



EMN FOCUSED STUDY 2012

Establishing Identity for International Protection: Challenges and Practices

National Contribution from Hungary¹

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

(Synthesis Report)]

National Contribution (one page only)

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

The EMN NCP undertook in its working program for 2012 to prepare a focussed study entitled „Establishing Identity for International Protection: Challenges and Practices”.

The aim of the study is to provide the European Commission, the Member States of the European Union and the experts working in the field of international or Hungarian migration with comparable information.

Identity identification is of overriding importance in the asylum procedure. The Hungarian authorities face the issue on a regular basis that applicants for international protection submit

¹ Replace highlighted text with your (Member) State name here.



their application without attaching their identification papers or any credible documentation. This situation has not changed for years. This analysis describes the regulations and laws applying to it which the authorities can rely on.

The study gives a deep insight into two procedures, namely the asylum procedure along with the refugee law in force and the aliens policing procedures in connection with the entry and stay of third country nationals. It also gives information on the practice of the authorities responsible for asylum policy and procedure under the legislation on aliens.

The most important striving of the study is to highlight the importance of being able to identify the refugee as it is one of the pivots of the asylum procedure. It is inevitable to reveal the particulars of the applicant and to prove his credibility to be able to come to a fair and positive decision which leaves no doubts.

In view of all these, the reader is acquainted with the most significant Hungarian legislation, the national institutional framework and the conditions of use of methods aimed at determining identity. In the third part of the study, each stage of the decision-making procedure will be explained.

It arises out of the specificities of the asylum procedure that most of the traditional evidence is not or cannot be available. As a result, the applicant cannot be expected to retain documents needed for his identification during his escape, as in most cases it would considerably diminish his chance of refuge from his original state or the transit state.

Consequently, it can be stated even in the introduction of this essay that the conditions for tangible evidence should not be applied too rigorously due to the difficulty of justification.²

Synthesis Report (up to 3 pages)

Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.

² Cf. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.



Section 1

The National Framework

(National Contribution: Maximum 6 pages, excluding statistics)

The Synthesis Report will provide the reader and policymakers, in particular, with insights into the scale and scope of the issue at national and EU level, evidenced by statistics. It will present an overview of which (Member) States consider, in the absence of credible documentation, the establishing of identity of applicants for international protection and for those applicants who have to be forcibly returned an issue and why. It will hence identify the extent to which (particular) challenges are shared across (Member) States.

It will subsequently analyse the extent to which the process for establishing identity in those cases is laid down in legislation across (Member) States, and the institutional framework for this process. Differences in the capacity that (Member) States have available to meet the challenges (e.g. in terms of being able to draw on expertise, access databases, or have a legal basis for using certain methods) will be drawn out.

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)

Most of the third country nationals applying for international protection (more than 90%) arrive in Hungary without or hiding their passport or any other document which could help their identification. A significant proportion of people applying for international protection during the procedure under legislation on aliens originating in third countries can provide no identification documents at all. Owing to the lack of reliable statistical data, approximately 70% of those being rejected or judged to forced return are concerned as they are not able to identify themselves with credible documents throughout the procedure. The police claim that every third illegal migrant coming from a third country arrives in the Schengen territory without identification documents and then applies for international protection. It does not apply to Kosovar nationals.

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.***

Owing to the situation in North-Africa and at the horn of Africa and the escalated armed conflicts in some Asian countries, the number of illegal migrants and applicants for international protection has soared at the Hungarian section of the European Union's external border. All in all, it can be said that the number of captured migrants have been steadily increasing (40%) in Hungary since September 2011. Moreover, there is a standard tendency which shows a continually high number of those coming to Hungary without any identification document or with false ones.

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

The procedure for taking of evidence proves to be rather complex in case of third country nationals applying for international protection without any credible identification documents. Not only does the lack of physical evidence but also the applicants' non-cooperative behaviour make the identification process even more difficult.

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

If the applicant cannot be identified on the basis of his statement (e.g. given to different Hungarian or foreign authorities in different forms), then it may cast doubts on his integrity regarding his flight as well. If the nationality stated by the applicant in the beginning is not true or could not be determined, his application may be deemed unfounded and rejected.

In the field of alien policing, the application of the third country national shall be rejected without discretion if the Office of Immigration and Nationality (OIN) stipulates that the passport the client has shown is not suited for establishing his identity and he insists on the data.

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



As most applicants for international protection arrive in Hungary without or hiding their identification documents, the issue of identification poses a great problem in Hungary. In case of people having their identification documents it may cause a problem if they have official papers whose sample is not at the disposal of the Hungarian document security experts, or if the credibility of those documents is not accepted by the international community. In some cases it can also happen that the applicants arrive with false identification documents or passports or visas.

- *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.*

If the foreigner has to return to his/her country of origin, the prerequisite of the return process is the identification. Most typical problems arising from identification in case of removal are improper records of personal data in the country of origin, false data provided by third country nationals and unrealistic conditions posed by the embassies (e.g. valid passport expected by the Iraqi embassy or the routine of the Afghan embassy which grants a passport only on condition that the person concerned wishes to return home). In view of all these, it comes as no surprise that most return procedures fail or are delayed to the country of origin. The only exception to it is returning to Georgia where identification is made easier by a developed face-recognising system.

