



# **Establishing Identity for International Protection: Challenges and Practices in Belgium**

Focused Study of the Belgian National Contact Point for the European  
Migration Network (EMN)



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The European Migration Network was set up with the purpose of providing up-to-date, objective, reliable and comparable information in the areas of asylum and migration for the European institutions, national authorities and other stakeholders.

The Belgian National Contact Point is a mixed point composed of experts from the Immigration Office, the migration observatory of the Centre for Equal Opportunities and Opposition to Racism and the Office of the Commissioner General for Refugees and Stateless Persons.

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## EMN FOCUSED STUDY 2012

### Establishing Identity for International Protection: Challenges and Practices

#### National Contribution from BELGIUM

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

#### Top-line 'Factsheet'

(National Contribution)

#### Executive Summary

The *first section* of this report outlines the *scope and the challenges of the identification issue* facing asylum seekers and rejected asylum applicants in Belgium, including the prevailing *legislative and institutional framework*.

As regards the extent to which identity documents can be produced for identification purposes, little statistical information is available. This applies to both the asylum procedure and to the return of rejected asylum applicants.

The present study did bring to light however that, with the exception of asylum seekers from the Balkan countries, many people applying for asylum in Belgium do not present their original travel and identity documents. During the interview with the asylum seeker, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), which is the central asylum application processing body in Belgium, will try to gain an insight into the reasons why the person in question is seeking international protection and will also try to establish the applicant's identity details.

Rejected asylum applicants often tend to be rather uncooperative when it comes to establishing their identity in view of a forced return. This translates itself into concealing or destroying documents, making false statements and using several identities. As regards identification and the issuing of laissez-passers, collaboration with the diplomatic representations of asylum seekers hailing from a number of African and Asian countries tends to be a laborious process. This problem becomes even more emphatic when a rejected asylum applicant is imprisoned. Aside from that, there are various technical and practical obstacles, such as the absence of reliable national population registers and the lack of digital databases with fingerprint records in the countries of origin, to contend with. In addition, the identification, detention and removal of rejected asylum applicants and other non-nationals illegally present on Belgian territory take up a considerable amount of the authorities' resources and can be a delicate matter at times.

The Aliens Act defines an identified non-national, lays down the terms governing the taking of fingerprints, describes the length of time illegally residing migrants may be detained for and also the period within which the identification process must be put in motion.

In Belgium, it is the Immigration Office (Asylum Directorate) that registers asylum applications and takes fingerprints. However, it is the CGRS which assesses the asylum applications and examines all the elements, among which an applicant's identity. Identification within the framework of the return of rejected asylum applicants falls within the remit of the Immigration Office (IO), more specifically, of the identification cells<sup>1</sup>, if need be, in consultation with the recently founded SEFOR<sup>2</sup> Bureau. The authentication of identity documents is in principle performed by specialist units of the Federal Police.<sup>3</sup>

The *second section* of this report describes the *identification techniques* used in Belgium. In the asylum procedure, the asylum seeker's interview by the CGRS plays a central part in the assessment of the account an asylum seeker gives in support of his application and in the determination of his identity. The CGRS relatively seldom resorts to other identification techniques. During the interview with the applicant, particular attention is paid to the identity aspects nationality and region of origin. As regards the return of rejected asylum seekers, the identification techniques most commonly used are the taking and checking of fingerprints, the analysis of the elements in the administrative file (among which the asylum application file) and the interview (by the IO and/or embassy personnel from the country of origin).

The *third section* of this report describes the *impact of the identification process on the decision* regarding the asylum application and on the return of rejected asylum applicants. The lack of identity documents does not necessarily imply that an asylum application will be rejected. In principle, asylum seekers are obliged to present the documents at their disposal or else make a convincing case as to why they are unable to do so. In practice though, this can be difficult to enforce at times. Most cases of identity fraud in asylum files involve fraudulent statements about a person's nationality or origin. In these situations, applicants are often denied protection status as the need for protection cannot be accurately assessed. In terms of returning people to their country of origin, it goes without saying that it is impossible to repatriate a person whose identity cannot be established and especially whose nationality cannot be ascertained. More often than not, the countries of origin want to know the nationality, name and date of birth before they are prepared to issue a laissez-passer.

The *final section* of this focussed study describes the *conclusions* and offers a number of concrete *recommendations* that may be useful to policymakers. In this respect, reference is made to the importance of a further optimization of the collaboration between the various bodies involved in the implementation of the asylum and return policy and to a possible linking of asylum application files to other residency procedures.

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<sup>1</sup> The Identification Cell (CID) and the Detainee Identification Cell (DID)

<sup>2</sup> Sensitization follow-up and return

<sup>3</sup> Central Squad against Forgery (CDBV/OCRF) and the *Valse en Vervalste Reisdocumenten* (Fake and Forged Travel Documents) (VVR) Unit of the Federal Police at Brussels Airport.

## Section 1

### The National Framework

#### **1.1 The Challenges and Scope of the issue**

*Is the issue of establishing identity in the absence of credible documentation considered an issue within the framework of the procedure for:*

*a) international protection?; and*

*b) the forced return of a rejected applicant to their (presumed) country of origin?*

*If Yes, briefly outline for either or both of the two 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)*

*a) The issue of establishing a person's identity within the framework of the asylum procedure*

The main problem is that, in most asylum application files, no reliable original identity or travel documents are presented. Under Belgian legislation however, asylum seekers are obliged to, within the framework of the asylum procedure, produce all the identity documents at their disposal<sup>4</sup>. The failure to produce official identity documents is more pronounced in respect of applicants coming from certain countries (cf. below).

From a questionnaire the department heads of the various geographical sections of Belgium's central asylum application processing body, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) completed, it cannot be deduced that most asylum seekers are actually not in a position to produce their official identity or travel documents. Leaving a number of specific countries of origin aside, like Somalia, for one, most department heads quoted the following reasons as the main explanations asylum seekers gave as to why they were often unable to produce any original identity or travel documents:

1. On the advice or at the insistence of third parties (family, acquaintances, smuggler...).
2. So as to portray themselves as someone from another region of origin in the belief that this would enhance their chances of being granted protection status.
3. To prevent their forced return in the event their application is turned down.

On account of the fact that few reliable official identity or travel documents are produced within the framework of the asylum procedure, the CGRS has to spend a lot of its interview time on trying to establish applicants' identity details (mainly in respect of their origin). By means of specific interview techniques and Country of Origin Information (COI) research, the CGRS tries to evaluate the statements the asylum seekers furnish. One of the main problems however is that the body processing asylum applications has very few mechanisms at its disposal to, as it were, compel asylum seekers to produce their documents, especially since the lack of reliable identity documents does not seem to be an impediment to applicants being granted protection status.

Furthermore, in many cases the CGRS only has the interview to base itself on to establish or verify the identity details of the person concerned and will have few other identification

<sup>4</sup> Article 9 and article 22 of the Royal Decree (RD) regulating the activities and the jurisdiction of the CGRS.

techniques it can resort to. Within the framework of the asylum procedure, it is true that asylum seekers are systematically fingerprinted but this is basically done to determine which Member State is responsible for the processing of the asylum application (cf. below). Contacting the authorities of applicants' country of origin to compare identity details or fingerprints is obviously not an option within the framework of an asylum application. Other identification techniques such as language analysis or photograph comparison are only useful in a number of situations, do not provide any conclusive information as regards a person's identity and are rarely decisive. As a result, these techniques are not often used. As regards other types of identification techniques, such as DNA analysis or iris scans, there currently is no technical or regulatory framework in place. At that, it must also be said that, even when documents are actually produced, it would neither be feasible nor possible to systematically check the authenticity of every identity document (cf. below).

