



Establishing Identity for International Protection

Challenges and Practices

EUROPEAN MIGRATION NETWORK

NATIONAL CONTACT POINT

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This report is provided solely for the purpose of completing an EMN synthesis report on establishing identity for international protection. The views expressed in this report do not necessarily reflect those of the Maltese National Contact Point or that of the Maltese Government.

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Establishing Identity for International Protection: Challenges and Practices

National Contribution from Malta

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.

National Contribution

The Office of the Refugee Commissioner is the decision-making authority in applications for international protection. Article 12 (2) (d) of the Legal Notice 243 of 2008 of the Refugees Act, Chapter 420 of the Laws of Malta states that *an applicant for asylum shall hand over all documents in his possession.*

However the biggest challenge faced by the Office of the Refugee Commissioner is the lack of reliable documents presented by the Third Country Nationals, since only a small number of applicants present credible identity documents. The majority of applications placed by Third Country Nationals would be from those having arrived irregularly by boat from North Africa. Some 97% of these arrive undocumented, which is also the main reason why the number of repatriations for failed asylum seekers is so low - due to the lack of documents.

A significant proportion of TCNs who apply for international protection in Malta are Somali. Many of these claim that they have never been in possession of identity documents. It has to be noted that the issuance of documents in Somalia is scarce and that Somali documents lack in credibility due to the high corruption in the country. A very small percentage claim to have bought their documents from the market.

The second largest number of asylum-seekers in Malta consists of Eritrean nationals, some of whom present identity documents. Such documents are forensically examined by personnel trained in documents analysis. The Office is also equipped with high-tech document analysis equipment.

Documents are checked for their authenticity, which may help further in the decision on the application. It is important to note, however, that the presentation of false documents does not necessarily result into a rejection of the application for international protection. In cases where the overall credibility of the applicant has been established, then the Office proceeds to determine the case. Decisions taken are based on an overall examination of the individual case. The Office does not exclude the possibility of granting protection to a person whose identity was not fully established, especially in cases where the applicant's nationality has been established and he/she has been consistent throughout his asylum application.

All applicants for international protection are given the opportunity for a personal interview. This is done to obtain in-depth information about their need for international protection in Malta and to determine the credibility of the applicant.

Through a GDISC Project, the Office of the Refugee Commissioner has had the opportunity to do language analysis in cases where there was doubt regarding an asylum-seeker's country of origin and a conclusion about such a case could not be realistically achieved by questions related to geography and/or general knowledge. The opportunity of doing language analysis assisted the Office in establishing the area/country of origin of the asylum seeker.

The Office of the Refugee Commissioner notes that the term 'identity' has not been defined in national legislation. When applied to applicants for international protection, identity would be those elements such as name, place of birth, date of birth, ethnic group, citizenship... that together makes the person unique.

	2007	2008	2009	2010	2011
Total no of applicants for international protection	1379	2607	2389	175	1862
Positive decisions	627	1413	1696	223	896
Negative decisions	329	1279	895	132	708

The Principal Immigration Officer is the national authority which has the operational responsibility for establishing the identity of failed asylum seekers who no longer have the right to stay in Malta.

Immigration Police notes that the measures used to establish identity are not always successful since this relies on the authorities of the country concerned to confirm the identity of the rejected asylum seekers and requests sent to countries of possible origin are rarely answered.

Malta has no bilateral agreements and no liaison officers in any of the countries of origin of concern. This greatly hinders any progress that may be made in this aspect. Yet it is common knowledge that Malta is one of the EU countries that faces the heaviest influx of Third Country Nationals originating from Africa in respect to its geo-demographic size. These migrants, if not qualifying for asylum, and if not repatriated, may end up in other EU countries. It is clear that any in-effective repatriation process in any MS will affect the whole EU.

The Immigration Office notes that Malta has very little possibility of enhancing the present co-operation with the country of origin and needs the assistance of the EU in this effort.

Establishing the identity of third country nationals is a challenging endeavor for the Maltese authorities since the majority of applications for international protection are lodged by third country nationals who enter Malta irregularly by boat and

undocumented.

Section 1

The National Framework

1.1 The Challenges and Scope of the issue

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

a) international protection?; and

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

The lack of reliable documentation to establish identity represents a challenge to the Office of the Refugee Commissioner that is the responsible authority in Malta for receiving and determining applications for international protection. This is due to the fact that a small number of the applicants for international protection present credible identity document/s.

