



Second Focussed Study 2012

**ESTABLISHING IDENTITY FOR INTERNATIONAL  
PROTECTION: CHALLENGES AND PRACTICES**

*French National Contact Point of the  
European Migration Network (EMN)*

October 2012

## PRESENTATION OF THE FRENCH CONTACT POINT

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**– ESTABLISHING IDENTITY FOR INTERNATIONAL PROTECTION:  
CHALLENGES AND PRACTICES –**

*Study conducted by the National Contact for France of the European  
Migration Network (EMN)*

October 2012

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## EXECUTIVE SUMMARY

**The identity of an applicant for international protection** is considered to be one of the key elements at the heart of the procedure for international protection. This is the reason why **identification** is a major step in the process of establishing the facts that are meant to justify **international protection**. **Establishing identity** remains however a **sensitive stage** of the procedure for international protection as few applicants for international protection have credible identity documentation available. Moreover, they may conceal or forge their identity documents. For the above reasons, the competent authorities have limited capacity in assessing whether the application for international protection is genuine.

In theory, rejected applicants for international protection are supposed to return to their country of origin. However, if identity has not been sufficiently established during the procedure for international protection, this may again constitute an obstacle to a **forced return procedure**<sup>1</sup> to the presumed country of origin. Indeed the authorities in the countries of origin of the rejected applicants for international protection often refuse to readmit them, for lack of ability to identify them. Moreover, certain applicants for international protection request a residence permit on grounds other than international protection. In this case, authorities face constraints similar to those met during the procedure for international protection, which disrupt the establishment of identity and the decision to be made regarding the application.

In the framework of this national report, the issue of establishing identity is studied with regard to **applicants for international protection and rejected applicants for international protection subject to a removal order**. Only the **procedures for international protection and forced returns** are analysed.

Establishing identity is considered an **increasingly important** problem by the authorities for both procedures (**Section 1.1**). In France, the majority of applicants for international protection do not present identity papers to support their application, and forged documents are also sometimes submitted to the authorities. However, at the current time, **the authorities are confronted with an increase in the alteration of fingerprints**, which, whether voluntary or not, and though restricted to certain countries, creates serious difficulties in terms of identifying applicants for international protection.

Some statistics on the problems encountered during the **procedure for international protection (Section 1.2)** are available. Between 2007 and 2011, it was estimated that annually, **65 %** of applicants for international protection presented no documents to support their application<sup>2</sup>. Moreover, the percentage of fingerprints that Eurodac, the European database, considers unusable owing to voluntary mutilation by applicants for international protection has continued to increase since 2009, reaching **14 %** in 2011<sup>3</sup>. If it is possible to estimate the extent of these phenomena, it is, on the other hand, more difficult to evaluate their impact on decision making during the procedure for international protection. As far as **the forced return of rejected applicants for international protection** is concerned, no

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<sup>1</sup> It should be noted that in France, the measures for the forced return of an applicant for international protection are no different than those used to return an illegal third-country national (whether a rejected applicant for international protection or not), subject to a removal order.

<sup>2</sup> **Source:** OFPRA – the French Office for the Protection of Refugees and Stateless Persons.

<sup>3</sup> **Source:** SGII, the Asylum Department of the General Secretariat for Immigration and Integration, the Ministry of the Interior.

statistics are available. In these conditions, it would seem difficult to know how these obstacles to establishing identity impact the effectiveness of forced returns.

The French laws and regulations governing foreigners, which frame the procedure for international protection and forced returns, make provision for **two processes** that help to establish the identity of applicants for international protection, but which are rather used to "**define**" the identity under which the applicant for international protection presents themselves to the authorities for their application to be examined by them (**Section 1.3**). These two processes are as follows:

- **fingerprinting**, so that prints are recorded in Eurodac, the European database, and compared with prints already recorded;
- the creation of a personal card in the national database of third-country nationals using the **AGDREF** application.

**Defining the identity** of applicants for international protection is within the remit of **the prefectures**.

As for **OFPROA, the French Office for the Protection of Refugees and Stateless Persons**, it participates as a decision-making authority in establishing the identity of applicants for international protection. Therefore, as part of the examination of international protection applications, OFPROA verifies the identity under which applicants for international protection present themselves, mainly through **an individual interview**. However, it is only once a third-country national has been granted protection, that the Office then has the responsibility of "**establishing**", strictly speaking, their identity **by reconstituting their civil registration data**<sup>4</sup>.

Besides these authorities, various other stakeholders take action in the course of the two procedures and each has differing expertise in determining identity and verifying documents (**Section 1.4**)<sup>5</sup>. They do not always face the same problems and interact little during the different stages: from the temporary permission to stay during the international protection procedure to the measures to be taken for a return to the country of origin in the event of a rejected application for international protection.

The notion of **identity** is not formally defined in the French laws and regulations governing foreigners (**Section 2.1**). Among the civil registration data that the authorities require, **nationality** seems to be one of the elements to which particular attention is paid. In order to verify data provided by applicants for international protection and rejected applicants for international protection who are subject to a return procedure, the French authorities use various methods (**Section 2.2**). The main biometric data used are the fingerprints. This allows the applicants' for international protection "**biometric**" **identity** to be established, for

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<sup>4</sup> It is possible that the identity of a third-country national finally "established" by OFPROA may differ from that initially retained by the Prefecture when it defines the identity. In that case, it is the identity "established" by the OFPROA which takes precedence.

<sup>5</sup> This national report is based on a series of individual and group interviews carried out in August-September 2012 by the various authorities concerned. The aim was to analyse the issue of establishing identity from the perspectives of the authorities involved at different levels. With regard to questions linked to the international protection procedure, representatives from the Asylum Department of the General Secretariat for Immigration and Integration (SGII), and from OFPROA, the French Office for the Protection of Refugees and Stateless Persons, were met with. Interviews were also held with the lower management of the SGII's Sub-directorate for controls and removals, in charge of countering fraud (SDEC) in order to discuss the issue within the framework of a forced return procedure.

comparison with national and European databases. "Civil" identity, however, can often only be established on **the basis of an applicant's declarations**.

The importance placed on the methods used (**Section 3.1**) and on the results of the verifications carried out (**Section 3.2**) to establish the identity of the third-country national varies. The decision-making authorities adopt a **case-by-case approach**, which may vary according to the **presumed country of origin**, and examine every element possibly allowing the determination of identity of a third-country national during the international protection procedure. The forced return of a rejected applicant for international protection will only be implemented after the **consular authorities of the presumed country of origin** have assessed the information relative to identity collected by the French authorities.

The final remarks underline the questions that arise from the conclusions of this national report. They may perhaps be taken into consideration by policy makers, in particular with a view to a joint reflexion at a European level.

