov.uk; laura.broomfield@homeoffice.gsi.gov.uk;

Challenges and practices for establishing applicants' identity in the migration process

Katharine.beaney@homeoffice.gsi.gov.uk; simon.woollacott2@homeoffice.gsi.gov.uk;
jenny.cann1@homeoffice.gsi.gov.uk.

9 TIMETABLE

The following implementation [timetable](#) has been agreed for the Study:

Date	Action
5 th April 2017	Launch of the Common Template
5 th July 2017	Deadline for national contributions
31 st July 2017	First draft of the Synthesis Report ⁵⁴
September 2017	Finalisation of the Synthesis Report and of National Contributions for publication.

10 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template outlines the information that should be included in the National Contributions to this Focussed Study. The indicative number of pages to be covered by each section is provided in the guidance note. For national contributions, the total number of pages should **not exceed 35 pages**, including the questions and excluding the statistical annex. A limit of **35** pages will apply to the Synthesis Report, in order to ensure that it remains concise and accessible.

⁵⁴ Provided that a sufficient number of EMN NCPs submit their National Contribution in time for the Synthesis stage.

EMN FOCUSSED STUDY 2017

Challenges and practices for establishing applicants' identity in the migration process

Top-line "Factsheet" (National Contribution)

National contribution (one page only)

Overview of the National Contribution – drawing out key facts and figures from across all sections of the Study, with a particular emphasis on elements that will be of relevance to (national) policy-makers.

In Luxembourg, the procedure for identity verification/establishment in the context of international protection is separated from the decision-making procedure as such. While the authority for granting international protection status lies with the Ministry in charge of Immigration (Directorate of Immigration), the Judicial Police is in charge of identity verification/establishment.ⁱ For this means, the applicant will be interviewed with regard to his/her travel itinerary, including questions on border crossing and used means of transports to arrive in Luxembourg.

During the last few years, the large majority of international protection applications in Luxembourg have come from persons originating from the Western Balkan countries (in 2016 they represent 35% of the applicants)ⁱⁱ. Concerning these applicants, most of them (85% to 90%) have presented valid identity documents to the authorities in Luxembourg. However, with the migration crisis there is a growing number of international protection applicants coming from the Middle East and North Africa and who cannot produce valid identity documents.

National authorities have always been confronted with lacking identity documents, predominantly observable among applicants from African countries. In some cases, identity documents were intentionally destroyed or withheld from the authorities in order to avoid being identified. If credible identity documents are lacking, the identification procedure can become complicated and resource consuming, and the responsible authorities, especially the Police, have a limited set of methods and means available (provided for in the Asylum Law).

Current national legislationⁱⁱⁱ only foresees taking photographs and fingerprints of the applicants, which are then run against EU or regional databases (e.g. EURODAC, EUROPOL, VIS, SIS II, CCPD). This allows the Judicial Police to inquire whether the applicant had entered the European Union using a valid passport and a visa, had been subject to an entry ban and/or had already applied for international protection in another Member State prior to applying in Luxembourg. The Judicial Police uses the information gained from these databases not only to verify the identity of the applicant, but also to verify the veracity of his/her statements.

National legislation does not allow the use of more invasive exams, like DNA testing or Iris scans. The administrative courts have accepted the use of DNA testing only on voluntary basis in cases of family reunification.^{iv} In cases where the applicant refuses to collaborate with the authorities or had tampered his/her own fingerprints in order to avoid identification, identity verification/establishment becomes difficult. DNA testing can only be ordered by the public prosecutor in the case of a judicial proceeding, i.e. if the applicant is suspected of having committed a crime.^v

In some cases, the Police manages to identify an applicant at a later stage in the international protection procedure, either because fingerprints are retaken after the initial attempt, or because an applicant who was been granted status (or not) might present identity documents to other authorities in a different context (to

Challenges and practices for establishing applicants' identity in the migration process

fulfill administrative requirements e.g. if the applicant wants to get married, the municipality will demand a valid passport).

The other methods foreseen in national legislation for trying to establish the identity of an applicant or rejected applicant are circumstantial. The Directorate of Immigration can order a linguistic test to determine the origin of the applicant, as well as a medical test (X-rays of wrist, collar bone and pelvic) to determine the age of the applicant. However, these types of exams are not conclusive as to the identity of the person.

Decision-making on status granting for a person that cannot be identified can only take place after a careful evaluation of all the elements of the application and be motivated on the credibility of the statements of the applicant.

Based on the Geneva Convention, national authorities can only contact the diplomatic missions of the (presumed) country of origin once international protection has been refused to the applicant and in the context of return, but not while the application is being examined. In the context of return, national authorities are relying on the collaboration of the concerned diplomatic authorities not only to identify the person, but also to issue necessary travel documents for the return of the rejected applicant.

The authorities are also confronted with the above mentioned problems in the case of return of irregular immigrants without valid documents and who may refuse to collaborate knowing that they can only be withheld in the Detention Centre for a maximum period of 6 months.^{vi}

Section 1: The National Framework

The aim of this Section is to provide an insight into the scale and scope of the issue at national and EU level, as evidenced by quantitative and qualitative information. The section will also analyse the extent to which the processes for establishing identity are laid down in legislation across (Member) States, and the institutional framework for these processes. Differences in the capacity of (Member) States to meet the challenges identified (e.g. in terms of having the (trained) human resources needed, being able to draw on expertise, access databases, or have a legal basis for using certain methods) will be presented.

SECTION 1.1 CHALLENGES IN RELATION TO IDENTITY MANAGEMENT IN THE MIGRATION PROCESS (IN RELATION TO PROCEDURES ON INTERNATIONAL PROTECTION, RETURN, VISA AND RESIDENCE PERMITS)

Q1. Is the issue of establishing identity considered an issue/ challenge within the framework of the procedure for?

- a) Considering the need for international protection?; **Yes.**
- b) Preparing for the forced return of a rejected applicant for international protection to their (presumed) country of origin?; **Yes.**
- and
- c) Verifying applications for the following categories:

- Visitors visa **Yes.**

Residence permits issued for:

- Family reasons; **Yes.**
- Study reasons; **Yes.**
- Remunerated activities; **Yes.**
- Non-EU harmonised protection status (i.e. resident permit on humanitarian or medical grounds). Residence permit issued for private reasons based on humanitarian reasons of exceptional gravity. **Yes.**

Challenges and practices for establishing applicants' identity in the migration process

If Yes, please briefly outline for any or all the cases above the main issues, challenges and difficulties within your (Member) State (e.g. no identification documents, false documents, multiple identities, applicants from certain third countries)

Yes, the establishment of identity is both an issue and a challenge in the framework of all the procedures mentioned above. Normally, the three services of the Directorate of Immigration (Refugees', Foreigners and Returns Departments) are confronted with this issue. An overview of relevant case law confirms this.^{vii}

The phenomenon varies considerably depending on the (presumed) countries of origin. Whereas applicants for international protection from the Balkan countries, in most cases, present valid (identity) documents (passports or identity cards), applicants from many different African countries very often do not present any documents at all. Also in the context of family reunification with a citizen of the European Union (especially from countries as Gambia, Guinea, Guinea-Bissau) as well as in the context of applications of family members of beneficiaries of international protection, the problems are the same: age determination and family links. Normally the bones and language tests are used in those cases. There is an additional problem in the sense when the documents presented are original but it is difficult to determine if they belong to the applicant. These issues are major challenges (see also Q.17 of this template). Applicants from Syria often present valid (identity) documents, but the verification process often takes much time.

In the case of people coming from Afghanistan, they normally do not have travel documents but they often bring their birth certificate/identity card. Also in some cases, the children are registered in Kabul, the capital, but they have never lived there. This is why these documents might be considered as doubtful by the Luxembourgish authorities.^{viii}

The Directorate of Immigration reported that another major challenge in the last couple of years has been the absence of birth certificate of children that were born on the way to Europe.

a) International protection:

Lacking identity documentation can pose a problem in the processing of international protection applications, as the identity of the applicant is considered an essential (although not indispensable)^x element for the assessment of the international protection claim. The lack of identity documents or the use of false documents make it very difficult to assess the credibility of the applicants' account and can consequently extend the instruction procedure by the Directorate of Immigration.^x

The law establishes an obligation of the applicant for international protection to cooperate with the Minister in charge of immigration in order to establish his/her identity.^{xi} In cases where the applicant refuses to cooperate with the authorities with respect to establishing his/her identity and/or nationality or, with fraudulent intent^{xii}, has misled the authorities by presenting false documents or information, the Minister may decide to rule on the merits of the application for international protection under the accelerated procedure.^{xiii}

National authorities have mainly been confronted with lacking identity documentation. False documents with regard to international protection applications are to be considered exceptional in Luxembourg.^{xiv} Normally these situations occur when persons are travelling to other Member States with falsified documents and they are controlled by the police. Later then they file an application for international protection.

With regard to identity documentation, tendencies can be observed depending on the (presumed) countries of origin of the applicants, i.e. lacking identity documents are most commonly observed among applicants from African countries^{xv} i.e. Gambia, Nigeria, Sierra Leone, Somalia, while applicants from the Balkan countries generally present documents and valid passports.^{xvi}

However, the procedure of identity verification of the applicant must begin with the fingerprints (if the applicant is 14 years old or older^{xvii}) and photographs, followed by an interview on the travel itinerary of the applicant (this is applied systematically in all the applications^{xviii}) in order to find any elements that will allow to determine if

another Member State is responsible to examine the application.^{xxix} Additionally, the EURODAC database is consulted to verify if the same person had already submitted an application for international protection in another Member State. If these measures do not yield a result, the Ministry can order a linguistic test. Given the small size of Luxembourg and the limitation in specialized people to conduct these linguistic tests, the Directorate of Immigration must second external from other Member States (especially from Germany and France^{xx}) to do these tests.

b) Forced return of rejected international protection applicants or irregular staying migrants

For rejected applicants and their subsequent return to the (presumed) country of origin, the lack of identity documents certainly complicates the return procedure, especially given that rejected applicants generally do not cooperate with the authorities with regard to identity establishment.^{xxi} In these cases, Article 120 of the amended Law of 29 August 2008 on the free movement of persons and immigration establishes that an undocumented person (rejected international protection applicant or irregular migrant) can be held in a detention facility for one month, while the return is being prepared.^{xxii} In the case of lacking documents^{xxiii} and refusal of cooperation from the person^{xxiv}, or because of delays that resulted from obtaining the needed documentation from third countries^{xxv}, this detention period can be extended up to six months.^{xxvi}

c) Verifying applications for residence permits for the following categories:

In order to apply for an authorisation of stay foreseen by the Immigration Law, the applicant has to fulfil the general conditions: a) conditions of entry and stay (valid passport and valid visa in case the applicant requires one^{xxvii}, not having an alert in the SIS^{xxviii}, not being subject to an entry ban^{xxix}, not being considered a threat to public safety, homeland security and public health^{xxx} and justify the objective of the entry and proof that s/he has sufficient resources^{xxxi} for not becoming a burden to the social security system); and b) the application has to be made from the country of origin of the applicant^{xxxii} before entering the country.

Then the applicant has to fulfil each one of the conditions established for each authorisation of stay for which s/he is applying.

i. Family reunification

Determining the identity of the third-country national applicants for family reunification is a challenge for the authorities because in some cases, and depending on the country of origin proving the family link is not so evident. Also, in the context of international protection, trying to determine the family link is likely to be particularly difficult because these individuals in most of the cases do not have any documents.

In order to understand the issue, it is important to understand the procedure for obtaining an authorisation of stay for family reunification.

Third country nationals wishing to come to Luxembourg as a family member must submit an application for a temporary authorisation to stay (on plain paper) from their country of origin^{xxxiii}. The application can be submitted:

- to the Directorate of Immigration of the Ministry of Foreign and European Affairs (through a legal representative in Luxembourg (i.e. attorney));
- to a [Luxembourg diplomatic or consular body](#) or to a diplomatic or consular mission representing Luxembourg in the country of origin or in the closest neighboring country if there is no representation in the country of origin.^{xxxiv}

The applicant must file the application with the following documents to prove his/her identity:

- a full copy of his/her passport, certified as true to the original;
- a birth certificate;

Challenges and practices for establishing applicants' identity in the migration process

- an extract of the criminal record or an affidavit.

In order to prove the family relationship, the applicant must provide the following documents:

1. In case it is the spouse or the registered partner of the sponsor:

- a document attesting the existence of the marriage or the registered partnership (e.g. marriage certificate, partnership declaration, family booklet);
- a certified copy of the valid passport of the spouse/partner, in its entirety;
- a birth certificate of the spouse/partner;
- a recent extract from the criminal records or a sworn affidavit by the spouse/partner, issued in their country of residence.

2. In case it is the descendant (minor) of the sponsor or of his/her spouse/partner:

- a certified copy of the child's valid passport, in its entirety;
- a document attesting the family relationship with the sponsor (e.g. birth certificate of the child, family book);
- in case of divorce (for minors only):
 - the judgment conferring the custody of the minor child to the parent living in Luxembourg and
 - if the other party has a visitation right: the notarial authorisation of the parental party living abroad to prove this party's agreement that the minor child is allowed to reside in Luxembourg (a copy of the identity document of the parental party living abroad has to be enclosed);
- in case of joint custody (for minors only): the notarial authorisation of the parental party living abroad to prove this party's agreement that the minor child is allowed to reside in Luxembourg (a copy of the identity document of the parental party living abroad has to be enclosed);

3. In case it is an ascendant (parent) of the sponsor or the spouse/partner:

- a certified copy of the parent's valid passport, in its entirety
- a document attesting of the family relationship (e.g. a birth certificate of the sponsor or the sponsor's spouse/partner)
- a document attesting of the civil status and the family situation of the ascendant as well as proof that he/she is deprived of the necessary family support in the country of origin (e.g. family booklet, any other equivalent document issued by the competent authorities of the country of origin);
- a proof that s/he is depending on the sponsor before filing the family reunification application (i.e. bank statements which prove regular money transfer to the first-degree ascendant)
- a document stating the financial situation of the family member in his/her country of origin (i.e. proof of salary, pension, property, etc.)^{xxxv}

The law^{xxxvi} establishes that the request for family reunification is accompanied by the documents proving the family links and a true copy of the travel document of the applicant. The Immigration Law foresees that the beneficiary of international protection may prove family bonds by every type of document if he can't provide official documents.^{xxxvii} In this case, the Directorate of Immigration may accept, in principle, all types of documents that can serve to establish the identity and/or nationality of the family member, and/or that can prove the veracity of the applicant's statements. I.e. official travel documents such as passport and identity cards, birth certificates, marriage licenses, birth and divorce certificates, driver's license, military record, municipal identification, qualification certificates, journal extracts (articles or photos claiming the identity of the applicant and the relationship with the family member ...).

In principle, official identity documents and travel documents prevail over other administrative documents, i.e. driver's license.^{xxxviii}

In the case of discrepancies between several identity documents, the validity is always examined on a case by case basis. For example, a more recent document cannot always be considered more reliable than an older document because it is quite possible that in certain circumstances in the past, the applicant has sought to hide his/her identity or nationality through a new identity document in order to leave the country of origin. However, it is to mention that divergent documents tend to raise doubts on the statements of the application and thus need to be explained.^{xxxix}

Another case that does not fall directly under the scope of the family reunification is the authorisation of stay for private reasons^{xl} in which the applicant does not meet the conditions for family reunification, but whose family and personal links are strong enough (in regards to the duration and stability), so that a refusal would be a violation of the right to private and family life.^{xli} In this case, the proof of identity based on the link with the sponsor is not evident.^{xlii} In any case, the application for an authorisation to stay must contain the applicant's identity details (surname(s), first name(s) and address) and must be accompanied by the following documents and information:

- a certified copy of their valid passport, in its entirety;
- a birth certificate;
- an extract from the criminal record or an affidavit (sworn oath) established in the country of residence;
- proof of suitable housing in the Grand Duchy of Luxembourg (rental agreement, property deed, etc.);
- proof of comprehensive health insurance valid in Luxembourg;
- a document certifying the applicant's marital status and family situation (e.g.: family record book or any equivalent document issued by the authorities of the applicant's country or origin);
- where necessary, a proxy.^{xliii}

ii. Education

Once the potential student receives the decision from the University of Luxembourg that s/he has been admitted, s/he would have to apply for an authorisation of stay as a student at the Directorate of Immigration in Luxembourg, from his/her country of origin or a country where s/he is allowed to stay.

The applicant must attach to his/her application the following documents:

- A certified true copy of all the pages of his/her passport;
- A birth certificate;
- An extract from the police records or an affidavit;
- The letter of admission to the University of Luxembourg;
- Proof of parental authorisation if the candidate is under 18;
- Proof of health insurance covering all risks in Luxembourg;
- Proof of sufficient resources, during the course of the studies, to cover the living and return expenses (monthly resources corresponding to at least 80% of the minimum guaranteed income in Luxembourg, i.e. €1078,54). Such proof may consist of:
 - A certificate of a grant or student loan, indicating the amount granted and term
 - A certificate from the bank
 - A certificate of financial support for the student

All documents either have to have an apostille by the competent local authority of the country of origin, or to be legalised by this very authority as well as to be authenticated by the diplomatic representation of Luxembourg or

of any EU country that represents Luxembourg's interests. If such documents are not in English, French or German, they must be accompanied by a certified and sworn translation.

As soon as the application for a temporary authorisation to stay has been received by the applicant, and if the applicant is a national of a third-country which requires a visa for entering the European Union, the applicant must apply for a visa within 90 days after obtaining the authorisation to stay, at the diplomatic representation of Luxembourg (or of the EU country who represents Luxembourg interests) in his/her country of residence.^{xliv}

iii. Remunerated activities

The application for an authorisation to stay must contain the applicant's identity details (surname(s), first name(s) and address) and must be accompanied by the following documents and information:

- a certified copy of the valid passport, in its entirety;
- a birth certificate;
- an extract from the criminal record or an affidavit (sworn oath) established in the country of residence;
- a curriculum vitae;
- a copy of the applicant's diplomas or professional qualifications;
- a copy of the employment contract (compliant with Luxembourg law), dated and signed by both the applicant and his/her future employer in Luxembourg;
- the original [certificate](#) from the Administration for the Development of the Employment (ADEM) granting the employer the right to hire a third-country national;
- a covering letter to support the application;
- where necessary, a proxy.

Upon arrival, the applicant will have to fulfil the following requirements:

- report to the commune where s/he will live within three days of his/her arrival;
- show proof of adequate accommodation and a medical certificate;
- pay a fee of 80 €

The applicant has to file an application for a residence as a salaried worker at the Directorate of Immigration.

The identity of the applicant will be verified twice: 1) during the authorisation of stay procedure and 2) during the granting of the residence permit.

iv. Non-EU harmonised protection status (i.e. resident permit on humanitarian or medical grounds)

The authorisation of stay on humanitarian grounds of exceptional gravity is established in Article 78 (3) of the Immigration Law. This disposition is a transposition of Article 6 (4) of the Directive 2008/115/EC of 16 December 2008.^{xlv} Seen that the only condition that is imposed by Article 78 (3) is that the individual must not be a threat to public safety, public order or public health there has to be an identification procedure. Nevertheless, being an irregular migrant, the possibility of identifying him/her cannot be completely guaranteed.

Q2a. Please also indicate which factors have contributed to the issues identified in Q1 (e.g. *the volume of cases where no credible documentation is available has increased, the measures used to substantiate the applicants' identity are considered ineffective, there is no enough funding or qualified staff etc.*).

Please support your answers with reference to statistics (e.g. those presented under Section 1.2 below), research or any other sources of information (e.g. media debates, case-law, policy documents, practitioners' views).

The issues and problems in the context of establishing identity of persons in the different procedures mentioned in Q1 have always existed, but the situation changed during the last years due to the migration crisis. The volume

Challenges and practices for establishing applicants' identity in the migration process

of cases where no credible documentation is available has increased, which has a direct impact on the examinations of these applications.

In addition, it has to be mentioned that the Judicial Police (UCPA) has 6 officers dedicated to the verification of the authenticity of documents (a police officer has to follow a 2-year training so s/he can be operational). They do not work exclusively for the Directorate of Immigration (they send systematically all the documents to them with the exception of the documents coming from the Balkans countries – only if there is a doubt), but for the Public Prosecutor Office and the Investigating Judges. In combination with the increase in the volume of cases overall as well as of the cases where no credible documentation is available, this situation leads to longer procedures of verification.^{xlvi}

Q2b. In relation to Q2a above, has your (Member) State experienced a change in the number of received applications for international protection and irregular migrants in recent years? **Yes.**

If Yes, was this change an important reason for the above-mentioned challenges and difficulties? **No.**

If Yes, please further elaborate on how this factor has contributed to the identified challenges and difficulties.