It has to be noted that the majority of applications for international protection that the Office of the Refugee Commissioner receives are lodged by third country nationals who enter Malta irregularly by boat after these are rescued at sea. A small number of the applications received are lodged by third country nationals who approach the Office personally to seek protection. The Office of the Refugee Commissioner rarely receives applications from persons who enter Malta by plane (documented) and who upon arrival at the airport express their desire to apply for asylum.

A significant proportion of the third country nationals that apply for international protection in Malta are Somali. Many of these claim to have never been in possession of identity documents. Also a good number of those (a very small percentage) who present document/s claim to have bought such documents at the market. It has to be noted that the issuance of documents in Somalia is scarce and that Somali documents lack in credibility due to the high corruption in the country.

The second largest number of asylum-seekers in Malta consists of Eritrean nationals, some of whom present the Office of the Refugee Commissioner with identity documents. Such documents are forensically examined by the personnel of the Office that has received training in documents analysis. The Office is also equipped with high-tech document analysis equipment.

The Office of the Refugee Commissioner notes that all documents presented by applicants are examined. This is done not only through document analysis but also through reference to similar documents with the access to documents collections either abroad or also at its office. The authenticity of documents presented may help further in its quest to decide about the application. However, it has to be noted that the presentation of false documents does not necessarily result into a rejection of the application for international protection.

In order to establish whether an asylum-seeker is truly from the claimed country of origin, the Office of the Refugee Commissioner examines documents presented by asylum-seekers. The asylum determination officers at the Office received intensive training on document analysis. These were provided with a personal kit to examine basic security features of original documents. Forensic document analysis equipment is available at the Office of the Refugee Commissioner. The Office has also created a database for documents.

Considering that the number of asylum-seekers holding and presenting reliable identity documents is small, the Office of the Refugee Commissioner has to rely on an overall credibility assessment of the applicant about his/her identity.

In the case of rejected applicants, the issue of establishing identity in the absence of credible documentation is considered an issue and very much so. In fact it is the main cause of the low numbers of repatriations of this category of migrants. In Malta the main source of illegally present migrants is boat people arriving from North Africa. These by far exceed the number of overstayers found on the Island every year. The vast majority (over 97%) of these migrants arrive undocumented and without any means of identity whatsoever. It is a fact that the first step towards an effective repatriation is having properly identified the migrants that qualify for this procedure. Whatever process this may entail, at the end of the day it is the authorities of the country of origin who have to confirm this identity. We can only assist them to reach this conclusion by providing all information available. The migrants who end up as failed asylum seekers claim to be coming from some 30 different countries of which we have no local representation except for very few. Understandably, this causes difficulties for the authorities to be in a position to have the migrants properly identified.

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.***

Yes. As explained above, the challenge faced by the Office of the Refugee Commissioner is that a very small number of the applicants present reliable identity documents.

In the case of rejected asylum applicants, the numbers remain constantly high for reasons given above – Immigration Police.

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

Yes. This is especially the case where the countries of the migrants concerned do not have any local representation – Immigration Police

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

This statement is also a fact. As explained above, Malta has to rely on the authorities of the countries of origin to confirm the identity of the rejected asylum seekers concerned. Several requests for the provision of travelling documents are rarely answered. – Immigration Police.

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

Yes. However, the Office of the Refugee Commissioner notes that in cases where the overall credibility of the applicant has been established, then the Office proceeds to determine the case.

➤ ***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.***

Yes, and for the reasons explained above. – Immigration Police

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

- (i) Somali nationals – especially to determine whether the applicant truly is from the claimed area of Somalia.

Eritrean/Ethiopian nationals – the Office of the Refugee Commissioner has had a number of Ethiopian nationals claiming to be from Eritrea.

West Africans – for example: Ghanaians claiming to be from Nigeria, Malians claiming to be Ivorian amongst others.

In order to address this difficulty, the Office of the Refugee Commissioner has participated in a GDISC Project through which it has benefited from linguistic analysis (more information in Section 1.4).