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## SECTION 1: THE NATIONAL FRAMEWORK FOR ESTABLISHING IDENTITY

The first section of the study aims to identify the challenges facing French authorities in their efforts to establish the identity of a third-country national in the framework of procedures for international protection and forced return (**sub-section 1.1**). It seeks then to determine to what extent the impact of the identification process, as well as the phenomena that may disrupt it, on decisions regarding international protection and forced return can be estimated by examining available data (**sub-section 1.2**). This section also tends to verify whether the legislation provides methods for establishing identity (**sub-section 1.3**). Another objective is to present the authorities responsible for establishing identity in the context of both procedures covered by the study (**sub-section 1.4**).

### 1.1 The challenges in relation to establishing identity...

#### 1.1.1. ... with regard to procedure for international protection

Establishing **the identity** of applicants for international protection is fundamental to the process of granting international protection.

In France, in order to apply for international protection, a third-country national must go to the prefecture in order to seek temporary permission to stay during the international protection procedure. At this first stage, the prefecture does not require that the **so-called "civil" identity** of the applicant be documented<sup>6</sup>. It is most frequently simply **"defined"** by the prefectural authorities **on a declaratory basis**. However, these authorities are competent to establish the **so-called biometric identity** of the applicant, which is determined by taking fingerprints and recording them in **Eurodac, the European database**. Although this procedure is aimed at determining the Member State responsible for the application for international protection, it also allows **the prevention and detection of multiple applications submitted under different "civil" identities**.

**The search for the authentic "civil" identity** of applicants for international protection is an integral part of the examination phase of the application for international protection carried out by OFPRA. Before determining the need for protection, it is indeed indispensable for the office to ensure that the applicant for international protection is actually the same person they claim to be in their statement.

Today, a certain number of difficulties disrupt this essential procedure of determining identity during the procedure for international protection. Foremost among them are the **absence of identity papers and forged documents, as well as the alteration of fingerprints**. Such practices allow applicants for international protection to assume an identity which is not theirs, and/or to present themselves under multiple identities.

In France, the majority of applicants for international protection do not present documents to support their application. According to OFPRA, the number of cases in which **no credible document** is available to support the identity of the applicant, constitutes **more than half of**

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<sup>6</sup> Article 741-3 of the CESEDA (Code on Entry and Residence of Foreigners and Right of Asylum) specifies that admission cannot be refused simply because the third-country national lacks identity documents and visas.



**the applications for international protection.** This can be explained by the fact that, apart from the circumstances in which they are sometimes obliged to leave their countries, it may be difficult for certain third-country nationals to obtain authentic documents, owing to the absence of the rule of law, the lack of an efficient administration and/or the presence of widespread corruption within the country of origin. This is notably the case in **Haiti**. This country does indeed have a **faulty civil registration system**, and documents issued by Haitian civil registration services are frequently suspected of being forgeries and illegal by the French authorities. Similarly, the administration of certain African States such as **Angola, Guinea and Sierra Leone** for example, seem marked by the **absence of reliable civil registration services**.

**The alteration of their fingerprints** by applicants for international protection is a recent phenomenon that is growing in France. It would seem that this phenomenon has been on the increase since **2009**. For certain nationalities the practice is widespread: in 2011, it is estimated that the practice was used in **85% of Somali applications for international protection and 89% of Eritrean applications**<sup>7</sup>. In addition to those coming from **countries in the Horn of Africa**, applicants for international protection from the **Chechen region** in Russia may also have used this technique.

**Table 1:** The evolution of the percentage of fingerprints unusable by Eurodac, the European database, owing to voluntary mutilations by applicants for international protection between 2005 and 2011<sup>8</sup>.

	Percentage of fingerprints unusable by Eurodac
<b>2005</b>	<b>9 %</b>
<b>2006</b>	<b>11 %</b>
<b>2007</b>	<b>10 %</b>
<b>2008</b>	<b>9 %</b>
<b>2009</b>	<b>12 %</b>
<b>2010</b>	<b>14 %</b>
<b>2011</b>	<b>14 %</b>

Source: Asylum Department, SGII, the Ministry of the Interior

Apart from avoiding transfer to the Member State responsible for the application in keeping with the Dublin Convention, the alteration of fingerprints may allow an applicant for international protection **to lodge multiple applications for international protection in France or in other Member States using different identities**<sup>9</sup>: this may consist of

<sup>7</sup> Source: Annex I: Note established by the SGII on the difficulties arising from the alteration of fingerprints.

<sup>8</sup> Source: SGII - Asylum Department

<sup>9</sup> Certain applicants for international protection from countries for which the average percentage of protection granted in France is high, also voluntarily alter their fingerprints to benefit from the priority procedure. The examination period for their application is thus reduced. According to article L. 741-4 paragraph 4 of the CESEDA, the Code on Entry and Residence of Foreigners and Right of Asylum, an applicant for international protection may be refused temporary admission to stay during the international protection procedure if the application is based on deliberate fraud. An application submitted by a third-country national who supplies false information, conceals information concerning his/her identity, nationality or means of entrance into France in order to mislead the authorities, constitutes an application based on deliberate fraud. The consequence of a refusal of temporary admission by the prefectures is that the application for international protection is examined as a priority procedure.

**simultaneous applications for international protection in France to accumulate certain welfare benefits or, successive applications to attempt to obtain an agreement after one or several rejections.**

In short, this practice deprives OFPRA of essential information about the identity of the applicant and as a consequence, they are not able to rule on the application in a properly informed manner.

For several years, certain elements of the French media have taken an interest in this matter and have reported the various parties' points of view on the issue. Thus from 2009, certain press articles and blog columns began to devote themselves to the subject of the **self-mutilation of migrants in the Calais region**<sup>10</sup>. Since then, the media have continued to record the testimonies of applicants for international protection explaining by which methods they had altered their fingerprints (glue, chemicals, burns to the fingers), and their reasons for doing so<sup>11</sup>. **In 2012** a debate, opposing the different **stakeholders involved** in the question of **fingerprint alteration by applicants for international protection** was relayed by the press<sup>12</sup>. The competent public authorities note that, very often, fingerprint alteration is a premeditated act intended to mislead them. They consider that it will be necessary to penalize this practice. **As for the migrant support associations, whilst they do not deny the existence of this phenomenon**, they denounce the fact that it is systematically perceived as a fraudulent technique. For these associations, the illegibility of a fingerprint may not only be the result of a voluntary and premeditated act intended to conceal identity, but may also arise from "*hard manual labour, dermatological problems or bad living conditions.*"<sup>13</sup>

### **1.1.2 ... with regard to the procedure for forced return**

A person whose application for international protection has been rejected is destined to return to his/her country of origin. Once their application has been rejected, applicants for international protection receive notice of an **OQTF, an Obligation to Leave French Territory**, which gives them a month to leave France **voluntarily**. When the month has expired, the OQTF becomes enforceable, and if they have not left France, then they are liable to be escorted to the border in the same way as any other person in an illegal situation<sup>14</sup>.