Yes. Even though the international protection applications were lower (- 16,8%) in 2016 (2.035) in comparison with 2015 (2.447) it remains a significant amount for Luxembourg.^{xlvii} The numbers have stabilized between 2013 (1070) and 2014 (1091) but there was an increase of 124,3% in 2015 and 86,5% in 2016 (in comparison with 2014).^{xlviii} According to Eurostat, this migration flows made Luxembourg the Member State with the fifth highest number of first applicants relative to its population with 3.582 applicants per million inhabitants.^{xlix}

The migration inflows during the period 2015 and 2016 have strained the national capabilities for the identification of third-country nationals coming from war-zones without documents.

However, even though there has been a surge in the numbers during 2015 and 2016 the profiles of the international protection applicants have changed. In 2015ⁱ, the first two countries of origin were Syria (27,3%) and Iraq (22%) whereas in 2016, the first two countries were Syria (14,2%) and Albania (11,1%) respectively.ⁱⁱ

There has been a significant increase during the last months of 2016 of nationals coming from the West Balkan countries. They represent 35% of the total number of applications in comparison with 2015 when they amounted to only 25%.ⁱⁱⁱ

The challenges and difficulties for establishing identity remain the same: 1) lack of documents to determine the nationality from people coming from Africa and from the Middle East; 2) lack of collaboration and obstruction of the applicants; 3) the fact that most of the diplomatic representations are not located in Luxembourg make the identification and the subsequent granting of travel documents more complicated; 4) lack of sufficient linguistics experts to carry out language tests.

These factors could have contributed to the diminution of the number of forced returns (from 176 in 2015 to 113 to 2016).

See also answers to Q1 and Q2a.

Q3. Has your (Member) State faced challenges in considering asylum applications/ implementing the return of third-country nationals as a result of their identity not being acknowledged by the (presumed) country of origin? **Yes.**

If Yes, please provide the list of countries of (claimed) origin for which establishing identity was considered to be particularly difficult as of 31st December 2016, (i) when considering asylum applications; (ii) for implementing return.

One of the embassies that does not willingly collaborate with the authorities is the Embassy of Liberia. This embassy not only refuses to recognise its nationals but when requested by the Luxembourgish authorities to reconsider its decision, the embassy puts obstacles and delays the answers^{liii}.

Challenges and practices for establishing applicants' identity in the migration process

However, the main problem with the identification procedure is the bad faith of the person in detention, who normally mentions that s/he is a national of one country and when the diplomatic authorities of this presumed country of origin come for the identification procedure, they consider that the detainee is not one of their nationals. In some cases, the diplomatic representatives mentioned from which country the detainee can be. Again, the detainee will refuse to meet with the diplomatic authorities or they will refuse to recognise him/her as a national and so on.^{liv} This situation normally arrives with third-country nationals coming from the sub-Saharan regions, especially from West-Africa countries (i.e. Gambia^{lv}, Nigeria^{lvi}, Sierra Leone^{lvii}, Senegal^{lviii} and Liberia^{lix}) or from southern Africa, such as Zimbabwe^{lx}.

Challenges and practices for establishing applicants' identity in the migration process

SECTION 1.2 STATISTICAL INFORMATION

Q4. Please provide, to the extent possible, the following statistics (with their source) along with, if necessary, an explanatory note to interpret them if, for example, the statistics provided are partial, had to be estimated (e.g. on the basis of available statistics that differ from the ones requested below, or of first-hand research) or if they reflect any particular trends (e.g. a change in policy, improved methods of establishing identity, a change in the country of origin of applicants for international protection or of rejected asylum seekers, etc.) If statistics are not available, please try to indicate an order of magnitude. Statistics already available through Eurostat have not been requested in order to facilitate the task of filling in the Common Template.

Table 1: Statistical information on international protection and return procedures

	2012	2013	2014	2015	2016	Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants) If statistics cannot be provided, please indicate the reasons why, <ul style="list-style-type: none"> > The necessary registrations are not made; > The registered information cannot easily be extracted for reporting and statistics; > The statistics are only produced for internal use, and are not available to the public. > Other reasons, please describe:
Number of applicants for international protection whom identity was not documented ⁵⁵ at the time when the application for international protection was lodged	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants) If statistics cannot be provided, please indicate the reasons why, <ul style="list-style-type: none"> > The necessary registrations are not made; Yes^{lx} > The registered information cannot easily be extracted for reporting and statistics; N/A > The statistics are only produced for internal use, and are not available to the public. N/A Other reasons, please describe: N/A

⁵⁵ Through the presentation of a formal identity document (identity card or passport) or other document(s) accepted in the Member State for the purposes of identity verification (e.g. driver's license).

Challenges and practices for establishing applicants' identity in the migration process

Number of applicants for international protection for whom identity was wholly or partially ⁵⁶ established during the asylum procedure thereby allowing the relevant authorities to reach a particular decision on the application for international protection (e.g. grant, refuse, defer)	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxii}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
Total Number of Positive Decisions for applicants for international protection whose identity was not documented ⁵⁷ at the time of application	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxiii}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
Total Number of Positive Decisions for applicants for international protection whose identity was considered sufficiently established by the decision-making authorities	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxiv}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i>

⁵⁶ For example, if some elements of identity (e.g. nationality) could be established but not others (e.g. full name, date of birth).

⁵⁷ Through the presentation of a formal identity document (identity card or passport) or other document(s) accepted in the Member State for the purposes of identity verification (e.g. driver's license).

Challenges and practices for establishing applicants' identity in the migration process

						<i>Other reasons, please describe: N/A</i>
Total Number of Negative Decisions for applicants for international protection whose identity was not documented ⁵⁸ at the time of application	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxv}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
Total Number of Negative Decisions for applicants for international protection whose identity was not considered to be sufficiently established by the decision-making authorities	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made: Yes^{lxvi}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
Total Number of (Forced) ⁵⁹ <u>Returns undertaken</u> of all rejected applicants for international protection	n.i.a.	59	122	136	73	Source: Ministry of Foreign and European Affairs, Annual Activity Report, 2012, 2013, 2014, 2015 and 2016. ^{lxvii}

⁵⁸ *Idem.*

⁵⁹ While the scope of this Focussed Study (with respect to Returns) includes only the forced return of rejected applicants for international protection, it is acknowledged that distinguishing between forced and voluntary returns in official statistics may not be possible. Where possible, do make this distinction.

Challenges and practices for establishing applicants' identity in the migration process

Total Number of (Forced) ⁶⁰ Returns of rejected applicants for international protection whose identity was established at the time of return	n.i.a.	59	122	136	73	Source: Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan des années 2015 et 2016 en matière d'asile et d'immigration. ^{lxviii} <i>Note: In Luxembourg for returning a third-country national s/he has to be identify in order to return him/her to her country of origin or country of last residence.</i> ^{lxix}
Total Number of (Forced) ⁶¹ Returns of rejected applicants for international protection whose return could not be executed due to the authorities of the (presumed) country of origin refusing to recognise their nationals or considering their identity as not sufficiently ⁶² established	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants) <i>If statistics cannot be provided, please indicate the reasons why,</i> > <i>The necessary registrations are not made; Yes</i> ^{lxx} > <i>The registered information cannot easily be extracted for reporting and statistics;</i> N/A > <i>The statistics are only produced for internal use, and are not available to the public.</i> N/A <i>Other reasons, please describe: N/A</i>

⁶⁰ Idem.

⁶¹ Idem.

⁶² For example if the authorities were unable to formally identify the third-country national by nationality, surname, first name and date of birth and support such identification with the documents required by the third county.

Challenges and practices for establishing applicants' identity in the migration process

Table 2: Statistical information on other migration-related procedures

	2012	2013	2014	2015	2016	Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants) <i>If statistics cannot be provided, please indicate the reasons why,</i> <ul style="list-style-type: none"> > <i>The necessary registrations are not made;</i> > <i>The registered information cannot easily be extracted for reporting and statistics;</i> > <i>The statistics are only produced for internal use, and are not available to the public.</i> > <i>Other reasons, please describe:</i>
Total Number of visas applied for in consulates in third countries ⁶³ - Consultation - Ex-officio	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	Note: No information provided because Luxembourg is a Member State of the Schengen area
Total Number of visas refused in consulates in third countries ⁶⁴ - Consultation - Ex-officio	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	Note: No information provided because Luxembourg is a Member State of the Schengen area
Total Number of visas refused in consulates in third countries due to the applicant having presented a travel document which was false, counterfeit or forged	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants) <i>If statistics cannot be provided, please indicate the reasons why,</i> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxi}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i>

⁶³ If your Member State is part of the Schengen area this statistics are collected at EU level and need not be repeated

⁶⁴ Idem.

Challenges and practices for establishing applicants' identity in the migration process

						<i>Other reasons, please describe: N/A</i>
Total Number of residence permits for remunerated activities refused due to the identity of the applicant not being considered sufficiently established	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxii}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p> <p>Note: In Luxembourg the applicant has to obtain an authorisation of stay before the Directorate of Immigration so the applicant before applying for a residence permit has been already identified, especially that in these type of authorisation of stay the applicant has to have provided his/her valid passport (See explanation in answer to Q.1.c.).</p>
Total Number of residence permits for study purposes refused due to the identity of the applicant not being considered sufficiently established	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxiii}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p> <p>Note: In Luxembourg the applicant has to obtain an authorisation of stay before the Directorate of Immigration so the applicant before applying for a residence permit has been already identified, especially that in these type of authorisation of stay the applicant has to have provided his/her valid passport (See explanation in answer to Q.1.c.).</p>

Challenges and practices for establishing applicants' identity in the migration process

Total Number of residence permits for family reasons refused due to the identity of the applicant/ the family relationship not being considered sufficiently established	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxiv}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
--	--------	--------	--------	--------	--------	---

Table 3 Statistical information on methods used to establish identity

	2012	2013	2014	2015	2016	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made;</i> > <i>The registered information cannot easily be extracted for reporting and statistics;</i> > <i>The statistics are only produced for internal use, and are not available to the public.</i> > <i>Other reasons, please describe:</i>
Total Number of Cases in which language analysis was performed to establish the identity of the third-country national	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxv}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i>

Challenges and practices for establishing applicants' identity in the migration process

						<i>Other reasons, please describe: N/A</i>
Total Number of Cases in which an age assessment was performed to determine whether the third-country national was a minor	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxvi}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>
Total Number of Cases in which a DNA Analysis was used to establish the family relationship in family reunification cases	N/A	N/A	N/A	N/A	N/A	<p>In Luxembourg the use of DNA testing is only used on voluntary basis in case there is not sufficient evidence to establish the family relationship. In this case, as the burden of proof is carried out by the applicant s/he has to consent, so it is not standard operation procedure.^{lxxvii}</p>
Total Number of Cases in which Interviews were used to determine probable country and/or region of origin	n.i.a.	n.i.a.	n.i.a.	n.i.a.	n.i.a.	<p>Additional Information (e.g. sources, caveats, reasons for trends, top five nationalities, with numbers for total applicants)</p> <p><i>If statistics cannot be provided, please indicate the reasons why,</i></p> <ul style="list-style-type: none"> > <i>The necessary registrations are not made; Yes^{lxxviii}</i> > <i>The registered information cannot easily be extracted for reporting and statistics; N/A</i> > <i>The statistics are only produced for internal use, and are not available to the public. N/A</i> <p><i>Other reasons, please describe: N/A</i></p>

SECTION 1.3 RELEVANT EU AND NATIONAL LEGISLATION**EU acquis**

[To be provided by the EMN Service Provider]

National legislation

Q5. Has the legislative basis for the procedures used to determine identity within the procedure for international protection and/or return been changed since the 2013 EMN Study on 'Establishing identity'? **Yes.**

If 'yes', please describe the reasons for this change (*e.g. whether this is due to a change in the number of asylum applications and irregular migrants in your (Member) State as of 2014*).

Yes. National legislation for the procedures used to determine identity within the procedure for international protection and/or return has been changed, but the content remains the same as in the amended Law of 5 May 2006 (old Asylum Law).

However, national legislation concerning the international protection procedure had been changed:

1) The amended Law of 5 May 2006 (Asylum Law) was abrogated by the Law of 18 December 2015 on international protection and temporary protection. The change in the law was prompted by the transposition of the 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.^{lxxxix} The political decision of changing the law was to provide the means to implement the Directive and not because of the number of international protection applicants of 2014 (1008) that was lower than the numbers of 2013 (1071).^{lxxx} In Luxembourg, the procedure for identity verification/establishment in the context of international protection is separated from the decision-making procedure as such. While the authority for granting international protection status lies with the Ministry in charge of Immigration and Asylum (Directorate of Immigration), the Judicial Police is in charge of identity verification/establishment. The police will take the fingerprints and a picture of the applicant. The applicant will also be interviewed with regard to his/her travel itinerary, including questions on border crossing and used means of transports to arrive in Luxembourg.^{lxxxix} Once the Judicial Police has made the verification on the databases of EURODAC, Europol and any other relevant database (i.e. Edison), they will render a report to the Directorate of Immigration.^{lxxxii}

2) In regards to the amended Law of 29 August 2008 on free movement of persons and immigration, there have been four significant amendments since the 2012 EMN Study.

- The first one was the Law of 21 December 2012 transposing the Directive 2009/52/EC of 18 June 2009 (Employers Sanctions Directive);
- The second one was the Law of 19 June 2013; which transposed the Directives 2011/51/EU and the Directive 2011/98/EU in regards to the long-term residence permit and the single permit Directive.^{lxxxiii}
- The third one was the Law of 9 April 2014 amending the Article 92 of the amended Law of 29 August 2008 on the detection of victims of human trafficking;
- The fourth one was the Law of 18 December 2015 amended Article 89 of the amended Law of 29 August 2008 which allows the regularisation of irregular staying third-country nationals, who: have lived for at least 4 years and who has not made any misrepresentation in regard with their identity, do not have absconded a return decision and can provide proof that they have sufficient financial means in order to provide for themselves and their families
 - i. when the third-country nationals have the parental authority over a minor who is schooled for at least 4 years in Luxembourg or
 - ii. if the applicant is schooled in Luxembourg for at least 4 years and is not 21 years old.

Challenges and practices for establishing applicants' identity in the migration process

It also introduced Article 100 (3) enabling the police to fingerprint and take pictures of the persons who have to be returned. This amendment entered into force on 1st January 2016 and, as a consequence, 72 applicants have been refused and 122 persons have been regularised.^{lxxxiv}

3) The third amendment is the Law of 8 March 2017^{lxxxv} that modifies the amended Law of 29 August 2008 and the Law of 28 May 2009 on the creation of the Detention Centre.^{lxxxvi}

Q6. Is the process used when verifying the identity of third country applicants for visitors' visa, work and study permits and family reunification permits, laid down in national legislation? **No.**

If Yes, briefly specify which legislative documents regulate the process of identity determination in relation to these procedures.

No.

SECTION 1.4 THE INSTITUTIONAL FRAMEWORK AT NATIONAL LEVEL

Q7. Have there been any changes concerning which national authorities have the responsibility for establishing the identity of applicants for international protection and return following the 2013 EMN Study on 'Establishing identity'? **No.**

If 'yes', please describe those changes and specify whether they are a consequence of a surge/decrease in asylum applications and irregular immigration in recent years.

No.

Q8. Which national authorities have the responsibility for verifying the identity of third country applicants for visitors' visa and permits for the purposes of study, family reunification and remunerated activities? Please describe which authorities take part in which procedures in your (Member) State and specify the name of the relevant authorities below (providing an English translation if possible, e.g. *Rajavartiolaitos – Finnish Border Guard; Migrationsverket – Swedish Migration Agency*).

[Please insert your response below and also complete the summary table provided in Annex 1]

The authorities concerned in order to verify the identity of third-country applicants for a purpose of study, family reunification, labour related and statelessness continue to lay under the Foreigners Department of the Directorate of Immigration.^{lxxxvii}

The identification of the applicants of the international protection applicants remains under the authority of the Refugee Department of the Directorate of Immigration^{lxxxviii} and the Judicial Police Department^{lxxxix} of the Grand-Ducal Police.

The identification of irregular migrants and rejected international protection applicants subject to a return decision continues to be the responsibility of the Returns Department of the Directorate of Immigration.^{xc}

Normally the application for any authorisation of stay has to be made by the applicant from his/her country of origin.^{xc} The applicant must file the application with the Luxembourgish diplomatic mission or the diplomatic mission of another Member State that represents the interest of Luxembourg in the country of origin. As Luxembourg does not have many diplomatic representations abroad (only in nine countries)^{xcii}, its interests are represented by the diplomatic missions of another Member State^{xciii} such as the Netherlands^{xciv}, Belgium^{xcv}, Germany^{xcvi}, France^{xcvii}, Sweden^{xcviii}, Spain^{xcix}, Portugal^c, Austria^{ci}, Hungary^{cii}, Switzerland^{ciii}, Norway^{civ}, Slovenia^{cv}, Italy^{cvi}

In countries such as India, VFS Global handles visas applications, which is a service provider that handles all visas applications for Luxembourg in Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad.^{cvii} Also in Nepal, VFS Global handles the visas for Luxembourg.^{cviii} VFS also operates as a service provider for Luxembourg in Ankara.^{cix}

In other countries such as Libya and Papua New Guinea, the Ministry of Foreign and European Affairs closed all visas applications until new order.^{cx} In Syria the Embassy of the Netherlands and the Consulate of Belgium in

Damascus are temporarily closed. Visas have to be applied at the Embassy of Belgium in Beirut (Lebanon)^{cxii} In Yemen, the visa applications are handled by the French Embassy but the embassy is temporarily closed.^{cxii}

Visitors Visa (C-Visa)

The competent central authority for the issuance of Schengen Visa (short-term visa or C-Visa) is the Passport and Visa Office.^{cxiii}

In regards to the identification of a C-Visa (visitors' visa) the agents of the diplomatic representation make the verification of the identification.

In order to be able to verify the identity the collection of fingerprints and biometrical data is practiced in the diplomatic representation. The applicant will be compelled to give his/her fingerprints (10 fingers)^{cxiv}. With this new system, the biometrical data will be saved in a common database, which will be used to control the visa's holder identity at the external border. Still, there are some practical problems because there are some people that do not have fingerprints, because they work with chemical products (i.e. farmers) or because they submit themselves to chemical procedures or plastic surgeries to erase their fingerprints^{cxv}.

They can grant the visa ex-officio^{cxvi} or they can send it for consultation to the Passport and Visa Office.^{cxvii} The recommendations of the Council encourage the diplomatic personnel to decide on all the obvious cases under their own responsibility but refer to the central authority cases that are more complicated.

The diplomatic missions can launch prior consultations to the Directorate of Immigration, the police and the intelligence authorities without first referring the application to the central authority.^{cxviii}

In the third-countries where Luxembourg does not have a diplomatic mission the identification procedure is carried out by the member of the diplomatic representation following their national procedure. In those cases, Luxembourg authorised the representation of the other Member State to keep the processing fee that is charged.

Nevertheless, the Council evaluation of Schengen recommended establishing written representation agreements with Belgium and Germany to clarify the respective roles of the representing and the represented Member States and in the case of Belgium to establish criteria based on which applications should be referred to the Luxembourg central authority.^{cxix}

Normal procedure:

1. The applicant must complete the visa application joining all the documents that are listed as requisites (See annex I of the Visa Code (Regulation EC 810/2009)^{cxix}).
2. Normally, once the applicant brings the application completed, he/she will have to pass in most cases a little interview with a consular officer. Once the application is complete, it is transferred with the remarks made by the consular officer by electronic means to the Visa department in Luxembourg. The delay of 15 days begins to run from the moment the diplomatic authority judged the application as completed.
3. The examiner will evaluate if the applicant fulfills the criteria so the visa can be issued. If the examiner considers that he/she needs more information, he/she can demand any document included in the list of non-exhaustive justifying documents (annex II of the Visa Code (Regulation EC 810/2009)) and any other that he/she considers necessary. It is important to notice that when there is an invitation of a particular the examiner can call the company or interview the person that will be responsible for the foreigner^{cxxi}. When there is a person that is taking the financial responsibility of the person that he/she is inviting, the "Passports and Visas Office" (Bureau des Passeports et Visas) has to intervene twice: 1) it has to validate the financial guarantee, and 2) decides to grant the visa or not.
4. Once the examiner has finished his/her evaluation, he/she takes the file to the head of the department and they will discuss the decision to be taken. The Director of the Passports and Visas Office will take the final decision. The Visa department will then contact the diplomatic representation and communicate the final decision.