(ii) For implementing return;

Algeria

Bangladesh

Cameroon

Chad

Eritrea

Ethiopia

Gambia

Guinea

Guinea Bissau

India

Ivory Coast

Liberia

Mali

Morocco

1.2 Statistics on the Scale of the Issue

Please provide, to the extent possible, the following statistics (with their Source) along with, if necessary, an explanatory note to interpret them if, for example, the statistics provided are partial, had to be estimated (e.g. on the basis of available statistics that differs from the below, or of first-hand research) or if they reflect any particular trends (e.g. a change in policy, improved methods of establishing identity, a change in the country of origin of applicants or of rejected applicants, etc.) If statistics are not available, please try to indicate an order of magnitude. Where available, statistics from Eurostat should be used and presented annually covering the period between 2007 and 2011 inclusive.

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)
<u>Total Number</u> of applicants for international protection	1379	2607	2389	175	1862	(Source: Office of the Refugee Commissioner, Malta)
Number of applicants for whom <u>identity</u> was not documented at the time of application	Statistics are not available					
Number of applicants for whom <u>identity was wholly or partially established</u> during the asylum process thereby allowing the relevant authorities to reach a particular decision on international application (e.g. grant, refuse, defer)	Statistics are not available					
Total Number of <u>Positive Decisions</u>	627	1413	1696	223	896	(Source: Office of the Refugee Commissioner, Malta)
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application	Statistics are not available					
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established	Statistics are not available					

by the decision-making authorities						
Total Number of <u>Negative Decisions</u>	329	1279	895	132	708	(Source: Office of the Refugee Commissioner, Malta)
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	Statistics are not available					
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities	Statistics are not available					
Total number of (Forced) ¹ <u>Returns undertaken</u> of all rejected applicants						
Number of (Forced) ² Returns of rejected applicants whose identity had to be established at the time of return						
Number of (Forced) ³ 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						

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

¹ 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.

² Idem.

³ Idem.

Statistics are not readily available on returns of asylum applicants but the following table gives a clear indication of the difficulties mentioned above. – Immigration Police

Year	Removal orders issued	Repatriations*
2009	1691	382
2010	243	231
2011	1728	159

* Repatriations effected do not necessarily refer to migrants issued with removal orders during the same year.

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.⁴

Article 12 (2) (d) of the Legal Notice 243 of 2008 of the Refugees Act, Chapter 420 of the Laws of Malta states that *an applicant for asylum shall hand over all documents in his possession.*

According to the same Legal Notice, a third country national who has been granted international protection in Malta is entitled to remain in Malta with freedom of movement and to be granted personal documents, including a residence permit for a period of three years in case of refugee status and one year in case of subsidiary protection which shall be renewable.

The Office of the Refugee Commissioner notes that third country nationals who apply for international protection and are not in possession of identity documents, are not expected to contact the authorities in their country of origin to be issued with such documents. The Office of the Refugee Commissioner is bound with confidentiality and cannot contact the authorities of the country of origin to assist in the determination of one's identity. Article 10 (2) of the same Legal Notice states that *any information concerning an application shall, under no circumstances, be disclosed to the authorities of the country of origin of the applicant nor shall any information be requested from such authorities regarding the applicant.*

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

Such a process is not laid down in legislation.

1.4 The institutional framework at national level

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

The Office of the Refugee Commissioner is the decision-making authority in applications for international protection.

In examining applications for international protection, the Office of the Refugee Commissioner examines whether the applicant is truly from the country/area that he/she claims to be. In cases where the applicant does not substantiate his/her claim

⁴ 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.

that he/she is from that area/country, the Office does not go on to establish where the asylum-seeker is from.

The Refugee Appeals Board is the decision making authority established by the Refugees Act (Cap. 420) to receive and determine appeals lodged against a negative decision of the Refugee Commissioner. The Board is composed of two separate chambers. Each Chamber has a Chairman and two other members.

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 Principal Immigration Officer is the national authority which has the operational responsibility for establishing the identity of failed applicants for international protection who have to be forcibly returned to their countries of origin. The Principal Immigration Officer is the Commissioner of Police and he specifically entrusts the Immigration section of the Special Branch of the Malta Police with this duty.

Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?⁵

No. Given the size of our country and the number of human resources available, this is not deemed necessary at the moment.

⁵ This may be a separate body (as in Norway) or a unit within a relevant authority.