When applying EU or bilateral readmission agreements to third country nationals, the authorities are obliged to prove the illegal border crossing or the illegal stay in the country. Readmission obligation does exist in connection with a person whose identity is not established, as a result, transfer can take place in third countries having readmission agreements even in case of partially or not correctly established identification.

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

- (i) In the field of aliens policing procedures, most identification problems arise in case of people originating from Palestine, Tunisia, Algeria, Egypt, China, Vietnam, Pakistan, Georgia, Morocco, Iraq and Iran.
- (ii) This chart below shows readmissions and identifications initiated by the police (but only after the termination of the refugee status determination procedure) to



which no answer came between 1 January, 2011 and 1 September, 2012.

Citizenship	Initiated	Unanswered	Passport serviced
Afghan	66	65	1
Pakistan	94	87	7
Algerian	21	21	0
Moroccan	9	9	0
Iraqi	9	9	0
Tunisian	9	9	0
Ukrainian	9	4	5
Vietnamese	3	3	0
Nigerian	4	4	0

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

Nothing to report.



1.2 Statistics on the Scale of the Issue³

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	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)
Total Number of applicants for international protection	3419	3118	4672	2104	1693	
Number of applicants for whom <u>identity</u> was not documented at the time of application	N.A.	N.A.	N.A.	N.A.	N.A.	
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	N.A.	N.A.	N.A.	N.A.	N.A.	

³ Source: Office of Immigration and Nationality



decision on international application (e.g. grant, refuse, defer)						
Total Number of <u>Positive Decisions</u>	169	248	234	189	145	From 2008 figures contain the number of recognized refugees and persons granted subsidiary protection
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application	N.A.	N.A.	N.A.	N.A.	N.A.	
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities	N.A.	N.A.	N.A.	N.A.	N.A.	
Total Number of <u>Negative Decisions</u>	1407	528	1383	772	740	
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	N.A.	N.A.	N.A.	N.A.	N.A.	
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making	N.A.	N.A.	N.A.	N.A.	N.A.	



authorities						
Total number of (Forced) ⁴ <u>Returns undertaken</u> of all rejected applicants	481	473	634	563	738	
Number of (Forced) ⁵ Returns of rejected applicants whose identity had to be established at the time of return	N.A.	N.A.	N.A.	N.A.	N.A.	
Number of (Forced) ⁶ 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	N.A.	N.A.	N.A.	N.A.	N.A.	

If desired, and it cannot be fitted in the Table, add further details concerning particular trends and/or notable aspects of the statistics provided.

⁴ While the scope of this Focussed Study (with respect to Returns) includes only the forced return of rejected applicants, it is acknowledged that distinguishing between forced and voluntary returns in official statistics may not be possible. Where possible, do make this distinction.

⁵ Idem.

⁶ Idem.



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?

If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the procedure for international protection.

Where possible, please refer to your National Contribution to the Organisation of Asylum and Migration Policies in the EU, rather than repeating the information here.⁷

In Hungary, asylum procedure is regulated by Act LXXX of 2007 on Asylum (hereinafter referred to as the „Act on Asylum”) and the Government Decree on the Implementation of Act LXXX of 2007, (hereinafter referred to as the „Gov. Dec.”)

Under the law, if a foreign national applies for entry at the border of Hungary or if he/she has arrived in Hungary illegally, he/she is obliged to inform the relevant authority without any delay of his wish to submit an application for international protection in Hungary. The authority shall take his statement in a minute, record the person’s fingerprint if he is over 14 and inform the Asylum Authority without any delay. At an international air traffic border crossing point, the foreign national can also inform the officer of aliens policy department of his wish to submit an application for international protection before his entry. The Office of Immigration and Nationality shall immediately arrange his/her accommodation at the Békéscsaba Accommodation where pre-investigation takes place and unaccompanied minors will be placed at Károlyi István Childcentre in Fót which provides food and shelter for migrant children and young adults.

When an unaccompanied child arrives in Hungary or is left separated after the arrival, the Guardian Authority appoints a guardian for this minor without delay. The guardian’s task is to assist the applicant during the procedure and to act for or on behalf of him. Procedures for international protection involving an unaccompanied minor are given preference by the authorities. If the minor is supposed to have told a

⁷ If however the level of detail is highly relevant, by shedding light on, for example, which elements of identity should be evidenced, what methods can or should be used to do so, what weight is to be given to the outcomes of the use of these methods, etc., it would be useful to insert the information directly in the Template.



lie regarding his age and seems to be over 18, the Asylum Authority may instruct a medical expert to prove it.

The applicant is under the obligation to reveal the circumstances surrounding his flight, to give his personal data, assist in his identification, hand over his official papers, endure the recording of his face and fingerprint (if he is over 14), account for his wealth and income and suffer the inspection of his luggage, clothing and vehicle, if justified. His personal data are checked during the hearing. He is obliged to hand over all his official papers (mainly his passport, identity card, other documents, birth- and marriage certificate, driving licence, diploma) and other written, tangible evidence that can prove his identity and support the cause of his escape.

If the applicant claims to be under age and the Asylum Authority discredits this statement, a medico-legal examination can be carried out with the consent of the foreign national. For the time of the asylum procedure, the Asylum Authority grants a residence permit for humanitarian reasons which certify his legal residence in Hungary.