The failure of the return procedure has been identified, **by the public authorities**, as one of the reasons why certain rejected applicants for international protection remain on French territory.<sup>15</sup> In France, the forced return of a third-country national and in particular, that of a **rejected applicant for international protection**, can not be carried out without a **consular laissez-passer (LPC)** from the consular authorities of the presumed country of origin, if the rejected applicant does not have a passport (or national identity card, in particular for Romanian or Algerian citizens). Now, it frequently happens that the consular authorities of the presumed country of origin are unwilling to provide such a document, given that the

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<sup>10</sup> J-M. Manach, *Les doigts brûlés de Calais*, Le Monde diplomatique, 25 September 2009

<sup>11</sup> C. Vallet, *Calais: ces clandestins qui rendent leurs empreintes digitales invisibles*, Les Inrocks, 18 August 2012

<sup>12</sup> C. Labbé, *Le casse-tête des demandeurs d'asile aux empreintes effacées*, Le Point, 11 January 2012

<sup>13</sup> Ibid.

<sup>14</sup> Article L. 511-1 of the CESEDA.

<sup>15</sup> The applicant for international protection may stay on French territory after having been granted a residence permit on grounds other than international protection or after having obtained legal status based on family or humanitarian reasons.

identity of the person in question has not been sufficiently established. **The public authorities therefore perceive that establishing the identity of rejected applicants for international protection is a problem in the case of a forced return procedure.**

Since 2009, 20 countries have been noted for their lack of consular cooperation: Afghanistan, Angola, Armenia, Bangladesh, Cape Verde, China, the Democratic Republic of Congo, the Republic of Congo, Côte d'Ivoire, Egypt, Gabon, India, Iraq, Mali, Mauritania, Pakistan, The Russian Federation, Senegal, Tunisia and Vietnam. In 2011, three of these countries: Côte d'Ivoire, Gabon, Iraq and presented an LPC issue rate equal to or less than 10%.

Moreover, the lack of collaboration of these countries has provoked a certain level of abuse as today, more and more third-country nationals subject to a forced return procedure claim to be nationals of these countries, in order to avoid being sent back to their own country of origin.

In the same way as for the international protection procedure, the main elements the authorities can use to establish the identity of a rejected applicant for international protection are, in the absence of credible documents, **his/her statements**.

**The forgery of identity documents** is an additional hindrance to **establishing identity** within the framework of setting up a return procedure. For example, the authorities regularly face certain obstacles linked to the forgery of documents by third-country nationals claiming to be nationals of Côte d'Ivoire. Although the latter hold authentic national passports, it would seem that these documents regularly contain false identities. Sometimes, **fingerprint alteration** may also prevent the discovery of **the legal status** of a third-country national questioned for the offence of an illegal stay. It may deprive the administrative authorities of crucial information on identity, which is essential for implementing a forced return.

## **1.2 Statistics on the scale of these challenges...**

### **1.2.1. ...with regard to the procedure for international protection**

Although establishing identity in the framework of international protection is known by the **competent public authorities** to be a real issue, it is more difficult to assess its **scale** and the **impact** it has on the decisions made.

Despite a lack of official statistics so far, **an ad hoc method** was designed to evaluate the scale of the phenomenon for the purposes of drafting the present national report. This method made it possible to assess both the number of applicants for international protection whose identity was **documented during the procedure** for international protection, and the type of decisions that were made regarding them. With this aim in mind, the decision-making authorities first considered that the characteristics of the influx of applicants for international protection had changed little from 2007-2011. Consequently, the data relative to the procedure for international protection were established based on a ratio resulting from a sample chosen from the year 2011 and which was then applied to the whole period. The ratio was set up on the basis of estimations stemming from **attached documents** that were part of the applications for international protection files. These attachments are not necessarily limited to identity documents, but correspond to any document submitted in support of the application for international protection **during the procedure**.

**Between 2007 and 2011**, out of ten applications for international protection, more than **six** were lodged by third-country nationals, whose identity was not documented **during the procedure**. Over the same period, **54 %** of the total number of positive decisions were made towards applicants for international protection, whose identity had not been documented **during the procedure**. Similarly, **more than half** the negative decisions were made with regard to applicants for international protection whose identity had not been documented.

It is still not possible to quantify the share of applicants for international protection whose identity had not been documented at the time of their application who were nonetheless successful, since decision-making authorities estimated that their identity had been sufficiently established during the procedure.

### **1.2.2. ... with regard to the procedure for a forced return**

It has not been possible so far to count the number of forced returns of rejected applicants given that national statistics relative to actual removals do not contain any information about the type of request giving rise to a removal order. **In other words, the data available do not make any distinction between the return of rejected applicants for international protection and the return of illegally staying third-country nationals.** In view of this situation, it is therefore difficult to grasp the impact of obstacles to establishing identity, on the effectiveness of forced returns.

**Table 2: Statistics on the scale of these challenges**

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants)
<p><u>Total Number</u> of applicants for international protection</p>	<p><b>35 520</b></p> <ul style="list-style-type: none"> <li>- Russian Federation</li> <li>- Sri Lanka</li> <li>- Serbia</li> <li>- Turkey</li> <li>- Congo, Democratic Republic</li> </ul>	<p><b>42 599</b></p> <ul style="list-style-type: none"> <li>- Russian Federation</li> <li>- Mali</li> <li>- Sri Lanka</li> <li>- Turkey</li> <li>- Congo, Democratic Republic</li> </ul>	<p><b>47 686</b></p> <ul style="list-style-type: none"> <li>- Kosovo</li> <li>- Sri Lanka</li> <li>- Russian Federation</li> <li>- Armenia</li> <li>- Congo, Democratic Republic</li> </ul>	<p><b>52 762</b></p> <ul style="list-style-type: none"> <li>- Kosovo</li> <li>- Russian Federation</li> <li>- Congo, Democratic Republic</li> <li>- Bangladesh</li> <li>- Sri Lanka</li> </ul>	<p><b>57 337</b></p> <ul style="list-style-type: none"> <li>- Russian Federation</li> <li>- Armenia</li> <li>- Bangladesh</li> <li>- Congo, Democratic Republic</li> <li>- Sri Lanka</li> </ul>	<p>These statistics are the latest available. Their source is the <b>General Secretariat for Immigration and Integration</b> of the French Ministry of the Interior.</p> <p>They represent the <b>number of first applications</b> as well as <b>re-examinations</b>. They <b>include accompanying minors</b>. The <b>Top 5 nationalities</b> are identified for each year.</p>
<p>Number of applicants for whom <u>identity</u> was not documented <b>during the procedure</b></p>	<p><b>23 088</b></p>	<p><b>27 689</b></p>	<p><b>31 114</b></p>	<p><b>34 295</b></p>	<p><b>37 123</b></p>	<p>These figures are estimations made by the French <b>Office for the Protection of Refugees and Stateless Persons (OFPRA)</b>.</p> <p>Each year, the share of applicants for international protection whose identity was not documented <b>during the procedure</b> (as opposed to at the time of application) is estimated at <b>65 %</b> of the total.</p>
<p>Number of applicants for whom <u>identity was wholly or partially established</u> during the procedure for international protection thereby allowing the relevant authorities to</p>	<p><b>Not available</b></p>	<p><b>Not available</b></p>	<p><b>Not available</b></p>	<p><b>Not available</b></p>	<p><b>Not available</b></p>	<p>.</p>