***b) The issue of establishing a person's identity within the framework of the forced return of rejected asylum applicants***

*Preamble:*

It has to be pointed out that Belgium only apprehends a very small percentage of rejected asylum applicants with a view to their removal. A number of rejected asylum applicants can legally extend their stay in Belgium by initiating other residency procedures or by filing another asylum application. Others will disregard the order to leave the territory following an unsuccessful appeal and will remain in Belgium illegally without being apprehended with a view to repatriation. In certain cases, citizens from a number of countries of origin who are apprehended for being in the country illegally will not even be detained since there is no way of effectively repatriating them anyhow. Other rejected asylum applicants will effectively leave Belgian territory and may either or not return to their country of origin. As it is particularly difficult to estimate the numbers making up the individual categories, it would be no easy matter to chart the identification issues for all rejected asylum applicants.<sup>5</sup>

The main reason why rejected asylum applicants (and other persons staying in the country illegally) can often not be returned to their country of origin is firstly due to the lack of cooperation the persons themselves are prepared to give during the identification process. This lack of cooperation translates itself into withholding or destroying identity documents, using forged identity documents or making false statements regarding their identity or nationality and using several identities. Aside from that, the cooperation with a number of countries of origin regarding the identification process and/or the issuing of a laissez-passer with a view to people's forced return leaves a lot to be desired.<sup>6</sup> This problem poses itself especially when it comes to identifying persons serving a jail sentence. The impact of applicants' (lack of) cooperation is also illustrated by the fact that rejected asylum applicants who are willing to voluntarily return to their country of origin are easier to identify and repatriate than people who are listed for a forced return. A voluntary return can be an option for some people or some countries of origin while a forced return would not. In the former case, the person concerned will in principle properly cooperate with the identification process and will not hide his travel documents. Also the countries of origin are in principle more willing to, if need be, issue a laissez-passer for people returning voluntarily.

Apart from that, a number of identification files are simply complex; this would be the case if

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<sup>5</sup> For obvious reasons there are no statistics on hand about the number of rejected asylum applicants who are illegally residing on the territory or on those who left the country without notification.

<sup>6</sup> Source: interview with Mr. VERBAUWHEDE Geert, head of the Identification and Repatriation Directorate, dd. 31/07/2012.

the nationality or country of habitual residency of an applicant cannot be conclusively established or if an applicant is unknown in his country of origin. At that, technical or operational obstacles in either the country of origin or in Belgium can also hamper the identification and return of some people. Firstly, Belgium does not have limitless detention centre space where people due to be repatriated can be detained and, secondly, the identification and practical organisation of a forced return requires a considerable amount of resources. Several countries of origin do not have any reliable national population registers, let alone digital databases containing biometric data.

*If **Yes**, please also indicate which of the following factors listed below contribute to the issues. Please support your answers with reference to statistics (e.g. those presented under Question 1.2 below), research or any other sources of information (e.g. media debates, case-law, policy documents, practitioners' views).*

➤ ***The volume of cases where no credible documentation is available to substantiate an applicant's identity is considered to be large and/or growing.***

There is no statistical information about the percentage of asylum seekers who, within the framework of their asylum application, produced their identity documents or not. It is clear however that the number of files where no official original identity documents (identity card or passport) were produced in support of people's asylum application is quite significant. The department heads of the geographical sections of the CGRS believe that it is safe to say that only in 20% of cases at the most original identity documents (identity card or passport) are produced. As a rule, asylum seekers from the Balkan countries do tend to produce their identity documents. In the case of most other countries of origin, other types of documents which provide some indication as to a person's identity are presented on a regular basis. These tend to be civil instruments (birth certificates, marriage certificates...), driving licences, diplomas or a copy of identity documents.

There is no clear trend as to whether the production of reliable identity documents within the framework of asylum applications is on the increase or decrease.

Belgium does not have any clear overview either of the extent to which forged identity documents are presented within the framework of asylum procedures. This can be attributed to the facts that the authenticity of the documents that are being produced is not systematically checked and that, in respect of a number of countries of origin, the authenticity of a document is extremely difficult or impossible to verify.<sup>7</sup> For a number of countries of origin there are indications that a relatively large number of documents that are being produced in support of applicants' identity or origin are forged, or not factually accurate (Iraq, Afghanistan, Albania, Bangladesh...). In the case of Iraq for instance, the CGRS gets the Federal Police (Central Squad Against Forgery cf. below) to authenticate any identity cards it has any doubts about. It seems that in about 50% of cases, documents have actually been forged.<sup>8</sup>

Also in terms of returning rejected asylum applicants, the aforementioned lack of reliable identity and travel documents can be problematic in many cases. Identity documents are an important element when it comes to convincing the diplomatic representation of a country of origin of a person's nationality and identity. If a person is in possession of a valid travel document, he will no longer need to obtain a laissez-passer to return to his country of origin.

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<sup>7</sup> In the case of certain countries of origin documents are also being circulated which do satisfy the official formalities but which are intrinsically incorrect.

<sup>8</sup> Source: questionnaire presented to the CGRS heads of department, section Asia-Middle East.

➤ ***The measures used to establish an applicant's identity in the absence of credible documentation are resource-intensive.***

When, within the framework of an asylum application, there are no reliable identity documents available, the CGRS staff will try to establish the applicant's identity and especially his origin by means of special interview techniques (origin check). These interview techniques are a labour-intensive and time-consuming affair, not to mention the fact that also preparing an interview like this takes a lot of time.

When it comes to returning rejected asylum applicants, who cannot present any reliable identity or travel documents, to their country of origin, the competent departments of the IO will have to carry out an investigation into the identity of the persons concerned. This investigation may be ponderous and labour-intensive (analysis of the file, the taking and comparing of fingerprints, cooperation from and persuading the country of origin, organising an interview...). Identification procedures like these may take months to complete, especially when the applicants in question are in prison.

➤ ***The measures used to establish identity are not always successful.***

The aforementioned specific interview within the framework of the international protection procedure for the purpose of establishing the identity and origin of an asylum seeker does not always produce a conclusive result. At that, one must always weigh up what the applicant in question can reasonably be expected to know in view of his profile. On the other hand, factual knowledge about a certain region may also have been studied of course.

Identification within the framework of the forced return of rejected asylum applicants is not always successful either (cf. below).

➤ ***Decision-making on applications for international protection is difficult due to the fact that measures used to establish identity are not always successful.***

This is certainly a major issue in the case of certain countries of origin where the risk of persecution or serious prejudice varies from region to region. The decision-making process and the statement of reasons can be seriously complicated because of a lack of clarity regarding the identity details in the broad sense, such as nationality, region of origin or the possibilities of finding a flight alternative.

➤ ***A significant proportion of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful.***

The statistical data on hand (cf. point 1.2) show that in about 50 to 60% of cases, the identification files of people being detained with a view to removal are closed with a positive result. These figures do not only relate to rejected asylum applicants but also to every irregular migrant in respect of whom an identification procedure was launched with a view to return.<sup>9</sup> The exact percentage of rejected asylum applicants who were arrested with a view to removal and who could not be returned to their country of origin because their identity could

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<sup>9</sup> It is worth noting that some people will not be detained and identified with a view to removal because this course of action is neither possible nor desirable.

not be unequivocally established cannot be specified. The exemption from removal and/or cancellation of a person's removal order may be inspired by various reasons other than whether or not the person in question could be identified (medical grounds, practical reasons, an appeal procedure...).

Furthermore, not every rejected asylum applicant, whose identity the Immigration Office was able to establish, will be (timely) issued with a laissez-passer by the country of origin, with the result that he cannot be returned either.<sup>10</sup>

**List the countries of (claimed) origin for which establishing identity is particularly difficult, (i) when considering asylum applications; (ii) for implementing return**

Establishing a person's identity and the lack of reliable documents is a major issue both in terms of the asylum procedure and of ascertaining a person's identity with a view to that person's return in the case of most African and Asian countries. For Belgium, it is especially difficult to establish the identity of people hailing from Afghanistan, Iraq, Guinea and the Democratic Republic of Congo. As far as the first two countries are concerned, often only copies or identity documents which are either not very reliable or have been forged are produced; people coming from the latter two countries often do not produce any travel or identity documents at all. Moreover, these particular countries of origin do not have any reliable national population registers or databases containing people's identity details. These very problems also pose themselves in relation to other countries but the four countries in question also happen to be some of the main countries where people seeking asylum in Belgium come from.

This identification problem is less of an issue with people coming from the Balkan as they more often than not are able to produce identity documents. Because of that and also on account of the relatively excellent collaboration with these countries of origin, identification within the framework of a person's return tends to run a whole lot smoother. The identification issue is also slightly less problematic for people coming from Russia (even though these citizens too don't often produce a passport either).<sup>11</sup>

➤ ***Other (Member) State specific factors***

Aside from applying for asylum, non-nationals can also apply for a residence status in Belgium on grounds other than the need for asylum such as regularisation (9bis) and medical regularisation (9ter). On account of the fact that regularisation procedure files are not automatically linked to asylum application files, it is not unheard of that one and the same person does present certain identity documents within the framework of one procedure yet withholds them within the framework of the other procedure. Because there is no regulatory framework in place that deals with the taking of fingerprints within the framework of regularisation procedures, it is also possible to initiate an asylum procedure and a regularisation procedure using two different identities.