Officers of the asylum procedure are aware of the situation in the possible country of origin of the foreign national, as a result, it is the interest of the applicant to give true answers to their questions as providing fake information or non-cooperation with the authorities can easily result in the rejection of their application. Statements made during the hearing are recorded.

The Asylum Authority registers the data of the applicant and treats them confidentially during the procedure and does not reveal them for the authorities of the country of origin. The Asylum Authority does not ask for information on the foreign national from his country of origin. The Constitution Protection Office⁸ participates in the procedure as an expert authority.

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

⁸ The Act CXXV of 1995 on National Security Act, Article 5b) places an obligation on the Constitution Protection Office to detect and avert any covert attempt to change or disrupt the constitutional order of Hungary by unlawful means.



*If **Yes**, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the forced return of rejected applicants.*

Where possible, please refer to your National Contribution to the Organisation of Asylum and Migration Policies in the EU, rather than repeating the information here.⁹

In Hungary, controlling of rejected applicants, their identification process, their expulsion and removal are governed by Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as "RRTN") and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter referred to as "Government Decree")

Under the law, any third country national who is not able to credibly identify himself and evidence the legality of his stay in Hungary shall be brought to an Aliens Policing Authority. If the item of his stay or his identity cannot be justified while being at the Authority, the person is obliged to undergo a withholding process for maximum 12 hours, which is specified in law. After it, if the Authority still fails to establish his identity and item for stay, the third country national can be apprehended to prepare his removal.

1.4 The institutional framework at national level

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

Under asylum law, asylum procedure creates an administrative relation in all cases between the Asylum Authority and the applicant. In Hungary, the Office of Immigration and Nationality is in charge of carrying out the asylum procedure.

Within the institutional structure of Office of Immigration and Nationality (OIN), refugee affairs are assigned to an independent directorate, thus all decisions are made on behalf of the Refugee Affairs Directorate. It has two departments: Reception and Integration Unit and Litigation Unit.

⁹ Idem.



Territorial organs of the Office of Immigration and Nationality are the regional directorates and the reception centres. At the moment, there are 4 refugee affairs units in Hungary: in Budapest, in Debrecen, in Békéscsaba and in Győr, whose task is to carry out the asylum procedures and make decisions.

The identity of the foreign national is established by the determining Asylum or Alien Policing Department during the asylum and aliens policing procedure.

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 RRTN lays down that enforcement of forced return shall be carried out by the police. However, it is the OIN's task to prepare and arrange conditions if return is carried out by air.

Under the RRTN, the third country national is obliged to show and hand over his passport, residence permit or any other identification document. The Act states that the third country national shall be brought to the Authority if he identifies himself with expired or invalid residence permit or he is unable to justify the legality of his stay in Hungary or his identity. If aliens policing removal is in force against the third country national, the police turn him to their territorial headquarters or to the OIN's regional directorate.

Implementation of removal shall be carried out by the Aliens Policing Department of the National Police Headquarters, the County Police Headquarters and at the external borders, whereas at internal borders this task is assigned to the authority in charge of alien affairs, for example the Aliens Subdivision or the Public Area Support Department.

Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?¹⁰

No.

¹⁰ This may be a separate body (as in Norway) or a unit within a relevant authority.



If Yes, what issues does the centre cover:

-issues relating to the determination of identity in respect of the procedure for granting international protection OR in respect of the procedure for executing the return of rejected applicants) OR in respect of both of these procedures

-issues relating to the verification of documents in respect of the procedure for granting international protection OR in respect of the procedure for executing the return of rejected applicants OR in respect of both of these procedures

If Yes:

- *Has the centre developed its own database / reference base for
 - *genuine documents?* [Yes/No]
 - *false documents?* [Yes/No]*
- *Does it make use of the database iFADO (iPRADO)¹¹ for checking false ID documents?* [Yes/No]
- *Does it make use of the EDISON¹² system?* [Yes/No]
- *Does its tasks involve:*
 - *Advisory services?* [Yes/No]
 - *Development of Methods?* [Yes/No]
 - *Training of frontline officers?* [Yes/No]
 - *Support with difficult cases?* [Yes/No]
- *Does it have a forensic document unit?* [Yes/No]

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?

At the moment, the Hungarian system does not operate a central body which would be responsible for the identification of foreign nationals. Establishing of identification

¹¹ [PRADO](#) – Public register of authentic identity and travel documents online.

¹² EDISON – Travel Documents System.



is a crucial part of the aliens policing or asylum procedure, as a result, in all cases the territorial units are responsible.

