

EMN FOCUSED STUDY 2012

Establishing Identity for International Protection: Challenges and Practices

National Contribution from the Netherlands.

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 aim of this Focussed Study is to provide an overview of the major challenges facing national authorities in their attempts to establish, in the absence of documentation, the identity of third-country nationals seeking asylum or of rejected asylum seekers. The challenges concerned pertain to both the substantive assessment of the asylum application and the problems associated with the return of rejected asylum seekers.

Main conclusions:

- This report indicates that a substantial proportion of the asylum seekers (at least 80%) arrive in the Netherlands undocumented¹.
- The absence of documentation plays a role in the assessment of the asylum application.
- Although establishing identity is an important component of the assessment of an asylum application, lack of clarity about the identity of an asylum seeker does not necessarily preclude the granting of an asylum permit.
- The difficulties experienced in establishing the identity of asylum seekers are not only an issue in the initial assessment of the asylum application, but may also at a later stage play a role in the admission process or in the application for naturalisation to become a Dutch national.
- With the Identification and Labelling Protocol (PIL), the Netherlands has a standardised procedure for unique identification and registration that is followed by the cooperating organisations in the immigration process.²

¹ In this context, 'undocumented' is defined as not having an official document of personal data for identification purposes.

² Cooperating organisations in the immigration process: All organisations involved in the entry, admission, monitoring, and reception of foreign nationals.

- Language analysis is considered an important tool in the assessment of asylum applications.
- Document investigation is conducted by different organisations in the Netherlands.
 - In the Netherlands, different cooperating organisations with different powers are involved in the process of establishing the identity of the asylum seeker. As these organisations consider different documents as guiding, this may cause differences in registration.
- The efforts made in the context of establishing the identity of asylum seekers for the purpose of return do not, by any means, always have the desired result.

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.

Section 1

The National Framework

(National Contribution: Maximum 6 pages, excluding statistics)

1.1 The Challenges and Scope of the issue

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

a) international protection?; and

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

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

a) Undocumented asylum seekers have been an issue in the Netherlands for a considerable time. The political and social debate has focused primarily on the challenges posed by this issue in the return of asylum seekers. The fact that the absence of documentation is also significant in the decision-making process regarding international protection has played a considerably less prominent role in the debate.

In recent debates on streamlining asylum procedures, for instance, the establishment of identity has often been linked to return. In drafting the Aliens Act 2000, the issue of establishing the identity was addressed in relation to the assessment of the asylum application. Section 31(2)(f) of this Act is an illustration of this issue.³

The establishment of identity plays an important role in the assessment of an asylum application. Although the establishment of identity usually precedes the assessment of the asylum account, in some cases even despite doubt about a person's identity it may still be decided that the asylum seeker qualifies for a permit. The mere situation in the country of origin can be decisive in this respect. If it has been established, for instance, that a person

³ The investigation of the application includes the circumstance that the foreign national may not be able to submit any travel documents or proof of identity in order to substantiate his application, or other documents required for the assessment of his application, unless the foreign national can argue convincingly that he cannot be blamed for the absence of these documents. Section 31(2)(f) of the Aliens Act 2000.

originates from a specific country or region in a country where the safety situation is so bad or he belongs to a specific ethnic group, a permit may be granted.⁴

The issue of identity also played a role in the implementation of the regularisation promulgated in 2007, referred to as the Settlement of the Legacy of the Former Aliens Act⁵. Pursuant to this Act, asylum seekers and former asylum seekers could still be granted a permit subject to specific conditions. In this context, the permit granted was not an asylum residence permit but a regular residence permit. If a file showed that a person's identity had been open to doubt at an earlier stage in the asylum procedure, the Immigration and Naturalisation Service (IND) offered the option for restoration of identity, in addition to the issue of a permit pursuant to this regulation. On 21 July 2008, this option for restoration of identity had been offered to circa 4,200 persons. In total, 28,000 permits were granted pursuant to this regulation.⁶

b) With regard to asylum seekers who have exhausted the procedure for international protection and who refuse to return voluntarily, important issues are primarily the person's nationality, but also his identity. It is possible to obtain replacement travel documents for the purpose of forced return in the absence of documents. The process of obtaining new travel documents or replacement travel documents may, however, be prolonged and resource-intensive when the identity of the third-country national cannot be substantiated by supporting identity documents and/or nationality documents. The presence of such documents is essential for the authorities of many countries of origin.⁷