Furthermore, a person applying for regularisation (9bis) is not obliged to produce any identification while his asylum procedure is pending. This situation may even encourage the practice of initiating an asylum procedure improperly and of withholding identity documents.

In Belgium there is quite a lot of effort made to inform the asylum applicant on his rights and

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<sup>10</sup> If the person concerned is in possession of a valid travel document, he will not need to be issued with a laissez-passer. For a number of countries, the Belgian government itself can issue laissez-passers.

<sup>11</sup> Source: questionnaire completed by the department heads of the CGRS geographical sections + interview with Geert VERBAUWHEDE (head of the Identification and Repatriation Directorate).

duties during the asylum procedure. When an asylum seeker applies for asylum information brochures are provided. The information brochures provide general information on the asylum procedure and it mentions that the applicant should submit documents proving his identity and origin (including his nationality), his itinerary and the facts mentioned, It is also made clear that the applicant should tell the truth and that false statements may result in a rejection of the asylum application. In the reception center the applicant will also be shown an information video.

## **1.2 Statistics on the Scale of the Issue**

*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 differs from the 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 or of rejected applicants, etc.) If statistics are not available, please try to indicate an order of magnitude. Where available, statistics from Eurostat should be used and presented annually covering the period between 2007 and 2011 inclusive.*

	2007	2008	2009	2010	2011	<b>Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)</b>
Total Number of applicants for international protection		15,940	22,955	26,560	32,270	
Number of applicants for whom <u>identity</u> was not documented at the time of application						No reliable statistical data available
Number of applicants for whom <u>identity was wholly or partially established</u> during the asylum process thereby allowing the relevant authorities to reach a particular decision on international application (e.g. grant, refuse, defer)						No statistical data available
Total Number of <u>Positive Decisions</u>		3,505	2,910	3,510	5,072	
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application						No statistical data available
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities						No statistical data available

Total Number of <u>Negative Decisions</u>		10,115	12,400	13,160	14,950	
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application						No statistical data available
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities						No statistical data available

As the above table illustrates, there are no statistical data on hand to indicate to what extent *identification was produced in the course of the asylum application assessment by the CGRS*. Whether or not an asylum seeker produces identification is not as yet being recorded in the CGRS database. To gain some sort of insight into the extent to which people produce documentation to back up their identity within the framework of an asylum application and how that impacts on the final decision, a questionnaire was compiled for the purpose of the present report. This questionnaire was presented to the six department heads of the various geographical sections of the CGRS. The findings from this questionnaire are described in the various sections of this report.

Total number of (Forced) <u>Returns undertaken</u> of all rejected applicants	N/A	N/A	919	906	1,254	These data include rejected asylum seekers who were sent back to their country of origin and those who have been sent back to other member states in the framework of the Dublin regulations or bilateral readmissions. (voluntary returns are not included)
Number of (Forced) Returns of rejected applicants whose identity had to be established at the time of return						Not available as for now – The Immigration Office is redeveloping its database, which should make it possible to say which rejected applicants had to be identified.
Number of (Forced) Returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin						Not available as for now, since a number other reasons could also have led to non-removal (illness, appeals, new procedures ...).

As far as people's **identification within the framework of the return procedure** is concerned, there are few figures that specifically relate to the category 'rejected asylum applicants'. Though the numbers of rejected asylum applicants who are actually repatriated can be found in the table above. The CID (the IO's Identification Cell) does in fact not only identify rejected asylum applicants with a view to removing them from the territory but also all other categories of non-nationals illegally staying in the country, such as irregular migrants who have never applied for asylum before.

However, we do have statistical data on hand about the number of identification files within the framework of repatriation, even though the below figures do not exclusively relate to rejected asylum applicants. The figures are not year-specific, i.e. a person who may have been identified during one particular year may not have been removed from the territory until the following year. (Source: IO Activity Report, 2011, pp.157-159).

	2007	2008	2009	2010	2011	<b>Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)</b>
Number of identification files processed by the CID	3,319	3,064	2,863	2,584	1,840	<i>Note:</i> - <i>As of 2009</i> the identification files of detainees are no longer included in this figure. - <i>Prior to 2011</i> the pre-identification files (identification prior to a person's detention by the SEFOR Bureau) are not included in this figure. It concerns 829 files.
Identification files concluded with a positive result (voluntary returns from detention centres + transfer to the repatriation cell with a view to removal)	1,958 (58.99%)	1,680 (54.83%)	1,521 (53.12%)	1,447 (56.02%)	1,157 (62.88%)	
Files transferred with a view to removal	1,204	1,105	1,410	1,293	1,045	
Number of laissez-passers obtained	740	870	797	659	743	
Number of detainee identification files processed by the DID.	/	/	622	645	862	
Number of pre-identification files processed by the SEFOR Bureau	/	/	/	/	829	

### **1.3 Relevant EU and National Legislation**

***Is the process to be used to determine identity within the procedure for international protection laid down in legislation?***

#### **Registration of asylum applications (IO – Asylum Directorate)**

Pursuant to *article 51/10* of the Aliens Act, the competent official takes receipt of the asylum application and takes a statement from the non-national regarding the latter's identity, origin and the route he travelled. At the Immigration Office, the non-national will also be given a questionnaire to complete, in which he is asked to explain the reasons what motivated him to file an asylum application.

#### **Fingerprinting of asylum seekers (IO - PRINTRAK)**

With respect to the asylum procedure, *article 51/3 §1* of the Aliens Act stipulates that asylum seekers, including asylum seekers whose identity is unclear, may be subjected to fingerprinting. *Article 51/3 §2* of the Aliens Act furthermore provides that these fingerprints can only be used to confirm the non-national's identity, to identify the State responsible for processing the asylum application or the State that should deal with the asylum application. *Article 51/3 § 3 of the Aliens Act* also describes the specific bodies and persons authorised to take fingerprints in this type of situation. The Aliens Act goes on to stipulate that these fingerprints shall be destroyed once the non-national has been recognised as a refugee under the terms of the Geneva Convention or has been granted subsidiary protection status.

#### **Asylum procedures dealt with by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**

Once the asylum seeker's asylum application has been registered by the IO and once he has been fingerprinted, he will be called for an interview by the CGRS. On foot of **article 9 and article 22** of the Royal Decree (RD) which regulates the activities and the jurisdiction of the CGRS, the notification shall include a request to produce any documents the asylum seeker may have that can confirm his age, background, including any details about any relevant family members, identity, nationality/nationalities, country/countries or previous place(s) of residence, previous asylum applications, travel routes, identification and travel documents including any other document that might support his asylum application.

**Article 23** of this Royal Decree regulating the activities of the CGRS, stipulates that, in principle, officials are not permitted to hold on to the original national or international documents corroborating a person's identity or nationality but must take a copy of these documents. However, article 23 of this RD does stipulate that *"If the official in charge of the interview were to deem that one or several of these documents merit further investigation, the documents in question may be withheld for as long as it takes to carry out the investigation. The original national or international identity documents retained shall be returned to the asylum seeker as soon as possible."*

The lack of identification does not necessarily imply that the asylum application will be rejected. In this regard, reference can be made to **article 57/7 ter** of the Aliens Act – which in line with article 4, point 5 of the Refugee or Person in Need of International Protection Qualification Directives (2004/83/EC or 2011/95/EU) – stipulates that if an asylum seeker fails to substantiate his statements with documentary or other evidence, he shall be obliged to meet certain conditions. For one, the asylum seeker will have to give a satisfactory explanation as to why he is unable to produce the relevant elements in support.

The bill currently under consideration provides an enhanced explanation for said article 4 point 5 of the Qualification Directive in the Aliens Act while the current article 57/7 ter of the Aliens Act will be replaced by a new article 48/6. This new article 48/6 also emphasizes the duty to cooperate and shall stipulate: *"Asylum seekers shall, as soon as possible, produce all*

*the elements that might support their asylum application.”* This new article of law shall furthermore provide that when an asylum seeker fails to substantiate a number of his statements by means of documents or evidence he shall only be given the benefit of the doubt if the **cumulative conditions** enumerated under article 4 point 5 of the Qualification Directive (conditions a up to and including e) have been satisfied. Said new article 48/6 of the Aliens Act is expected to come into effect early 2013.

***Is the process to be used to determine identity within the procedure for the forced return of rejected applicants laid down in legislation?***

Article 1, paragraph 14 of the Belgian Aliens Act describes the term **identified non-national**. It defines an identified non-national as a non-national in possession of a valid travel document, a valid passport or a valid identity document or in respect of whom the country of origin or the minister can issue a laissez-passer.