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reach a particular decision on international protection application (e.g. grant, refuse, defer)						
Total Number of <u>Positive Decisions</u>	<b>8 815</b>  - Sri Lanka - Russian Federation - Serbia - Turkey - Congo, Democratic Republic	<b>11 484</b>  - Sri Lanka - Russian Federation - Mali - Congo, Democratic Republic - Turkey	<b>10 401</b>  - Sri Lanka - Russian Federation - Mali - Congo, Democratic Republic - Guinea	<b>10 377</b>  - Sri Lanka - Russian Federation - Mali - Congo, Democratic Republic - Guinea	<b>10 755</b>  - Sri Lanka - Russian Federation - Kosovo - Congo, Democratic Republic - Guinea	<p>These statistics are the latest available. Their source is the <b>General Secretariat for Immigration and Integration</b> of the French Ministry of the Interior.</p> <p>They represent the decisions made by the French <b>Office for the Protection of Refugees and Stateless Persons (OFPRA) in first instance</b> and by the <b>National Court for Right of Asylum (CNDA) in second instance</b>.</p> <p><b>The Top 5 nationalities</b> are identified for each year.</p>
Total Number of Positive Decisions for applicants whose identity was not documented <b>during the procedure</b>	<b>4 760</b>	<b>6 201</b>	<b>5 617</b>	<b>5 604</b>	<b>5 808</b>	<p>These figures were compiled by <b>OFPRA</b>.</p> <p>Each year, the share of positive decisions regarding applicants for international protection whose identity was not documented <b>during the procedure</b> (as opposed to at the time of application) is estimated at <b>54 %</b> of the total</p>
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	

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the decision-making authorities						
Total Number of <u>Negative Decisions</u>	<b>25 922</b>  - Turkey - Sri Lanka - Serbia - Congo, Democratic Republic - Armenia	<b>26 648</b>  - Sri Lanka - Turkey - Russian Federation - Armenia - Congo, Democratic Republic	<b>30 283</b>  - Kosovo - Turkey - Congo, Democratic Republic - Sri Lanka - Armenia	<b>32 571</b>  - Kosovo - Bangladesh - Armenia - Sri Lanka - Russian Federation	<b>37 619</b>  - Bangladesh - Kosovo - Sri Lanka - Russian Federation - Congo, Democratic Republic	<p>These statistics are the latest available. Their source is the <b>General Secretariat for Immigration and Integration</b> at the French Ministry of the Interior.</p> <p>They represent the number of decisions made by the French <b>Office for the Protection of Refugees and Stateless Persons (OFPRA)</b>. <b>Top 5 nationalities</b> are identified for each year.</p>
Total Number of Negative Decisions for applicants whose identity was not documented <b>during the procedure</b>	<b>13 739</b>	<b>14 123</b>	<b>16 050</b>	<b>17 623</b>	<b>19 938</b>	<p>These figures were compiled by <b>OFPRA</b>.</p> <p>Each year, the share of negative decisions regarding applicants for international protection whose identity was not documented <b>during the procedure</b> (as opposed to at the time of application) is estimated at <b>53 %</b> of the total</p>
Total Number of Negative Decisions for applicants whose identity was not considered sufficiently established by the decision-making authorities	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	

Total number of (Forced) Returns undertaken of all rejected applicants	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	
Number of (Forced) Returns of rejected applicants whose identity had to be established at the time of return	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	
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	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	<b>Not available</b>	



## 1.3 EU and national legislation outlining methods for establishing identity...

### 1.3.1 ... with regard to the procedure for international protection

European legislation, in **Articles 8 and 18-1** of the regulation pertaining to the creation of the European **Eurodac**<sup>16</sup> system, has defined the framework for the "biometric" identification of applicants for international protection. All Member States are bound, in application of the abovementioned articles, to take fingerprints of **applicants aged over 14 years**. Since European regulations are directly applicable in Member States, the "biometric" identity establishment process is not defined by French law.

In addition, according to Article R. 741-2 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), applications for admission lodged at the prefecture must include:

- information pertaining to the civil registration of applicants;
- documents justifying regular entry into France or, failing that, any information regarding conditions of entry into France and the itinerary used to reach France starting from their country of origin.

In this case, the identification of applicants by decision-making authorities can **only rely on the indications and documentation supplied by them**.

Lastly, **according to Article L. 723-3 of the CESEDA**, decision-making authorities in charge of determining the identity of applicants are obliged to interview the applicants for international protection. This helps with establishing identity even though the content of the hearing is not set by law.

### 1.3.2. ... with regard to the procedure for a forced return

Although CESEDA does provide for the administrative procedure for removal, there is no procedure defined for establishing the identity of an illegal third-country national subject to a forced return procedure.

## 1.4 The institutional framework for establishing identity

As a general policy in France, there is a clear-cut separation between **the prefectural authorities** responsible for the admission of successful applicants for international protection and the removal of rejected applicants, and the French Office for the Protection of Refugees and Stateless persons (**OFPPRA**) in charge of examining applications for international protection. At each stage of the procedure (**access to the international protection process, the examination of the application and the return of rejected applicants**), **different actors are involved and various problems and constraints are encountered**. The institutional chain, as opposed to being integrated, is **segmented**. **In other words, there is no single competent authority in charge of processing applications for international protection, in particular as far as issues relating to**

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<sup>16</sup> Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention.  
[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133081\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133081_en.htm)

establishing identity and verification of documentation are concerned, within the framework of the two procedures that have been examined.

#### **1.4.1 ... with regard to the procedure for international protection**

**The prefectures are in charge of issuing to applicants for international protection temporary permission to stay during the international protection procedure. In this capacity therefore, prefectures establish the “biometric” identity** of applicants for international protection using their fingerprints, so that they can ascertain that the review of their application is not incumbent upon other Member States pursuant to the Dublin Convention. There is **an electronic terminal** installed at prefectures equipped with a **system for taking digital fingerprints**. The latter are automatically sent to Eurodac, the European database located in Luxemburg. In the case of a match between the applicant’s fingerprints and data held in the European database, the **Asylum Department of the General Secretariat for Immigration and Integration (SGII)**, the single access point on a national level, checks the result manually prior to forwarding it to the relevant prefecture.

Further to **Article R. 741-2 of the CESEDA**, prefectures have to **“define” the “civil” identity** of the applicants for international protection **based on documentation that they present and information they provide**. They use these data for processing the application lodged by third-country nationals and for feeding the national database of third-country nationals via the AGDREF application. More often than not, the identity “defined” is solely based on information provided by applicants for international protection.