The Asylum Authority operates an asylum register (refugee records) containing data to be able to establish the legal status of refugee, protected refugee and to provide their rights, to hinder multiple procedures and to check multiple application. This register contains the following data regarding the person protected by law on asylum:

- a) natural identification data;
- b) facial image;
- c) fingerprints of persons older than fourteen years of age;
- d) if the applicant is an unaccompanied minor, this fact,
- e) if the applicant was taken over in the Dublin procedure, this fact and the date of the take-over,
- f) the date of submission of the application for recognition as refugee or beneficiary of subsidiary or temporary protection as well as the date of the withdrawal of such application,
- g) the fact and the date of recognition as refugee or beneficiary of subsidiary or temporary protection, the name of the authority or court issuing the recognition decision as well as the number of persons covered by the decision,
- h) the fact, reason and date of rejecting the application for recognition, the discontinuation of the procedure and the withdrawal of the recognition; the name of the authority or court that made the decision, and the number of persons covered by the decision;
- i) the fact and reason of the hand-over of the applicant in Dublin procedure, the dates of the resolution providing for the hand-over as well as of the actual hand-over, and the number of persons covered by the resolution,
- j) marital status, occupation, education of the person seeking recognition;
- k) place of residence, place of stay and accommodation of the person seeking recognition, as well as the beneficiary of subsidiary and temporary protection receiving provisions and benefits under this Act;
- l) name of country of origin;
- m) from among data relating to racial or ethnic affiliation, membership of particular social group, religion or political convictions, those which the person referred to in the reasoning part of his/her application;
- n) data of identification and travel documents (identification mark and



number of document, term of validity, date of issuance, name of issuing authority, place of issuance);

o) natural identification data of family members arriving together with him/her and the legal title of residence in Hungary;

p) data relating to his/her income and pecuniary situation which were contained in his/her declaration, the document supplied by him/her or in the data supplied by the tax authority and/or the agency fulfilling social security responsibilities.

q) the fact and date of the proceedings initiated ex officio;

r) the fact and date of the procedural actions carried out during the refugee proceedings on the basis of this legal regulation;

During the procedure, the credibility of documents provided by the asylum seekers are examined by a separate document expert in the OIN or the document expert of the Special Service for National Security.

Establishing of identification in case of aliens forcibly returned by air is exercised by the Unit of Coercive Measures and Repatriation in the Aliens Policing Directorate.

OIN document experts participate in deciding on the verification of a document, establishing of identification, preparatory arrangements and advising a document for verification process.

During the identification procedure, the different units closely cooperate with the document expert. Their basic task is to carry out complete asylum and aliens policing procedures. If the asylum seeker files a document or an official paper to verify his identity and his escape, in all cases an examination by a document seeker shall be initiated. If the issue of identification arises, the document expert produces an advisory statement and makes a suggestion to conduct further examinations. However, identification (photo, identification by fingerprints, anthropological identification) is out of the scope of a document advisor.

A document expert is instructed to act in an aliens policing procedure if exchange of owner or document, falsification or fictional issuance can be suspected on the basis of an identification document.

The OIN employs two forensic document experts who work as an integral part of the Office. One of them performs examinations and training of another two forensic



document experts are in progress in 2012.

The OIN continuously performs advisory and training activities for its own staff, whereas it provides training and advice for external bodies, mainly for government offices and cooperative institutions.

Tasks in connection with identification are performed by the Border Management Departments Information Unit within the institutional system of the National Police Headquarters (NPH) and document experts in the County Police Headquarters.

The Information Unit of NPH's Border Management Department continuously organises trainings for document experts. Trainings of this kind are held with the help of External Borders Fund within the framework of school-system and further trainings.

Statistics¹³:

Number of document examination in the asylum process			
	2010	2011	First half of 2012
Number of examinations	540	652	329
Real documents	349	428	N. A.
False documents	113	151	61
Misuse could not be proven	78	73	N. A.

In 2010, assignment and instruction took place in 336 cases, out of which real document examinations were 540. In 349 cases the filed documents proved to be genuine, in 113 cases documents were suspected to be false or falsified or with exchange of owner, whereas in 78 cases misuse could not be proven.

¹³ Source: OIN.



In 2011, there were 405 assignments or instructions, out of which on the basis of 339 indictments 652 document examinations were made. In 428 cases it was decided that the filed documents were genuine, 151 documents were suspected to have been false, falsified or undergone owner exchange. Misuse was not obviously proven in 73 cases.

In the first half of 2012, assignments and instructions took place in 329 cases, in 61 cases the documents have been declared to be false.

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.)?

Article 86 of the Asylum Act lists which data the asylum authority can seek to perform its task:

“The refugee authority may request data specified by law for the attendance of its responsibilities stipulated by law

- a) from the records related to persons who committed crime, are under forced measures and/or criminal procedure;
- b) from the central alien police records;
- c) from the records of personal and residence data;
- d) based on an international treaties, legal acts of the European Community or reciprocity, from foreign crime investigation, alien police and refugee agencies and international organisations.”

Furthermore, when the asylum seeker files his/her application for international protection (and he/she is an alien over 14), the Hungarian Authorities shall record his fingerprints and send them on to EURODAC (the European Union’s database for fingerprints). Fingerprint data are available only for the authorized Hungarian asylum and aliens policy departments, the EURODAC’s central unit of registry system, and, if justified, the Member States providing residence for him formerly. The alien has right to obtain information on the content of his data in the registry system, moreover, he can ask for the correction of his faulty data and the cancellation of his data holding there unjustly.



OIN document experts have access to iFADO on expert level, whereas the authorised staff has general access to it and to NEKOR where levels are ranked in a similar way.

OIN officers have free access to PRADO system and restricted access to EDISON, with two stations.

The Aliens Policing Directorate is entitled to record fingerprints of third country nationals in order to carry out a control on the basis of articles 19 and 20 of VIS Regulation to compare data contained in the Visa Information System.

OIN has its own, in-house database freely accessible for its own staff where data are listed according to their type and whether they refer to passports or identity cards.