Section 2

Methods for Establishing Identity

2.1 Definition and Documents required for establishing identity

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

The Office of the Refugee Commissioner notes that the term ‘identity’ has not been defined in national legislation. When applied to applicants for international protection, identity would be those elements such as name, place of birth, date of birth, ethnic group, citizenship... that together makes the person unique.

Insofar as the return process is concerned, the only identity document which allows the repatriation to be effected is a recognized travel document.

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.

The Office of the Refugee Commissioner is responsible from examining applications for international protection. As mentioned above, only a small number of applicants for international protection present documents.

In case where documents are presented, the Office examines these thoroughly to determine the veracity of such documents. The Office examines all the documents presented: travel documents as well as civil status documents, original as well as copies. This is done not only through document analysis but also through reference to similar documents with the access to documents collections either abroad or also at our office. The genuineness of documents presented may help further in our quest to decide about asylum. One should also note that presentation of false documents does not necessarily result itself into a rejection of the asylum application.

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.

The requirements of the authorities of the countries of origin vary according to country. Most accept birth certificates or expired passports and identity cards. These are the few types of documents that are encountered most frequently. In the vast

majority of cases, however, the migrants are totally undocumented.

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);*

Do national authorities make use of:

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

➤ Applicants for international protection:

Through a GDISC Project, an EU organisation that works in the field of immigration and asylum, the Office of the Refugee Commissioner has benefited from language analysis. The EU Funded Project ended in June 2012. Language analysis was used in cases where there is doubt regarding an applicant's country of origin and a conclusion about such case could not be realistically achieved by questions related to geography and/or general knowledge, or in cases where there is the need of another expert opinion.

➤ Return of rejected applicants for international protection:

This procedure is always an option and there were instances when it was used in the past. It is however not used on a regular basis.

ii) Age assessment to determine probable age

➤ Applicants for international protection:

➤ Return of rejected applicants for international protection:

Yes. Age assessment is conducted by the Agency for the Welfare of Asylum Seekers (AWAS) that is the authority responsible for age determination, in cases of unaccompanied minors. The Age Assessment Team decides on the possible need of any medical test to be carried out. This procedure is not enshrined in the Law but it is normal practice.

iii) Fingerprints for comparison with National and European databases

National Database

➤ Applicants for international protection:

The Office of the Refugee Commissioner notes that the fingerprints of all the applicants for international protection above the age of 14 are taken by the Immigration Police. This is part of the standard procedure.

➤ Return of rejected applicants for international protection:

Fingerprints are invariably taken for inclusion in the Eurodac system. Any comparison will then be made if and when required. It is not a legal requirement.

European databases

➤ Applicants for international protection:

➤ Return of rejected applicants for international protection:

Fingerprints are invariably taken for inclusion in the Eurodac system. Any comparison will then be made if and when required. It is not a legal requirement.

iv) Photograph for comparison with National and European databases

National Database

➤ Applicants for international protection:

➤ Return of rejected applicants for international protection:

The same procedure as for fingerprints applies.

European databases

➤ Applicants for international protection:

➤ Return of rejected applicants for international protection:

The same procedure as for fingerprints applies.

v) Iris scans for comparison with National and European databases

National Database

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

European databases

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

vi) DNA analysis

- Applicants for international protection:
No.
- Return of rejected applicants for international protection:
No.

vii) Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)⁶

- Applicants for international protection:
The Office of the Refugee Commissioner notes that all applicants for international protection are given the opportunity for a personal interview. This is done to obtain in-depth information about their need for international protection in Malta and to determine the credibility of the applicant. During the interview, the asylum determination officer aims to obtain in-depth verifiable information about the claims presented by the applicant such as his claimed nationality.
- Return of rejected applicants for international protection:
This is part of standard procedure and is done in each and every case for rejected asylum seekers in an effort to obtain further information on their identity.

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

- Applicants for international protection:
Not applicable.
- Return of rejected applicants for international protection:
Requests to confirm identity are sent to the respective Embassies through our Ministry for Foreign Affairs for the reasons explained earlier. Immigration police continuously try to enhance relations with the countries of origin and this is done through various initiatives and EU funded projects. On numerous occasions consular officers are invited to Malta in order to interview and possibly document their nationals.

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.