This definition of an identified non-national clearly reflects the conditions that must be satisfied before a non-national staying in the country illegally, such as a rejected asylum applicant, can be repatriated to his own country.

In relation to the taking of biometric data, article **30bis** of the Aliens Act provides that biometric data should be construed as the taking of fingerprints and photographs. Article 30bis §2 specifies who may be asked for biometric data. One of the categories, in respect of whom the Act authorises the taking of biometric data, are non-nationals who are asked to leave the country or who have been served with an order to leave the territory. The Act furthermore specifies what these biometric data may be used for. Establishing and/or checking the identity of a non-national is one of the reasons the Act provides for.

**Article 7** and article **74/6** of the Aliens Act specify the **detention periods** non-nationals due to be deported may be subjected to and state that steps must be taken to deport the non-national from the territory within seven days of the person having been detained. In practice, this means that the identification procedure must be set in motion within the first seven days of a person's detention.

In addition, the operational identification procedure to be followed within the framework of returning persons illegally present on the territory has been described in an internal vade mecum. This vade mecum specifies that it must first of all be checked whether the decision to detain the person in question satisfies the legal requirements. The next step involves checking which procedure must be followed (conventional identification procedure, Dublin take-charge request or a bilateral take-charge request). Next, the file will be analysed and checked for any information that may help establish the identity and the nationality of the person concerned. If a person cannot produce any valid travel documents, the competent diplomatic, consular or migration authorities (either in Belgium or in the country of origin) will be contacted with a view to obtaining a laissez-passer.

#### **1.4 The institutional framework at national level**

***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection?***

The IO (Asylum Directorate) and the CGRS

In Belgium, asylum applications are registered by the Asylum Directorate of the Immigration Office (IO). When registering an asylum application, the asylum seeker will be asked for identification. The PRINTRAK Cell fingerprints all asylum seekers aged 14 years and over. The fingerprints are firstly compared with the data in the national database of asylum seekers and then with those in Eurodac.<sup>12</sup> The Eurodac database is not used to establish a person's identity but to check which Member State has the responsibility to examine the asylum application (Dublin Convention). In the case of a positive hit in Eurodac, the Member State(s) in question will be called upon to take charge of or take back the applicant<sup>13</sup>. In its/their reply, the Member State(s) will specify the identities the person in question has used in its/their own country. If none of the Member States can take charge of or take back the applicant and Belgium will have to process the asylum application anyhow, the information regarding the identity details the asylum seeker used in the other EU Member State(s) is added to the file before the file is forwarded to the CGRS.<sup>14</sup>

In Belgium, asylum applications are assessed on their merits, i.e. whether or not the applicant in question does indeed qualify for international protection, by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). Within the framework of the procedure pending before the CGRS, the asylum seeker will also be asked to produce his identity documents. If the asylum seeker is unable to produce any original, authentic identification (passport or identity card), the CGRS will ask the applicant to explain this lack of documentation and to produce other documents (certificate from the registry for births, marriages and deaths, driving licence, copies of identity documents, etc.) that can corroborate his identity.

If the CGRS has any doubts about the authenticity of any of the original identity documents an asylum seeker produces, it can forward the document in question to the Central Squad against Forgery (CDBV/OCRF) of the Federal Police, which will assess the document's authenticity. Not every identity document an asylum seeker presents is systematically forwarded to the Federal Police for an authenticity check; checks like these are rather exceptional.

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<sup>12</sup> The Eurodac-system helps Member States of the European Union (EU) identify asylum seekers and persons who have been arrested because they illegally crossed one of the Union's outer borders. By comparing fingerprints, the EU Member States are able to establish whether an asylum seeker or third-country national, who entered the territory illegally, already lodged an asylum application in another EU Member State and whether an asylum seeker has entered the territory of the Union illegally. 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.

<sup>13</sup> With the exception of Greece.

<sup>14</sup> Source: email correspondence with Mrs. VAN DORPE Els, head of the Dublin Cell (IO), dd. 16/07/2012

***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection who have to (be) forcibly return(ed) to their (presumed) country of origin?***

The IO (the Identification and Repatriation Directorate)

Once the CGRS has turned down an asylum application, the rejected asylum applicant is issued with an order to leave Belgian territory within a certain period of time.<sup>15</sup> Last year, this period of time was extended from 5 to 30 days.<sup>16</sup> However, the enforcement of the order to leave the country will be suspended if the asylum seeker lodges a suspensive appeal with the Council for Alien Law Litigation (CALL) until such time as CALL has ruled on the applicant's appeal.

Asylum seekers who disregard an order to leave the territory once the Council for Alien Law Litigation has dismissed their appeal may be arrested and detained with a view to being forcibly returned to their country of origin. In that case, the IO will be charged with the task of identifying the asylum seeker. The Identification Cell (CID) will try to identify the person illegally present on Belgian territory if the person in question declares not to be in possession of a valid travel document.<sup>17</sup> Persons illegally present on the territory who are arrested with a view to their forced return are not necessarily asylum seekers who have exhausted all remedies at law but may also be persons who never filed an asylum application in the first place. In principle, it is the embassy or the consulate of a person's country of origin which validates the identification or issues travel documents (laissez-passer). These bodies are not informed of the fact whether the person due to be deported is an ex-asylum seeker or not. To keep the detention period in a detention centre to a minimum, the CID has of late begun to process more and more files before any detention measures are taken. The pre-identification files are selected in consultation with the SEFOR (Sensitization, Follow-up and Return) Bureau. Once the competent authority has agreed to issue a travel document, the CID will contact the SEFOR Bureau which will organise the detention of the non-national concerned.<sup>18</sup> The Detainee Identification Cell (DID) is charged with the task of identifying the non-nationals in prisons, with a view to returning them to their country of origin. These would also include rejected asylum applicants. The DID also works in collaboration with SEFOR in that respect.

***Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?*<sup>19</sup>**

Belgium does not have a separate body or central authority that specifically deals with all aspects regarding the identification of asylum seekers or rejected asylum applicants, like in Norway. As explained above, there are specific cells within the existing government departments tasked with establishing or checking identities.

The authentication of documents, produced within the framework of an asylum application, comes within the remit of the Central Squad against Forgery (CDBV/OCFR) of the Federal Police. Documents forwarded to this police unit for authentication purposes may either have been transmitted by the CGRS within the framework of the actual asylum procedure or by the IO within the framework of the procedure aimed at returning rejected asylum applicants.

<sup>15</sup> Annexe 13 quinquies

<sup>16</sup> This extension was introduced to allow non-nationals to make the necessary preparations to leave the country voluntarily.

<sup>17</sup> The files of people illegally present on Belgian territory who are in possession of a valid travel document are not firstly forwarded to the IO's Identification Cell (CID) but straight to the IO's Repatriation Cell (RC).

<sup>18</sup> Source: the Immigration Office 2011 Activities Report, p 155.

<sup>19</sup> This may be a separate body (as in Norway) or a unit within a relevant authority.

At that, the authenticity or validity of original identity or travel documents within the framework of repatriation may also be checked by the *Valse en Vervalste Reisdocumenten* (Fake and Forged Travel Documents) (VVR) Unit of the Federal Police at Brussels Airport or by the competent authority of the country of origin. Papers can also be checked by immigration officers (ILOBEL), the border patrol division, the IO's juridical investigation cell, or the IO's tracking cell.<sup>20</sup>

The answers below relate to the **Central Squad against Forgery (CDBV (NL)/OCFR (FR))** of the Federal Police which is contacted to authenticate identity documents produced within the framework of an asylum application.<sup>21</sup>

- **Has the centre developed its own database / reference base for**
  - **genuine documents?** Yes
  - **false documents?** Yes
- **Does it make use of the database iFADO (iPRADO)<sup>22</sup> for checking false ID documents?** Yes
- **Does it make use of the EDISON<sup>23</sup> system?** No
- **Does its tasks involve:**
  - **Advisory services?** Yes
  - **Development of Methods?** Yes
  - **Training of frontline officers?** Yes
  - **Support with difficult cases?** Yes
- **Does it have a forensic document unit?** Yes, although there is not really a laboratory, there is certain equipment available on the CDBV which other institutions do not have.

**If No, i.e. 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?**  
Cf. Supra

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

Both within the framework of an application for international protection and within the framework of the forced return of asylum seekers, the IO's PRINTRAK Cell cross-checks

<sup>20</sup> Vade mecum on identifications procedures, dd. 21.12.2009, p 3.