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.***

An estimated 80% of the asylum seekers do not have an identity card or passport.⁸ On the other hand, many asylum seekers do have other documents that may be used to substantiate their asylum application. There are no indications that the number of undocumented asylum seekers has increased. Since the introduction of the Implementation of the Improved Asylum Procedure Project on 1 July 2010, asylum seekers have been informed, at an earlier stage, of the importance of submitting documents.⁹

4 Advisor of the Implementation Policy Department, IND, Rijswijk.

5 The Settlement of the Legacy of the Former Aliens Act entered into force on 15 June 2007. On the basis of this regulation, asylum seekers who were still residing in the Netherlands and who had submitted their initial asylum application prior to 1 April 2001, qualified for a permit subject to conditions pursuant to this regulation.

6 WODC 2011 *Pardon? Evaluation of the regulation to settle the legacy of the old Immigration Law*

7 Employee of the Division for Implementation and Policy, DT&V, The Hague.

8 Estimate based on linking figures from the Immigration and Naturalisation Service and data from the Police, see Section 1.2.

9 Decision-maker, IND, Zevenaar.

10 Aliens Police Support Service, Senior Advisor, De Bilt.

11 Senior Linguist, Office for Country Information and Language Analysis, IND, Rijswijk.

12 Senior Document Expert, Identity and Document Investigation Unit, IND, Zwolle.

13 DISCS: Documents Information System on Civil Status. A system of the Identity and Document Investigation Unit (IND), which can be consulted for information (in pictures and text) about the features of source documents.

14 Senior Linguist at the Office for Country Information and Language Analysis, IND, Rijswijk.

15 Identification and Labelling Protocol, <http://ind-intranet/Asiel/Nieuws/Documents/PIL%203%200.pdf> Ministry of Justice, Appendix 6, April 2008.

16 The figures have been rounded off to fives. The DT&V started on 1 January 2007. The low numbers in the first years may be due to the fact that the organisation did not start until that year.

17 Employee of the Division for Implementation and Policy, DT&V, The Hague

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

Yes, the different measures used to establish the identity are resource-intensive. Different organisations are engaged in the measures used to establish the identity. The first contact with, and registration of, asylum seekers is handled by the Aliens Police in Ter Apel and at Amsterdam Airport Schiphol. A total number of 40 people work here.¹⁰ All asylum seekers are registered in the Central Shared Database with Basic Information on Applicants (BVV Basisvoorziening Vreemdelingen) in the Netherlands. The database is filled from the systems of the cooperating organisations in the immigration process.

The Identity and Document Fraud Centre of Expertise of the Royal Netherlands Marechaussee employs a total number of 41 people. They support the Aliens Police and the Royal Netherlands Marechaussee in the establishment of identity, and verify the documents found for authenticity.

In the decision-making process, as well, capacity is reserved for identity research (which includes the interview to determine the probable country and or region of origin). The Office for Country Information and Language Analysis of the Immigration and Naturalisation Service (IND), for instance, has 4 linguists and 24 country specialists in permanent employment, and 30 language analysts who are paid on a case-by-case basis. At the time of the publication of this report, the IND received circa 500 cases a year, and the language analysis takes four hours for each asylum seeker. There have been times when the IND received more than 1,000 cases a year.¹¹

The IND established a separate unit for the investigation of documents: the Identity and Document Investigation Unit. This Unit employs circa 50 persons; 11 investigators and 39 support staff.¹² On an annual basis, 13,000 documents are submitted for the establishment of authenticity. So far, circa 2,500 documents have been entered in DISCS.¹³

In the return process, resources are also deployed with a view to the establishment of identity. In the Netherlands, a separate organisation, the Repatriation and Departure Service (DT&V), is charged with the return of third-country nationals, including asylum seekers who have exhausted the procedure for international protection. This organization has a department that maintains the contacts with the embassies and attempts to obtain new travel documents or replacement travel documents.