**As for** the French Office for the Protection of Refugees and Stateless persons (**OFPPRA**), it is competent to both examine and make decisions on applications for international protection. Verifying the identity of applicants is therefore part and parcel of the review procedure but it often relies only on **assessing whether the elements provided by applicants** in their case file and during the interviews **are credible or not**.

When conducting these checks, OFPPRA protection officers are able to contact **French consulates in the country of origin** in order to check the **authenticity of documents** presented by the applicants. Given that the confidentiality of applications for international protection is to be upheld, each letter sent to a French Consulate clearly emphasises the absolute obligation of keeping the data confidential and not disclosing them to the country of origin authorities.

Lastly, it is worth mentioning that when international protection is granted, OFPPRA is the authority that is competent for “establishing” the identity of the applicants by **reconstituting their civil registration**.

#### **1.4.2 ... with regard to the procedure for a forced return**

##### **➤ Competent authorities**

Determining the identity of rejected applicants for international protection and requesting a consular *laissez-passer* is the responsibility of the **prefectures, which are also in charge of applying removal procedures**. The judiciary police can also collect upstream information regarding the identity of third-country nationals who have been arrested and

put into custody for illegal stay further to **Article L. 621-1 of the CESEDA**<sup>17</sup>. Intelligence stemming from police enquiries is then forwarded to the competent prefectural authorities for them to apply the **administrative return procedure**.

➤ **Support from closely related services**

Prefectures can also count on the expertise of other public institutions in order to establish identity and to facilitate obtaining a consular *laissez-passer*. First of all, the **Consular relations and laissez-passer Section** of the SGII's Bureau for operational support and follow-up (BSOS), regularly takes part in enquiries thanks to its regular contact with French representations abroad. At the request of the BSOS, **police attachés and liaison officers** working at French consulates in the country that the rejected applicant claims to be a national of, can check his/her identity **on the spot**. Moreover, at the **Ministry of Foreign and European Affairs, the Directorate of French Nationals Abroad and of the Administration of Consulates** can take formal action when faced with a foreign consulate delaying, or refusing to issue, a consular *laissez-passer*. Its leeway is however limited since it can simply send a verbal note to recalcitrant consulate authorities asking them to speed up the procedure.

With regards to document verification, a **contact point in charge of "fraud" has** been recently appointed in each prefecture. Staff members responsible for applying the removal procedure can therefore benefit from their expertise and they can also call upon the Bureau in charge of document fraud at the Central Directorate for Border Police (DCPAF), as well as the competent services of the local gendarmerie when they need support from experienced specialists. These experts also have access to the **European database iFADO**, which can be used to distinguish forged documents from genuine ones. The most important information about security features on travel documents and other identity documents issued by EU Member States and some third countries, figures in the database. Information on forged documents as well as typical falsification techniques can also be found in the database.

➤ **Access to EU databases**

Access to certain databases enables rejected applicants for international protection to be identified rapidly. In fact, prefectural agents in charge of applying removal procedures may consult data contained in the SIS, via the **National access point, SIRENE France**, when an alert has been issued to refuse admission of a third-country national. Agents will soon have access to the **VISABIO database, the French component of the Information System on Visas (VIS)**, which contains the biometric data of all persons applying for a visa.

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<sup>17</sup> On 5 July 2012, further to Article L. 621-1 of the CESEDA, a ruling made by the first civil chamber of the Court of Cassation ruled the end of custody for third-country nationals whose sole offence is to have entered or stayed in the country illegally. A bill providing for an administrative detention of illegal third-country nationals is underway through Parliament. For the purposes of this study we will refer to the period prior to the rulings of the Court of Cassation and present the methods used up to then by the judiciary police on illegal third-country nationals in police custody, to establish their legal status and their identity.

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According to this section, if identification is a major step of the procedures for international protection and forced return, it is perceived by the authorities as a stage that has become increasingly sensitive. However, given the lack of suitable statistical tools, it is not yet possible to determine to what extent this process disrupts decision-making in the context of both procedures covered by the study. National legislation does not really provide methods for establishing the identity of third-country nationals. The authorities who are responsible for establishing identity may be different from one procedure to another. The fact that the legislative framework for establishing identity is limited does not mean that in practice, techniques are not used to determine the identity of applicants within the procedure for international protection and the identity of rejected applicants, within the one for forced return.

## SECTION 2: METHODS FOR ESTABLISHING IDENTITY

First of all, the second section aims to determine how the concept of identity is defined in the context of the procedures for international protection and forced return. It then looks at the documents considered as confirming the third-country national's identity (**sub-section 2.1**). It also tends to highlight the methods used to establish the identity of third-country nationals in the framework of both procedures covered by the study (**sub-section 2.2**).

### 2.1 Definition of identity and documents required for establishing identity...

#### 2.1.1. ...with regard to applicants for international protection

##### ➤ Definition of identity

In France there is no **formal definition** of the notion of identity with regard to applicants for international protection. However, all applications for international protection must include **civil registration data, photographs** and **the applicant's signature** in order to be registered. The civil registration data required by the authorities includes **family name, given name, date of birth, nationality, kinship, and family composition**.

##### ➤ Documents required for establishing identity

Proof of "civil" identity may be achieved by **any means**. Applicants for international protection are therefore under no obligation to hold identity documents in order to lodge an application for international protection. They are requested, however, to submit all original documents in their possession to the decision-making authorities.

The protection officers of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) **regularly** air their suspicions concerning the **veracity** or the **authenticity** of documents submitted. While they are indeed able to express their doubts, there is no established or legal mechanism for overcoming this kind of difficulty. They may, however, contact the French consular authorities in the countries of origin so that the latter can verify the authenticity of the documents produced by the applicants. Moreover, the facsimiles of **civil registration certificates** collected during **fact-finding missions**, organised by OFPRA in the countries of origin, are a useful tool for detecting the **falsification of identity documents**<sup>18</sup>.

#### 2.1.2. ... with regard to the procedure for a forced return

The documents accepted for establishing the identity of rejected applicants undergoing return procedures and the types of documents recognised as **basic identification** or **supporting evidence** vary depending on **the presumed country of origin** and the existence of **agreements** between France and the country in question. Indeed, some **bilateral agreements** or those concerned with **concerted management of migratory flows** include provisions regarding the **identification of nationals** in the case of return procedures.

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<sup>18</sup> The French Office for the Protection of Refugees and Stateless Persons, Republic of Kosovo Mission Report, 31 October – 9 November 2010, pp.28-36, available (in French) at: [http://www.ofpra.gouv.fr/documents/Rapport\\_Kosovo.pdf](http://www.ofpra.gouv.fr/documents/Rapport_Kosovo.pdf)

For example, **the agreement between the Government of the French Republic and the Government of the Republic of Congo regarding concerted management of migratory flows and co-development**<sup>19</sup>, signed 25 October 2007, stipulates, in Appendix II, that a person's nationality is deemed **established** only on the basis of a **valid identity card, certificate of nationality or naturalisation order**. Furthermore, these are the only documents enabling the **immediate issue** of a consular *laissez-passer* by the Congolese authorities. On the other hand, a person's nationality is deemed **presumed** on the basis of documents such as **birth certificates, consular registration cards or residence permits**. In contrast, identity may be established by any means in France – as is the case for the procedure for international protection – and the law leaves it to the prefectural authorities to gauge whether or not the documentation submitted is “**sufficiently probative**”.