<sup>21</sup> Source: telephone interview with Mr. BOUCAR Alain, chief commissioner, head of the CDBV/OCRF, dd. 6 June 2012.

<sup>22</sup> [PRADO](#) Public register of authentic identity and travel documents online

<sup>23</sup> EDISON Travel Documents System

fingerprints with the data in **EURODAC**. In about 15% of asylum applications we do get a EURODAC hit<sup>24</sup>; this does not mean however that, in all these cases, the asylum application is being dealt with by another Member State. When no other Member State is prepared to take charge of a particular applicant for one reason or another, the Member State(s) that were approached would usually forward any information they may have about the identity details the person in question used in the other Member State(s) however.

In principle, it is the Federal Police who will check whether an **alert has been entered in the SIS** (Schengen Information System) in respect of any person who was arrested for being illegally present on Belgian territory with a view to removal. Article 96 of the Convention implementing the Schengen Agreement recommends that persons illegally present on the territory and in respect of whom an alert has been issued in the Schengen Information System should be removed from Schengen territory. Persons who are residing on Belgian territory legally will be released however, irrespective of any alerts. In Belgium, the IO's C-SIS Bureau is in charge of entering, storing and deleting the alerts. The C-SIS Bureau also draws attention to any of the IO's decisions in the *Algemene Nationale Gegevensbank* (General National Database of the Federal Police (ANG)).<sup>25</sup>

The plan is that, in the future, in accordance with articles 20 and 21 of the VIS Regulation, the IO will compare any fingerprints taken within the framework of an asylum application or within the framework of the return of an irregular migrant with the data in the **VIS**.<sup>26</sup> Due to technical reasons this is not possible as yet.

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<sup>24</sup> Source: telephone interview with Mr. MOERMAN Jan, head of the PRINTRAK Cell, Immigration Office, dd. 20/07/2012

<sup>25</sup> Source: the Immigration Office 2011 Activities Report, pp. 141-143

<sup>26</sup> Article 20 and 21 REGULATION (EC) No 767/2008 of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

## Section 2

### Methods for Establishing Identity

#### **2.1 Definition and Documents required for establishing identity**

***What definition (if any) of identity is used with regard to (a) applicants for international protection and (b) for the return process.***

The Belgian Aliens Act does not distinguish between either procedure and describes an identified non-national as follows:

Article, Aliens Act, 14° identified non-national: every non-national

- who is in possession of a valid travel document, a valid passport or a valid identity card, or
- who was recognised as a subject by the national government of his country, and who declared to be agreeable to being issued with a laissez-passer, or
- who comes under the category of nationalities the minister can issue a laissez-passer for.

***What types of documents and other information do authorities in your (Member) State accept as (contributing to) establishing the identity for applicants of international protection?***

Within the framework of the asylum procedure, Belgium strictly speaking only accepts valid travel documents (passport) or a valid identity card as a valid identity document. This does not detract from the fact however that, within the framework of the asylum procedure, numerous other documents can be produced in support of people's identity details or asylum application account, such as certificates issued by the registry of births, marriages and deaths, a driving licence, etc.. Also copies of identity documents may be presented within the framework of an asylum application, although their probative value is limited. This has been confirmed by case law of the appeal body with jurisdiction over asylum-related matters, the Council for Alien Law Litigation.<sup>27</sup>

It must be emphasized however that, in Belgium, the lack of official identity documents does not necessarily prevent a person from being granted international protection status. In principle, the asylum seeker will have to give a plausible explanation as to why he is unable to produce any identity documents and his explanations must come across as credible.<sup>28</sup> In the absence of any official identity documents, it is desirable that the asylum seeker in question can present other documents from which his identity may be deduced, or that he at least makes a serious attempt to obtain these documents.

The extent to which the CGRS will insist on authentic identity documents being produced will also very much depend on the country of origin and on the actual asylum application file. It goes without saying that asylum seekers coming from countries without a central government or where no official documents have been issued of late cannot be expected to produce such documents.

It must in any case be pointed out that every asylum application file is assessed on its individual merits and that, during the assessment, all the statements made, the documents produced and the situation in the country of origin is taken into consideration. In this respect

<sup>27</sup> "Copied and faxed documents are easily forged and have no probative value" (RvS (Council of State), no. 142,624 of March 2005; RvS no. 133.135 of 25 June 2004; CALL, no. 30.965 of 2 September 2009; CALL no. 11.423 of 21 May 2008); "Photocopies are easily forged by means of copying and pasting" (CALL, no. 42. 528 of 28 April 2010).

<sup>28</sup> 57/7 ter of the Aliens Act and article 4 point 5 of 2004/83/EC (and the future article 48/6 of the Aliens Act)

it is also worth noting that no document, even an original, has absolute probative value per se. When an asylum seeker for instance produces a document which states that he has a particular nationality but cannot convincingly back up that nationality claim in his statements, the CGRS may still dispute his alleged nationality. For certain documents it is extremely difficult, impossible even, to check their authenticity. In some countries the authorities merely issue identity documents on the basis of an asylum seeker's or third-parties' statements without necessarily checking the veracity of these statements to any great extent. Moreover, as corruption in a number of countries of origin is rife, original identity documents can always be obtained against payment. Documents like these will of course satisfy the formal authenticity requirements but are not necessarily intrinsically truthful.

***What types of documents are accepted by national authorities in the (presumed) countries of origin if those applicants for international protection have to be returned, because they have received a negative decision, exhausted or abandoned the procedure? Please illustrate any differences between the documents accepted by the authorities of the (presumed) countries of origin and the documents accepted by the relevant authorities of your (Member) State.***

In respect of irregular migrants, for instance asylum seekers who have exhausted the asylum application process, who are arrested with a view to repatriation, the competent authorities invariably check whether they are in possession of a valid travel document that would allow them to return to their country of origin. What will be construed as a valid travel document will depend on the country of origin.

If an irregular migrant does not have a valid travel document, the embassy or consulate of the (presumed) country of origin will be contacted with the request to issue the person in question with a laissez-passer. In this case, the identification procedure will very much vary according to the country of origin involved and will also depend on any agreements that may have been concluded with the country of origin in question. In practice, it boils down to whether or not the Immigration Office can convince the embassy or consulate of a particular country that the person in question is actually a subject of their state.

Documents which the Immigration Office will take into consideration to determine the nationality and identity of a person the Belgian government wishes to repatriate:

To establish which embassy should be contacted with regard to issuing a laissez-passer, the Immigration Office will need to have some indications as to a person's country of origin. If official identity documents can be located it will be clear which embassy needs to be contacted. But also numerous other documents, such as a driving licence or even a train ticket may contain clues as to a person's nationality and/or identity. In other cases, there may be no (reliable) documents on hand but plenty of other indications to establish which embassy should be contacted.

When the person in question is an asylum seeker who has exhausted the asylum application process, the statements and documents the ex-asylum applicant made and produced within the framework of his asylum application will obviously contain some important clues. The Immigration Office does not disclose to the embassy of the country of origin whether the person arrested for being on the territory illegally and whom they wish to return to his country of origin is an ex-asylum seeker.<sup>29</sup>

Documents which the country of origin takes into consideration to determine the nationality

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<sup>29</sup> Source: interview with Mrs. ELLEBAUT, Marlies, Identification Cell, dd. 1/06/2012.

and identity of a person the Belgian government wishes to return:

If the person in question does not have a valid travel document, the IO will have to apply for a laissez-passer. Which documents will actually convince the country of origin to issue a laissez-passer varies from country of origin to country of origin. It will also depend on the other indications as regards the person's identity (e.g. fingerprints, outcome of the interview with embassy personnel...). It is always easier to identify a person and obtain a laissez-passer if identity documents can be presented. Most countries of origin will accept photocopies of identity documents.

## **2.2 Methods used in the absence of documentary evidence of identity**

*The aim of this section is to investigate, for cases where aspects of the applicant's statements regarding his/her identity are not supported by documentary evidence, which methods are used by the competent authorities in the (Member) State to check the credibility of the applicant's statements. In the boxes below, a list of methods is provided. For each method listed, please indicate*

*Do national authorities make use of:*

### *i) Language analysis to determine probable country and/or region of origin?*

- Applicants for international protection:

Optional

In exceptional cases only, the Office of the Commissioner General for Refugees and Stateless Persons will order a detailed language analysis. This is because this technique does rarely produce a definite answer.<sup>30</sup> A primitive language analysis (Does the person speak or understand a certain language?) is performed on a regular basis however. An asylum seeker will obviously not be very convincing if he wishes to portray himself as a resident of a particular country if he does not speak the language of the country in question.