„General documents” where training material and data on stolen and lost documents can be found,
„False documents” where discovered and examined, false and falsified documents are contained.

In the procedures under legislation on aliens, the policy are entitled to use the different, special systems (e.g. data of residence and citizen registry offices), HIDRA and national database of warrants, MIR and AFIS systems.

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

[Insert response here]



Section 2

Methods for Establishing Identity

(National Contribution: Maximum 8 pages)

The Synthesis Report will provide an overview of the types of documents that are required for establishing identity (preferable in Table format), of the methods that can/should be used in the absence of credible documentation (preferably in Table format), and the relative weight that is given to the outcomes of the methods used (Table or narrative, depending on the responses given) across the (Member) States.

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 Hungarian law does not define explicitly the notion of identity in spite of the fact that the asylum law uses this expression on more occasions. Regarding establishing of identity, the law states which data can be regarded as natural identification data in connection with people concerned by law during the aliens policing procedure.

The following details of the persons coming under the effect of Act on Asylum qualify as natural identification data:

- a) surname(s) and first name(s);
- b) surname(s) and first name(s) at birth;
- c) former surname(s) and first name(s);
- d) pseudonym(s);
- e) place and date of birth;
- f) sex;
- g) mother's surname(s) and first name(s);
- h) current and former nationality, nationalities or stateless status;
- i) in case of refugee or beneficiary of subsidiary protection, the personal identifier.

The immigration authority processes the personal data of third-country nationals obtained within the framework of Act on RRTN in the central immigration register for the purpose of establishing their identity, for checking the authenticity of documents, to determine the duration of lawful residence and to avoid any overlap in



procedures.

The central immigration register contains the following natural identification data of the persons falling within the scope of immigration sub-registers:

- a) surname and forename (names);
- b) surname and forename (names) at birth;
- c) any previous surname and forename (names);
- d) place and date of birth;
- e) sex;
- f) mother's surname and forename (names) at birth;
- g) nationality (nationalities) or stateless status.

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? For example:

- ***Official travel documents: Passports, ID cards;***
- ***Other documents: birth certificates, divorce certificates, marriage licences, qualification certificates, etc.***

Where possible, please indicate whether copies are accepted by relevant authority(ies) and which type of documents are considered by the national authorities as core or supporting documents. Also indicate the major issues faced concerning determining the veracity (or genuineness) of documents.

As the asylum seeker refers to the situation in his country of origin during the asylum procedure, there is no way to carry out a control by the authority. As a result, article 41 (1) of the Asylum Act lists some examples of the deployable means to prove which may help the categorisation of the international protection status.

To verify or substantiate in the course of the refugee status determination procedure whether the criteria of recognition as a refugee, a beneficiary of subsidiary or temporary protection exist in respect of the person seeking recognition, the following means of providing evidence may be used in particular:

- a) facts and circumstances giving rise to the act of fleeing disclosed by the person seeking recognition and the documents supporting the same;



b) the travel document or any other document presented by the person seeking recognition, on the basis of which it is possible to infer his/her identity and/or nationality;

c) all relevant up-to-date information relating to the country of origin of the person seeking recognition, including the statutory or any other mandatory legal provisions of the country of origin and the method of application thereof.

The most typical means to prove is the statement of the asylum seeker, thus the personal hearing of him is compulsory with the only exception that he/she is not in a state to be heard.

Regarding the statement, it is worth mentioning that the applicant cannot be expected to prove his identity beyond any doubts. The only expectation towards him is the requirement of probability. Owing to the fact that in several cases there is no other means to prove apart from his statement, his credibility is of great importance which can be reinforced or rebutted by other means to prove, e.g. his filed documents and gained country information¹⁴.

The importance of the statement is highlighted by the fact that the Asylum Authority terminates the procedure if the applicant makes no statement. Furthermore, Article 59 (1) of the Act lays down in point c) that requirements are not met if the applicant does not reveal the reasons for his escape and the facts surrounding it, or if his statement about it is so irrational or disordered or contradictory that it cannot be implied whether he was persecuted or suffered harm or injury or was at risk of them.

It is a common routine that asylum seekers file documents to verify their identity or citizenship and to support their application. Documents of this kind are passport, certificate of party membership, handbill, indictment or injunction. Besides handing in official documents, the applicants make an attempt at supporting their application by filing reference letters written by lawyers, religious communities or charity services. However, they are not or only rarely suited to make a decision on merits.

¹⁴ Act on Asylum, Article 41 (2): The refugee authority and – in case of need – the court shall obtain the report of the agency responsible for the provision of country information under the supervision of the Minister.



article 52 (2) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services¹⁵ is replaced by Article 41 (3)-(4) of Act on Asylum which stipulates that the asylum authority is entitled to accept a public document issued abroad and filed by the applicant or a private document certified by a foreign court or administrative authority or notary or any other person accredited with authentic registration without the over-authentication of the Hungarian delegation operating in the issuer state or any other over-authentication. A deed issued in a language other than Hungarian may also be accepted without an authenticated Hungarian translation.

Several submitted documents prove to be false or falsified; however, it is imperative to note that the false nature of a document in itself does not imply that the application for international protection is ungrounded. Furthermore, a person in real need of international protection may be in a situation that his only chance to escape his country is to use false or falsified documents. Article 59 (1) (e) of the Act states that use of false or falsified documents may indicate lack of conditions for international protection if the applicant insists on the data of the document.