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

Yes, the measures used to establish identity are not always successful. People can simply present themselves as someone else if they do not yet occur in any systems (see Section 2.2 under (iii), (iv) and (vi)). See in this connection also the above-mentioned description of the group of persons who have been offered a permit pursuant to the Settlement of the Legacy of the Former Aliens Act. The cases of a substantial proportion of these persons appeared to concern doubts regarding their identity.

One instrument to establish a person's origin or ethnicity with reasonable certainty is language analysis. The advantage of language analysis is that it nearly always provides clarity about which language a person speaks and in which region this language is spoken.¹⁴

In the case of asylum seekers who have exhausted the procedure for international protection, applications for the issue of a travel document or a replacement travel document are not always granted. One reason for rejection may be that the identity and/or nationality cannot be established. See Table 1 below.

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

Yes, in this context, as well, reference may be made to the group of persons who were offered the option for restoration of identity pursuant to the Settlement of the Legacy of the Former Aliens Act. Considering the size of the group, it may be concluded that the establishment of identity is not always successful. Ideally, the identity is established on the basis of an official personal data document (passport or identity document).¹⁵ An established identity facilitates and accelerates the decision-making process.

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, the establishment of identity poses a large challenge in forced returns. The Table below states the number of applications for the issue of a travel document or a replacement travel document, and the answers received from the authorities, broken down by the year in which the answers were received.

Table 1 Total number of applications for the issue of travel documents or replacement travel documents, and the answers received to these requests

Year of answer received from the authorities	Answer received from authorities	2007	2008	2009	2010	2011
	No answer received	5	125	310	215	1,985
	Consent to transfer				35	690
	Positive reaction from authorities	45	370	495	595	885
	Negative reaction from authorities	75	395	575	480	780
	Total number of requests per year ¹⁶	135	890	1,380	1,325	4,340

Source: Repatriation and Departure Service

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 case of Somalis, the establishment of identity is complicated, firstly, because Somali documents are not recognised by the Dutch authorities. On the other hand, the part of Somalia from which a person originates is, however, relevant to the options of forced return. It is also difficult to develop admission policies regarding the different Somali areas of origin and the region of origin.

ii) Some countries of origin consider the establishment of nationality insufficient; in those cases it is also necessary to verify the identity. This process progresses slowly when the third-country national used aliases and the country of origin does not require the registration of fingerprints. Countries that wish to verify the identity in addition to nationality include China, India, and Pakistan.¹⁷

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

(-)

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.

Table 2

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – also see the Table below)
Total Number of applicants for international protection ¹⁸	7,100	13,400	14,905	13,335	11,590	
Number of applicants for whom <u>identity</u> was not documented at the time of application	NA	NA	NA	NA	NA	
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)	NA	NA	NA	NA	NA	
Total Number of <u>Positive Decisions</u>	5,625	6,140	8,505	8,700	8,375	
Total Number of Positive Decisions for applicants whose identity was not	NA	NA	NA	NA	NA	

¹⁸ Concerns initial asylum applications

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documented at the time of application						
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities	NA	NA	NA	NA	NA	
Total Number of <u>Negative Decisions</u>	4,470	5,665	9,770	10,325	10,220	
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	NA	NA-	NA	NA	NA	
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities	NA	NA	NA	NA	NA	
Total number of Forced <u>Returns undertaken</u> of all rejected applicants	NA	NA	120	170	285	The authority providing the transfer file is the Immigration and Naturalisation Service (IND). Therefore, these figures relate only to third-country nationals who have been transferred to the Repatriation and Departure Service from the asylum process. In addition, cases have been transferred by other the immigration authorities, in which cases no records are kept of whether it concerned an asylum application or not. Returns to the countries of origin have not been registered until 2009; consequently no figures are available for 2007 and 2008.
Number of Forced Returns of	420	1,580	1,725	3,305	4,725	The authority providing the transfer file is the IND. This concerns the number of notifications ¹⁹ of

¹⁹ Notifications: Notified to the authorities in writing, in person, or otherwise in connection with the application for a travel document.