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

### 2.2.1. ... with regard to applicants for international protection

- **Language analysis**, as used in other Member States, is not applied in France. The OFPRA protection officers considering the applications for international protection may nonetheless make good use of their expertise in **languages and cultures** so as to determine the identity of the applicant. It is an ad-hoc technique, used **on an optional basis**.

It is important to remember that the role of interpreters, who may be present during the interviews, is not to undertake language analysis. Indeed, aside from their responsibility to assist with communication, interpreters are in no way involved in the processing of applications for international protection and therefore have no influence over the outcome decisions.

- **Age assessment** by bone testing can be carried out if there is a prefectural request and a court order when the age of an applicant is in doubt. It is essential to establish the age of applicants because the rules governing stay and removal differ depending on whether or not the person is a minor. Furthermore, unaccompanied minors are covered by child welfare services and, if they apply for international protection, are represented by an ad hoc administrator assigned by the public prosecutor until guardianship is arranged.
- **Fingerprinting** as a **prerequisite for the procedure for international protection** is **mandatory** under the Eurodac Regulation, directly applicable in France.

It should be noted that fingerprints are taken primarily so as to determine **the Member State responsible for processing the application for international protection** rather than to establish the identity of the applicant. Indeed, it is, above all, an instrument for registering applicants for international protection in the EU. It does nonetheless enable the “**biometric**” identity to be established.

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<sup>19</sup> The text is available in French on the SGII website at the following address: <http://www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/Accord%20CONGO%20du%2025%20octobre%202007.pdf>

- Pursuant to **Article R. 723-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA)**, a **photograph is obligatory** when applying for international protection **for the compilation of the application**. As there is currently no facial recognition system in France, this information cannot be used for comparison with national and European databases.
- **Interviews are compulsory except in certain cases**. Indeed, **Article L. 723-3 of the CESEDA** stipulates that OFPRA will call the applicant to appear in person except in the following cases:
  - a) the Office is preparing to issue a positive decision based on the evidence already in its possession;
  - b) the applicant's nationality is from a country for which the stipulations of Article 1, C (5) of the Geneva Convention relating to the Status of Refugees (28 July 1951) have been applied;
  - c) the elements submitted in support of the application are clearly unfounded;
  - d) the applicant cannot attend the interview for medical reasons.

These interviews have become **quasi systematic** for applicants seeking international protection. The first part of the interview is to establish the applicant's civil registration. After this, the person is questioned on all elements in the application in connection with the reasons for which international protection is sought.

#### ➤ **Other methods**

The French Office for the Protection of Refugees and Stateless Persons (OFPRA) also undertakes **fact-finding missions** in the countries of origin on a regular basis. These missions enable the Office to collect information that can be compared with elements submitted by international protection applicants. The information concerns, notably, **certain societal issues** (arranged marriages, excision, etc.), **the political and security situation or management of civil registration services** in some countries. Such data can then help establish the identity of a person seeking international protection, especially through verification of elements relating to nationality. To date, OFPRA has carried out fact-finding missions in **Bosnia-Herzegovina, Bangladesh, Azerbaijan, Armenia, Mali, the Democratic Republic of Congo, Kosovo and Sri Lanka**.

**An example of this regarding civil registration services** is the fact-finding mission organised in Kosovo from 31 October to 9 November 2011; it enabled the French authorities to collect facsimiles of Kosovo civil registration certificates which may prove useful in combatting document fraud.

Moreover, in certain cases, the decision-making authorities can interview the applicant's presumed **family members**. This is particularly true for **minors**. In addition, protection officers very often **cross-check files** and do not hesitate to question an applicant as to **the chronology and biography** of presumed members of the family if an application for international protection has already been lodged by them in France.

### 2.2.2. ... with regard to the procedure for a forced return

- **Age assessment** is **mandatory** so as to establish whether or not the illegally-staying third-country national is a minor and can be subject to removal procedures. However, age assessment by bone testing takes place **in the case of legal proceedings** following the arrest of the illegally-staying third-country national; this occurs prior to administrative removal procedures. A criminal investigation police officer oversees the process.
- **The use of photographs and fingerprints** for comparison with European and national databases is **common practice**.

During the legal proceedings that come before the administrative formalities for removal, criminal investigation officers may fingerprint illegally-staying third-country nationals and order photographs to be taken to enable comparison with national databases, such as the **FAED automated fingerprint database**<sup>20</sup>.

The identity of a rejected applicant facing return procedures can also be established by sending the **original usable fingerprint file** and **an identity photograph** to the presumed country of origin. Similarly, these elements are exchanged with any representations making a specific request to that effect – as is frequently the case, notably, for Turkey – or when it is provided for by an international instrument. For example, this procedure is envisaged as part of the **framework agreement regarding concerted management of migration and solidarity development** between France and **Tunisia**<sup>21</sup>.

Rejected applicants who are apprehended for illegally staying in the country are required to provide, during the course of the interview with criminal investigation officers, **information regarding their identity**. The transcript of the interview is subsequently forwarded to prefectural authorities.

\* \* \*

In both procedures, the analysis of biometric data and especially the interview practice seem to be the main methods for establishing identity of a third-country national. In the procedure for international protection, the identity elements collected by the determining authorities are often examined with regard to the information available on the presumed county of origin. Despite this, it seems that with the methods used, not all difficulties encountered in the drive to satisfactorily establish the third-country national's identity can

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<sup>20</sup> The FAED is a national fingerprint database used for seeking and identifying perpetrators of criminal offences, as well as for the prosecution, investigation and sentencing of cases brought before the courts. Thanks to the FAED, the true identity of persons accused in criminal proceedings or sentenced to detention can be ascertained, so as to avoid, for example, a miscarriage of justice by detecting false identities and cases of repeat offending. It furthermore permits the identification, by comparison, of traces left by unidentified individuals at the scene of the crime.

<sup>21</sup> Paragraph 3 of Appendix II of this agreement mentions the transmission of such data. The full text is available in French on the SGII website at the following address:

<http://www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/TUNISIA%20-%20Protocole%20gestion%20des%20migrations.pdf>



always be overcome. In that case, it is interesting to determine the importance of identity establishment in the decision-making process regarding international protection and forced return.

## SECTION 3: IMPORTANCE OF IDENTITY ESTABLISHMENT IN DECISION-MAKING PROCESS

On the one hand, the last section of this study aims to determine the importance the authorities give to the different methods used to establish the identity (**sub-section 3.1**). On the other hand, it tends to estimate the influence of outcomes of identity establishment on decision-making process on international protection and forced return (**sub-section 3.2**).