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.

Ministerial Decree 26/2007 (V. 31.) IRM on the implementation of forced returns lists all tasks the aliens policing authority shall perform when implementing and executing a forced return. Regarding identification, the decree lays down the following.

First of all, the aliens policing authority shall assist the rejected person in obtaining

¹⁵ An authentic instrument made out abroad, and any private document certified by a foreign court, administrative body, notary public or any other person vested with authenticity shall - unless any legal regulation pertaining to the case in question, an international agreement or the principle of reciprocity suggests otherwise - be considered affirmative proof according to Hungarian laws if endorsed by the Hungarian foreign mission in the country where it was issued. Any instrument made out in a language other than Hungarian shall be accepted only with the official translation attached, unless otherwise prescribed by any legal regulation pertaining to the type of case in question



his passport and visa necessary for his entry and transit. Rejected persons from third countries mostly lack not only a Hungarian residence permit but a passport, too. In these cases, determining his citizenship or name can pose a problem. The aliens policing authority turns to the embassy of the country of origin based in Hungary to issue the document. This process, however, may prolong. On the one hand, not every state is represented in Hungary, so it may be needed to turn to its delegation seated in the closest country to Hungary. On the other hand, determining his identity may also be difficult, mainly in cases involving a non-cooperative third country national under pseudo name or a state lacking an operational e-data registry.

If the acquisition of the document completely fails, the Hungarian authority may also issue a passport as *ultima ratio*, under Article 84 of the Act on RRTN. It allows for the aliens policing authority to issue a passport for a third country national to enable him to return his permanent residence country if his lost or destroyed passport cannot be replaced. Thus, Hungary uses this method to enable forced return even in cases of failed acquisition of documents. It has to be mentioned here, however, that the European Union has a recommendation since 1994 regarding a single form of a laissez-passer which would especially ease the process of forced return. With reference to this recommendation, many readmission agreements on the EU level refer to these documents.

The Act of RRTN pinpoints that application of the readmission agreement is crucial in the implementation of the removal. In practice, it means that the Hungarian aliens policing authority shall turn to the partner organisation determined in the implementing protocol of the EU readmission agreement and it shall „offer” the rejected person for readmission. Removal process can be initiated after readmission conditions have been met.



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

- (a) whether it is used within the framework of the procedure for international protection and/or the procedure to forcibly return rejected applicants, or have exhausted or abandoned the procedure for international protection;*
- (b) whether the method is obligatory (i.e. enshrined in law), whether it is part of standard practice (i.e. used in most cases but not enshrined in law) or whether it is optional (i.e. not enshrined in law and used in some cases only). The rationale for selecting some methods as obligatory or optional may relate to national legislation, outlined in Section 1.2 (which the (Member) State can refer to in their replies);*

In practice, there is no hierarchy regarding the use of processes detailed below in the asylum procedure. To examine the fingerprints, to carry out personal hearings and to assess credibility are compulsory in all cases. If the competent authority has doubts regarding the infancy of the applicant, a forensic medical expert is involved in the procedure. Regarding the above-mentioned methods, personal interview is of lowest importance in OIN procedures as examination of fingerprints and forensic examination are considered to be more objective and reliable.

Linguistic analysis and compliance make up no part of the asylum procedures, they are deployed in consular procedures by the diplomatic or consular representations. Age-determining examinations are conducted by medical services and institutions (doctors) instructed by structural units. No credibility test has been introduced as of yet, but assessment and analysis of country information and local knowledge are part of the procedure. Examination of fingerprints and photo checking are compulsory both in national and in international systems, too. No iris scan or DNA examination is conducted.

Do national authorities make use of:

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

- Applicants for international protection:

In theory, the possibility of instruction of linguistic experts does exist who



could identify or exclude the applicant's country of origin based on his dialect, but it has no precedent in Hungary.

➤ Return of rejected applicants for international protection:

It has not been introduced permanently.

ii) Age assessment to determine probable age¹⁶

➤ Applicants for international protection:

If the asylum authority suspects that the applicant may be over 18, then a forensic expert may be instructed to determine his age.

➤ Return of rejected applicants for international protection:

It has not been introduced permanently.

iii) Fingerprints for comparison with National and European databases

National Database

Categories of fingerprints:

Category „1”: it refers to asylum seekers

Category „2”: a third country national over 14 who has been captured by the border checking authorities for illegally crossing the borders of that state by road, by sea or by air and has not been forcibly returned.

Category „3”: if the third country national has already applied for international protection in another Member State if:

- if the third country national states that he has already applied for international protection in another member state but he does not reveal in which

- if the third country national does not apply for international protection but he is reluctant to return to

¹⁶ 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>.



his country of origin (potential risk)

- if the third country national hinders his removal and refuses the establishment of his identity.

➤ Applicants for international protection:

Fingerprint-compliance is routinely carried out in the database.

➤ Return of rejected applicants for international protection:

Under Act on RRTN the relevant authority enforces the law by recording the fingerprint and taking a picture of the applicant and forwards his data on fingerprints to the dactyloscopic institution.

To avoid multiple procedure and establish his identity, the relevant authority records the alien's fingerprint if the followings are ordered:

- detention
- expulsion on the basis of procedure under legislation on aliens
- expulsion based on court order
- compulsory confinement in a place ordered by the authorities.