If it is accepted the diplomatic representation will issue the visa. However, if this representation has any further information that demonstrates that the applicant does not deserve to be issued a visa, then the diplomatic

representation would stop the issuing and contact the Visa office submitting the new information. The final decision will be taken by the Visa office.

In case that the visa was refused, the applicant will be notified the final decision and the motives of the refusal (see form^{cxixii}). The applicant has to come to the embassy or consulate to receive the signed refusal. It is only until then that the delay for making recourse against the decision is possible.

There are two types of recourses:

a) **Gracious recourse:** This is a recourse that is made to the Director of the Passport and Visa Office, to reconsider his/her decision. Against his/her final decision there is no other recourse.

b) **Administrative recourse:** This is the normal recourse that any citizen could introduce to the first instance administrative court. The delay for introducing the recourse is of three months (Article 16 of the Law of 21 June 1999) from the notification of the decision. Against the decision of the first instance administrative court the applicant has the right to make an appeal to the Administrative Court (Cour Administrative). The delay for doing so is of 40 days (Article 38)^{cxixiii}

Nevertheless, it is almost impossible that an applicant will use this administrative procedure not only because of the cost of hiring a lawyer but the time it will take to be decided. So normally the only thing that the applicant does is to file gracious recourse against the decision to the Director of the Visa Office.

D Visa obtained as a result of the granting of an authorisation of stay^{cxixiv}

In regard with entry and stay of foreigners, the evaluation of the application is done by the Foreigners Department of the Directorate of Immigration. The staff of this department will verify the application and the identity of the applicant by using the VIS and SIS system and requesting the Police and intelligence authorities to do a background check of the applicant (mainly national databases and Europol and Interpol databases).

The authorization of stay is a prerequisite for obtaining a resident permit. Article 39 of the Law on the free movement of persons and on immigration is clear that the application for the authorization to stay and for the visa has to be done from the country of origin. In this case the diplomatic representation that represents Luxembourg does not have any discretion in issuing the visa and it is compelled to send the application directly to the Ministry of Foreign Affairs in Luxembourg, who is the only competent authority that will take the decision related to the authorisation of stay and the D visa. However, the diplomatic representation will help in the examination procedure of the application.

Once the authorisation of stay is accorded, the applicant has 90 days to obtain the D visa in case it is needed or 90 days to enter the country, in case the applicant does not require a visa to enter.

The diplomatic mission can make any verification on the country of origin that considers necessary for determining the seriousness, validity and legality of the documents that the applicant had submitted. Also it can demand any information from the applicant that they consider necessary for clarifying any doubt that they have.^{cxixv} On the Directorate of Immigration side, the examiner can contact any of the "sponsors" or companies that want to bring a third-country national into the country.^{cxixvi} The examiners can demand from these people all the information that will be relevant to determine the seriousness, validity and legality of the documents that the Luxembourgish resident or the Luxembourgish company had submitted.^{cxixvii}

In the case of family reunification, the examiner has the right to interview the resident to determine the level of affective links that the resident has with the third-country national^{cxixviii}. In cases of suspicion of a marriage of convenience, the diplomatic representative and the minister officer can conduct simultaneous and independent interviews to the applicant and to the resident to determine the really of their story and to verify the facts.

After the visa is issued the authorities continue to have a determinant role to play in the admission of the third-country national independent to the type of visa that the applicant holds.

Q9. For each of the migration procedures considered (applications for international protection, returnees, visa and residence permit applicants), please briefly describe the different steps followed to establish the identity of third country nationals, including:

Challenges and practices for establishing applicants' identity in the migration process

- Parts of the process which have been automated;⁶⁵
- Biometric technologies used, if any;
- Identification/ identity verification tasks carried out by a decision-maker or specialised officer;
- Centralised or decentralised identification function(s).

[Insert response in table in Annex 2]

Q10. Does your (Member) State have in place specific procedures to establish the identity of third-country nationals within the context of exceptional migratory flows (e.g. under the EU 'Hotspot' approach)? **No.**

If Yes, please briefly describe the various steps followed to establish the identity of third-country nationals within the context of such procedures, explaining in particular how these differ from the regular procedures described in response to **Q9** above.

No, there are no specific procedures in place in this context.^{cxix}

The identity of the applicants for international protection under the EU 'Hotspot' approach is verified in a first step in situ by the respective national (Greek, Italian) authorities, with the help of EASO. On the national level, the competent authorities closely cooperate. Once the relocation to Luxembourg has been implemented, the application for international protection is processed exactly the same way as any other application for international protection filed in Luxembourg.^{cxx}

Q11. Does your (Member) State have a central competence centre or similar entity for issues related to identification/ identity verification? **No.**

If Yes, is that centre responsible for?

- Issues relating to the determination of identity in respect of the procedure for granting international protection OR in respect of the procedure for executing the return of rejected asylum seekers) OR in respect of third country applicants for visa and residence permit, OR in respect of several (if so, specify which) or all of these procedures
- Issues relating to the verification of documents in respect of the procedure for some or all of the abovementioned immigration categories.

No.^{cxixi}

If Yes:

- Has such Centre developed its own database / reference base for:
 - Genuine documents? **N/A**
 - False documents? **N/A**
- Does such Centre make use of the database iFADO (iPRADO) for checking false ID documents? **N/A**
- Does such Centre make use of the EDISON system? **N/A**
- Does such Centre provide:
 - Advisory services? **N/A**
 - Assistance through the development of identity management methods? **N/A**

⁶⁵ Automation is defined as 'The use or introduction of automatic equipment in a manufacturing or other process or facility' (see Oxford Dictionary <https://en.oxforddictionaries.com/definition/automation>, last accessed on 24th March 2017). For example, the use of a document reader would be understood as partially automating the task of performing document checks).

Challenges and practices for establishing applicants' identity in the migration process

- Training of frontline officers? **N/A**
- Support with difficult cases? **N/A**
- Does such Centre have a forensic document unit? **N/A**

If your (Member) State **does not** have a central competence centre, what other institutions / systems are available to provide advisory services/other forms of support to officials responsible for establishing the identity of applicants for international protection or third-country nationals applying for visitors visa and permits for the purposes of study, family reunification and remunerated activities?

INTERNATIONAL PROTECTION: This is the competence of the Directorate of Immigration, Refugees Department. In Luxembourg, the procedure for identity verification/establishment in the context of international protection is separated from the decision-making procedure as such. While the authority for granting international protection status lies with the Ministry in charge of Immigration and Asylum (Directorate of Immigration), the Judicial Police is in charge of identity verification/establishment. The police will take the fingerprints and a picture of applicant. This means that the applicant will be interviewed with regard to his/her travel itinerary, including questions on border crossing and used means of transports to arrive in Luxembourg. Once the Judicial Police has made the verification on the databases of EURODAC, Europol and any other relevant database (i.e. Edison) they will render a report to the Directorate of Immigration.

SHORT TERM-VISA: This is the competence of the diplomatic missions abroad (national or of other Member States which represents Luxembourg's interests abroad) under the supervision of the Passports and Visas Office.^{cxxxii} The diplomatic authority or the central authority in Luxembourg can verify the identity of the applicant using the VIS and SIS databases. Also, they can request a background check to the Directorate of Immigration, Grand-Ducal Police and intelligence authorities (SREL).^{cxxxiii}

AUTHORISATION OF STAY: This is the competence of the Directorate of Immigration Foreigners Department. They can verify the identity of the applicant accessing the VIS and SIS databases and in case there is doubt with the identity of the applicant, they will request the Grand-ducal police and the intelligence services to do a background check.^{cxxxiv}

RETURNS: This is the competence of the Directorate of Immigration, Returns Department. They have access to the EURODAC, VIS and SIS databases. They can request assistance from the Grand-ducal police and from the intelligence services as well as having access to other databases of Member States (i.e. EDISON) or of the European Union (IPRADO). Also they work closely with the diplomatic missions of third-countries in order to identify their nationals. This can be made physically or using a video conference system.

Q12. Are the officials responsible for determining the identity of the abovementioned immigration categories authorised to access EU databases holding identity information about third-country nationals (e.g. EURODAC, SIS II, VIS, etc.)? **Yes.**

If Yes, please specify the authorities given access to each of the various EU databases (e.g. asylum authorities have access to EURODAC and VIS)

The VIS roll-out has been completed in February 2016 and all stations connected to the VIS are operational. Certain categories of applicants have to provide their fingerprints when they hand over their visa request. An offline procedure has been developed in view of enrolling applications in case of a temporary disconnection to the main server. Luxembourg is collaborating with VFS in two countries, Turkey and India.^{cxxxv} The staff from the Directorate of Immigration, Foreigners Department have access to the SIS and VIS databases. The staff from the Directorate of Immigration, Refugees and Returns Department have access to EURODAC, SIS and VIS. Discussions are currently ongoing concerning the new Visa Code, which will facilitate the whole application procedure.^{cxxxvi}

When entering the country, the third-country national will have to pass:

1st line checks: Passport readers "VISOTEC® Expert 600" from the *Bundesdruckerei* are used to perform checks on passports and e-passports (with validation check of the chip against ICAO-PKD). Persons are also checked against SISII, Interpol and VIS databases. First-line VISA checks are done with a "Crossmatch Fingerprint-

Challenges and practices for establishing applicants' identity in the migration process

scanner" (check against VIS database). APIS/PNR is used for prior checks of the passengers. Furthermore, UV lamps with transmitted and diagonal light and simple magnification glasses are used.^{cxxxvii}

2nd line checks can be performed for more sophisticated checks: 2nd line checks against VIS database. Passports and other identification documents can furthermore be checked with Docucenter and Nirvis equipment and with microscopes. Specialised document databases (authentic and false) can be consulted (FADO, iFADO, DOKIS, ARKILA, ARGUS) for further investigation.^{cxxxviii}

An EUROSUR workstation is installed in the SIRENE office and a further Eurodac workstation has recently been installed in the 2nd line.^{cxxxix}

If No, are the officials responsible for determining the identity of these applicants authorised to liaise directly with the authorities who do have access to these databases?

If Yes, please specify how such interactions take place

N/A

Section 2: Methods for Establishing Identity

The aim of this Section is to provide an overview of the types of documents and methods used to establish the identity of third-country nationals within the context of various migration processes.

SECTION 2.1: DEFINITION AND DOCUMENTS REQUIRED FOR ESTABLISHING IDENTITY

This Subsection looks into the documents required/ accepted to establish the identity of third-country nationals in various migration processes.

Q13 What legal and/or operational definitions (if any) of identity is/are used with regard to (a) applicants for international protection and (b) the return process and (c) applications for short stay and long stay visas and permits for the purposes of study, family reunification and remunerated activities?

Neither the Law of 18 December 2015 on international protection and temporary protection (Asylum Law)^{cxli} nor the amended Law of 29 August 2008 on free movement of persons and immigration^{cxlii} (which regulates the return process and the application for short and long stay visas and authorisations of stay) have a legal definition of identity. Furthermore, there is also no legal definition of identity in the amended Law of 19 June 2013 on the identification of physical persons, the national registrar of physical persons, the identity card and the municipality registers of physical persons.^{cxliii}

The competent authorities use the following definition of identity^{cxliiii}: "Identity" means 'any name, number, or data transmission that may be used, alone or in conjunction with any other information, to identify a specific individual, including any of the following: 1. a name, Social Security number, date of birth, official government issued driver's license or identification number, government passport number, or employer or taxpayer identification number; 2. unique electronic identification number, address, account number, or routing code; or 3. telecommunication identification information or access device'.^{cxliiv} This operational definition comes from the fact that the term of identity comes from law of evidence^{cxliv} in criminal and administrative procedures.

In this context, Luxembourg law provides a mechanism for identity verification/establishment through a) Article 45 of the Code of Criminal Procedure^{cxlvi} (Code d'instruction criminelle) and b) Articles 133, 135 and 136 of the amended Law of 29 August 2008 on the free movement of persons and immigration.^{cxlvii}

However, the dispositions for identity establishment vary according to the procedure involved, differentiating between:

1. Judicial proceedings (Code of Criminal Procedure)

The police can apply the dispositions in the Code of Criminal Procedure (CIC) concerning people for which there is evidence that they:

- *have committed or attempt to commit an infraction;*

Challenges and practices for establishing applicants' identity in the migration process

- *are preparing to commit a crime;*
- *can offer further useful information to the investigation in case of a crime*
- *are subject to an arrest warrant by a judicial or administrative authority*

The police can apply these dispositions when the controlled person refuses to disclose or is unable to prove his/her identity^{cxlviii} and the police can demand a foreigner to identify himself/herself at any time.^{cxlix} If necessary, the person can then be detained on site and transferred to the police station, to the detention facility of the airport^{cl} or to the detention center. In all cases, the person is immediately presented to a Judicial Police officer who will conduct the identity verification.^{cli} The person can only be detained while his/her identity is being established (verification through fingerprinting and photographs). The detention is, in any event, limited to a maximum of four hours from the initial identity check.^{clii} The detainee has the right to notify the public prosecutor or a person of his/her choosing. For this purpose, a telephone has to be put at his/her disposal and the entire procedure has to be recorded (a minute has to be drawn up).^{cliii} The minutes have to be presented to the detained person for signature. In case of refusal to sign, the circumstances have to figure within the minutes.^{cliv} The public prosecutor can end the detention at any time^{clv} if he/she considers that there is not enough evidence to keep the person in detention. It is also important to mention that Article 133 of the Law of 29 August 2008 establishes the possibility for the Grand-Ducal Police to control any foreigner on Luxemburgish territory.

The verification procedure through fingerprinting and taking photographs outlined above is only applicable in a judicial procedure and it has to be ordered or authorised by the public prosecutor or an instruction judge.^{clvi} The public prosecutor can order the collection of human cells to be submitted to DNA testing for the purpose of identifying the person.^{clvii} The person who was subject to this procedure can seize the judicial judge who will establish the nullity of the procedure if it appears that the rules imposed by the Code of Criminal Procedure were not followed. It should be noted that the fingerprints and photographs taken can be used for the prevention, research and verification of a criminal action. However, if the person controlled is not subject to a criminal investigation or execution measure, the fingerprints and photographs must be destroyed within the six months following the drawn up of the minutes.^{clviii} All this applies to a judicial investigation and it is regulated by Article 45 of the CIC.

2. Administrative procedures (Immigration Law and Asylum Law^{clix})

Different from the above-mentioned procedure is the identification provisions foreseen in the Immigration and Asylum Laws. These are administrative procedures that allow the Judicial Police to take photographs and fingerprints without the need of authorisation of the instruction judge or the public prosecutor.^{clx}

According to the Immigration Law, the police has the right to request to any third-country national his/her identity papers (i.e. passport)^{clxi}. In case the third country national does not have identity documents with him/her, the authorities may take photographs (pictures) of a person who is brought to the detention facility because he/she is an irregular migrant or rejected international protection applicant who is to be returned. The collection of fingerprints is allowed only if it is strictly necessary to establish the identity of the detained foreigner or for the issuance of the travel document.^{clxii} However, this is considered as an administrative procedure and a judicial authorisation is not required.^{clxiii}

According to the Asylum Law, in cases of international protection applications, the applicant must submit his/her identification documents when he/she submits the application^{clxiv} as well as any other proof useful for the examination of the application. These documents will be preserved at the Directorate of Immigration of the Ministry of Foreign Affairs and they will be returned the moment the international protection status is granted, or in case of refusal, at the moment the person will be returned.

The Directorate of Immigration will open a file for any international protection application. All the relevant information, including obtained identification documents will directly be transferred to the Judicial Police (Foreigners Service) in order to proceed to all necessary measures needed for the establishment of the identity or verification of the documents.^{clxv} The Judicial Police proceeds to a hearing/interview with the person in order to verify the identity and the itinerary of his/her journey. The police can make a bodily search of the person in the respect of human dignity. Also, in this case, the Judicial Police will proceed to the fingerprinting of the applicant

Challenges and practices for establishing applicants' identity in the migration process

as well as take his/her photographs in the context of EURODAC^{clxvi}. Once everything is finalized, the Judicial Police will draw up its report and send it to the Directorate of Immigration.

For identification purposes, the Minister of Immigration, through the Directorate of Immigration, can conduct linguistic tests^{clxvii} in order to determine the origin of the applicant^{clxviii} as well as medical tests in order to determine the age of the applicant, especially when there is doubt about his/her age and there are no credible identification papers.^{clxix}

If the applicant refuses to collaborate with the authorities to establish his/her identity, by presenting false information or documents or has supposedly destroyed existing identity documents, the Ministry can decide to process the application under accelerated procedure.^{clxx} The Asylum Law also allows the placement of the applicant in a closed detention facility in order to verify his/her identity.^{clxxi} The duration of detention is up to three months, but can be extended to a maximum duration period of one year.^{clxxii}

Q14. What types of documents and other information do the authorities in your (Member) State accept as (contributing to) establishing the identity for the abovementioned immigration categories? For example:

- Official travel documents: Passports, ID cards; **Yes**
- Other documents: birth certificates, driving licence, divorce certificates, marriage licences, qualification certificates, house books etc.; **Yes**
- Please indicate if your (Member) State takes informal (residence) documents into consideration in the identification process, such as UNHCR registration documents. **Yes**

Table 4 Documents accepted as (contributing to) establishing the identity

Type of document	(a) applicants for international protection	(b) for the return process	(c) third country applicants for visitors visa and permits for the purposes of study, family reunification and remunerated activities
Official travel documents: Passports, ID cards	Yes. <i>Within the examination procedure of an international protection claim, the Directorate of Immigration accepts only Passports (official travel documents) or national ID in order to establish the identity and/or nationality of an applicant of international protection.</i> ^{clxxiii}	Yes. <i>Passport and ID cards</i> ^{clxxiv}	Yes. <i>Passport.</i> <i>The Immigration Law</i> ^{clxxv} <i>establishes the conditions of entry, stay and exit of third-country nationals. Article 34 (1) requires that for entering and exiting Luxembourgish territory, the third-country national has to have a valid travel document and, if required, a valid visa. Article 34 (2) 1) requires that for staying up to three months the TCN must have a valid passport, to prove his/her identity.</i> <i>For a stay over 3 months, the third-country national must apply for an authorisation of stay (study, family reunification or remunerated activities). With the application, the third-country national has to submit a certified copy of his/her passport to prove his/her identity.</i>

Challenges and practices for establishing applicants' identity in the migration process

Other documents: birth certificates, driving licence, divorce certificates, marriage licences, qualification certificates, house books etc.	<p>Yes.</p> <p><i>All other kind of documents, such as birth certificates, marriage licenses, birth and divorce certificates, driver's license, military record, municipality cards, qualification certificates, journal extracts (articles or photos claiming the identity of the applicant...) may help to prove the veracity of the applicant's statements.</i>^{clxxvi}</p>	<p>Yes.</p> <p><i>All other kind of documents, such as birth certificates, marriage licenses, birth and divorce certificates, driver's license, military record, municipality cards, qualification certificates, journal extracts (articles or photos claiming the identity of the applicant...) may help to prove the veracity of the applicant's statements.</i>^{clxxvii}</p>	<p>No. See above.</p>
Informal (residence) documents, such as UNHCR registration documents	<p>Yes, UNHCR registration documents can be accepted as contributing to the establishment of the identity by the authorities, but do not prevail over other documents such as official travel documents or other documents mentioned above.^{clxxviii}</p>	<p>Yes, UNHCR registration documents can be accepted as contributing to the establishment of the identity by the authorities, but do not prevail over other documents such as official travel documents or other documents mentioned above.^{clxxix}</p>	<p>No.</p>

Q15a. To the extent possible, please indicate whether copies are accepted by the relevant authority(ies) and which type of documents are considered by the national authorities as core or supporting documents.

In order to inform its final decision, the Directorate of Immigration accepts, in principle, any document that can prove the identity of the applicant (e.g. driver license, military card, birth certificates, photocopies of official documents). However, Article 34 (2) 1 of the amended Law of 29 August 2008 establishes the passport as the only valid identity document for a third country national for entering the territory.^{clxxx} Therefore, in principle, copies are accepted, but as supporting documents, with the exception of the copies of the passport that have to be certified, in the case of an application for a residence permit.

Q15b. Which are the major issues faced by your (Member) State concerning determining the authenticity (or genuineness) of documents?

In the case of international protection applications, once the Directorate of Immigration receives the travel- or identity documents of the applicants, they are directly transferred to the Judicial Police.^{clxxxi} The Judicial Police not only interviews/hears the applicant in relation to his/her travel itinerary, used means of transports and border crossing in order to arrive in Luxembourg, but also proceeds with identity verification/establishment of the applicant. The Judicial Police officers systematically verify the documents against general databases, i.e. iFADO, iPRADO and EDISON. In case of doubts as to the authenticity of a document, it will be transferred to the Central Airport Police Unit (UCPA) and the Document Expertise Section (SED), specialized in analyzing travel documents. If there is evidence concluding that the document is false, the police draws up a report and directly transfers it to the public prosecutor, who decides whether to press criminal charges or not.