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rejected applicants whose identity had to be established at the time of return						travel documents or replacement travel documents per year.
Number of Forced Returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin	85	525	885	690	2765	The authority providing the transfer file is the IND. This concerns the number of answers from authorities to an application for the issue of a travel document or a replacement travel document, whereby no answer or a negative answer was received from the authorities, broken down by the year in which the answer was received.

Source: INDIS, PSHV, and Repatriation and Departure Service

- The Immigration and Naturalisation Service (IND) as the authority providing the transfer file in connection with the indication that it concerns an asylum application.
- NB: The registration system for applications for emergency travel documents was not put into operation until the middle of July 2007.
- Figures rounded off to fives.

The requested statistics about the scale on which asylum seekers were found to be undocumented appeared to be available only to a very limited extent.

For the purpose of these statistics, a link had to be made between the information system of the Immigration and Naturalisation Service (INDIS) and the statistics from the PSHV system provided by the police.²⁰ The question of whether the asylum seekers were undocumented at the time of the decision cannot be answered. A statement can be made only about the proportion of documented asylum seekers on the reference date of 31 July 2012. In 13% of the cases, the asylum seekers registered with the IND in the period of 2007-2011 appeared to be not registered with the police. With regard to 2% of the number of asylum seekers registered with the police, it was not known whether they possessed documents. In this context, the term ‘documented’ means registered in conformity with PIL level 1+2.²¹

On the reference date of 31 July 2012, 21% of the total number of procedures appeared to comply with the above-mentioned PIL level 1+2.

²⁰ PSHV (*PolitieSuite Handhaving Vreemdelingen*): system in which the business processes for dealing with the settlement of the supervision of foreign nationals and removal are processed

²¹ The Identification and Labelling Protocol (PIL) is a standardised procedure for unique identification and registration followed by the cooperating organisations in the immigration process. PIL Level 1+2 means possessing an official identifying personal data document combined with an official non-identifying personal data document or possessing an official identifying personal data document.

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.

Legislation to determine the identity and nationality of asylum seekers has been laid down in the Aliens Act 2000 (Sections 50, 52, and 55 of the Aliens Act, Article 11(1) and (2)(d) of Directive 2005/85/EC, and the Aliens Decree 2000. This often concerns a formal/procedural division of powers. Section 31(2) of the Aliens Act 2000 also includes a few provisions about the assessment of the asylum application (Article 11(1) of Directive 2003/86/EC and Article 20(1) of Directive 2005/85/EC). The actual immigration policy on the establishment of identity and nationality has been elaborated further in the Aliens Act Implementation Guidelines (Aliens Act Implementation Guidelines 2000 (A/B/C) paragraphs A1/6, C9/2, C4/3, and C14). The Aliens Act Implementation Guidelines stipulate that the identification and registration of third-country nationals is carried out in accordance with the Identification and Labelling Protocol (PIL).²² The PIL describes a standardised procedure for the identification, registration, modification, and determination of personal data, which is to be followed by the cooperating organisations in the immigration process. The procedure provides a framework for the internal administrative organization of the cooperating organisations.²³

In addition, the Immigration and Naturalisation Service (IND) has laid down work instructions (sometimes only internal instructions) for the relevant civil servants. These are documents in which the legislation and the policies are elaborated further. For the sake of clarity: such instructions concern procedural instructions, not policy rules. The instructions that are important for this report are, in particular, the IND Work Instructions no. 2010/14 on decision methodology²⁴, and no. 2010/10 on the investigation method to be used during the asylum procedure²⁵.