All fingerprint-records of third country nationals shall be forwarded to the dactyloscopic institution.

European databases

➤ Applicants for international protection:

The Hungarian authorities are under the obligation to record and send the fingerprints of asylum seekers over 14 to EURODAC. These fingerprint data are available exclusively for the authorised Hungarian asylum and national security authorities, the central unit of EURODAC data-recording system and if justified, the member states where he had residence formerly. Any foreigner has right to obtain information on his data recorded there and he is entitled to apply for the correction of his false data and the cancellation of his data preserved there illegally.

➤ Return of rejected applicants for international protection:

Examination of compliance of the applicant's fingerprint is carried out in all cases. If the determining authority pinpoints the number of category of the fingerprint, the dactyloscopic institution directly forwards it to EURODAC system. (If there is no code attached to the recording, the data will be



registered only in the national registry database.)

In cases of categories „1” and „3”, the number of category shall be determined on the fingerprint document which is forwarded to EURODAC registry system via the dactyloscopic institution.

In case of category „2”, when the third country national is a third country national who has been captured by the border checking authorities for illegally crossing the border by land, by air or by sea and has not been forcibly returned, his code shall be put on display on his fingerprint document and register it in EURODAC system. If the determining authority forcibly returns the captured third country national, his/her fingerprint code is not shown on his/her data documents. If his/her data are in the EURODAC system but he/she is forcibly returned, his/her data shall be cancelled from the system.

iv) Photograph for comparison with National and European databases

National Database

➤ Applicants for international protection:

When submitting an application, the Asylum authority shall order the registration of the third country national’s fingerprint and photo on a regular basis. The only exception is when it has already been arranged by an asylum authority or any other authority involved in procedures under legislation on offenders or criminals formerly. The Asylum Authority shall forward the fingerprint without any delay for registration and checking to the competent authority.

Examination of photo-compliance of the applicant is routinely performed in the databases.

➤ Return of rejected applicants for international protection:

Examination of photo-compliance of the applicant is routinely performed in the databases.

European databases

➤ Applicants for international protection:



Examination of photo-compliance of the applicant is routinely performed in the databases.

➤ Return of rejected applicants for international protection:

Examination of photo-compliance of the applicant is performed in the databases on a regular basis.

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

National Database

➤ Applicants for international protection:

No data registration.

➤ Return of rejected applicants for international protection:

No data registration.

European databases

➤ Applicants for international protection:

No data registration.

➤ Return of rejected applicants for international protection:

No data registration.

vi) *DNA analysis*

➤ Applicants for international protection:

Not typically conducted but not excluded by law.

➤ Return of rejected applicants for international protection:

Not typically conducted but not excluded by law.

vii) *Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)*¹⁷

¹⁷ 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.



➤ Applicants for international protection:

Hearing of the applicant is compulsory in the asylum procedure – if not laid down statutorily in a different way. The minute of the hearing shall be taken. Hearing may be cancelled on the condition that the asylum seeker is not in a state to be heard.

The applicant is obliged to provide the Asylum Authority with all evidence available for him/her supporting his/her application during the hearing. The applicant shall be warned of it at the beginning of the hearing.

During the hearing, the applicant shall be given the opportunity to reveal the reasons for his application and arrival in Hungary in a complex way. Following this, the applicant may be raised questions by the Asylum Authority, the guardian and the representative by law of the applicant.

The hearing shall concern questions regarding the applicant's marital status, date and place of his marriage, the family, the surname, the date and place of the birth of his spouse and children, his education history, his occupation, his temporary /permanent address in his country of origin, his accommodation and residence in Hungary and his income and wealth.

➤ Return of rejected applicants for international protection:

Personal hearing is conducted in all cases.

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

➤ Applicants for international protection:

➤ Return of rejected applicants for international protection:

In addition, the asylum or aliens policing authority may instruct an expert in connection with any relevant, specific issue governed by Article 58 of Act on the General Rules of Administrative Proceedings and Services¹⁸ in line with free means to prove.

¹⁸ An expert shall be consulted or an expert opinion shall be obtained if the competent authority does not have sufficient expertise and:

a) if special expertise is required in the case for establishing a material fact or other circumstance; or
b) an expert is prescribed mandatory by the relevant legislation.



Expert statement is not listed as a primer means to prove according to the Act, however, it can be exercised in the asylum procedure. Besides medical experts, document advisers play an important part in the asylum procedure. Their task is to examine the documents submitted by the applicants. The main feature of the examination is the technical and formal examination of the documents, but the expert does not make an official statement concerning their content.

Furthermore, if necessary, the asylum or aliens policing authority is under obligation to obtain the report of the country information centre being under the guidance of the minister. This report contains information needed to check the validity of statements made by the applicant concerning his activities before his escape and to establish his validity. It also assists the decision-makers and legal councils to prepare for the hearings and court trials.

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.

Under Hungarian law, complete level of evidence is not an obligatory part of the asylum procedure; probabilities are considered to be accepted.

If the results of the procedures support the applicant's statements, his/her identity can be considered established or probable. However, if the results of the procedures contradict his/her statements, his/her credibility is seriously questioned.