Current national legislation^{clxxxii} only foresees taking photographs and fingerprints of applicants, which are then run against EU or regional databases (e.g. EURODAC, VIS, SIS II, CCPD). This allows the Judicial Police to see whether the applicant had entered the European Union using a valid passport and a visa, had been subject to an entry ban or had already applied for international protection in another Member State prior to applying in Luxembourg (Dublin Regulation).^{clxxxiii} If the border guard has a suspicion concerning fraudulent acquisition and

Challenges and practices for establishing applicants' identity in the migration process

use of false documents, the SED is contacted. The SED controlled approximately 1500 travel documents in 2016.^{clxxxiv}

The Judicial Police uses the information gained from these databases not only to verify the identity of the applicant, but also to verify the veracity of his/her statements. However, if the database search does not yield any additional useful information, the Police does not have any other means to verify the identity because national legislation does not allow the use of more invasive exams, such as DNA testing or Iris scans. Only if the applicant is suspected of having committed a felony or a crime and is subject to a judicial proceeding can the public prosecutor demand DNA testing in order to identify the person.^{clxxxv}

The other methods foreseen by law for trying to establish the identity of an applicant or rejected applicant are circumstantial and not systematic. The Directorate of Immigration will audition the person on the reasons on which he/she requests the protection of the Luxembourgish government and can use a linguistic test^{clxxxvi} as well as a medical test (X-rays of wrist bone, pelvic) to determine the origin/age of the applicant.^{clxxxvii} However, these exams are not conclusive as to determining the identity of the person.^{clxxxviii}

Based on the Geneva Convention, national authorities can only contact the diplomatic authorities of the (presumed) country of origin once international protection has been refused to the applicant and in the context of return, but not while the application is being examined.^{clxxxix} However, in exceptional cases (if international protection applications are patently abused, for example if it is obviously based on economic grounds), contact with the country of origin (through police cooperation) remains possible.^{cx}

In these cases, national authorities are relying on the collaboration of the concerned diplomatic authorities not only to identify the person but also to issue necessary travel documents for the return of the rejected applicant.^{cxci}

In some cases, the diplomatic authorities (especially some African countries) request the physical presence of the person at the embassy or consulate. Seen that most of the diplomatic missions are outside of Luxembourg (normally in Brussels), the transfer of the person implies considerable logistics and legal issues for national authorities. The Judicial Police, accompanied by an official of the Directorate of Immigration, transfers the person to the diplomatic mission.^{cxcii} However, the Luxembourgish authorities have introduced a pilot project entitled Video Conferencing for Identification (VCI) (together with Belgium and Poland), thereby allowing the diplomatic representatives in Brussels to come to the Luxembourgish Permanent Representation in Brussels and to identify, via video conference, their nationals, who will be in a specially adapted room in the Directorate of Immigration in Luxembourg.^{cxci} Other countries have joined the VCI project, which works rather well. The Return Department reported that the Tunisian consul has asked if the Luxembourg Penitentiary Center (Centre Pénitentiaire de Luxembourg) could be equipped with a screen in order to be able to communicate with Tunisian nationals without having to travel to Luxembourg each time.^{cxci}

In the cases where, after interviewing the person, the diplomatic officers inform the Directorate of Immigration that the person is not a national of their country and they thus cannot deliver travel documents, the identification/travel document issuance procedure starts again.^{cxcv} In other cases, the diplomatic authorities do not collaborate or they take a lot of time to answer.^{cxvii}

Decision-making on granting international protection status for a person that cannot be identified becomes difficult and can only take place after a careful evaluation of all the elements of the application and be motivated on the credibility of the statements of the applicant.^{cxvii}

Q15c. Have any of these issues changed compared to those described in your contribution to the 2013 EMN Study on 'Establishing identity'? **No.**

If Yes, please indicate the reasons why this has been the case, e.g. *the (Member) State has receiving high numbers of immigrants and asylum seekers in recent years and this has increased the workload of the authorities responsible for verifying documents.*

No.^{cxviii}

Q16. In your Member State, are there any national guidelines for the control by the relevant authorities of identity of person and identity documents in the various migration procedures? **No.**

Challenges and practices for establishing applicants' identity in the migration process

If Yes, please give reference to the relevant guidelines if possible and the procedure under which framework they apply.

No, there are no specific national guidelines in place in Luxembourg. The different steps taken by the Directorate of Immigration for the control of identity documents are part of the administrative practice and are noted and documented in a short and concise internal document (a so-called "circulaire"), establishing the internal procedure that must be followed.

Q17. In which situations, and by which authorities, are forged documents most commonly detected in connection with applications for visa and residence permit (e.g. in border control, by immigration authorities or other state agencies)?

The Directorate of Immigration is most commonly confronted with false or forged documents in connection with applications for family reunification with a citizen of the European Union or beneficiaries of international protection. This is particularly the case for applications from most African countries where, for the most part, the presented documents proving age and family ties, in particular birth and/or marriage certificates, are found to be false or forged. It was also reported that these cases increased rather dramatically over the last year or so.

Another important point raised by the Directorate of Immigration is the issue of authentic passports or ID cards, verified as such by the Judicial Police and/or the diplomatic missions concerned, which after verification by agents of the administration, are found that they do not belong to the respective applicant. It was reported that this is particularly the case with Syrian and Iraqi passports. In this case the document is valid but the content is forged.

Moreover, such situations can occur when persons travelling to other Member States with falsified documents are controlled by the Police. There have been documented cases where applications for international protection have been filed after the Police discovered that the documents were forged^{ccix}, or where a third-country national presented a false passport while trying to obtain an authorisation of stay before the Directorate of Immigration.^{cc}

National authorities have mainly been confronted with lacking identity documentation. False documents with regard to international protection applications are to be considered exceptional in Luxembourg.^{cci} However, in certain cases the applicant has to leave his/her country using false documents.^{ccii}

With regard to identity documentation, certain tendencies can be observed depending on the (presumed) countries of origin of the applicants, i.e. lacking identity documents are most commonly observed among applicants from African countries^{cciii} (i.e. Gambia, Nigeria, Sierra Leone, Somalia), while applicants from the Balkan countries generally present documents and valid passports.^{cciv}

Q18. Are there any exemptions to the obligation to present an official travel document for third country applicants for visa and residence permit? **No.**

If Yes, for which groups and/or major nationalities are there exemptions, and are these exemptions stated in national legislation and/or guidelines?

No. ^{ccv}

In the case of beneficiaries of refugee status, the Luxembourgish authorities will grant them a travel document in accordance with the Geneva Convention.^{ccvi} The beneficiaries of subsidiary protection can be granted a travel document if they are in the impossibility of obtaining a national passport.^{ccvii}

SECTION 2.2: METHODS USED IN THE ABSENCE OF DOCUMENTARY EVIDENCE OF IDENTITY IN THE ASYLUM/RETURN PROCEDURE

This Subsection looks into the methods used in the absence of credible documentation to ascertain the credibility of the third-country national's statements, and the relative weight that is given to the outcomes of the methods used across the (Member) States. The Subsection focuses on the asylum and return procedure, where the absence of credible documentation is a common challenge.

Challenges and practices for establishing applicants' identity in the migration process

Various methods are listed in the tables below. Where applicable, please succinctly identify any changes introduced with respect to the situation described in the 2013 EMN Study on 'Establishing identity'. For each method listed, please indicate whether any changes introduced since 2013 were made as a result of legislative reforms and/or due to considerations of reliability, efficiency and/or workloads.

Q19a. In your (Member) State, do national authorities make use (or plan to make use) of the methods identified below to establish the identity of third-country nationals subject to asylum/return procedures?

Please indicate, per method used, who executes the method (i.e. all-round decision makers, in-house specialists or external parties). Please also indicate whether the method is **obligatory** (i.e. enshrined in law), whether it is part of **standard practice** (i.e. used in most cases but not enshrined in law) or whether it is **optional** (i.e. not enshrined in law and used in some cases only).

Table 5: Methods **used** for establishing identity in the asylum/ return procedure (I)

Method	Applicants for international protection	Return of rejected applicants for international protection
Language analysis to determine probable country and/or region of origin	<p>Yes: enshrined in law and used if necessary.^{ccviii} Generally, these tests are only used when the identity of the applicant could not be established otherwise, or if doubts on the statements of the applicants prevail.^{ccix}</p> <p>The linguistic tests focus on dialects and other linguistic specificities and are done in collaboration with asylum administrations from another or several other Member States.^{ccx}</p>	<p>Yes: Not enshrined in law but used if necessary. It has to be noted that the Return Department of the Directorate of Immigration mostly carries out linguistic tests in the context of irregular migrants rather than in the context of rejected asylum seekers, as the identity of the applicants needs to be established in order to take a final decision by the Refugee department.^{ccxi}</p>
Age assessment to determine probable age	<p>Yes. It is foreseen in the law and in case there is a doubt in regards to the age of the applicant, it may be used.^{ccxii}</p>	<p>Yes. In case there is a doubt in regards to the age of the applicant, it may be used.^{ccxiii}</p>
Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)⁶⁶	<p>Yes. An interview with an agent of the Directorate of Immigration is enshrined in law..^{ccxiv}</p> <p>This interview will focus on the reasons for applying for international protection^{ccxv} and allows the applicant to clarify any contradiction or misrepresentation. Oral statements made by the applicant may be registered by appropriate technical means, provided that the latter has been informed prior to the registration.^{ccxvi} If a lawyer accompanies the applicant, he/she must nevertheless respond personally to questions.</p> <p>A written report is made of every personal interview and the statements made.^{ccxvii} The</p>	<p>Yes. They can be optional in cases where the applicant changes his/her story about his/her country of origin.^{ccxix}</p>

⁶⁶ This would depend on the elements included in your national definition of "identity" used within the procedures covered by this Study. See Section 2.1.

Challenges and practices for establishing applicants' identity in the migration process

	<i>absence of the applicant or his/her lawyer at the interview^{ccxxviii}, or the refusal of the applicant to sign the written report do not prevent the responsible officials from taking a decision on the international protection application. In case of refusal to sign the report, the reasons for refusal need to stand out in the application file.</i>	
Identity related paper and e-transactions with the authorities (e.g. tax, social benefits)	<i>No.^{ccxx}</i>	<i>No.^{ccxxi}</i>
Identity related paper and e-transactions with the private sector (e.g. bank)	<i>No.^{ccxxii}</i>	<i>No.^{ccxxiii}</i>
Identity related e-transactions in connection with social media	<i>No.^{ccxxiv}</i>	<i>No.^{ccxxv}</i>
Smartphones and other digital devices: May your law enforcement/immigration authorities confiscate (temporarily or permanently) such devices and access their content in their efforts to establish or verify an identity?	<p><i>No. In case of need, the Asylum Law authorises to proceed to a strip and search of the applicant and a search of his/her personal belongings. Any useful object for the examination of the application can be seized by the judicial police but a report has to be drawn up.^{ccxxvi}</i></p> <p><i>There are only two possibilities for authorities to access the content of smartphones or other digital devices:</i></p> <ul style="list-style-type: none"> <i>- the applicant gives his/her consent^{ccxxvii}</i> <i>- in the context of a criminal procedure and the public prosecutor requests the investigating judge^{ccxxviii} for an order even if the investigation is not open.^{ccxxix} The judicial police will seize the smartphone and other digital devices and draw up a report.^{ccxxx}</i> <p><i>The agents of the Directorate of Immigration only make use of social media to verify the statements of the applicant, but not as a means to prove or verify the identity of the applicant per se.^{ccxxxi} Any doubts about the statements of the applicant lead to checking in social media (Facebook, Instagram, Youtube, LinkedIn,...)^{ccxxxii} All data available (including overall profile activity): General information available on the profile pages (posts, photos,</i></p>	<i>No. See "Applicants for international protection".</i>

Challenges and practices for establishing applicants' identity in the migration process

	<p>videos, name, date of birth,...) but also overall profile activity (comments, pages liked...).^{ccxxxiii}</p> <p>LU mostly uses social media information to confront the applicant during the interview in order to clarify his/her statements. In most of the cases, the information is useful.^{ccxxxiv} It is important to mention that the Directorate of Immigration does not have the human resources to carry out depth searches in social media.^{ccxxxv}</p>	
Other	No.	Yes. Cooperation with the diplomatic missions of presumed third-countries of origin in order to identify their nationals, in case that the rejected international protection applicant does not have any documents. The use of video conference in order to execute this identification is also used.

Table 6 Methods **used** for establishing identity in the asylum/return procedure (II)

Method	Applicants for international protection		Return of rejected applicants for international protection	
	National database	European database	National database	European database
Fingerprints for comparison with National and European databases	No.	Yes. Obligatory. ^{ccxxxvi}	Yes. Part of the procedure if necessary. ^{ccxxxvii}	Yes. Part of the procedure if necessary. ^{ccxxxviii}
Photograph for comparison with National and European databases	No.	Yes. Obligatory. ^{ccxxxix}	Yes. Part of the procedure if necessary. ^{ccxl}	Yes. Part of the standard procedure if necessary. ^{ccxli}
Iris scans for comparison with National databases	No	No.	No.	No.
DNA analysis	No. DNA testing can only be ordered by the public prosecutor in the case of a judicial proceeding, i.e. if the applicant is suspected of having committed a felony or a crime. ^{ccxlii} The applicant has the possibility to make a	No. See "National database".	No. DNA testing can only be ordered by the public prosecutor in the case of a judicial proceeding, i.e. if the applicant is suspected of having committed a felony or a crime. ^{ccxliv}	No. See "National database".

Challenges and practices for establishing applicants' identity in the migration process

	<i>DNA testing on a voluntary basis.</i> ^{ccxliii}			
Other (please describe e.g. type of co-operation with or contacts in third countries, such as diplomatic missions)	<i>Yes. Obligatory.</i> ^{ccxliv}	<i>Yes. Obligatory.</i> ^{ccxlv}	<i>Yes. Part of the procedure if necessary.</i> ^{ccxlvii}	<i>Yes. Part of the procedure if necessary.</i> ^{ccxlviii}

Table 7 Methods national authorities **plan to use** for establishing identity in the asylum/ return procedure (I)

Method	Applicants for international protection	Return of rejected applicants for international protection
Language analysis to determine probable country and/or region of origin?	<i>N/A</i>	<i>N/A</i>
Age assessment to determine probable age	<i>N/A</i>	<i>N/A</i>
Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)⁶⁷	<i>N/A</i>	<i>N/A</i>
Identity related paper and e-transactions with the authorities (e.g. tax, social benefits)	<i>No</i>	<i>No</i>
Identity related paper and e-transactions with the private sector (e.g. bank)	<i>No.</i>	<i>No.</i>
Identity related e-transactions in connection with social media	<i>No.</i>	<i>No.</i>
Smartphones and other digital devices: May your law enforcement/immigration	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>

⁶⁷ This would depend on the elements included in your national definition of "identity" used within the procedures covered by this Study. See Section 2.1.

Challenges and practices for establishing applicants' identity in the migration process

authorities confiscate (temporarily or permanently) such devices and access their content in their efforts to establish or verify an identity?		
Other	N/A	N/A

NOTE: **Fingerprints:** In the context of international commitments on international protection and in order to determine whether a person has already presented an application for international protection in another Member State before coming to Luxembourg, or to determine the Member State responsible for the examination of the application, the Police may take fingerprints of all persons aged 14 and above^{ccxlix} and run them against the EURODAC and CCPD (Centre de Coopération Policière et Douanière) databases.

The Judicial Police has access to CCPD^{cccl}, EURODAC, iFADO, iPRADO, SIS 2 and VIS. EURODAC, CCPD and SIS are consulted systematically, while EDISON is consulted on a case by case basis. Fingerprints will be run against EURODAC first, even before the applicant is interviewed with regard to his/her identity, travel itinerary etc. That is to support the Police in assessing the credibility of the applicant's statements.^{cccli} The CCPD database is actualised on a daily basis with the list of international protection applicants.

If the applicant refuses to give his/her fingerprints, the law provides for the examination of the application in the context of an accelerated procedure.^{ccclii}

In the case where an applicant is held in the Detention Centre in order to prepare his/her removal to the presumed country of origin, photographs are taken and fingerprints are only taken if strictly necessary for the establishment of the identity or the procurement of travel documents.^{cccliii}

The Refugee Service has access to 'general' databases, i.e. official websites of other Member States and third countries containing guidelines and expertise on how to recognise valid or identity documents issued from the given country. The Directorate of Immigration, in cases of doubts, can access the German and Austrian databases in order to determine the validity of documents. It has also access to Edison and receives the EURODAC 'hit list' given by the Police. It is important to mention that the Judicial Police does not have complete access to the database of the Directorate of Immigration (e.g. medical records) and that the Directorate of Immigration does not have direct access to the general database of the Grand Ducal police.^{cccliv}

Photographs: The Judicial Police/ Foreigner Department proceeds to all kinds of verifications needed in order to establish the applicant's identity and travel itinerary, including taking fingerprints and photographs. The standard procedure in all cases is to take the photographs and fingerprints and run them against the EURODAC database before interviewing the applicant. Furthermore, the information is run against the database of the Centre for Customs and Police Cooperation.^{ccclv} Afterwards, a report, stating these procedural steps, is drafted.^{ccclvi}

Table 8: Methods national authorities **plan to use** for establishing identity in the asylum/ return procedure (II)

	National database	European database	National database	European database
Fingerprints for comparison with National and European databases	N/A	N/A	N/A	N/A
Photograph for comparison with	N/A	N/A	N/A	N/A

Challenges and practices for establishing applicants' identity in the migration process

National and European databases				
Iris scans for comparison with National databases	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>
DNA analysis	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>
Other (please describe, e.g. type of co-operation with or contacts in third countries, such as diplomatic missions)	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

Q19b. Is the (biometric) identity information given by an asylum seeker matched against identity information available in VIS?

- Yes, for all asylum seekers
- o Please specify since when these checks have been carried out: _____
 - o Do you produce statistics on the number of matching attempts and the results? _____
 - o What proportion of matchings produce a positive 'hit' (approximately): _____
- Yes, for some asylum seekers^{cclvii}
- o Please specify since when these checks have been carried out: 2013^{cclviii}
 - o Do you produce statistics on the number of matching attempts and the results? No^{cclix}
 - o What proportion of matchings produce a positive 'hit' (approximately): N/A^{cclx}
- No, for:
- o Technical reasons
 - o Legal reasons.
 - o Other reasons (please specify)

See also answers to Q.11 and Q.12.

Q19c. Has your Member State introduced any changes in the method(s) used to establish the identity of applicants in the asylum/ return procedure since 2013? **No.**

If Yes, please outline briefly the rationale behind any changes, explaining e.g. why new methods have been introduced, whether there is a different hierarchy or order in the methods used. If possible, please mention also any new research conducted providing evidence of the reliability of the method(s) used.

No, but the verification is made systematically and not on a case by case basis. The only new method introduced was the Video Conferencing for Identification (VCI), which is a pilot project between Luxembourg, Belgium and Poland (see also Q15b).^{cclxi}

Q19d. If there has been an increase in the number of applicants for international protection and irregular immigration in your (Member) State in recent years, has this had any effect on the methods used (e.g. certain methods have been prioritised to deal with specific nationalities, the capacity to use certain methods has been under strain due to lack of sufficient staff resources, etc.)? **No.**

Challenges and practices for establishing applicants' identity in the migration process

If Yes, please specify

No.^{cclxii}

Q20. Has your (Member) State issued any guidelines and/or best practices on the use of different methods? **No.**

If Yes, please specify

No, there are no specific national guidelines in place in Luxembourg. The different steps taken by the Directorate of Immigration for the control of identity documents are part of the administrative practice and are noted in a short and concise internal document.^{cclxiii} The Directorate of Immigration also reported that, because the number of cases has increased over the last few years, the different steps in the verification of identity documents in the various migration procedures have become more systematic. There are regular meetings between the Directorate of Immigration and the Grand-Ducal Police to assess the situation. There is also an internal circular that regulates the procedure between the Police and the Directorate.^{cclxiv}

SECTION 2.3: METHODS USED TO VERIFY THE IDENTITY OF THIRD-COUNTRY NATIONALS IN OTHER MIGRATION PROCEDURES

This Subsection focuses on the methods used to verify third-country national's identity within the framework of procedures concerning applications for short-stay visas and residence permits for family and study-related reasons or for the purposes of remunerated activities. With the partial exception of family reunification, where documentary evidence is sometimes missing, within the framework of these procedures applicants are generally required to provide documentary proof of their identity. The challenge thus lies in verifying that the third-country national concerned is who they claim to be.