- Return of rejected applicants for international protection:

Optional

This tends to be a rather rudimentary form of language analysis in the course of which one tries to establish the person's nationality based on the language he speaks so that further steps in the identification process can be taken with a view to returning him to his country of origin. The embassy or the consulate of the country of origin may also perform a language analysis.

### *ii) Age assessment to determine probable age<sup>31</sup>*

- Applicants for international protection:

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<sup>30</sup> It is important that the language analysis cannot be used as an exclusive argument. The results of the language analysis can be used in support of other elements justifying a refusal decision, or be a decisive element in case of doubt to take a positive decision.

<sup>31</sup> EMN NCPs are asked to update the information provided through the EMN Comparative EU Study on Unaccompanied Minors. EMN (2010), *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors*, European Migration Network, May 2010. The EMN Synthesis Report, as well as the 22 National Reports upon which the synthesis is based, are available from <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=115>.

Part of standard practice

Every unaccompanied minor applying for asylum is assigned a guardian via the FPS Justice Guardianship Service. If there are doubts about the actual age of the unaccompanied minor seeking asylum, the Guardianship Service can check his age by means of a medical examination. A triple check is performed, consisting of three X-rays: an orthopantomogram (a dental X-ray of the upper and lower jaw), an X-ray of the wrist and an X-ray of the collar bone.

In 2011, 2040 asylum applicants presented themselves as unaccompanied minor asylum seekers. Once their age was determined, this figure dropped to 1483.<sup>32</sup> In 2011, asylum applications from unaccompanied minors from Afghanistan accounted for almost half of all requests for asylum by unaccompanied minors. In comparison to 2010, the number of unaccompanied minors from Afghanistan has trebled.<sup>33</sup>

➤ Return of rejected applicants for international protection

Part of standard practice

In principle, unaccompanied minors are not forcibly returned to their country of origin until they come of age. If there are doubts about the actual age of the unaccompanied non-national minor, the Immigration Office can, via the Guardianship Service, have the minor's age determined by means of a medical examination.

**iii) Fingerprints for comparison with National and European databases**

The option of fingerprinting asylum seekers and persons to be repatriated has been described in the law (cf. section 1.3). In practice, fingerprints are always taken. This is not a legal obligation however, but it is a legal option.

**National Database**

➤ Applicants for international protection:

Part of standard practice<sup>34</sup>

➤ Return of rejected applicants for international protection:

Part of standard practice<sup>35</sup>

**European databases**

➤ Applicants for international protection:

Eurodac: Part of standard practice

National database of other Member States: optional (fingerprints of visa applicants)

➤ Return of rejected applicants for international protection:

Part of standard practice

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<sup>32</sup> This is the March 2012 figure which may still change as not all age analyses had been performed at that stage. These figures, and considering the margin of error that is taken in account in age determinations, including the fact that in the event of doubt, the asylum seeker is given the benefit of the doubt, show that a considerable number of single minor asylum seekers are not actually minors.

<sup>33</sup> Source: CGRS 2011 Annual Report, pp. 16-17.

<sup>34</sup> Article 51/3 of the Aliens Act describes the conditions under which asylum seekers may be fingerprinted.

<sup>35</sup> Article 30bis of the Aliens Act describes the conditions under which biometric data (fingerprints and photographs) may be taken from asylum seekers ordered to leave the territory.

iv) **Photograph for comparison with National and European databases**

**National Database**

- Applicants for international protection:

Taking photograph: Part of standard practice – photograph comparison: optional

At the moment of registration of the asylum application, a photograph is taken of the asylum seeker. It is therefore possible to visually compare the photograph on the asylum seeker's documents with the photograph that was taken at the time the asylum application was registered.

- Return of rejected applicants for international protection:

Taking photograph: Part of standard practice – photograph comparison: optional

A photograph is taken of every person who is detained in a detention centre with a view to being forcibly returned which is then stored in a database. A photograph is forwarded of any person in respect of whom a laissez-passer needs to be issued.

**European databases**

- Applicants for international protection:

No

- Return of rejected applicants for international protection:

No

v) **Iris scans for comparison with National and European databases**

**National Database**

- Applicants for international protection:

No

- Return of rejected applicants for international protection:

No

**European databases**

- Applicants for international protection:

No

- Return of rejected applicants for international protection:

No

vi) **DNA analysis**

- Applicants for international protection:

No

- Return of rejected applicants for international protection:

No

**vii) Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)**<sup>36</sup>

- Applicants for international protection:  
Obligatory<sup>37</sup>
- Return of rejected applicants for international protection:  
Optional

**viii) Other (please describe, e.g. type of co-operation with or contacts in third countries), related to**

- Applicants for international protection:
  - Ad-hoc collaboration with other Member States (e.g. requests for information contained in the visa files kept by other Member States.)
  - Ad-hoc collaboration with contact persons in the countries of origin.
- Return of rejected applicants for international protection:
  - In consultation with the immigration officials, the CID often meets with consular representatives from the countries of origin. This with a view to enhancing the collaboration within the framework of identifying non-nationals due to be removed from the territory and of creating a favourable framework that will benefit identification and the issuing of laissez-passers. Some countries of origin (e.g. Pakistan) also send civil servants to Belgium to help identify people.
  - The plan is to, for identification purposes, allow embassy personnel to interview people illegally present on the territory, especially detainees, by video conference within the foreseeable future.

***If possible, outline briefly the rationale behind the method(s) indicated above used in your (Member) State, e.g. why some method(s) been used in preference to others, is there a hierarchy or order of methods followed, any research conducted providing evidence of the method's reliability.***

- ***Within the framework of a request for international protection***, the CGRS will always invite applicants for an interview. During this interview, the asylum seeker will be given the opportunity to explain why he fled his country of origin. Apart from that, the interview will also centre on the applicant's identity details, and will focus on cross-checking the nationality and region of origin of the asylum seeker with objective information on the countries of origin (COI). After all, an asylum seeker's fear needs to be assessed in light of the situation in the country he is a national of. Often it will also be important to have a good insight into the region the asylum seeker comes from, because, in a number of countries, the risk of suffering serious harm varies according to the specific region of origin.

The asylum seeker's statements about his identity in the broad sense will be assessed and can be verified by means of Country of Origin Information (COI), the documents the asylum seeker produced and all the other elements in the administrative file.

<sup>36</sup> 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.

<sup>37</sup> The Office of the Commissioner General or its authorised representative will call asylum seekers for at least one interview. (Article 6 of the Royal Decree regulating the activities and the jurisdiction of the Office of the Commissioner General for Refugees and Stateless Persons (18 August 2010)).

Asylum seekers are systematically fingerprinted when their asylum application is registered but this is mainly done to establish which Member State is responsible for the processing of their asylum application.

Other identification techniques such as language analysis and the comparison of photographs are only resorted to in exceptional cases because these techniques tend not to provide conclusive answers. DNA details or iris scans comparisons are not performed to establish an asylum seeker's identity on account of the cost involved, the technical complexity and the lack of a reference database and because of the limited regulatory framework.

**- Within the framework of returning rejected asylum applicants**

It is important to stress that, in principle, the definitive identification and the issuing of a laissez-passer are performed by the authorities of the country of origin, and this based on the elements the Immigration Office was able to establish. The Immigration Office performs the identification but the result still needs to be validated by the country of origin. In terms of identification, the Immigration Office will most commonly resort to techniques such as data analysis of the administrative file, fingerprinting and interviewing applicants. The identification techniques countries of origin use vary from country to country. An interview would be the most commonly used method. In addition, some countries of origin cross-check identity details, and perhaps fingerprints, with the information in national or local registers. The reliability of these registers leaves a lot to be desired at times and only a limited number of countries operate a digital database of their subjects' fingerprints.

Apart from that, it must be emphasized that a successful identification does not necessarily mean that the country of origin will actually issue a laissez-passer. In view of the statutorily defined detention periods with regard to repatriation, it would not be unusual that a person cannot be returned because the country of origin fails to issue or does not timely issue a laissez-passer. With a number of countries of origin a specific agreement is in place under the terms of which the Belgian government can issue a person who has been conclusively identified with a laissez-passer (the so-called European laissez-passer).