### 3.1 Status and weight of different methods to establish identity ...

#### 3.1.1. ...with regard to applicants for international protection

The **statements** made by applicants for international protection during the **interview** with the French Office for the Protection of Refugees and Stateless Persons (OFPRA) are the primary source of data used by the authorities when deciding whether or not to grant protection. **Elements from these statements are then compared with any documentation in the case file and are examined with regard to the information available on the countries of origin.**

**Theoretically, fingerprinting has primacy over the interview.** Indeed, if the fingerprinting process demonstrates that the person has lodged multiple applications for international protection under various identities, in France or in the EU, the Office may decide not to interview the applicant. **Article L. 723-3 of the CESEDA** provides the legal basis for this. It stipulates that OFPRA may decide not to call for the applicant to appear in person if the case file's existing elements are clearly groundless. It should nonetheless be noted that **in practice**, given the recent litigation proceedings in this regard, the decision-making authorities do undertake interviews on a very regular basis, even in cases where fingerprints have been altered.

In France, **no formal classification structure** has as yet been established for grading the degree of certainty surrounding identity establishment. However, **certain qualifiers** regularly appear in the case files of applications for international protection which describe the extent to which the applicant's identity has been reliably ascertained. These indications are not officially recorded and/or registered electronically, which explains why the French authorities are not in a position, to date, to gauge the degree of identity reliability for each application. This also makes it impossible to quantify the proportion of applicants whose identity was undocumented at the time of application but who nevertheless obtained protection in France, as the decision-making authorities were satisfied that the person's identity had been adequately established during processing.

At this juncture there are no plans to set up such a classification structure.

#### 3.1.2. ...with regard to the procedure for a forced return

It is incumbent on the consular authorities of the presumed country of origin – which are required to issue a consular *laissez-passer* with a view to removal – to decide how much weight they will give to the different methods used to establish the identity of rejected applicants.

## 3.2 Influence of outcomes of identity establishment on decisions taken by competent authorities

### 3.2.1 ... for the consideration of the application for international protection

There is no doubt that the outcome of identity establishment influences the overall decision but it is difficult to gauge the extent. Indeed, the weight of this outcome is **relative** and **varies** depending on **each individual case**<sup>22</sup> and **on the presumed country of origin**.

For example, the decision-making authorities are more stringent when it comes to applicants claiming to be from certain countries, **like Russia**, given that it is far less likely that a citizen of that country could have gone about daily life with no identity papers. Indeed, identification documents are used locally for even the most commonplace daily activities. On the other hand, the fact that identity has only been partially established, especially when there is a lack of credible identity documentation, will be given less weight in other cases. The decision-making authorities also bear in mind the fact that some applicants are from countries, like **Haiti**, where the civil registration services are faulty.

### 3.2.2 ... for return to the country of origin

The ability or inability to establish a rejected applicant's identity influences the removal procedure. As has been highlighted above, the forced return of a rejected applicant is only possible if the presumed country of origin recognises the person as being one of its nationals, and this depends, in most cases, on the establishment of the person's identity.

**According to Article L. 723-4 of the CESEDA**, upon the request of the administrative authority, the Director General of OFPRA may disclose to authorised officials **civil registration or travel documents** enabling the establishment of a rejected applicant's nationality, or copies thereof, with the provision that this disclosure is necessary for the **implementation of a removal order** and that it does not compromise the safety of the person or the person's relatives. This has been facilitated by the creation of an OFPRA **paperless procedure**. On the other hand, the prefectural authorities in charge of implementing the return order cannot consult the application case file in its entirety.

\* \* \*

This section showed that, in the context of the procedure for international protection, not only the identity elements but all the information in relation to the facts that are meant to justify international protection are taken into account at the time of the decision. The authorities adopt a case-by-case approach in accordance with the requirement of specific examination of each application for international protection. The way in which the authorities estimate the elements of identity may vary depending on the country of origin, as it is the case in the procedure for forced return. Indeed, with regard to this procedure, consular authorities of the country of origin are those who look at the information relating

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<sup>22</sup> In France, under **Article L. 723-1 of the CESEDA**, the decision-making authorities are bound to undertake a **thorough examination** of each application for international protection and any elements produced in support thereof.

to the identity collected by the French authorities and determine whether these elements are sufficiently convincing to allow the effective implementation of the forced return of a rejected applicant for international protection.

## CONCLUSION

These closing remarks briefly recapitulate specific issues arising from the findings of this national report.

This national report offers an appreciation of how the establishment of identity constitutes **a determinant process for the two procedures** and highlights the reasons why it is seen as an **increasingly significant problem** by the French authorities. Over and above **the lack of credible documents**, some other obstacles – such as **the falsification of documents** – hinder identity establishment and decision-making regarding international protection and forced return. Moreover, **the increasing phenomenon of fingerprint alteration**, while chiefly concerning certain nationalities, seriously hinders **identification of applicants for international protection**.

Public authorities in France have a perception of these phenomena which indicates that they are on the rise but it is not yet possible to fully quantify them. One of the difficulties in assessing the problem is **the lack of official statistics**. **Creating a formal classification structure** for grading the extent to which identity has been established may be useful for achieving a more accurate evaluation.

In France, the laws and regulations governing foreigners provide for procedures to **define** the identity of applicants for international protection. These procedures are chiefly based on **the indications** given and **the documents** produced by the applicant seeking to initiate the procedure for international protection. **On the other hand, the legal framework for establishing identity is limited**. Practices for establishing “**biometric**” identity are circumscribed by European legislation. **The interview** with the applicant for international protection is the only **compulsory** method enabling the establishment of an applicant’s identity in the absence of credible documents.

There are no provisions in French law regarding the process of identifying a rejected applicant for whom a removal order has been issued.

This national report has underscored the fact that there is, in France, a strict separation between **the prefectures** responsible for arranging temporary permission to stay for international protection applicants and removal of those rejected and **the French Office for the Protection of Refugees and Stateless Persons**, the decision-making authority responsible for assessing each case. Over and above these authorities, **various public stakeholders** may play a role during the process so as to establish identity or verify documentation. Their involvement varies depending on procedures and on their field of expertise.

This study has shown that the notion of identity is not formally defined in the law covering third-country nationals. Among the civil registration data required by the authorities, **nationality** appears to be one of the elements to which special attention is paid.

This study has identified France’s **practices** for adequately establishing the identity of third-country nationals so as to make a fair decision, based on the facts and the circumstances expounded in the framework of an individual case of application for international protection or of forced return. **Fingerprinting** helps establish the “**biometric**” identity of third-country nationals for determining the Member State

responsible for examining the application for international protection. It is also a way of detecting cases in which applicants have lodged **multiple applications under different identities**. As far as third-country nationals' "civil" identity is concerned, this is more often than not established solely on the basis of their **statements, which must subsequently be checked against the available information regarding the country of origin**. With the verification methods used, however, not all of the difficulties encountered in the drive to satisfactorily establish the person's identity can always be overcome.