*Various methods are listed in the tables below. Where applicable, please indicate if the method is **obligatory** (i.e. enshrined in law), is it part of **standard practice** (i.e. used in most cases but not enshrined in law) or is it **optional** (i.e. not enshrined in law and used in some cases only). The rationale for selecting some methods as obligatory or optional may relate to national legislation, outlined in Section 1.2, which your (Member) State may refer to in their replies.*

Q21. Does an applicant for an authorization to stay or residence permit have to present an official travel document? **Yes.**

Are there exceptions to this rule? **No.**

If Yes, please specify:

According to the Immigration Law, the applicant for any authorisation of stay for family, study, labour related activities must present an official travel document.^{cclxv} There are no exceptions to this rule. It is important to mention that a complete certified copy of the valid passport must join the request for an authorisation of stay and for the application of the residence permit once the authorisation of stay has been granted.^{cclxvi}

Q22. Do national authorities make use (or plan to make use) of the methods identified below to establish the identity of third-country nationals within the framework of procedures concerning applications for short-stay visas and residence permits for family and study-related reasons or for the purposes of remunerated activities? **Yes.**

Please specify by filling in the table below:

Table 9 Methods **used** for establishing identity

Short stay visas		
Method	National database	European database
Fingerprints for comparison with	Yes. <i>Obligatory.</i>	Yes. <i>Obligatory.</i>

Challenges and practices for establishing applicants' identity in the migration process

National and European databases		
Photograph for comparison with National and European databases	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i>
Others (please specify)		
Residence permit for study reasons		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i> ^{cclxvii}
Photograph for comparison with National and European databases	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i> ^{cclxviii}
Others (please specify)		
Residence permits for the purposes of remunerated activities		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i>
Photograph for comparison with National and European databases	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i>
Others (please specify)		
Residence permit for family reasons		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>Yes. Obligatory</i>	<i>Yes. Obligatory.</i>
Photograph for comparison with	<i>Yes. Obligatory.</i>	<i>Yes. Obligatory.</i>

Challenges and practices for establishing applicants' identity in the migration process

National and European databases		
DNA analysis	<i>No.</i>	<i>No.</i>
Others (please specify)	<i>N/A</i>	<i>N/A</i>

NOTE: The fingerprints and the pictures for the residence permits are only taken in Luxembourg at the Directorate of Immigration and not in the diplomatic missions abroad.^{cclxix}

Table 10: Methods national authorities **plan to use** for establishing identity

Short stay visas		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>N/A</i>	<i>N/A</i>
Photograph for comparison with National and European databases	<i>N/A</i>	<i>N/A</i>
Others (please specify)		
Residence permit for study reasons		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>N/A</i>	<i>N/A</i>
Photograph for comparison with National and European databases	<i>N/A</i>	<i>N/A</i>
Others (please specify)		
Residence permits for the purposes of remunerated activities		
Method	National database	European database
Fingerprints for comparison with National and European databases	<i>N/A</i>	<i>N/A</i>

Challenges and practices for establishing applicants' identity in the migration process

Photograph for comparison with National and European databases	N/A	N/A
Others (please specify)	N/A	N/A
Residence permit for family reasons		
Method	National database	European database
Fingerprints for comparison with National and European databases	N/A	N/A
Photograph for comparison with National and European databases	N/A	N/A
DNA analysis	<i>No, not at the moment.</i>	<i>No, not at the moment.</i>
Others (please specify)	N/A	N/A

Section 3: Decision-Making Process

This Section looks into how the different methods outlined above are combined to establish the identity of third-country nationals, and their outcomes used to make a decision within the context of various migration procedures

SECTION 3.1 STATUS AND WEIGHT OF DIFFERENT METHODS AND DOCUMENTS TO DETERMINE IDENTITY

Q23. On the basis of the information gathered by the methods outlined in Section 2, how is a decision on the establishment of identity made?

- Are some methods given more weight than others? **No.**

If Yes, please indicate which methods and why they are considered more reliable, and whether this is laid down in legislation, policy or practice guidelines.⁶⁸

In Luxembourg, all the available elements of an international protection application are collected and will be considered in entirety^{cc1xx} and not weighted individually.^{cc1xxi} It is important to mention that the lack of documents or the fact that the applicant was discovered with false documents^{cc1xxii} are not sufficient elements to reject the international protection application.^{cc1xxiii} Even if the linguistic expert considers that the applicant is not from the country of origin s/he indicates, the lawyer or the applicant can request a counter-expertise in order to challenge the findings of the first expert.^{cc1xxiv} In the international protection procedure, the credibility of the facts advanced by the applicant in conjunction with all the elements will determine the granting or refusal of the international protection.

⁶⁸ Member States may differ significantly in how they deal with applicants for international protection whose statements regarding their identity are not supported by valid documentary evidence, not only in the methods they can or should use, but also in the weight they give to the outcomes of some methods. The aim, therefore, is to highlight these differences, should they exist.

Challenges and practices for establishing applicants' identity in the migration process

The same happens with third-country nationals applying for an authorisation of stay. In this last, case the documentary evidence (i.e. valid travel document) will have a more decisive weight, except if there is doubt about the identity of the individual (because of an alarm in the VIS or SIS that makes believe that the document presented is false or forged).

- Does there need to be consistency between the results obtained from the various methods used? **Yes.**

If Yes, please specify:

In principle, the answer will be yes in the case of third-country nationals applying for an authorisation of stay and then for a residence permit. If there is any inconsistency the authorisation of stay or the residence permit will be refused.

However, when dealing with an international protection application it is the credibility of the facts advanced by the applicant in conjunction with the elements collected through the procedure that will determine if the international protection will be granted or not. As it was mentioned above, if the linguistic test or the age assessment are not conclusive the doubt will not imply an automatically refusal of the application (in the case of the age assessment if there is any doubt the applicant will be treated as a minor^{cclxxxv}) and the decision will be taken on the merits of the rest of the elements. Nevertheless, if the results of the methods used contradict the facts advanced by the applicant there is a higher probability that the application will be rejected.^{cclxxxvi}

Q24. Is a 'grading' structure or spectrum used to denote the degree of identity determination (e.g. from "undocumented," over "sufficiently substantiated" or "has the benefit of doubt" to "fully documented and verified")? **No.**

If Yes, please briefly describe it and clarify whether any distinction applies between international protection, return and other migration-related procedures in this respect.

No.

Q25. Are there any future measures being considered with regard to setting up or further elaborating a 'grading' structure? **No.**

If Yes, please briefly describe it and clarify whether any distinction applies between international protection, return and other migration-related procedures in this respect.

At the moment, there are no plans to elaborate a grading structure and it would be against the examination of all the elements and evidence collected during the procedures.

SECTION 3.2 DECISIONS TAKEN BY THE COMPETENT AUTHORITIES ON THE BASIS OF THE OUTCOMES OF THE IDENTITY MANAGEMENT PROCEDURES

Application for international protection

Q26a. Does the outcome of the procedure to establish the identity of the applicant for international protection influence a recommendation to 'grant international protection,' 'refuse international protection' or 'defer decision'?

Please describe any changes introduced with respect to what was described in your national contribution to the 2013 EMN study on 'Establishing identity'.

In Luxembourg, identification of the applicant is not a decisive factor for deciding on the merits of the international protection case. The fact of not proving one's identity is in itself not a sufficient motive for rejecting an application for international protection.^{cclxxvii}

The decision is based on an overall analysis of the person's statements, taking into account all other elements of the application, and must be motivated.^{cclxxviii} The decision is neither based solely on the ground that identity was not established, neither based exclusively on the medical/linguistic test. Overall, it is the perceived credibility^{cclxxix} of the applicant's statements that informs the final decision^{cclxxx}, going beyond merely establishing the applicant's

Challenges and practices for establishing applicants' identity in the migration process

identity^{cclxxxii}, especially since there may be a valid reason for the applicant not to disclose his/her identity^{cclxxxiii}. E.g. a person may be obliged to use false documents in order to be able to leave the country of origin where he/she may be prosecuted.^{cclxxxiii} In these types of cases and if the credibility of the applicant's statements is considered sufficient, the Directorate of Immigration as well as the administrative courts tend to grant international protection to the applicant, even though the identification of the person could not be established.^{cclxxxiv}

Nevertheless, if considerable doubt remains on the identity of the applicant and he/she does not want to collaborate with the authorities, the person can be held in the Detention Centre for a maximum period of three months. This period can be extended every three months to a maximum detention of one year.^{cclxxxv}

It is important to note that the status of international protection can be, and has been revoked after initial granting, if new elements and evidence appear at a later stage showing that the applicant had made use of false documents, hide facts or make fraudulent declarations during his/her application and that these were decisive for the granting of the status.^{cclxxxvi} The same applies if presumed non-existing identity documents appear in another context (e.g. marriage^{cclxxxvii}).

If the authorities conclude that the person has not collaborated with regard to identity establishment, had made use of false documents or has hidden elements that would have led the Ministry to reject the application, the Minister can decide to process the application under accelerated procedure.^{cclxxxviii}

Indeed, an analysis of relating case law^{cclxxxix} shows that in most cases where the authorities have had a serious doubt on the identity of the person and where the credibility of their history and statements was questioned, the decision on the application was often negative.^{ccxc}

Q26b. If there has been an increase in the number of asylum applicants/ irregular migrants in your (Member) State in recent years, what has been the impact of such increase in the decision-making process? For example:

- Has the decision-making process become more difficult for national authorities? **Yes.**
- Have the authorities stopped using certain methods for identity determination? **No.**
- Has the quality of the methods used decreased? **No.**

If the answer to any of the above is Yes, please elaborate (with reference to any reports/studies if available)

The Directorate of Immigration reported that the number of cases where there is doubt about the identity of an applicant have increased, which also has an impact on the decision-making process. Very often, every possible form of verification of information needs to be processed before a final decision can be taken. In some cases, different forms of verification, such as linguistic tests for example, need to be undertaken because of insufficient or varying results or change of the discourse of the applicant.^{ccxci}

Furthermore, the increase in the international protection applications created a backlog at the beginning because of lack of human resources. However, the Refugee Department of the Directorate of Immigration was restructured and was reinforced with more staff allowing the Department to increase the number of decision taken from 1232 decisions during 2015 to 2319 during 2016, which represents an increase of 1087 decisions (88,2%).^{ccxcii}

Return

Q27a. Does the outcome of identity establishment influence a recommendation to 'defer return'? **Yes.**

Please describe any changes introduced with respect to what was described in your national contribution to the 2013 EMN Study on 'Establishing identity'.

Yes. With regard to forced returns, a number of elements could be identified as slowing down the return procedure or render the return impossible altogether. Lack of cooperation from the rejected applicant in establishing his/her identity and difficulties to procure valid travel documents due to difficult or non-existing contacts with consular and diplomatic entities have been mentioned as key barriers to return in the pluriannual programme of the European Return Fund.^{ccxciii}

Challenges and practices for establishing applicants' identity in the migration process

Procedures to obtain travel documents require complex and resource intensive administrative preparations, especially given that the responsible consular- and diplomatic entities are mostly located abroad^{ccxciv}. Consequently, Luxembourg authorities have to travel to the concerned entities located in the bordering countries and notably Brussels, in order to develop and nurture bilateral relations, especially with regard to organising the return of their claimed nationals.^{ccxcv}

Alternatively, they have to organise and cover transport and accommodation to Luxembourg for identification purposes, of the responsible foreign representatives.

A video conference pilot project has been implemented in cooperation with Belgium and Poland in order to make the interviews between the third-country nationals and the diplomatic missions of the presumed country of origin in Brussels easier. This system allows that the third-country national is brought to a special conference room set up for the conference call and the representative of the diplomatic mission comes to the Luxembourg Permanent Representation in Brussels.^{ccxcvi}

Q27b. Are the results of the work to establish identity during the international protection process available to the authorities preparing forced return? **Yes.**

Please describe the supplementary steps (if any) that may be needed with respect to identity establishment for the authorities in the receiving country to be prepared to accept the return.

Yes, all the results concerning the establishing of identity are available. The Return Department of the Directorate of Immigration will examine all the reports and, if necessary, proceed to further measures if there are still doubts. This is particularly the case in cases when an applicant changed his/her story about his/her country of origin for example.

Procedure for third country applicants for visa and residence permits

Q28a. Does the outcome of identity establishment influence a recommendation to "grant residence permit" "refuse residence permit," "defer decision"?

As it was mentioned above, the identity of the third-country national applicant has to be established before granting the authorisation of stay. However, if after granting the authorisation of stay but before the granting of the long-stay visa (if applicable) or the residence permit there is a suspicion or doubt about the identity of the applicant the residence permit can be refused.^{ccxcvii}

Q28b. How important is the establishment of identity compared to other factors considered in making an overall decision? For example, if identity cannot be established, does this *de facto* lead to a negative decision? Are other factors such as family ties, health problems or/and other humanitarian reasons, given more weight than identity determination in some cases? **Yes.**

If Yes, please specify

Yes. In the case of third-country nationals who apply for an authorisation of stay, the establishing identity is fundamental in order to grant the authorisation of stay. This means that if the identity of the applicant cannot be established this will lead, in the cases of study, family reunification and labour related activities, to a negative decision per se.

However, in the case of an authorisation of humanitarian reasons of exceptional gravity (i.e. serious health issues) the establishing of identity will not be a *de facto* element for the refusal of granting an authorisation of stay on humanitarian grounds.^{ccxcviii} As they are mainly irregular migrants without any documentation, every possible form of verification of information is used but this does not guarantee a full identification of the person.^{ccxcix}

Section 4: Databases and data procedures

This Section explores which personal data is collected within the framework of migration procedures and which data sharing arrangements are in place.

*Challenges and practices for establishing applicants' identity in the migration process***SECTION 4.1 LEGAL FRAMEWORK**

Q29a. Do(es) the identity determination/verification authority(ies) in your (Member) State have Memoranda of Understanding (MoUs) and/or other agreements for the sharing of personal data in place with?

- Other agencies/departments **Yes.**
- Carriers **Yes.**
- Authorities in one or more other countries **Yes.**
- International organisations **Yes.**
- Private entities: **Yes.**
- Others **N/A.**

If Yes, please specify the other agency, carrier, countries or organisation/entity, if possible:

Other agencies/departments:

In the resettlement procedure there is sharing of personal data information between the Directorate of Immigration, the Judicial Police and the Luxembourgish Secret Service.^{ccc} The same goes for cases of national security, where the Luxembourgish Secret Service cooperates with the Directorate of Immigration and other departments of the Grand-Ducal Police, such as the antiterrorist unit and the organized crime unit.^{ccci}

Authorities in one or more other countries:

Luxembourg has a Memorandum of Understanding with Nigeria in the context of readmission of rejected asylum seekers and illegally staying third-country nationals.^{ccci} Furthermore, Luxembourg is part of readmission agreements in the context of Benelux and the European Union.^{ccciii}

Carriers:

Passenger Name Record Agreements: The EU has signed bilateral Passenger Name Record (PNR) Agreements with the **United States, Canada and Australia**. PNR data is information provided by passengers during the reservation and booking of tickets and when checking in on flights, as well as collected by air carriers for their own commercial purposes. PNR data can be used by law enforcement authorities to fight serious crime and terrorism. The use of PNR data for law enforcement purposes involves the processing of personal data. The transfer of PNR data from the EU to third countries must be governed by a bilateral agreement that provides for a high level of personal data protection.^{ccciv}

Furthermore, Luxembourg has a Memorandum of Understanding with carrier companies in the context of return, who receive a list of the passengers during the return trip and the passports or travel documents that will be handed back to the third country nationals once s/he leaves the Schengen area.^{cccv}

Terrorist Finance Tracking Programme » (TFTP): EU agreement signed with the United States in order to share financial information.^{cccvi}

International organisations:

In regards with the reinstallation programme the identification procedure is done with the assistance of UNHCR. The Directorate of Immigration informs UNHCR on its criteria/priorities as well as the number of refugees Luxembourg intends to resettle. UNHCR may thus proceed with the "match making" which consists of an examination of dossiers/files of persons registered with the UNHCR as candidates for resettlement. UNHCR seeks to refer cases to resettlement States based on a practical approach, i.e. pre-existing links to a country such as family links, language, previous studies etc., which may help to support their subsequent integration. The basis for UNHCR's identification process are its Global Resettlement Submission Criteria as set out in the UNHCR Resettlement Handbook.^{cccvii}

In some cases, agents of the Directorate of Immigration proceed by verifying information given by applicants of international protection with, for example, (international) NGOs by asking them very general questions about their

Challenges and practices for establishing applicants' identity in the migration process

structure of operations, but without asking specific personal information, as they cannot have any contact with the authorities of the country of origin.^{cccviii}

Private entities:

In countries such as India, VFS Global handles visas applications, which is a service provider that handles all visas applications for Luxembourg in Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad.^{cccix} Also in Nepal, VFS Global handles the visas for Luxembourg.^{cccix} VFS also operates as a service provider for Luxembourg in Ankara.^{cccxi}

Q29b. Please identify any agreements below and if possible share them through attachments. If it is not possible to share the documents, please provide a brief overview of the information they contain

Seeing that these agreements and Memorandum of Understanding are not public, the Directorate of Immigration was not able to share them through attachments.

SECTION 4.2 DATA PROCEDURES AND DATABASES

Q30. Which personal data of individuals is collected in national databases⁶⁹ within the framework of the various migration procedures, i.e. biographic (e.g. name, nationality, birthplace, ID-documents) and biometric (e.g. fingerprints, photographs, DNA). Please describe which data is collected for each of the relevant migration procedures and give the name of the relevant databases.

In Luxembourg, the legal framework on the information that is collected in the migration process is established by Article 138 of the Immigration law and the amended Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data.^{cccxi} The database concerning the entry and stay of foreigners in the territory comprehend all the directly collected data from the foreigner regarding their entry and stay in the territory. The agents of the Foreigners' Department of the Directorate of Immigration have access to this database in the framework of their mission.^{cccxi} The Minister is the responsible for the handling of the data. The Informatics Center of the State is considered as a sub-contractor.^{cccxi}

In order to control if a foreigner fulfils the conditions of entry and stay the Minister can access the following personal data:

- From the national registrar of physical and moral persons the national identification number;^{cccxi}
 - o Name and surname and residential address
 - o Date and place of birth
 - o Family situation
 - o Nationality (ies) or stateless
 - o Refugee status or subsidiary protection
 - o Sex
 - o For individuals who are married, separated or in a partnership the name, surname, date of birth and national identification number of their spouse or partner
 - o The national identification number of the parents if they have been assigned
 - o The national identification number of the child (ren)
 - o The origin and amendments of the registered data
 - o Date and place of death
 - o The nobility title of the family members of the Grand-ducal family^{cccxi}
- In regards with the visa applicants managed by the Passport and Visa Office^{cccxi}:
 - o the type of visa and passports issued, renewed and refused as well as the duration of their validity, as well as the decisions taken;
 - o The reasons which motivated the granting, renewal or refuse of the issuance of visas and passports;

⁶⁹ EMN NCPs do not need to provide information on the data collected under the framework of EU large-scale information management systems (EURODAC, VIS AND SIS II) as data collection requirements in this area are standardised at the European level and will be detailed directly by the EMN Service Provider in the Synthesis Report.

Challenges and practices for establishing applicants' identity in the migration process

- The date and port of entering the territory;
- The name and surname and address of the guarantor (financial responsibility);
- The financial situation of the applicant and the guarantor;
- Concerning the authorization of establishment managed by the Directorate General of Small and Medium Sized Enterprises^{ccc xviii}:
 - Name, surname and address and if required, the company or business name of the applicants and beneficiaries of an authorization of establishment;
 - Name, surname and address of the technical manager of the moral person who is an applicant or beneficiary of an authorization of establishment.
 - Date of issuance, extension, withdrawal or cancellation of authorization of establishment
 - Activities authorized in the framework of the authorization of establishment.
- Concerning the files regarding the affiliation of salaried and self-employed workers managed by the Joint Centre of the Social Security^{ccc xix}:
 - Date and duration of the affiliation;
 - Weekly working hours;
 - Name, surname, address and if applicable, company or business name of the employer;
 - Affiliations with previous employers;
 - Affiliations which are the responsibility of the employer
- Concerning the registered job seekers and the file containing the information regarding vacant positions managed by the Administration for the Development of Employment^{ccc xx}
 - Applications concerning the registration as job seekers
 - Data concerning the vacant positions
 - Professional qualifications of job seekers
- Concerning the files regarding the beneficiaries of the Guaranteed minimum income managed by the National Solidarity Fund and the National Service of Social Aid:^{ccc xi}

The beneficiaries of the Guaranteed minimum income In Luxembourg, a third country national who applies for a residence permit or a renewal of a residence permit must have his/her picture taken and undergo fingerprinting because the biometric data is not registered outside of the chip. Luxembourg takes two fingerprints of a third country national (left and right index) and a biometric picture to issue a biometric residence permit, as established in Council Regulation (EC) n° 380/2008 of 18 April 2008 modifying Council Regulation (EC) n° 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. This measure was implemented on 20 May 2011. The biometrical data gathered (fingerprints and photo) for the issuing of the residence permit are stored until the handing over of the residence permit to its holder, or at the most six months after the production of the residence permit.^{ccc xii}

The picture will be taken every time that the residence permit will be renewed (this period can go up to 5 years).^{ccc xiii}

SECTION 4.3 USE OF DATABASES IN THE SCREENING PROCESS

Q31. Which identity-related databases are managed by the different national authorities involved in migration processes? (e.g. the national population register is managed by the police; the national entry/exit system is managed by the border guard authority; the Eurodac National Access Point is managed by the asylum authority).