Experience has shown that whenever representatives of the claimed countries of origin are present locally, the repatriation process has always had more success. Suffice it to mention that virtually all TCNs who have an Embassy here and are failed asylum seekers are documented within a few weeks and

⁶ 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.

repatriated. Language analysis has helped when there are doubts as to the claimed nationality but this proves to be a costly process and will still require further checks by the consular officers from the country of origin. It does help in pointing the Maltese authorities to the right direction but is never conclusive in itself.

Most authorities of the countries of origin require that the migrants claiming to be their nationals be interviewed prior to them considering issuing any laissez-passer for them. It is therefore deemed more opportune to invest in having proper and established contact points and relations with the countries of origin and a proper structure to enable to have them invited over to Malta at short notice and be in a position to carry out the required and essential interviewing procedures which are vital in the quest for establishing the identity of the migrants and eventually acquiring their travelling documents.

Section 3

Decision-making Process

3.1 Status and weight of different methods to determine identity

On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.⁷

The Office of the Refugee Commissioner notes that its decisions are based on an overall examination of all the information presented by the applicant and on the individual merits of the case. The results of the different methods are taken together to check consistency.

With regard to return procedures, practice in this field is that all failed asylum seekers are interviewed at length by the Immigration Authorities in an effort to establish their identity. Due consideration is given to the documents they may present, in the very rare cases that they present any. Yet, notwithstanding any other procedure, it is the authorities of the countries of origin who need to be convinced of the nationality of the claimant. Therefore, it is vital that they are part of the process. Malta has no experience with cases in which the countries of origin rely totally on any ‘evidence’ as may be given by the requesting State (Malta) and the main reason behind this is that in the vast majority of cases, the Immigration authorities never have any documents to prove the claims.

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.

Immigration Police do not make use of such ‘grading’ methods.

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

N/a

⁷ 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.

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”?

As cited above, the Office of the Refugee Commissioner is the responsible authority for receiving and determining applications for international protection. The decisions taken by this Office are based on the individual merits and are taken independently of whether the identity of the person has been completely established.

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

The Office of the Refugee Commissioner notes that decisions taken are based on an overall examination of the individual case. The Office does not exclude the possibility of granting protection to a person whose identity was not fully established, especially in cases where the applicant’s nationality has been established and he/she has been consistent throughout his asylum application.

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”?

As long as the principle of non-refoulement is respected, once the identity of the failed asylum seeker is determined, efforts are made to look into the possibility of effecting repatriation. Return must be deferred in cases when the country of origin is one to which repatriations cannot be effected due to situations therein.

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

Not readily available but on request, this should be possible.

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

As explained above, the authorities of the country of origin need to interview the migrants and be satisfied with their nationality. It is only at this stage that they may

consider issuing a travelling document to enable the repatriation. Once this document is supplied by the country of origin, in theory the Immigration authorities will be in a position to effect the repatriation.

Section 4

Conclusions

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

With regards to the asylum procedure, the Office of the Refugee Commissioner notes that this Focused Study highlights the challenges faced by this same Office in establishing the identity of asylum-seekers. Establishing the identity of third country nationals is a challenging endeavor for the Maltese authorities since the majority of applications for international protection are lodged by third country nationals who enter Malta irregularly by boat and undocumented. This Focused Study will assist Member States in sharing good practices and in turn will help these to improve/develop the methods used in establishing identity.

With regard to return procedures, the Immigration Authorities note that it is imperative that the authorities of the countries of origin are involved in the process of identification of failed asylum seekers. Efforts have to be made to enhance the possibility of stepping up the current relations that the EU has with the most common countries of origin. It is clear that most EU countries try to enhance this co-operation bilaterally with the countries of origin that are mostly of concern to them. Yet, this is not the ideal scenario. Malta has very little possibility of enhancing the present co-operation with these countries and needs the assistance of the EU in this effort. Malta has no bilateral agreements and no liaison officers in any of the countries of origin of concern. This greatly hinders any progress that may be made in this aspect. Yet it is common knowledge that Malta is one of the EU countries that faces the heaviest influx of Third Country Nationals, mostly originating from Africa, in respect to its geo-demographic size. These migrants, if not qualifying for asylum, and if not repatriated, may end up in other EU countries. It is clear that any in-effective repatriation process in any MS will affect the whole EU. It is in this context that all the MS should work in unison in a combined effort to further engage the authorities of the countries of origin.