The ability or inability to establish a rejected applicant's identity to a sufficient degree of certainty influences each of the two procedures. With regard to applicants for international protection, the respective weight given to the person's statements and to the findings of the verifications undertaken to establish identity varies depending on the **individual situation**. In the case of the forced return of a rejected applicant, it is incumbent upon **the consular authorities of the presumed country of origin** to decide whether the probative value of the information gathered concerning the person's identity is sufficient to enable recognition of the person as being one of its nationals and thus his/her readmission.

**The synthesis** of national reports will offer **an overview** of the processes used by the authorities of different Member States for establishing identity during international protection and forced return procedures. If similar challenges are found to be common to several Member States it will be useful to undertake **joint consideration of these issues at the European level**.

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## APPENDICES

### Appendix I – Note on difficulties caused by wilful alteration of their fingerprints by applicants for international protection <sup>23</sup>

#### **A – The wilful mutilation of fingerprints is incompatible with proper application of Community instruments governing the right to international protection**

Like several of its partners, France is having to contend with this new phenomenon, which runs counter to several principles of European Union law and which undermines the correct application thereof.

As of 2009, the practice of fingerprint obfuscation by some international protection applicants accelerated, rising from 3 % to 9.6 % in 2009 and to nearly 12 % in 2011.

For some nationalities, the practice is very widespread: in 2011, it was evident in nearly 85 % of Somali applications for international protection and 89 % of Eritrean applications.

The phenomenon of fingerprint alteration is not unique to France. Other Member States such as Denmark, Germany, Luxembourg, Malta, the Netherlands, the United Kingdom and Sweden are also confronted with it. For this reason the GDISC (General Directors' Immigration Services Conference) organised a working session on this topic, 22 and 23 March 2012, in which the Commission participated.

Regarding international protection, there are three major consequences of this practice:

Firstly, it negates application of Council Regulation No. 343/2003 dated 18 February 2003, known as the Dublin Regulation, which remains “*a cornerstone*” in building the Common European Asylum System<sup>24</sup>.

Through the wilful mutilation of their fingerprints, applicants for international protection sidestep the fingerprinting formality which is mandatory under Articles 8 and 18.1 of Regulation No. 2725/2000 of 11 December 2000, known as the Eurodac Regulation, and prevent the Member State to which the application has been submitted from identifying the State genuinely responsible for processing the application under the Dublin Regulation.

In so doing, these applicants render the authorities powerless to apply the inadmissibility clause provided for in Article 25 of Directive No. 2005/85/CE dated December 2005 concerning applications for international protection falling under the remit of another Member State.

This fraudulent behaviour disregards the principle of equality before the law regarding international protection (*bona fide* applicants for international protection are not able to “cherry-pick” their host country) and exacerbates imbalances between States and the pressure on those States considered more attractive. This is, in particular, the case for

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<sup>23</sup> This document was drafted by the General Secretariat for Immigration and Integration.

<sup>24</sup> Stockholm Programme (5731/10), 6.2: A common area of protection and solidarity, p.114.

France, which saw an increase in the number of applications submitted between 2008 and 2011 of almost 50 % (57,337 applications for international protection). This situation leads to congestion of the reception mechanism with applicants who should theoretically be transferred to the authorities of another Member State, responsible for processing the application by virtue of the Dublin Regulation.

Secondly, the practice of fingerprint alteration enables some applicants to submit multiple applications for international protection, be it in one country or across other Member States, under different identities (given that Eurodac also enables detection of multiple applications): this may come in the guise of simultaneous applications in one country so as to accumulate certain welfare advantages or that of successive applications in the hope of obtaining a positive outcome after one or more rejections.

This situation seriously jeopardises the integrity and credibility of the right to international protection.

Thirdly, this practice means that the decision-making authority lacks vital information concerning the applicant's identity and is consequently unable to issue a fully informed decision:

Identification is a determinant step in establishing the facts that may warrant the granting of protection. In order to grant international protection to a person, it is essential to know who that person is. It is difficult to match a personal account and an individual if we do not know the person's identity, and have no way of knowing whether or not that person is the one featured in the account given. Identification by fingerprinting helps fulfil this requirement. By dodging this obligation, such persons can use an identity other than their own, usurping another person's story, escaping the story that truly does belong to them. In so doing, the applicant is putting the decision-making authority in a delicate position when it comes to determining eligibility for protection.

The deliberate alteration of fingerprints can only be interpreted as failure to comply with the Community law principle of cooperation, in good faith, with the authorities with which a request for protection has been lodged. In this regard, Article 11.1 of the "procedure" Directive sets forth that: "*Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application*" and Article 4.1 of the "qualification" Directive provides that "*Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application*".

**B – The principle of considering each individual application on a case-by-case basis, including fast-track procedures, cannot adequately address this phenomenon:**

Pursuant to the provisions of Article 23.4 (d) of the "procedure" Directive which sets forth that Member States may decide to accelerate an examination procedure if: "*the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision*", the French authorities have decided to fast-track applications for international protection filed by persons who have obfuscated



their fingerprints, in the belief that such an act is actually a manoeuvre to mislead them through the dissimulation of information.

This approach, which maintains the principle that each case be considered individually and which has not been challenged by national jurisdictions (cf. above), provides not only for the swifter issue of a decision, but also for some procedural accommodations.

However, this fast-track examination procedure has clearly had no dissuasive effect with regard to such behaviour, and hampers the smooth operations of the French Office for the Protection of Refugees and Stateless Persons (OFRPA). Indeed, the significant number of applications has led to congestion which weighs heavily on application processing, making workload forecasts more complex, and has made it difficult to respect the timeframes for priority processing of first-time applications.

All the while, this approach does nothing to mitigate the difficulties stemming from such behaviour: the individuals concerned dodge implementation of the Dublin Regulation; multiple, successive or simultaneous applications persist; and the assessment of eligibility for protection process remains undermined.

**C- The situation calls for reflection so that measures to dissuade this type of conduct can be identified:**

Given the magnitude of the fingerprint alteration phenomenon and given what is at stake – having the European international protection system function properly – it is clear that thorough deliberation is required at the European level, bearing in mind the experience and solutions adopted in other Member States.

It is important to adopt harmonised, consistent solutions, and to avoid arriving at divergent national responses that could result in imbalances between States.

Such solutions would have to reconcile the rights and guarantees of individuals and the requirements underpinning the effective implementation of the Dublin Regulation, with the fight against fraud and the misuse of asylum, as well as requirements concerning the need for proper procedures for determining protection.

The responses to be explored could be framed within the context of existing instruments but if these are not ultimately able to deliver adequate solutions, then legislative adjustments to the relevant instruments may have to be envisaged.

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