National Registrar of Physical persons^{ccc xiv}: Centre for the Information and Communication Technologies of the State^{ccc xv} under the supervision of the Ministry Civil Service and State Reform.

Authorisation of establishment: Directorate General of Small and Medium Sized Enterprises

Affiliation to the social security system: Joint Centre of Social Security

Job seekers and post vacancies: Administration for the Development of Employment

Guaranteed Minimum Income: National Solidarity Fund

Challenges and practices for establishing applicants' identity in the migration process

EURODAC: Grand-Ducal Police^{cccxxvi}

SIS/SIRENE: Grand-Ducal Police^{cccxxvii}

CEPOL and EUROPOL: Grand-Ducal Police^{cccxxviii}

VIS: Ministry of Foreign and European Affairs (Passport and Visa Office, Consulates, Directorate of Immigration).^{cccxxix}

Challenges and practices for establishing applicants' identity in the migration process

Q32a. Which regional, national and international databases, watch lists or reference tools are used for identification purposes, when a third-country national applies for international protection, a visa or residence permit? Please indicate which databases are used for specific procedures through the table below

Table 11 Databases, watch list and reference tools used for identity determination in migration-related procedures

	VIS	SIS	EURODAC	National databases and watch lists
International protection	X	X	X	X
Return	X	X	X	X
Short stay visas	X	X		X
Long stay visas and residence permit for study reasons	X	X		X
Long stay visas and residence permits for family reasons	X	X		X
Long stay visas and residence permits for the purposes of remunerated activities	X	X		X

Challenges and practices for establishing applicants' identity in the migration process

Q32b. Are there any data elements that the authorities would consider useful, but are not yet collected or stored?

If Yes, please specify

As the Directorate of Immigration bases its decisions on the reports of the Judicial Police, it did not report about any data elements that they would consider useful, but are not yet collected or stored by the administration.

The Judicial Police reported that a systemic comparison with EURODAC would be useful.^{ccccxx}

SECTION 4.4. RECENT AND PLANNED DEVELOPMENTS

Q33a. Please outline recent major changes in relation to the processing of personal data within the framework of migration-related procedures and databases (national/regional levels), including the following, if applicable:

- Inclusion of new identity elements on individuals in existing systems (i.e. biographic or biometric data)
- New databases, centralisation of databases or inter-connectivity systems.

From a legal point of view, the inter-connectivity and the cross-reference of databases of the Directorate of Immigration with, for example, the Grand-Ducal Police or the Luxembourgish homeland intelligence agency (SREL) is not possible.

Q33b. Please outline recent /planned pilots in the field of identity management architecture and data sharing.

No information available.

SECTION 5: DEBATE AND EVALUATION

Q34. Are the (actual or planned) measures described above currently being debated in your Member State?

If Yes, please describe the key issues under discussion and the actors involved in the debate. Sources of national debate to include may be national media reports, parliamentary debates, and statements of Non-Governmental Organisations/Civil Society Organisations or International Organisations.

No information available.

Q35. Have (national) data protection authorities or similar entities and/or legal experts assessed any of the measures described above?

If Yes, please specify the relevant authorities/ experts, describe what conclusions have they drawn and indicate whether (and if so, how) such conclusions have been taken into account when devising new measures or reviewing existing ones.

No information available.

SECTION 6: CONCLUSIONS DRAWN FROM THE NATIONAL CONTRIBUTION

This Section will outline the main findings of the Study and present conclusions relevant for policy-makers at national and EU level.

Q36. With regard to the aims of this Focussed Study, what conclusions would you draw from the findings reached in elaborating your National Contribution? What is the relevance of your findings to (national and/or EU level) policy-makers? *Please make any distinction between international protection, the forced return process and other (legal) migration channels.*

For all migration procedures treated in this study, the establishment of the identity of the respective applicants is an essential element of the examination process. For all the procedures, it is obligatory for applicants to provide fingerprints and photographs in order to conduct comparisons with National and/or European databases (e.g.

Challenges and practices for establishing applicants' identity in the migration process

EURODAC, EUROPOL, VIS, SIS II, CCPD). This allows the Judicial Police, who is responsible for the identity verification/establishment, to inquire whether the applicant had entered the European Union using a valid passport and a visa, had been subject to an entry ban and/or had already applied for international protection in another Member State prior to applying in Luxembourg. The Judicial Police uses the information gained from these databases not only to verify the identity of the applicant, but also to verify the veracity of his/her statements.

In order to apply for a visitor's visa and permits for the purposes of study, family reunification and remunerated activities, third country nationals are required to present valid travel document (i.e. a passport) and, if required, a valid visa and no exemptions are made. Furthermore, in the case of third-country nationals who apply for an authorisation of stay, the establishing identity is fundamental in order to grant the authorisation of stay. This means that if the identity of the applicant cannot be established this will lead, in the cases of study, family reunification and labour related activities, to a negative decision per se.

In the contexts of applications for international protection and of the return process, the Luxembourgish authorities also accept, in addition to official travel documents (i.e. passports and ID cards), a number of other documents as contributing to the establishing of identity in the various migration procedures, such as birth certificates, driving licences, marriage licences, divorce certificates, municipality cards etc. These documents may also help to prove the veracity of the applicant's statements during the examination of his/her application. Furthermore, an interview with an agent of the Directorate of Immigration is enshrined in law in order to allow the applicant to put forward the reasons for applying for international protection and to clarify any contradiction or misrepresentation. Additional measures such as language analysis tests to determine the origin of the applicant as well as medical age assessment tests are also foreseen in the law and used if the identity of the applicant could not be established otherwise. However, these types of exams are not conclusive as to the identity of the person.

Luxembourgish authorities reported that establishment of identity is both an issue and a challenge in Luxembourg. Although these issues and problems have always existed, the situation changed during the last years due to the migration crisis. Currently, Luxembourg is mainly faced with challenges in the area of applications for international protection (mainly from the Middle East, but also from African countries) and family reunification (mainly from African countries). In both contexts, the volume of cases where no credible documentation is available has increased, which has a direct impact on the establishment and verification of the identity of the applicants and, consequently, on the overall examination of these applications. The Directorate of Immigration systematically sends all the documents, with the exception of documents from the Balkan countries, to the agents of the Judicial Police (UCPA), who are responsible for the establishment and verification of the authenticity of documents. Seeing that they do not only work exclusively for the Directorate of Immigration, and combined with the fact that both the overall volume of cases as well as the cases where no credible documentation is available have increased, the current situation leads to longer procedures of verification.

The Luxembourgish authorities have recently introduced a pilot project entitled Video Conferencing for Identification (VCI) (together with Belgium and Poland), thereby allowing the diplomatic representatives in Brussels to come to the Luxembourgish Permanent Representation in Brussels and to identify, via video conference, their nationals, who will be in a specially adapted room in the Directorate of Immigration in Luxembourg. Other countries have joined the VCI project, which works rather well.

Challenges and practices for establishing applicants' identity in the migration process

Annex 1

With reference to **Q8**, please fill the following table by indicating with an "X" the national authorities/institutions primarily involved in identity establishment procedures for each of the procedures considered

Table 12 National authorities/ institutions involved in identity establishment in various migration procedures

	International protection	Return	Short stay visas	Long stay visas/ permits for family reasons	Long stay visas/ permits for study reasons	Long stay visas/ permits for the purposes of remunerated activities
Consulates/Embassies			X	X	X	X
Immigration authorities	X	X		X	X	X
Asylum authorities	X					
Police	X	X	X	X	X	X
Border guard	X		X	X	X	X
Security services	X	X	X	X	X	X
Identification centre	N/A	N/A	N/A	N/A	N/A	N/A
Other (please add rows to specify)						

Challenges and practices for establishing applicants' identity in the migration process

Annex 2

With reference to **Q9**, please provide a brief explanation of how the identity establishment procedure is organised. For each of the procedures considered, please fill the table below with general information on the different identification steps, including:

- Parts of the process which have been automated;⁷⁰
- Biometric technologies used, if any;
- Identification/ identity verification tasks carried out by decision maker or specialised officer;
- Centralised or decentralised identification function(s).

Table 13 Procedural steps taken to establish identity of third-country nationals in various migration procedures

Migration procedure	Steps in the procedure to establish identity
International protection	Current national legislation ^{cccxxxi} only foresees taking photographs and fingerprints of the applicants, which are then run against EU or regional databases (e.g. EURODAC, VIS, SIS II, CCPD). This allows the Judicial Police to inquire whether the applicant had entered the European Union using a valid passport and a visa, had been subject to a re-entry ban and/ or had already applied for international protection in another Member State prior to applying in Luxembourg (in this case the Dublin Convention applies). The Judicial Police uses the information gained from these databases not only to verify the identity of the applicant but also to verify the veracity of his/her statements. ^{cccxxxii} This is not an automated procedure. The taken of the fingerprints and pictures are taken using biometric technology. The identification of the task is conducted by the Judicial Police (Foreigners Service), which later draw up a report and hand it to the responsible agent that is taking care of the file. ^{cccxxxiii}
Forced return	
Short stay visas	Since October 2011 ^{cccxxxiv} , the Luxembourgish diplomatic missions have been using biometric technologies in order to collect photos and fingerprints of the applicants for the short-term visas. The system was totally implemented in February 2016. ^{cccxxxv} Third country nationals subject to a visa obligation who wish to stay in Luxembourg for less than 90 days over a period of 180 days for business, family or tourist visits, etc. must apply for a short stay visa (visa C).

⁷⁰ Automation is defined as 'The use or introduction of automatic equipment in a manufacturing or other process or facility' (see Oxford Dictionary <https://en.oxforddictionaries.com/definition/automation>, last accessed on 24th March 2017). For example, the use of a document reader would be understood as partially automating the task of performing document checks).

Challenges and practices for establishing applicants' identity in the migration process

Visa applications should in principle be lodged at least 15 calendar days before the intended visit and cannot be lodged earlier than 3 months before the start of the intended visit.

Holders of a multiple-entry visa may lodge the application before the expiry of the visa valid for a period of at least 6 months.

The applicant must submit a completed and signed Schengen visa application in person at:

- the Luxembourg diplomatic mission or consulate in his country of residence;
- or, failing that, the embassy or consulate of the country in the Schengen area which represents Luxembourg for the issuance of visas.

The application must be accompanied by the following documents:

- 2 recent and identical identity photos;
- a valid passport or a travel document accepted in the Schengen area, which is valid for at least 3 months after the expiry date of the requested visa;

supporting documents associated with the purpose of the journey, such as:

- an authenticated formal obligation (undertaking of financial responsibility) from a guarantor resident in Luxembourg;
- official letter of invitation for a business visit;
- a hotel reservation;
- a return airline ticket;
- proof of sufficient means of subsistence (bank account statements, cash, credit cards, etc.);
- proof of legal residence in the normal country of residence;
- health insurance covering the travel period.

Before sending the formal obligation to the third country national for whom he is acting as guarantor, the guarantor must:

- officially authenticate his/her signature on the form at his/her commune of residence;
- send the form to the Passport, Visa and Legalisation Office (Bureau des passeports, visas et légalisations) for a stay of less than 90 days or to the Immigration Directorate for a stay of more than 3 months along with:
 - his/her last 3 salary slips or a document stating his/her monthly revenue;
 - a copy of his/her passport or national identity card;
 - if he is a foreign national, proof of lawful residence in Luxembourg;

Challenges and practices for establishing applicants' identity in the migration process

	<ul style="list-style-type: none"> • a copy of the non-EU national's valid passport for whom he is a guarantor. <p>If his/her application is accepted, the guarantor receives an official stamped copy of the document. The foreign national then has 6 months to use this document to apply for his/her visa.</p> <p>The issuance of the visa alone does not necessarily give the right of entry or stay in Luxembourg.</p> <p>Other supporting documentation, in relation to the purpose of the visit, may be requested.</p> <p>Applications shall be decided on within 15 calendar days of the date of their lodging. In particular cases, namely when further scrutiny of the application is needed or if the if the application is submitted to a consulate of a State representing Luxembourg, this period may be extended up to a maximum of 30 calendar days. As an exception, when additional documentation is needed in specific cases, the period may be extended up to a maximum of 60 calendar days.</p> <p>When the visa is granted, it is affixed in the passport in the form of a visa sticker.</p> <p>The visa type C allows for stays for a duration not exceeding 90 days over any 180-day period. The visa can be issued for one or several entries, depending on the reasons of stay.</p>
Long stay visas/ permits for family reasons	<p>In the 90 days following receipt of the temporary authorisation to stay, the applicant must submit, in person, a long stay visa application (D) in 2 copies to the Luxembourg diplomatic or consular mission in his/her country of residence or, failing that, to the embassy or consulate of the country in the Schengen area which represents Luxembourg for the issuance of long-stay visas (only the Belgian embassy or consulate).</p> <p>The application must be accompanied by the following documents:</p> <ul style="list-style-type: none"> • 2 recent and identical identity photos; • a valid passport or a travel document accepted in the Schengen area, which is valid for at least 3 months after the expiry date of the requested visa; • the temporary authorisation to stay. <p>When the visa is granted, it is affixed in the passport in the form of a stamp or vignette.</p> <p>A visa type D is valid for a period of 90 days to one year maximum.</p>
Long stay visas/ permits for study reasons	See Long stay visas/permits for family reasons
Long stay visas/ permits for the purposes of remunerated activities	See Long stay visas/permits for family reasons

Challenges and practices for establishing applicants' identity in the migration process

-
- ⁱ Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ⁱⁱ Direction de l'Immigration, Ministère des Affaires Etrangères et Européennes, Bilan de l'année 2016 en matière d'asile et immigration, 17 mars 2017, p. 3.
- ⁱⁱⁱ Article 6 (3) paragraph 2 in accordance with Article 12 (2) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ^{iv} The applicant for family reunification is free to submit himself voluntarily to a DNA test in order to prove the family link and this was considered as a legal solution by the First Instance Administrative Court, second chamber, n° 23176 of 27 February 2008, especially that the court considered that the burden of proof is on the applicant when there is no documentary evidence of the family link. The Immigration Directorate accepts this kind of proof but as it isn't foreseen in the Law, the Directorate can't require it. Interviews are foreseen and possible according to Article 73 (2) of the amended law of 29 August 2008 on free movement of persons and immigration.
- ^v Article 45 (6) paragraph 4 of the Criminal Procedure Code.
- ^{vi} Article 120 (3) of the Law of 29 August 2008.
- ^{vii} All the case law that is mentioned throughout this study, www.emn.lu
- ^{viii} Information provided by the Directorate of Immigration, 15 June 2017 and 7 July 2017.
- ^{ix} Not proving or disclaiming one's identity is not a sufficient ground for refusing the status of international protection. Decisions on international protection always need to be based on an analysis of the whole procedure and need to be reasoned (Articles 26 (1), 27 (1) c) and 37 (5) of the Law of 18 December 2015, <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2015-255-fr-pdf.pdf>
- ^x See First instance Administrative Court, 2nd Chamber, n° 27289 of 16 May 2011 The court said: «S'y ajoute que le certificat de naissance versé par le demandeur a été établi le... qui était un dimanche. Malgré les tentatives d'explications confuses du demandeur selon lesquelles il ne serait pas exclu que le calendrier musulman en vigueur en Gambie ne coïncide pas avec le calendrier grégorien ou que ledit certificat aurait pu être émis un dimanche «à titre de faveur par exemple (sic), ou à tout autre titre comme par exemple la connaissance personnelle d'un membre de l'administration (sic)», le tribunal se rallie à l'opinion du ministre qui avait émis de sérieux doutes quant à l'authenticité de ce document en ce que le demandeur n'apporte aucune explication plausible démontrant qu'un tel acte ait pu être établi un dimanche.
- Des éléments qui précèdent, il se dégage que le récit incohérent et peu crédible du demandeur n'est pas de nature à établir l'existence d'une persécution ou d'une crainte de persécution susceptible de justifier la reconnaissance du statut de réfugié...»
- ^{xi} Article 12 (1) of the Law of 18 December 2015 on international protection and temporary protection.
- ^{xii} This is an evaluation made by the Judicial Police or the public servants that is based on the statements made by the applicant and the provided documents. E.g. the Judicial Police will run the fingerprints and the photographs of the applicant against the EURODAC database and other databases. Once having the results, the applicant will be interviewed on his/her itinerary and identity. If the applicant had already applied for

international protection in another Member State and he/she hides this fact or lies about it, the fraudulent intent is proven. Interview with the Judicial Police, 22 August 2012.

- xiii Articles 27 (1) c), d) and i) in accordance with Article 22 (4) of the Law of 18 December 2015.
- xiv See Judgment n°30008 of 23 March 2012. First instance Administrative Court, 3rd Chamber and n° 28620C of 24 May 2011 of the Administrative Court.
- xv See judgments n°28621 of 26 May 2011, First instance Administrative Court, 2nd Chamber (Nigerian national); n°28671 of 6 June 2011, First instance Administrative Court, 2nd Chamber (Algerian national); n°28767 of 30 June 2011, First instance Administrative Court, 2nd Chamber (Nigerian national), n°28769C of 30 June 2011, Administrative Court (Somalia national)
- xvi See judgments n°30447 of 13 June 2012, First instance Administrative Court, 3rd Chamber (Serbian national in possession of a Serbian passport issued on 9 March 2010), n°30358 of 7 June 2012, First instance Administrative Court, 2nd chamber (Serbian national in possession of a Serbian passport issued on 13 November 2008), n°30335, First instance Administrative Court, 2nd Chamber (Serbian nationals in possession of a Serbian passport issued on 17 December 2011), n°30381 of 27 June 2012, First instance Administrative Court, 3rd Chamber (Montenegrin national in possession of a valid passport issued on 25 June 2008), n°30168 of 26 June 2012, First instance Administrative Court, 3rd Chamber (Montenegrin national with valid passport); n°29801 of 30 March 2012, First instance Administrative Court, 3rd Chamber (Albanian national with valid passport), n° 30557 of 9 July 2012, First instance Administrative Court (Macedonian national with a valid passport issued on 30 August 2010)
- xvii Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection in accordance with Article 100 (3) of the amended Law of 29 August 2008 on free movement of persons and immigration.
- xviii Article 6 (3) paragraph 2 of the Law of 18 December 2015
- xix Article 6 (3) paragraph 2 of the Law of 18 December 2015.
- xx Interview with the Directorate of Immigration, 20 June 2012
- xxi European Return Fund, Pluriannual programme 2008-2013, p 18, http://www.olai.public.lu/en/publications/programmes-planactions-campagnes/programme_fer/prog-pluriannuel-fer.pdf
- xxii Article 120 (3) of the amended Law of 29 August 2008 [Mémorial A n°113 of 3 July 2013](#)
- xxiii See First instance Administrative Court, 3rd Chamber, n° 30713 of 29 June 2012
- xxiv See Article 120 (3) of the amended Law of 29 August 2008 and Administrative Court, n°28769C of 30 June 2011.
- xxv See First instance Administrative Court, 2nd Chamber, n°30636, of 7 June 2012.
- xxvi See First instance Administrative Court, 3rd Chamber, n°30713 of 29 June 2012.
- xxvii Article 34 (2) 1) of the amended Law of 29 August 2008.
- xxviii Article 34 (2) 2) of the amended Law of 29 August 2008.
- xxix Article 34 (2) 3) of the amended Law of 29 August 2008.