### Section 3

#### Decision-making Process

##### **3.1 Status and weight of different methods to determine identity**

*On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.<sup>38</sup>*

The fingerprinting of asylum seekers is standard practice. Within the framework of asylum applications, it is also clear that the interview is the most important, and often also the only, tool to establish and verify the identity of the person concerned. During this interview, the asylum seeker will among other things be asked to produce documentation in support of his identity. In the event of doubt about an asylum seeker's origin, the applicant will be subjected to an in-depth interview and his statements will be cross-checked with the COI.

As regards identification with a view to repatriation, a person's ability to present reliable identity and travel documents is often decisive. African countries in particular will set much store by the outcome of the interview they conducted with the person concerned. Fingerprint comparison will also be able to produce a decisive result in respect of countries which operate databases that facilitate this technique.

*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")? If Yes, outline what this is.*

Within the framework of a request for international protection, there is no extensively described grading structure to denote the degree of identity determination. In principle, there is no reason to doubt the veracity of the identity details of any person who has been granted protection status. The benefit of the doubt may be granted, though in most cases that doubt will tend to have been created by the applicant's account of why he is seeking asylum, the genuineness of his fear of persecution or his region of origin and not so much by the person's name or date of birth.

Also as regards the return of rejected asylum applicants, there is no grading structure or spectrum in place to denote the degree of identity determination. When a person is in possession of a valid travel document or when he has been issued with a laissez-passer, it can be presumed that the person in question has been adequately identified. If a person cannot be returned because he cannot produce a valid travel document or did not receive a laissez-passer, one could state that the person in question has not been properly identified. The degree to which a person needs to be identified before he can be returned will depend on the country of origin. As indicated earlier, in some cases it may suffice to establish a person's nationality without necessarily having to gain a complete overview of all the other identity aspects. On the other hand, some countries of origin may refuse to issue a laissez-passer if there is even the slightest doubt about a person's identity.

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<sup>38</sup> 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.

***Are any future measures considered with regard to setting up or further elaborating a “grading” structure? If Yes, outline what these are.***

No (for both procedures)

### **3.2 Decisions taken by competent authorities on basis of outcomes of identity establishment**

#### **3.2.1 For the consideration of the application for international protection**

***What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken? For example, does the outcome of identity establishment influence a recommendation to “grant international protection,” “refuse international protection,” “defer decision”?***

Belgium does not assess asylum applications in stages so does not firstly try to establish a person’s identity before examining why he may be applying for international protection. The asylum seeker’s statements, the documents he produced and all the elements from the administrative file as a whole are taken into consideration when the person’s need for international protection is being assessed.

Within the framework of an asylum application, the investigation into the reliableness of the identity details will mainly focus on the aspects of nationality and region of origin. This would especially be the case for countries where an armed conflict is raging and whose citizens may qualify for (subsidiary) protection status on account of the general safety situation in a specific country or region of this country. It goes without saying that incredible statements regarding a person’s nationality and region of origin will considerably reduce the chances of a positive decision, the more so since the CGRS would in that case not be able to correctly assess that person’s need for protection.

In the asylum procedure, little time will be spent on establishing the veracity of statements regarding a person’s name. In many cases it will also be most unlikely that an asylum seeker will be able to favourably influence a decision regarding his asylum application by making false statements in relation to his name.

With the exception of countries involved in armed conflict, there are no clear indications in most asylum application files either to show that people’s identity details might be false. Moreover, using a false identity after protection status has been granted could create problems, for instance within the framework of family reunification.

***How important is establishing identity relative to other factors used in making an overall decision? For example, if identity cannot be established, does this de facto lead to a rejected decision? Are other factors such as gender, suspected country of origin, given more weighting than identity determination in some cases?***

The CGRS rejects about 75% of all asylum applications in first instance. As stated earlier, asylum applications by applicants from specific countries of origin are rejected on a regular basis due to the incredible statements in relation to applicants’ nationality or places of residence in the (alleged) country of origin. On the other hand, and this applies to most countries of origin, asylum applications are not normally rejected on the basis of people’s identity details but because their fear of persecution is either unfounded or incredible. In these cases, the CGRS would not normally delve a whole lot deeper into the degree to which the statements made and/or the identity documents produced tally with reality.

The questionnaire completed by the department heads of the geographical sections of the CGRS brings to light that the lack of identity documents does not necessarily prevent a person

from being granted protection status. A number of CGRS department heads even indicated that an applicant's ability or inability to produce an official identity document does in fact not have any bearing on the final decision as long as he makes a convincing case. Others stated that the granting of protection status becomes a slightly trickier issue if no official identity documents can be produced. Only in the case of files from the Balkan section, protection status is exceptionally granted in cases where no official identity documents are produced. In respect of asylum application files from people from the Balkan, it must be noted however that, as a rule, applicants do present their identity documents, that they can be reasonably to do so and that positive decisions in any of the Balkan files tend to be rather exceptional in any case. None of the department heads stated that a person will automatically be denied protection status if he is unable to produce an official form of identification. In this regard it must also be mentioned that the lack of official identity documents does not necessarily imply that an applicant's statements regarding his identity would be untruthful. Moreover, it is also possible that identity and travel documents are not produced for reasons that do not detract from an applicant's fear of persecution in his country of origin.<sup>39</sup> Negative decisions cannot solely be based on the argument that a person's identity was not sufficiently demonstrated. In Belgium, an asylum application cannot merely be rejected on the grounds that a forged identity document was produced for instance (fraus omnia corrumpit). In principle, it will be possible to deduce from the reasons given in support of a negative decision why the applicant's need for international protection was not deemed to be genuine.

### 3.2.2 For the return to country of origin

*What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken? For example, does the outcome of identity establishment influence a recommendation to "defer return"?*

It goes without saying that, if a person cannot be identified as a subject of a particular country of origin, he cannot be returned. The term "identification" can be interpreted in different ways. For some countries of origin, it may suffice to ascertain a person's nationality instead of having to establish all his other identity details. This tends to be the exception rather than the rule however as most countries of origin want a person identified by nationality, surname, first name and date of birth before they are prepared to issue a laissez-passer. A number of countries are not as strict about a person's exact date of birth because uncertainty may prevail in this regard. Other countries may also want to know the region of origin to enable them to compare identity details with those in the local registers. In other cases again, the country of origin will also want to be furnished with the address in the country of origin or the parents' names before they will issue a laissez-passer. These additional identification details are mainly sought by countries with a large diaspora.<sup>40</sup>

If the Immigration Office is unable to identify a person illegally present on the territory or if his identity cannot be confirmed by the country of origin and no laissez-passer can be issued, the person in question must be released. However, that does not mean that the person in question will be given permission to remain in the country. He will remain classified as an irregular migrant and will be expected to leave the territory under his own steam (order to leave the territory). It is also possible that a person cannot be identified within the statutorily defined detention periods<sup>41</sup>. In that case, the person in question will also have to be released. Of late, the CID has stepped up the follow-up of identification files of people who have been

<sup>39</sup> For instance, because the person in question travelled to Belgium without documentation and is unable to contact people in the country of origin who might be able to furnish him with documents.

<sup>40</sup> Source: interview with Mr. VERBAUWHEDE Geert, head of the Identification and Repatriation Directorate (IO).

<sup>41</sup> Cf. article 7 of the Aliens Act which fixes the maximum detention period at 5 months, in cases of public-order offences, the maximum detention period is eight months.

released from a detention centre (post-identification). If the IO receives a positive response from a foreign government after the non-national has been released, the file will be checked to establish whether or not the person remains classified as an irregular migrant, so that his return may as yet be organised, if need be.<sup>42</sup>

***Are the results of the work to establish identity during the international protection process available for work to prepare for forced return?***

Yes, if the person to be repatriated is a rejected asylum applicant, the IO (CID or DID Cell, if the person is a detainee) will check the asylum application file. It will look into the identity documents the applicant in question produced within the framework of his asylum application and will also peruse the statement of reasons of the asylum decision and, where applicable, the ruling of the appeal body.

***If 'yes': please describe the type of supplementary steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.***

As mentioned earlier, the country of origin will not be informed of the fact that the person to be taken back is a rejected asylum applicant. This to prevent that the person in question would run into problems on account of the fact that the country of origin would probably take a dim view of his asylum application.

Following identification by the CID, the competent diplomatic, consular or migration authorities in Belgium or the country of origin are contacted with a view to obtaining a travel document. Depending on the specific country of origin, passport photographs, fingerprints and/or a questionnaire will be transmitted. In almost half of the cases, an interview will be arranged with the consular or diplomatic representative of the country of origin, although diplomatic representatives are reluctant to interview people in jail.<sup>43</sup> Once the representative of the country of origin has validated the person's identity, the specific take-back procedure can be put in motion (EU or Benelux readmission agreement, memorandum of understanding, administrative agreement...)