Regarding means to prove, there is no hierarchy, as a result, all findings of methods mentioned above are taken into consideration when making a decision. No hierarchy has been established or introduced in either aliens policing or asylum procedures.



Section 3

Decision-making Process

(National Contribution: Maximum 3 pages)

The Synthesis Report will describe how the different methods are combined to establish an identity and how the outcomes of attempts to establish identity are then used in making a decision on international protection and forced return. To the extent possible, the Synthesis Report will draw out commonalities and differences across (Member) States.

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.¹⁹

If the results of the procedures contradict the applicant's statements, the authority questions his credibility. Free means to prove shall be used in the asylum procedure, thus any means may be regarded as evidence as they are evaluated on their own merits respectively.

Identity	Alien returned to his own country of origin	Forced return of third country national
Established	Enforcement of forced return with all conditions met	Enforcement of forced return with other conditions met
Partly established	Continued procedure to establish identity and suspend enforcement of forced return	In case of readmission agreement: enforcement when other conditions of forced return are met Other cases: to suspend enforcement of removal and continue procedure to establish identity

¹⁹ 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.



Not proved	Initiation of establishing of identity	In case of readmission agreement: enforcement when other conditions of forced return are met Other cases: to suspend enforcement of removal and initiate establishing of identity
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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.

Under Hungarian law, complete level of evidence is not an obligatory part of the asylum procedure; probabilities are considered to be accepted. The applied methods verify or make the issue at question probable, or they can give it no support or contradict it.

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

Nothing to report.

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”?

The principle of free means to prove is applied in asylum procedures, that is to say, on the one hand, applicable means to prove are not specified, thus evidence can be anything which justifies to relevant issue. On the other hand, the authority is free to



assess the items of evidence respectively or in all and shall decide on their position based on them.

As for the examination of credibility, it is of high importance that the applicant makes a statement about his identity which is exempt from contradictions and is not rebutted by other evidence obtained from different sources.

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?

When making a decision, the authority assesses facts and pieces of evidence respectively and in all, as well. If, concerning identity, only nationality can be established, it may justify international protection for the applicant.

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”?

If the rejected asylum seeker is returned to his/her country of origin, the condition for the removal is the establishing of his/her identity.

If identity has been established, forced return can be enforced. If no prohibition of readmission is in force or his identity is not established, the forced return cannot be enforced. The procedure to establish his identity shall be continued and if it proves to be impossible, a procedure for the establishment of statelessness may be initiated at the request of the applicant.

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



Yes, findings of the procedure to establish an applicant's identity can be used by the authorities responsible for the enforcement of his removal, and asylum authorities provide the aliens policing authorities with this information.

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.

The order of forced return is primarily based on data revealed by the third country national if the identity is not established. Under Article 53(1) of Act, on RRTN, in order to avoid multiple procedure and establish identity, the authority responsible for preparatory detention, aliens policing authority's rejection, stay at the specified place, ordering detention by aliens policy authority and enforcement of court order shall record the photo and the fingerprints of the third country national. Under Article 53 (2), the third country national is obliged to undergo this process and its binding nature is included in the rejection order. If the established identity and the data revealed by the applicant formerly do not correspond to one another, the determining authority shall take steps to correct them properly.

In readmission procedures, the other country does not issue the documents necessary for the forced return until identity has been established with 100% certainty. However, the Georgian practice is different where a passport needed for a single return to the country of origin is issued on the basis of false data on condition that forced return is implemented by an accompanying authority to the border of Georgia and it seems to be probable that the person is a Georgian national.

The aliens policing authority shall give assistance in obtaining the passport and visa necessary for the rejected person's entry and transit to the country of destination. If authorities in the readmission country are unable to perform it, the Hungarian aliens policy authority is entitled to issue a passport for a single journey for the third country national to return to the country of his residence if the lost or destroyed passport cannot be replaced.

If 'no': please describe the type of steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.



Section 4

Conclusions

(National Contribution: Maximum 2 pages)

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?

Problems of identification in the asylum procedures are a difficult issue not only in the European Union but in Hungary, too. Hungarian experiences – similarly to other States – are not positive. The Hungarian authorities are overburdened by the steadily increasing number of applicants, the prolonged time of the procedures and the fact that more and more people are arriving in Hungary without valid documents.

Based on the practice and law-abiding activities of the Office of Immigrants and Nationality, it can be stated that it is the advantage of the Hungarian system to have a flexible procedure to prove due to its free means to prove system. Another merit of the Hungarian system is that decision on an asylum application overrides the aliens policing's enforcements irrespective of the credibility of the applicant.

As a disadvantage, it has to be noted that establishment of identity may fail due to having objective means to prove.

According to the asylum authorities, asylum seekers are increasingly becoming reluctant to cooperate to identify them during the procedures, whereas this obligation is enshrined in law. Nonetheless, it is a further disadvantage that violating this law has no real consequences on the applicant.

Furthermore, to highlight the gravity of the problem, it is still worth mentioning that illegal migrants often use the means of application to avoid enforcement by aliens policing departments (detention, return with readmission agreement). It may pose the risk that those in real need for international protection are given less attention. It is the task of the Hungarian authorities to decrease the number of misused applications for international protection and to terminate the procedures involving ungrounded applications as quickly as possible. Moreover, it would also result in granting international protection for those who really need it at a much greater speed.