-
- xxx Article 34 (2) 4) of the amended Law of 29 August 2008.
- xxxi Article 34 (2) 5) of the amended Law of 29 August 2008.
- xxxii Article 39 (1) of the amended Law of 29 August 2008.
- xxxiii LU EMN NCP, Family Reunification of TCNs in the EU: National Practices, Luxembourg National Report, 2017, p.p. 30-31.
- xxxiv Guichet.lu, Government of the Grand Duchy of Luxembourg« Family reunification for third-country nationals », URL : <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/regroupement-familial/index.html> (last accessed on 21 November 2016).
- xxxv Directorate of Immigration, Ministry of Foreign and European Affairs, « Authorization to stay for a family member of a third-country national », URL : www.guichet.public.lu/entreprises/catalogue-formulaires/immigration/tiers-regroupement-familial/autorisation-sejour-note/regroupement-familial-tiers-note-EN.pdf
- xxxvi Article 73 (1) of the amended Law of 29 August 2008
- xxxvii Article 73 (3) of the amended Law of 29 August 2008. See [Memorial A-298 of 20 March 2017](#).
- xxxviii LU EMN NCP answer to NL EMN NCP Ad-Hoc Query on Checking identity and family relationships in case of family reunification with a beneficiary of international protection launched on 8 June 2016.
- xxxix LU EMN NCP answer to NL Ad-Hoc Query on Checking identity and family relationships in case of family reunification with a beneficiary of international protection, launched on 8 June 2016.
- xl Article 78 (1) c) of the amended Law of 29 August 2008.
- xli Article 78 (1) c) of the amended Law of 29 August 2008.
- xlii This is the case of a foster child. LU EMN NCP, Family Reunification of TCNs in the EU: National Practices, Luxembourg National Report, 2017, p. 23.
- xliii See <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/raisons-privees/index.html>
- xliv LU EMN NCP answer to SI Ad-hoc Query on verification of the reliability of potential students, launched on 25 October 2016.
- lv Parliamentary document n° 6218/00 of 9 November 2010, p. 8.
- lvi Information provided by the Directorate of Immigration, 15 June 2017 and 7 July 2017.
- lvii Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, Luxembourg, 2017, p. 3.
- lviii Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, Luxembourg, 2017, p. 3.
- lix Eurostat, Newsrelease, [Asylum in the EU Member States, 1.2 million first time asylum seekers registered in 2016](#), n° 46/2017, 16 March 2017, p. 2.

Challenges and practices for establishing applicants' identity in the migration process

-
- ⁱ Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2015 en matière d'asile et d'immigration, Luxembourg, 2016, p. 2.
- ⁱⁱ Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, Luxembourg, 2017, p. 3.
- ⁱⁱⁱ Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, Luxembourg, 2017, p. 3.
- ⁱⁱⁱⁱ See Judgement First instance Administrative Court, 1st Chamber, n° 38077 of 30 June 2016.
- ^{liv} See Judgement of the [First instance Administrative Court, 1st Chamber, n° 38133 of 15 July 2016](#) (the detainee argued that he is Zimbabwean but when the diplomatic authorities came to identify him, they conclude that he was not one of their nationals. Then the applicant argued that he was from Gambia, and then from Nigeria). See also judgement of the [First instance Administrative Court, n° 33755 of 19 November 2014](#) (the detainee argued that he is from Senegal and then that he is from Mali) and [First instance Administrative Court n° 31600 of 5 November 2012](#) (detainee argued that he was from Sierra-Leone, then from Nigeria and finally from Gambia).
- ^{lv} See Judgement of the [First instance Administrative Court, 1st Chamber, n° 38133 of 15 July 2016](#).
- ^{lvi} See Judgement of [First instance Administrative Court n° 31600 of 5 November 2012](#).
- ^{lvii} See Judgement of the [First instance Administrative Court n° 31600 of 5 November 2012](#).
- ^{lviii} See Judgement [First instance Administrative Court, n° 33755 of 19 November 2014](#)
- ^{lix} See Judgement First instance Administrative Court, 1st Chamber, n° 38077 of 30 June 2016.
- ^{lx} See Judgement of the [First instance Administrative Court, 1st Chamber, n° 38133 of 15 July 2016](#).
- ^{lxi} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxii} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxiii} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxiv} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxv} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxvi} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxvii} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lxviii} Information provided by the Directorate of Immigration, 28 June 2017.
- ^{lix} LU EMN NCP answer to LT EMN NCP Ad-Hoc Query on TCNs who could not be expelled from the State due to lack of identification/return documents, launched 3 May 2016.

- lxx Information provided by the Directorate of Immigration, 28 June 2017.
- lxxi Information provided by the Directorate of Immigration, 28 June 2017.
- lxxii Information provided by the Directorate of Immigration, 28 June 2017.
- lxxiii Information provided by the Directorate of Immigration, 28 June 2017.
- lxxiv Information provided by the Directorate of Immigration, 28 June 2017.
- lxxv Information provided by the Directorate of Immigration, 28 June 2017.
- lxxvi Information provided by the Directorate of Immigration, 28 June 2017.
- lxxvii The applicant for family reunification is free to submit himself voluntarily to a DNA test in order to prove the family link and this was considered as a legal solution by the First instance Administrative Court, second chamber, n° 23176 of 27 February 2008, especially that the court considered that the burden of proof is on the applicant when there is no documentary evidence of the family link. The Immigration Directorate accepts this kind of proof but as it isn't foreseen in the law, the Directorate can't require it. See LU EMN NCP answer to NL EMN NCP launched on 8 June 2016.
- lxxviii Information provided by the Directorate of Immigration, 28 June 2017.
- lxxix Exposition of motives of bill n° 6779. See [parliamentary document n° 6779/00](#), p. 34.
- lxxx Exposition of motives of bill n° 6779. See [parliamentary document n° 6779/00](#), p. 37. The bill was introduced to parliament on 19 February 2015 before the peak of the migration crisis.
- lxxxi Article 6 (3) paragraph 2 of the amended Law of 18 December 2015 on international protection and temporary protection.
- lxxxii LU EMN NCP answer to FI EMN NCP Ad-hoc query on Best Practices and Methods of Establishing the Identity of Applicants for International Protection, launched 15 March 2016.
- lxxxiii Exposition of motives of the bill n° 6507, [Parliamentary document n° 6507/00](#), p. 13.
- lxxxiv Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, pp. 26-27.
- lxxxv Law of 8 March 2017 amending: 1) amended Law of 29 August 2008 on free movement of persons and immigration; 2) the amended Law of 28 May 2009 on the Detention Centre; 3) the Law of 2 September 2011 regulating the access to the professions of craftsman, merchant and manufacturer as well as certain liberal professions. [Mémorial A-298 of 20 March 2017](#).
- lxxxvi Law of 28 May 2009 on the creation and organization of the detention center; [Memorial A-119 of 29 May 2009](#).
- lxxxvii See <http://www.gouvernement.lu/4210546/immigration>
- lxxxviii <http://www.gouvernement.lu/4210546/immigration>

lxxxix Article 6 (3) of the amended Law of 18 December 2015 on international protection and temporary protection.

xc <http://www.gouvernement.lu/4210546/immigration>

xcⁱ Article 39 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration.

xcⁱⁱ See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 3.

xcⁱⁱⁱ <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>

xc^{iv} Afghanistan, Angola, Benin, Canada (Vancouver), China (consulate in Guangzhou), Costa Rica, Dominique, United Arab Emirates, Eritrea, United States of America (Miami), Georgia, Ghana, Guatemala, Indonesia, Iraq, Macedonia, Mali; Morocco (Rabat), Mozambique, New Zealand, Oman, Russia (Saint Petersburg), Soudan, Sri Lanka, Surinam, Trinidad y Tobago, Venezuela.

xc^v South Africa, Saudi Arabia, Argentina, Australia, Brazil, Bulgaria, Burkina-Faso, Burundi, Cameroon, Canada, (Montréal), Chile, China (consulate in Hong Kong), Colombia, Democratic Republic of Congo, North Korea, South Korea, Ivory Coast, Croatia, Cuba, Egypt, United States of America (Atlanta and Los Angeles), Ethiopia, Iran, Ireland, Israel (Jerusalem and Tel Aviv), Jamaica, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Morocco (Casablanca), Mexico, Monaco, Nigeria, Uganda, Peru, Philippines, Qatar, Rumania, Rwanda, Senegal, Serbia, Singapore, Tanzania, Tunisia; Ukraine, Vietnam.

xc^{vi} Armenia, Bahrein, Belarus, Botswana, Cambodia, Cyprus, Kirghizstan, Mongolia, Myanmar, Namibia, Tajikistan, Turkmenistan.

xc^{vii} Andorra, Azerbaijan, Central African Republic, Republic of Congo, Djibouti, Fiji, Gabon, Haiti, Laos, Madagascar, Mauritius, Mauritania, Niger, Uzbekistan, Pakistan, Saint Lucia, Seychelles, Tchad, Togo, Vanuatu, Zimbabwe.

xc^{viii} Bangladesh, Zambia.

xc^{ix} Bolivia, El Salvador, Ecuador, Equatorial Guinea, Honduras, Nicaragua, Panama, Paraguay, Uruguay

^c Guinea Bissau, Sao Tome et Principe.

^{ci} Kazakhstan (Astana)

^{cii} Kazakhstan (Almaty), Moldova.

^{ciii} Kosovo.

^{civ} Malawi.

^{cv} Montenegro.

^{cvi} Saint Marin.

^{cvii} <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>

^{cviii} <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>

Challenges and practices for establishing applicants' identity in the migration process

-
- cxix <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cx <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cxix <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cxix <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cxix Ministère des Affaires étrangères et européennes, [Rapport d'activité 2016](#), Luxembourg, 2017, p. 15.
- cxix Information provided by the Passports and Visas Office, May 2011. This was implemented on 11 October 2011 to nationals coming from Maghreb countries.
- cxix Information provided by the Passports and Visas Office.
- cxix In this case, the diplomatic representation will follow its own procedures. The diplomatic representation will accept or refuse the visa on its own right. In case of refusal, Luxembourg has the right to ask the reasons why the diplomatic representation refuses ex-officio the visa. Nevertheless, the applicant must file the administrative recourses in the administrative jurisdiction of the country that made the refusal and not in Luxembourg. See LU EMN NCP, Visa Policy as Migration Channel, Luxembourg, 2011, p. 47. See also, Ministère des Affaires étrangères et européennes, [Rapport d'activité 2016](#), Luxembourg, 2017, p. 15.
- cxix See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 3. Recommendation 1 and 2.
- cxix See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 3. In practice, the diplomatic authorities sent the documents to the Central Authority for consultation and they trigger the referral to the Directorate of Immigration, Police and intelligence authorities.
- cxix See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 4. See recommendation 11.
- cxix <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0810:EN:NOT>
- cxix The person that guarantees the stay of the foreigner is responsible up to 2 years for the person and he is liable for any wrong doing that the foreigner does in the Schengen area. Also the person is responsible for the return of the foreigner to the country of origin. Interview with the Bureau des Passeports et Visas, May 2011.
- cxix This form comes from the STANDARD FORM FOR NOTIFYING AND MOTIVATING REFUSAL, ANNULMENT OR REVOCATION OF A VISA contemplated in annex VI of the Visa Code.
- cxix Law of 21 June 1999. This law rules the procedure of the administrative jurisdictions. <http://www.legilux.public.lu/rgl/1999/A/1892/1.pdf>
- cxix It is necessary to distinguish between the application for the authorization to stay and that for the visa. The application for the authorization to stay has to be introduced first. The delays in which the Ministry of Foreign Affairs has to respond vary from 3 months in cases like salaried

Challenges and practices for establishing applicants' identity in the migration process

workers, students, researchers, athletes, transferred and posted workers, to 9 months in cases of family reunification when the resident is a non-EU citizen.

In exceptional cases, linked to the complexity of the application's investigation, this period may be extended.

In any case, the delay starts to run when the file is completed.

cxxv See LU EMN NCP, Visa Policy as Migration Channel, Luxembourg, 2011, p. 65.

cxxvi See LU EMN NCP, Visa Policy as Migration Channel, Luxembourg, 2011, p. 65.

cxxvii See LU EMN NCP, Visa Policy as Migration Channel, Luxembourg, 2011, p. 65.

cxxviii Point of view of NGO, Interview N° 5, page 7, lines 299 to 302 and page 26 lines 1253 to 1260.

cxxix LU EMN NCP answer to FI EMN NCP Ad-hoc query on Best Practices and Methods of Establishing the Identity of Applicants for International Protection, launched on 15 March 2016.

cxxx Information provided by the Directorate of Immigration, 15 June 2017 and 7 July 2017.

cxxxi LU EMN NCP answer to FI EMN NCP Ad-hoc query on Best Practices and Methods of Establishing the Identity of Applicants for International Protection, launched on 15 March 2016.

cxxxii Ministère des Affaires étrangères et européennes, [Rapport d'activité 2016](#), Luxembourg, 2017, p. 15.

cxxxiii See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 3. In practice, the diplomatic authorities sent the documents to the Central Authority for consultation and they trigger the referral to the Directorate of Immigration, Police and intelligence authorities.

cxxxiv See Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of the common visa policy, document n° 13134/16](#) of 13 October 2016, p. 3. In practice, the diplomatic authorities sent the documents to the Central Authority for consultation and they trigger the referral to the Directorate of Immigration, Police and intelligence authorities.

cxxxv LU EMN NCP, Annual Policy Report 2016 on Immigration and Asylum in Luxembourg, National Report (Part 1), 2017, p. 12.

cxxxvi Information provided by the Passports, Visas and Legalisations Office of the Ministry of Foreign and European Affairs on 6 January 2017.

cxxxvii LU EMN NCP, Annual Policy Report 2016 on Immigration and Asylum in Luxembourg, National Report (Part 1), 2017, p. 27.

cxxxviii LU EMN NCP, Annual Policy Report 2016 on Immigration and Asylum in Luxembourg, National Report (Part 1), 2017, p. 27.

cxxxix LU EMN NCP, Annual Policy Report 2016 on Immigration and Asylum in Luxembourg, National Report (Part 1), 2017, p. 27.

cxl Article 2 of the Law of 18 December 2015 on international protection and temporary protection.

-
- cxli Article 3 of the amended Law of 29 August 2008 on free movement of persons and immigration.
- cxlii See Articles 1 to 3 of the [amended Law of 19 June 2013 on the identification of physical persons, the national registrar of physical persons, the identity card and the municipality registers of physical persons](#). See Memorial n° 107 of 25 June 2013.
- cxliii LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 31.
- cxliv <http://definitions.uslegal.com/i/identity-theft/> «Identité» désigne n'importe quel nom, le numéro ou la transmission de données qui peut être utilisé, seul ou en conjonction avec toute autre information, d'identifier une personne en particulier, y compris les éléments suivants:
1. un nom, numéro de sécurité sociale, date de naissance, officielle émise par le gouvernement le numéro de permis de conduire ou d'identification, numéro de passeport du gouvernement, ou de l'employeur ou le numéro d'identification du contribuable;
 2. numéro unique d'identification électronique, adresse, numéro de compte, ou le code de routage, ou
 3. des informations d'identification de télécommunication ou dispositif d'accès
- cxlv In the law of evidence. Sameness; the fact that a subject, person, or thing before a court is the same as it is represented, claimed, or charged to be. [Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.](#)
- cxlvi Code of Criminal Procedure (CIC) modified by the Law of 16 June 1989, Mémorial A n° 41 of 26 June 1986, <http://www.legilux.public.lu/leg/a/archives/1989/0041/1989A07741.html>
- cxlvii Amended Law of 29 August 2008 on free movement of persons and immigration. Memorial A-113 of 3 July 2013.
- cxlviii Article 45 (1) of the Criminal Procedure Code.
- cxlix Article 135 of the amended Law of 29 August 2008.
- cl Article 45 (2) of the CIC in relation with Articles 104 and 119 (2) of the amended Law of 29 August 2008, in the case that the detainee cannot be expelled within the following 48 hours.
- cli Article 45 (3) of the Criminal Procedure Code.
- clii Article 45 (5) of the Criminal Procedure Code.
- cliii According to Article 119 (6) in accordance with Article 110 (3) of the amended Law of 29 August 2008. See also Article 45 (4) of the Criminal Procedure Code.
- cliv Article 45 (7) of the Criminal Procedure Code.
- clv Articles 45 (4) and (5) of the Criminal Procedure Code.
- clvi Article 45 (6) § 1 and 2 of the Criminal Procedure Code.
- clvii Article 45 (6) § 3 of the Criminal Procedure Code.
- clviii Article 45 (8) of the Criminal Procedure Code.
- clix Law of 18 December 2015 on international protection and temporary protection. Memorial A-255 of 28 December 2015.

-
- clx Article 6 (3) paragraph 2 of the Law of 18 December 2015.
- clxi Article 136 of the amended Law of 29 August 2008.
- clxii Article 120 (4) of the amended Law of 29 August 2008.
- clxiii See Article 136 of the amended Law of 29 August 2008.
- clxiv Article 12 (1) paragraph 1 of the Law of 18 December 2015.
- clxv Article 6 (3) paragraph 2 of the Law of 18 December 2015.
- clxvi Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Convention <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:NOT>
- clxvii Article 12 (2) of the Law of 18 December 2015 on international protection and temporary protection.
- clxviii Article 12 (2) paragraph 2 of the Law of 18 December 2015. See First instance Administrative Court, 1st Chamber, n° 38133 of 6 July 2016; First instance Administrative Court, 2nd Chamber, n° 37862 of 3 May 2016 First instance Administrative Court, 2nd Chamber, n° 37400 of 21 January 2016; First instance Administrative Court, 3rd Chamber, n° 30606 of 21 June 2012. See also First instance Administrative Court, 3rd Chamber, n° 27727 of 29 June 2011. See also First instance Administrative Court, 1st Chamber, n° 27341 of 17 October 2011.
- clxix Article 20 (4) and (5) of the Law of 18 December 2015.
- clxx Articles 27 (1) c), d) and i) of the Law of 18 December 2015.
- clxxi Article 22 (2) a) of the Law of 18 December 2015.
- clxxii Article 22 (4) of the Law of 18 December 2015.
- clxxiii LU EMN NCP answer to FR EMN NCP Ad-Hoc Query on proof of identity, launched on 18 June 2014.
- clxxiv LU EMN NCP answer to FR EMN NCP Ad-Hoc Query on proof of identity, launched on 18 June 2014.
- clxxv Article 38 in accordance with Article 34 (1) and (2) of the amended Law of 29 August 2008 on free movement of persons and immigration. LU EMN NCP answer to FR EMN NCP Ad-Hoc Query on proof of identity, launched on 18 June 2014.
- clxxvi LU EMN NCP answer to FR EMN NCP Ad-Hoc Query on proof of identity, launched on 18 June 2014.
- clxxvii LU EMN NCP answer to FR EMN NCP Ad-Hoc Query on proof of identity, launched on 18 June 2014.
- clxxviii Information provided by the Directorate of Immigration, 15 June 2017.
- clxxix Information provided by the Directorate of Immigration, 15 June 2017.
- clxxx LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 51.
- clxxxi Article 6 (3) of the Law of 18 December 2015 on International protection and temporary protection. The information for Q15b has been confirmed by the Grand-Ducal Police on 27 June 2017.

- clxxxii Article 6 (3) of the Law of 18 December 2015 on International protection and temporary protection.
- clxxxiii LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 51.
- clxxxiv Information provided by the Grand Ducal Police, 27 January 2017.
- clxxxv Article 45 (6) of the Criminal Procedure Code.
- clxxxvi Article 12 (2) paragraph 2 of the Law of 18 December 2015 on International protection and temporary protection.
- clxxxvii Article 20 (4) of the Law of 18 December 2015 on International protection and temporary protection.
- clxxxviii The Administrative Court had expressed doubts regarding reliability of the age assessment method, signalling the high risk of error in applying the Greulich and Pyle scale to non-Caucasian children. See Judgment n° 30869C of 25 July 2012. The Court said: *«La Cour, à l'instar du tribunal, partage les doutes sérieux émis à l'encontre des conclusions du docteur ..., médecin spécialiste en radiologie au CHL, en relation avec l'âge exact de Monsieur ... et notamment la conclusion que celui-ci serait âgé de plus de 18 ans. En effet, si le médecin spécialiste arrive à la conclusion que l'âge osseux de l'intimé déterminé par la méthode de GREULICH et PYLE est supérieur à 18 ans, il convient cependant de signaler que le rapport médical du 6 avril 2012 n'exprime aucune certitude à ce sujet, mais uniquement une « estimation la plus probable ». Dans ce contexte, la Cour rejoint les développements des premiers juges concernant le manque de fiabilité de la méthode appliquée afin de déterminer l'âge réel de Monsieur ... et notamment le « risque d'erreur majeur à l'égard d'enfants non caucasiens, originaires d'Afrique, ou d'Asie, dont le développement osseux peut être tout à fait hétérogène par rapport aux références anglo-saxonnes suscitées et qui peut être profondément affecté par des carences ou des pathologies inconnues dans les populations de référence remontant à plus d'un demi-siècle ». S'y ajoute que d'après un rapport établi en France par l'Académie Nationale de Médecine, invoqué tant par la partie étatique que par l'intimé, la lecture de l'âge osseux par la méthode de GREULICH et PYLE permet uniquement d'apprécier avec une bonne approximation l'âge de développement d'un adolescent en dessous de 16 ans, mais que cette méthode ne permet pas de distinction nette pour des personnes âgées entre 16 et 18 ans, période d'âge précisément litigieuse dans le cas d'espèce. Finalement, le docteur ... précise lui-même en fin de rapport que « la méthode de GREULICH et PYLE a été développée pour suivre dans le temps la maturation squelettique dans les pathologies interférant avec la croissance staturo-pondérale mais pas pour la détermination de l'âge chronologique ». ... « Il s'ensuit que c'est à tort que la partie étatique estime qu'il existerait un faisceau d'indices bien plus concluant en faveur de la majorité de l'intimé qu'en faveur de sa minorité, l'incertitude à ce sujet devant être interprétée en faveur du concerné afin de pouvoir profiter des dispositions protectrices accrues applicables aux mineurs, dont notamment l'article 6, paragraphe (3), de la loi du 28 mai 2009 ».*
- clxxxix Kolb, R. Prof (2010), Synoptic and analytical report on the questionnaire on "False identity information as a challenge to immigration authorities," Council of Europe, Committee of Experts on Terrorism (CODEXTER), p 11, p 93, <https://rm.coe.int/16804a822c>
- cx0c Kolb, R. Prof (2010), Synoptic and analytical report on the questionnaire on "False identity information as a challenge to immigration authorities," Council of Europe, Committee of Experts on Terrorism (CODEXTER), p 11, p 93, <https://rm.coe.int/16804a822c>
- cx0ci LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 38.
- cx0cii LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 38.