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<sup>42</sup> Source: IO Activity Report, 2011, p 155.

<sup>43</sup> Source: interview with Mrs. JACQUEMIN, M., head of the Detainee Identification Cell (DID), dd. 29 Aug. 2012.

## Section 4

### Conclusions

*With regard to the aims of this Focussed Study, what conclusions would you draw from your findings? What is the relevance of your findings to (national and/or EU level) policymakers?*

**The issue of establishing a person's identity within the framework of a request for international protection:**

In Belgium, no records are kept as to whether or not asylum seekers produce identity documents within the framework of their asylum procedure in the database of the central asylum application processing body CGRS, with the results that there are no statistical data on hand in this respect.

Belgium does not extensively investigate an applicant's identity prior to processing his asylum application. Asylum seekers are systematically fingerprinted at the moment their application is being registered though. Asylum seekers are also asked to, if possible, produce identification. Although asylum seekers are, under Belgian legislation, obliged to produce any identity documents they may possess, often no official travel or identity documents are presented within the framework of a request for international protection in Belgium. Asylum seekers from the Balkan form the exception to this rule. However, asylum seekers do often present other types of documents, such as a birth certificate, a driving licence or copies of identity documents, which provide some indication as to their identity.

Asylum seekers more often than not claim that they are unable to produce their official travel and identity documents. This study has shown that, save in the case of a number of specific countries of origin, little credence can be attached to these claims. The fact that asylum seekers often withhold their official travel and identity documents does not in fact mean that identity fraud is rife amongst asylum seekers from most countries of origin. The main reason why no official travel and identity documents are presented can rather be attributed to the fact that asylum seekers are advised not to produce these documents or to destroy them. This, among other reasons, to hamper the identification process in the event of a forced return. Even though there are no clear indications of wide-scale identity fraud as far as most countries are concerned, origin fraud and age fraud seem to be relatively rampant in the case of a number of important countries of origin (e.g. Afghanistan, Iraq). The assessment of these asylum applications will therefore mainly focus on identity aspects, nationality and origin and, as always, on whether the applicant is in need of international protection.

Within the framework of the assessment of an asylum application, identity documents tend to be only exceptionally subjected to an authenticity check. After all, identity documents per se will not provide any details about a person's fear of persecution or about the risk of suffering serious prejudice. At that, no absolute probative value is attached to documents (produced in support of a person's identity or fear of persecution). Within the framework of an asylum application, documents are invariably assessed in light of the applicant's statements and the information about the country of origin. The interview with the asylum seeker is therefore the most important tool in terms of assessing all the aspects of the asylum application, among which his identity and origin. Fingerprints are taken as a matter of course, but predominantly so to determine which Member State should process the asylum application. Language analysis and visual photograph comparison are techniques which are only rarely used to

identify asylum seekers. More advanced techniques like DNA analysis or iris scans are not used to identify asylum seekers in Belgium.

**The issue of establishing a person's identity within the framework of the forced return of rejected asylum applicants**

Also in relation to the identification of asylum seekers within the framework of the forced return of rejected asylum applicants there are major differences between the various countries of origin. For one, different countries of origin will accept different documents as a valid travel document. If the person concerned does not have a valid travel document to organise his forced return, a laissez-passer will need to be obtained. Depending on the country of origin, specific identification conditions will need to be satisfied before a laissez-passer will be issued. In practice, it boils down to the Immigration Office identification cells (CID and DID) persuading the competent diplomatic or consular authorities of the country of origin of the identity of the person illegally present on Belgian territory. In this respect too, the policies of the various countries of origin vary; in exceptional cases it will suffice to demonstrate a person's nationality, while other countries of origin will require detailed identification before they will issue a laissez-passer. Which documents the countries of origin will accept in terms of substantiating a person's identity once again varies from country of origin to country of origin, but as a rule, documents featuring identity details will invariably be an important element when it comes to convincing an embassy or consulate.

As explained in the present report, it must be noted that, in Belgium, rejected asylum seekers will in first instance be ordered to leave the territory. Only a limited number of rejected asylum applicants will effectively be arrested, detained and identified with a view to removal. Furthermore, it must also be said that not all irregular migrants arrested with a view to removal are necessarily rejected asylum applicants. Specifically as regards the category 'rejected asylum applicants', identification tends to be slightly easier on account of the information and the identity documents contained in the asylum application file. The countries of origin are not be informed however of the fact that the person in question is a rejected asylum applicant. It is also worth noting that a successful identification does not necessarily mean that the person in question can effectively be returned. After all, the person concerned needs to be timely issued with a travel document or laissez-passer and his effective return may prove to be impossible for numerous reasons (practical reasons, outcome of an appeal procedure...). In general, it is safe to say that the reason why a forced return cannot be enforced is more often than not caused by the poor cooperation on the part of the irregular migrant, which translates itself into withholding or destroying documents, making false statements regarding his identity, verbal or physical resistance to his return, etc.. That having been said, certain countries of origin do not cooperate as optimally as they might when it comes to identifying people and issuing them with a laissez-passer. Furthermore, technical obstacles in the countries of origin (no reliable database or registers in the countries of origin) and operational limitations in Belgium (space in the detention centres, limited resources...) can often hamper the identification process.

The identification techniques the Immigration Office most commonly uses to (successfully) identify rejected asylum applicants within the framework of a forced return are fingerprinting, the interview conducted with the applicant and the administrative information and documents on hand. Within the framework of validating the identification performed by the IO, diplomatic representations of the countries of origin will often set much store by the interview with the person in question (save when it comes to detainees in prison).

**Recommendations:**

Even though the task of the CGRS when processing asylum applications fundamentally differs from that of the IO within the framework of the forced return of rejected asylum applicants, cooperation in matters of identification between both bodies could be optimised further, for instance by organising specific deliberation meetings. In terms of assessing a person's need for international protection, it may not always be necessary perhaps to produce identity documents and to check a person's statements regarding his identity. Within the framework of the asylum procedure, slightly more pressure could be put on asylum seekers to produce their (official) travel or identity documents though. After all, under Belgian and European legislation, asylum seekers are obliged to produce any documents that can help back up their identity and asylum application account. At that, the explanations asylum seekers come up with as to why they are unable to produce these documents are not always all that convincing. In this regard, reference could also be made to the amendment to the legislation that is currently being prepared in view of transposing article 4 point 5 of Asylum Qualification Directive 2011/95/EU. When implemented, the Aliens Act will stipulate that asylum seekers shall produce all the elements that might support their asylum application as soon as possible. The Act will also enumerate the cumulative conditions an asylum seeker will have to satisfy if he fails to substantiate his statements with documents or proof. This amendment could serve as a basis for concrete guidelines on the interview and the statement of reasons given in support of an asylum decision with regard to the production of identity documents.

An automatic linking of asylum application files and other residency procedures, such as a regularisation file (9bis or 9ter), could prove useful in terms of dealing with the identification issue. In theory, one and the same person can currently submit different identity documents or make different statements within the framework of these parallel or successive procedures, which can also be attributed to the fact that only asylum seekers are fingerprinted. In light of the existing interaction between the various asylum and migration procedures it would be opportune to investigate how this interplay between these procedures might be optimised, this with a view to building in further incentives to encourage asylum seekers or migrants to present travel and/or identity documents.

Hopes in relation to the possibilities the VIS has to offer in terms of the identification of asylum seekers and former asylum applicants are high. Experts believe in fact that a considerable number of asylum seekers use their own travel documents to travel to Europe. It will be vital to, at a national level, provide enough resources to ensure the swift and proper technical, regulatory and operational implementation of the VIS.

It would obviously also be appropriate to continuously invest in best practices, such as pre-identification, i.e. putting the identification process in motion before people are detained so as to keep detention periods to a minimum (SEFOR).

In conclusion, with a view to the identification of people within the framework of their forced return, it is obviously essential to foster a smooth collaboration with the countries of origin with regard to the identification, obtention of a laissez-passer and repatriation of their subjects. Where possible, it would be opportune to lay down concrete arrangements in European, multilateral (Benelux) or bilateral agreements. After all, all the trouble the IO went through to identify a non-national will have been in vain if the person in question cannot be repatriated in the end because no laissez-passer could be issued for instance. Especially as regards the identification of detainees there is considerable room for enhancing the cooperation with the diplomatic representations of the countries of origin.