Is the process to be used to determine identity within the procedure for the forced return of rejected applicants 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 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.

With regard to the departure and forced return of rejected applicants, Sections 61-66 of the Aliens Act 2000 are important. These Sections have been elaborated further in the Aliens Act Implementation Guidelines 2000. Chapter A, paragraph 4.4 of the Aliens Act Implementation Guidelines 2000 sets out the procedure to be used if the third-country national does not

²² Aliens Act Implementation Guidelines 2000 (A) 1/6.2.

²³ Identification and Labelling Protocol (PIL), <http://ind-intranet/Asiel/Nieuws/Documents/PIL%203%200.pdf> Ministry of Justice, April 2008.

²⁴ IND work instructions no. 2010/14 (Implementation Policy Department). Decision methodology: The assessment of credibility and relevance. (*Beslissystematiek: beoordeling geloofwaardigheid en zwaarwegendheid*). 15 December 2010. (www.ind.nl)

²⁵ IND work instructions no. 2010/10 (Implementation Policy Department). Procedure to start an investigation and/or to ask questions in an investigation during the asylum procedure (*Wijze van opstarten van onderzoek en/of het stellen van vragen bij onderzoek tijdens de asielprocedure*). 19 August 2010 (www.ind.nl).

possess a valid travel document or does not possess any documents at all. In such case, the Repatriation and Departure Service (DT&V) often seeks contact with the relevant diplomatic representation.

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 identifying cooperating organisations²⁶ are:

- The Aliens Police
- The Seaport Police
- The Royal Netherlands Marechaussee
- The Immigration and Naturalisation Service (IND)
- The Central Agency for the Reception of Asylum Seekers (COA)
- The Municipal Civil Registrars

There are, however, a number of differences among these identifying cooperating organisations. Personal identification and initial registration in the Central Shared Database with Basic Information on Applicants (BVV) are effected upon the initial contact with the asylum seeker. The parties that come into contact with the asylum seeker first and that have the power to attribute an identity are the Aliens Police, the Royal Netherlands Marechaussee, and the Seaport Police.²⁷ They have supervisory powers, which give them more scope to conduct an identity investigation than any of the other identifying cooperating organisations mentioned above. They have the power to carry out a body search of a third-country national and to search his possessions. The Royal Netherlands Marechaussee and the Seaport Police identify asylum seekers at the so-called external borders of the Netherlands (i.e. Amsterdam Airport Schiphol and the Rotterdam port area, as the Netherlands only has national borders with EU countries). The Royal Netherlands Marechaussee subsequently registers the asylum seekers in the BVV. If the asylum seeker is undocumented (which is frequently the case in the asylum process) or if it is a matter of identity fraud, the Aliens Police, the Royal Netherlands Marechaussee, or the Seaport Police will conduct an identity investigation.

The Aliens Police are responsible for the supervision of third-country nationals – including asylum seekers – and their place of residence. The Aliens Police register all asylum seekers who did not enter the Netherlands via Amsterdam Airport Schiphol or the Rotterdam port area in the BVV at the application centre in Ter Apel. The aim of the cooperating organisations in the immigration process is to obtain personal data that is as credible as possible.²⁸

The other organisations – the IND, the COA, and the municipal civil registrars – do not have the power to *attribute* an identity, but only have the power to *identify*. The official attribution of an identity must consequently be distinguished from the identification of an asylum seeker. The IND deals with the question of admission. In other words, as soon as the asylum seeker submits an application for asylum or subsidiary protection, the IND will handle this application. However, the IND does have the power to submit a proposal for modification of the personal data. The Aliens Police will assess this request, and usually grants this request only if the proposal for modification is substantiated by original source documents.