-
- cciii Information provided by the Directorate of Immigration, 22 March 2017 and 10 July 2017.
- cciv Information provided by the Directorate of Immigration, 15 June 2017 and 10 July 2017.
- ccv See First instance Administrative court, 1st Chamber, n° 38133 of 6 July 2016.
- ccvi See First instance Administrative court, 1st Chamber, n° 38077 of 30 June 2016.
- ccvii Article 26 (1) paragraph 1, and Article 37 of the Law of 18 December 2015 on International protection and temporary protection.
- ccviii Information provided by the Grand-Ducal Police on 27 June 2017.
- ccix See Judgment Administrative Court, n° 37350C of 5 January 2016, First instance Administrative Court, 1st Chamber, n° 38559 of 7 December 2016, First instance administrative Court, 1st Chamber, n° 31717 of 3 December 2012, First instance Administrative Court, 2nd Chamber n° 31406 of 20 September 2012, First instance Administrative Court, Vacation chamber, n° 31366 of 3 September 2012 First instance administrative court, 3rd Chamber n°30008 of 23 March 2012 and Administrative Court n° 28620C of 24 May 2011 of the Administrative Court.
- cc See Judgment First instance Administrative Court, 2nd Chamber n°34564 of 25 June 2015.
- cci See Judgment n°30008 of 23 March 2012. First instance Administrative Court, 3rd Chamber and n° 28620C of 24 May 2011 of the Administrative Court.
- ccii See Judgment First instance Administrative Court, n° 34184 of 23 February 2015.
- cciii See judgments n°28621 of 26 May 2011, First instance Administrative Court, 2nd Chamber (Nigerian national); n°28671 of 6 June 2011, First instance Administrative Court, 2nd Chamber (Algerian national); n°28767 of 30 June 2011, First instance Administrative Court, 2nd Chamber (Nigerian national), n°28769C of 30 June 2011, Administrative Court (Somalia national)
- cciv See judgments n°30447 of 13 June 2012, First instance Administrative Court, 3rd Chamber (Serbian national in possession of a Serbian passport issued on 9 March 2010), n°30358 of 7 June 2012, First instance Administrative Court, 2nd chamber (Serbian national in possession of a Serbian passport issued on 13 November 2008), n°30335, First instance Administrative Court, 2nd Chamber (Serbian nationals in possession of a Serbian passport issued on 17 December 2011), n°30381 of 27 June 2012, First instance Administrative Court, 3rd Chamber (Montenegrin national in possession of a valid passport issued on 25 June 2008), n°30168 of 26 June 2012, First instance Administrative Court, 3rd Chamber (Montenegrin national with valid passport); n°29801 of 30 March 2012, First instance Administrative Court, 3rd Chamber (Albanian national with valid passport), n° 30557 of 9 July 2012, First instance Administrative Court (Macedonian national with a valid passport issued on 30 August 2010)
- ccv Article 38 in accordance with Articles 34 (1) and (2) of the amended Law of 29 August 2008.
- ccvi Article 58 (1) of the Law of 18 December 2015 on international protection and temporary protection.
- ccvii Article 58 (2) of the Law of 18 December 2015 on international protection and temporary protection.
- ccviii Article 12 (2) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ccix LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 33.

Challenges and practices for establishing applicants' identity in the migration process

-
- ccx European Return Fund, Pluriannual programme 2008-2013, p 13, http://www.olai.public.lu/en/publications/programmes-planactions-campagnes/programme_fer/prog-pluriannuel-fer.pdf
- ccxi Information provided by the Directorate of Immigration, 15 June 2017.
- ccxii Article 20 (4) of the Law of 18 December 2015 on International protection and temporary protection.
- ccxiii Article 20 (4) of the Law of 18 December 2015 on International protection and temporary protection.
- ccxiv Article 13 (2) in accordance with Articles 28 and 32 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxv Article 15 (1) of the Law of 18 December 2015 on international protection and temporary protection.
- ccxvi Article 15 (4) of the Law of 18 December 2015 on international protection and temporary protection.
- ccxvii Article 15 (2) of the Law of 18 December 2015 on international protection and temporary protection.
- ccxviii Article 13 (2) paragraph 3 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxix Information provided by the Directorate of Immigration, 15 June 2017.
- ccxx Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxi Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxii Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxiii Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxiv Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxv Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxvi Article 12 (5) of the Law of 18 December 2015. This disposition is the same norm contained in Article 8 of the abrogated Law of 5 May 2006 (See [parliamentary document n° 6779/00](#) of 31 March 2015, p. 40). In the exposition of motives the main objective of this Article is to find identification documents that probably were hidden by the applicant in order to prevent abuse of the international protection procedure. See [Parliamentary document n° 5437/00](#) of 27 January 2005, p. 30
- ccxxvii Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxviii Article 28 (1) of the Criminal Procedure Code.
- ccxxix Article 24 (1) and (2) of the Criminal Procedure Code.
- ccxxx Article 33 (1) of the Criminal Procedure Code.
- ccxxxi Information provided by the Directorate of Immigration, 15 June 2017.

Challenges and practices for establishing applicants' identity in the migration process

-
- ccxxxii LU EMN NCP answer to NO EMN NCP Ad-hoc query on use of social media (OSINT) in processing claims in connection with asylum applications, launched on 23 September 2016.
- ccxxxiii LU EMN NCP answer to NO EMN NCP Ad-hoc query on use of social media (OSINT) in processing claims in connection with asylum applications, launched on 23 September 2016.
- ccxxxiv LU EMN NCP answer to NO EMN NCP Ad-hoc query on use of social media (OSINT) in processing claims in connection with asylum applications, launched on 23 September 2016.
- ccxxxv Information provided by the Directorate of Immigration, 15 June 2017.
- ccxxxvi Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxxxvii Article 120 (4) of the amended Law of 29 August 2008.
- ccxxxviii Article 120 (4) of the amended Law of 29 August 2008.
- ccxxxix Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxli Article 120 (4) of the amended Law of 29 August 2008. In cases of placement in detention, it is obligatory.
- ccxli Article 120 (4) of the amended Law of 29 August 2008.
- ccxlii Article 45 (6) paragraph 4 of the Criminal Procedure Code.
- ccxliii Information provided by the Directorate of Immigration, 7 July 2017.
- ccxliv Article 45 (6) paragraph 4 of the Criminal Procedure Code.
- ccxlv Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxlvii Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- ccxlviii Article 120 (4) of the amended Law of 29 August 2008.
- ccxlix Article 120 (4) of the amended Law of 29 August 2008.
- ccxlix Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection in accordance with Article 100 (3) of the amended Law of 29 August 2008.
- ccd Centre de Coopération Policière et Douanière, established in March 2003. This center was established on the basis of a quadrilateral agreement between the Germany, Belgium, France and Luxembourg.
- Police, gendarmes and customs of neighboring countries are represented alongside police Luxembourg,
http://www.police.public.lu/PoliceGrandDucale/mission_organigramme/description/direction-generale/CCPD/index.html
- ccdi The Administrative Courts recognize the usefulness of these databases. See Administrative Court, n° 28620C of 24 May 2011.

Challenges and practices for establishing applicants' identity in the migration process

-
- cclii Article 27 (1) i) of the Law of 18 December 2015 on international protection and temporary protection. See also Administrative Court n° 28769C of 20 June 2011. It is important to mention that in this case the court decided that the offer by the detainee of submitting himself to a DNA test was not relevant because for the identification on the EURODAC files the only valid information are fingerprints.
- ccliii Article 120(4) of amended Law of 29 August 2008
- ccliv LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 35 and 36.
- cclv <http://www.police.public.lu/fr/police-se-presente/poste-unites-police/direction-generale/ccpd/index.html>
- cclvi Article 6 (3) paragraph 2 and 12 (2) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- cclvii Information provided by the Directorate of Immigration, 7 July 2017.
- cclviii Information provided by the Directorate of Immigration, 7 July 2017.
- cclix Information provided by the Directorate of Immigration, 7 July 2017.
- cclx Information provided by the Directorate of Immigration, 7 July 2017.
- cclxi Information provided by the Directorate of Immigration, 23 March 2017 and 10 July 2017.
- cclxii Information provided by the Directorate of Immigration, 15 June 2017.
- cclxiii Information provided by the Directorate of Immigration, 15 June 2017.
- cclxiv Information provided by the Directorate of Immigration, 15 June 2017.
- cclxv Article 38 in accordance with Article 34 (1) and (2) of the amended Law of 29 August 2008.
- cclxvi Article 9 of the amended grand ducal regulation of 5 September 2008 implementing certain dispositions regarding the administrative formalities foreseen in the Law of 29 August 2008 on free movement of persons and immigration.
- cclxvii Article 10 d) and Article 13 (2) paragraph 2 of the Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing Community Code on Visas (Visa Code).
- cclxviii Article 10 c) and Article 13 (2) paragraph 1 of the Regulation 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing Community Code on Visas (Visa Code).
- cclxix See LU EMN NCP answer to SE EMN NCP Ad-hoc query on residence permit cards and biometric identifiers, launched on 6 November 2012 and LU EMN NCP answer to LT EMN NCP Ad-Hoc Query on sending identity authorizing documents to TCNs and MS citizens, launched on 8 January 2013.
- cclxx See Administrative Court, n° 33834C of 18 March 2014.
- cclxxi LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 44. See also Article 26 (1) of the Law of 18 December 2015 on international protection and temporary protection.
- cclxxii See Judgment First instance Administrative Court, n° 34184 of 23 February 2015.

Challenges and practices for establishing applicants' identity in the migration process

- cclxxiii First instance Administrative Court, 1st Chamber, n° 30032 of 16 April 2012. See also First instance Administrative Court, 3rd Chamber, n° 28745 of 23 November 2011.
- cclxxiv See Administrative Court, n° 38294C of 24 January 2017, First instance Administrative Court, n° 36968 of 14 July 2016, Administrative Court, n° 26683C of 18 May 2010, First instance Administrative Court, 1st Chamber, n° 25548 of 25 January 2010.
- cclxxv After the judgment of the Administrative n° n° 30869C of 25 July 2012, which questioned the reliability of the test, the Directorate of Immigration decided to continue treating the applicant as a minor. See also, LU EMN NCP, Policies, practices and data on unaccompanied minors in 2014, National Report, Luxembourg, 2015, p. 18.
- cclxxvi See Administrative Court, n° 33834C of 18 March 2014.
- cclxxvii First instance Administrative Court, 1st Chamber, n° 30032 of 16 April 2012. See also First instance Administrative Court, 3rd Chamber, n° 28745 of 23 November 2011.
- cclxxviii Articles 26 (1) and 37 (3) (5) of the Law of 18 December 2015 on international protection and temporary protection.
- cclxxix Article 37 (5) of the Law of 18 December 2015 on international protection and temporary protection. See also: First instance Administrative Court, n° 30606 of 3rd Chamber of 21 June 2012.
- cclxxx See First instance Administrative Court, 1st Chamber, n° 30032 of 16 April 2012, 3rd Chamber, n° 30023 of 13 June 2012, 1st Chamber, n° 29406 of 7 May 2012, 3rd Chamber n° 29203 of 7 March 2012, See also Articles 37 (1) (2), (3) and (5) of the Law of 18 December 2015
- cclxxxI First instance Administrative Court, 1st Chamber, n° 25586 of 19 May 2009.
- cclxxxII See First instance Administrative Court, 1st Chamber, n° 29406 of 7 May 2012.
- cclxxxIII Kolb, R. Prof (2010), Synoptic and analytical report on the questionnaire on "*False identity information as a challenge to immigration authorities,*" Council of Europe, Committee of Experts on Terrorism (CODEXTER), p 94, <https://rm.coe.int/16804a822c>
- cclxxxIV First instance Administrative Court, n° 29406 of 7 May 2012.
- cclxxxV Article 22 (4) of the Law of 18 December 2015 on international protection and temporary protection.
- cclxxxVI Articles 47 (3) b) and 52 (3) b) of the Law of 18 December 2015 on international protection and temporary protection.
- cclxxxVII LU EMN NCP, Establishing Identity for International Protection: Challenges and Practices, Luxembourg, 2013, p. 44.
- cclxxxVIII Articles 27 (1) c), d) and i) of the Law of 18 December 2015
- cclxxxIX A large number of relevant case law on the subject could be identified in the EMN jurisprudence database, www.emn.lu
- ccxc See First instance Administrative Court, n° 30008 of 23 March, 2012. Also First instance Administrative Court, 1st Chamber, n° 29241 of 24 October 2011. See also First instance Administrative Court, 2nd Chamber, n° 24337 of 13 October 2008.
- ccxi Information provided by the Directorate of Immigration, 15 June 2017.
- cccii Directorate of Immigration, Ministry of Foreign and European Affairs, Bilan de l'année 2016 en matière d'asile et d'immigration, Luxembourg, 2017, p. 3.

- ccxciii European Return Fund, Pluriannual programme 2008-2013, p 18, http://www.olai.public.lu/en/publications/programmes-planactions-campagnes/programme_fer/prog-pluriannuel-fer.pdf. See Administrative Court n° 28769C of 20 June 2011.
- ccxciv E.g. in Judgment n°30009 the First instance Administrative Court recognized that even though the personnel of the Directorate of Immigration had been in close contact with the Embassy of Mali, the foreseen interview to identify the person had not been possible (after almost five months) because of the impairment of the diplomatic officials to do so. Or see Administrative Court n° 28790C of 24 June 2011 on cooperation with the diplomatic mission of Algeria in Brussels. The court stated: «Or, l'ensemble de ces démarches entreprises par les autorités luxembourgeoises ne permet pas de suivre les reproches de l'intimé en rapport avec un défaut de diligences de leur part, étant insisté sur ce qu'il ne saurait leur être reproché d'avoir attendu dans une première phase 20 jours avant de relancer téléphoniquement le consulat algérien et ensuite 16 jours pour adresser une lettre de rappel aux autorités algériennes afin d'obtenir la confirmation de l'identité de l'appelant et par la suite l'émission d'un laissez-passer, étant donné dans ce contexte que les autorités luxembourgeoises sont essentiellement tributaires de la collaboration et de l'efficacité des autorités étrangères».
- ccxcv European Return Fund, Pluriannual programme 2008-2013, http://www.olai.public.lu/en/publications/programmes-planactions-campagnes/programme_fer/prog-pluriannuel-fer.pdf
- ccxcvi Information provided by the Directorate of Immigration, 23 March 2017.
- ccxcvii Article 101 (1) 3) and 4) of the amended Law of 29 August 2008.
- ccxcviii Article 78 (3) of the amended Law of 29 August 2008.
- ccxcix Information provided by the Directorate of Immigration, 15 June 2017.
- ccc See LU EMN NCP, Resettlement and Humanitarian Admission Programmes in Europe – what works? National Report, Luxembourg, 2016, p. 17.
- ccci Information provided by the Directorate of Immigration, 15 June 2017.
- cccii Information provided by the Directorate of Immigration, 15 June 2017 and 10 July 2017.
- ccciii Information provided by the Directorate of Immigration, 15 June 2017.
- ccciv See http://ec.europa.eu/justice/data-protection/international-transfers/pnr-tftp/pnr-and-tftp_en.htm and <https://cnpd.public.lu/fr/dossiers-thematiques/caractere-sensible/transf-internati/coop-justice-police/index.html>
- cccv Information provided by the Directorate of Immigration, 15 June 2017.
- cccvii <https://cnpd.public.lu/fr/dossiers-thematiques/caractere-sensible/transf-internati/coop-justice-police/index.html>
- cccviii See LU EMN NCP, Resettlement and Humanitarian Admission Programmes in Europe – what works?, National Report, Luxembourg, 2016, p. 17; Information provide by the UNHCR on 27 June 2016 and See also: UNHCR, Resettlement Handbook, Geneva, revised edition, July 2011.
- cccix Information provided by the Directorate of Immigration, 15 June 2017.
- cccix <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>

-
- cccx <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cccxi <http://www.gouvernement.lu/4505327/missions-diplomatiques-et-consulaires-luxembourgeoises>
- cccxi Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxiii Article 1 (2) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxiv Article 1 (3) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxv Article 2 a) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxvi Article 5 (2) a) to n) of the Law of 19 June 2013.
- cccxvii Article 2 b) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxviii Article 2 c) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxi Article 2 d) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the Law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxx Article 2 e) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxxi Article 2 f) of the Grand-ducal regulation of 26 September 2008 on the creation of a database for treating personal data needed for the implementation of the law of 29 August 2008 on free movement of persons and immigration and determining the personal data to which the Ministry in charge of Immigration can access in order to make the controls foreseen by the law.
- cccxxii Article 2 of the Grand-ducal regulation of 19 May 2011 that modifies: 1. the Grand-Ducal regulation of 5 September 2008 on the execution of certain disposition on administrative formalities foreseen by the Law of 29 August 2008 on free movement of persons and immigration; 2. the Grand-Ducal regulation of 26 September 2008 on the creation of a database for treating personal data)

- cccxxiii LU EMN NCP answer to EE EMN NCP Ad-hoc query on fingerprint biometry and facial image in identity documents launched on 14 February 2014.
- cccxxiv Article 4 (1) and (2) and 5 (1) of the Law of 19 June 2013.
- cccxxv Article 1 (2) paragraph 2 of the Law of 19 June 2013.
- cccxxvi Police Grand-ducale, Rapport d'activité 2016 de la Police Grand-ducale, Luxembourg, 2017, p. 32. Also see <https://cnpd.public.lu/fr/dossiers-thematiques/caractere-sensible/transf-internati/coop-justice-police/index.html>
- cccxxvii Police Grand-ducale, Rapport d'activité 2016 de la Police Grand-ducale, Luxembourg, 2017, p. 33. Also see <https://cnpd.public.lu/fr/dossiers-thematiques/caractere-sensible/transf-internati/coop-justice-police/index.html>
- cccxxviii Police Grand-ducale, Rapport d'activité 2016 de la Police Grand-ducale, Luxembourg, 2017, p. 32. See also, <https://cnpd.public.lu/fr/dossiers-thematiques/caractere-sensible/transf-internati/coop-justice-police/index.html>
- cccxxix See <https://cnpd.public.lu/fr/commission-nationale/activites-eur-inter/VIS-SCG/index.html>
- cccxxx Information provided by the Grand-Ducal Police, 27 June 2017.
- cccxxxi Article 6 (3) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.
- cccxxxii LU EMN NCP answer to FI EMN NCP Ad-hoc query on Best Practices and Methods of Establishing the Identity of Applicants for International Protection, launched on 15 March 2016.
- cccxxxiii Articles 6 (3) paragraph 2 and 12 (2) paragraph 2) of the Law of 18 December 2015 on international protection and temporary protection.
- cccxxxiv LU EMN NCP, Visa Policy as Migration Channel, Luxembourg, 2011, p. 47.
- cccxxxv See LU EMN NCP, Annual Policy Report 2016 on Immigration and Asylum in Luxembourg, National Report (Part 1), 2017, p. 12.