A key element in the assessment of the asylum application is establishing the truth. Is the asylum seeker concerned the person he claims to be, and is his asylum account credible? Of course, the presence or absence of documents plays a significant role in this process of

²⁶ Identifying cooperating organisations are the organisations in the immigration process with the power to establish and register the personal data of third-country nationals in the shared registers and/or to modify existing personal data.

²⁷ Identification and Labelling Protocol (PIL), <http://ind-intranet/Asiel/Nieuws/Documents/PIL%203%200.pdf> Ministry of Justice, April 2008.

²⁸ Idem, Appendix 6.

establishing the truth.

In order to arrive at the correct assessment of the asylum application, the IND has a number of instruments at its disposal. These instruments include a language analysis by the Office for Country Information and Language Analysis, document verification by the Identity and Document Investigation Unit, age assessment, and the interview to determine the probable country and or region of origin on the basis of the Country of Origin Information System (HIS).²⁹ The IND also has the power to initiate an investigation via the Ministry of Foreign Affairs in the form of a person-specific report. Elements that are dealt with in such an investigation are, among other things, the question of whether the name of the asylum seeker concerned actually occurs, in the same form as that in the personal data provided by the asylum seeker himself, in the registers of a specific country. If the identity investigation results in other results than those obtained in the investigation at the initial intake, a cooperating organisation with supervisory powers, in this case the Aliens Police or the Royal Netherlands Marechaussee, will have to modify the data in the BVV.

The COA is the implementing authority in the Netherlands that is responsible for the reception of asylum seekers. The COA uses the database of the Aliens Police in which every asylum seeker is registered (name and fingerprints). By means of the obligation to report weekly, the COA checks the asylum seekers for whom the reception has been arranged on the basis of fingerprints.

The civil registrars enter the personal data of third-country nationals in the Municipal Personal Records Database (GBA), which data are subsequently included in the shared registers. The GBA is the Dutch population register; all residents must be entered in this register. The registration of asylum seekers is effected, in principle, after a stay of six months. If the asylum seeker obtains a residence permit before the end of this period, he will have to register earlier. Once the asylum seeker has been entered in the GBA, the relevant municipality is responsible for the quality of the data provided. For the purpose of the registration in the GBA, the source documents (in particular the birth certificate) are guiding if they have been issued by the competent authority in the country of origin.

In conclusion, the Netherlands has several cooperating organisations that establish the identity of the asylum seeker. Due to this stratification in the organisation of asylum policy and the different objectives pursued by the cooperating organisations, a situation is created in which the third-country national may be known under different aliases. The organisations use different criteria and consider different documents as guiding. This may, for instance, result in the fact that an asylum seeker is registered with the IND under Somali nationality, whereas his nationality is unknown in the GBA.

Which national authorities have the operational responsibility for establishing the identity of applicants for international protection who have to (be) forcibly

29 Since 1 January 2003, HIS (*Herkomstinformatiesysteem*) has collected approximately 15,000 topographical *and* thematic maps, all available from official publishers of maps.

30 DISCS (Documents Information System on Civil Status): A system of the IND (Identity and Document Investigation Unit), containing information (in pictures and text) about the features of source documents.

31 Policy officer, Directorate for Operations / Area of responsibility Immigration law, Staff Commander of the Royal Netherlands Marechaussee, Ministry of Defence

32 PRADO Public register of authentic identity and travel documents online.

33 EDISON Travel Documents System.

34 Identification and Labelling Protocol. p. 20-22.

35 OPS (*Opsporingsregister*) is the national list of wanted persons (Dutch citizens and foreign nationals) in respect of whom an alert has been issued and who qualify for apprehension and investigation. Havank: With a view to potential danger to the public order and security, the cooperating organisations with supervisory powers may consult the criminal biometrics register called 'Havank' to verify whether the fingerprints of a third-country national already occur in this register. DISCS (Documents Information System on Civil Status): A system of the Identity and Document Investigation Unit (IND), which can be consulted for information (in pictures and text) about the features of source documents.

return(ed) to their (presumed) country of origin?

- The Immigration and Naturalisation Service (IND)
- The Repatriation and Departure Service (DT&V)

When the asylum application is rejected, the IND provides the DT&V with a transfer file. This service is charged specifically with the return of third-country nationals. On the basis of the information provided to the DT&V by means of this transfer file, the DT&V will conduct an interview with the third-country national. If any travel documents are lacking, the additional information obtained through this interview is used in formulating an application for the issue of a travel document or a replacement travel document.

The DT&V has a special division to obtain such travel documents or replacement travel documents. This division deals with all applications for travel documents or replacement travel documents for third-country nationals. In addition, this division maintains contact with the diplomatic representations of countries of origin in the Netherlands or in Belgium.

After submission of the application for the issue of a travel document or a replacement travel document in writing, the diplomatic representation may request the person concerned to present himself at the diplomatic representation in order to establish his identity.

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

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

Yes, the Netherlands has several expertise centres. As explained above, the Netherlands has designated several organisations for the attribution of identity of asylum seekers. Dependent on the place of application/first-day registration by the asylum seeker (airport, seaport or application centre), different authorities (Royal Netherlands Marechaussee, Seaport Police, and Aliens Police) are responsible for the attribution of identity. For this purpose, the Royal Netherlands Marechaussee and the police agencies mentioned above can use the services of the expertise centres. Dependent on the type of document, different centres have been established. The Identity and Document Fraud Centre of Expertise, a division of the Royal Netherlands Marechaussee, is, for instance, specialised in the investigation of travel documents (passports and identity cards).

The RDW Centre for Vehicle Technology and Information/ Government Road Transport Agency (RDW) verifies driving licences for authenticity.

As pointed out above, the IND does not have the power to attribute an identity to an asylum seeker. In the context of assessing the asylum account, the IND does, however, investigate the credibility of the asylum seeker's statements. These statements include the asylum seeker's statements about his identity.

The Identity and Document Investigation Unit, a division of the IND, provides support, among other things, in the investigation of documents that may be of importance in the assessment of asylum applications. The Identity and Document Investigation Unit has specialised in the

investigation of so-called 'source documents'. This category of documents relates to the 'capacity' of the person, such as arrest warrants, ration booklets, and military cards. However, documents relating to the civil status of asylum seekers, such as marriage certificates, birth certificates, and death certificates, are also assessed by the Identity and Document Investigation Unit. The Office for Country Information and Language Analysis (BLT) of the IND also provides support in the assessment of asylum applications. The BLT has country specialists, regional information centres, and linguists who make analyses together with language analysts.

The Identity and Document Investigation Unit does not conduct any investigations for the DT&V. This Unit does, however, make documents available that may be useful to the DT&V for the return process.

If Yes:

- ***Has the centre developed its own database / reference base for:***
 - ***genuine documents?*** Yes, the Identity and Document Investigation Unit has its own database for source documents, called DISCS.³⁰ Travel documents are registered in EDISON (see also below). In the provision of support in the recognition of travel documents, different facilities are used in the border control process. For this purpose, the databases with travel documents of commercial parties are used.³¹
 - ***false documents?*** No, the Identity and Document Investigation Unit does not have a database for false documents. However, DISCS does have an alert function that reports any new incongruities in documents identified recently. If false or forged documents cannot be returned to the issuing authority/government, the Identity and Document Fraud Centre of Expertise files these documents in its own archive. In this way, border officials are informed about the forgeries used most.
- ***Does it make use of the database iFADO (iPRADO)³² for checking false ID documents?*** This database is available, but it is hardly ever used. Each country uses its own methods in this database, which causes problems with regard to comparability.
- ***Does it make use of the EDISON³³ system?*** Yes, the Royal Netherlands Marechaussee and the Netherlands Police Agency fill this system, as this system is concerned with travel documents.
- ***Does its tasks involve:***
 - ***Advisory services?*** Yes, both the Identity and Document Investigation Unit and the Identity and Document Fraud Centre of Expertise fulfil advisory roles.
 - ***Development of Methods?*** Yes, the Identity and Document Investigation Unit, for instance, recently conducted research into facial recognition.
 - ***Training of frontline officers?*** Yes, the Identity and Document Investigation Unit provides internal training courses for the IND and external training courses, for instance, for municipalities, but also abroad (International Liaison Officer). The Identity and Document Fraud Centre of Expertise provides document training courses at different levels to its own staff, to staff of the national police force, air carriers, and the IND.
 - ***Support with difficult cases?*** Yes.

- *Does it have a forensic document unit?* Yes.

*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?*

As explained above, the Netherlands does not have a central competence centre, but it does have various expertise centres. As the activities of these expertise centres are indeed relevant, a number of the questions above have been answered all the same.

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.)?

Dependent on the immigration process followed, one or more external systems can or must be consulted with a view to further investigation of the identity and the identity documents. This investigation is conducted immediately after the asylum seeker's application/first-day registration. The Aliens Police has access to these systems, and has the mandate to modify the data.³⁴ In addition to the European databases of EURODAC, SIS II, and VIS, the Netherlands also has national systems, such as OPS, Havank, and DISCS.³⁵

*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?*

Since the IND is responsible for making the substantive decision on the asylum application, it can liaise directly with cooperating organisations such as the Aliens Police or the Royal Netherlands Marechaussee.

Section 2

Methods for Establishing Identity

(National Contribution: Maximum 8 pages)

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.*

There is no legal definition of identity in the Netherlands. The Identification and Labelling Protocol (see also footnote 20) mentions the following relevant personal data:

- surname
- first names
- gender
- date of birth
- place of birth
- country of birth
- nationality
- source of the personal data
- if applicable, address details in the Netherlands
- if applicable, family relationship with other registered third-country nationals

Identity consequently does not consist of one aspect, but it is composed of many characteristics that identify a person, also referred to as 'personal data'.³⁶

Within the framework of the asylum procedure, legislation specifies which identity documents are relevant. Chapter C4, paragraph 3.6.2 of the Aliens Act Implementation Guidelines sets out the minimum criteria for a document to be accepted as a supporting document of identity or nationality. The documents to be used to substantiate the identity are official documents issued by the government, which must, as a minimum, include the asylum seeker's passport photo, place of birth, and date of birth.

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 described in Section 1.4 above, the asylum seeker's identity is established by the cooperating organisations at different levels in the immigration process. The Aliens Police accepts official travel documents (issued by the competent authority), certificates, own statements, and statements from third parties. This is due to the fact that it is the aim of the Aliens Police to identify the asylum seeker, and to subsequently register him in the Central Shared Database With Basic Information On Applicants (BVV). The IND uses all data carriers (documents, electronic files, or photos) that are or may be submitted, in order to substantiate the statement made within the framework of the asylum application procedure. The Municipal Personal Records Database (GBA) is guiding insofar as personal data are concerned, and the asylum seeker is registered in the GBA on the basis of source documents. The Municipal Personal Records Database Act provides for a weighting of sources. The birth certificate has the highest status as a source document for the registration of the date and place of birth.³⁷ A passport has the highest status as a source document for nationality. If these documents cannot be submitted, the person concerned will be registered in the GBA as 'nationality unknown'. Copies of identity documents cannot be verified for authenticity. For this reason, copies cannot be assigned overriding importance in the assessment of the asylum application.³⁸

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.

Documents accepted by the countries of origin are passports and travel documents or

³⁶ ACVZ: *The tip of the iceberg? Advisory report on combating identity and document fraud in the immigration system*. The Hague, May 2010.

³⁷ This has to do with the person's traceability. The principle concerns the notion that the birth certificate is the beginning of administrative life. Legal facts later in life may cause adjustments, but on the basis of the birth certificate it is clear who you are.

³⁸ Senior decision-maker, IND, Zevenaar

replacement travel documents. In some countries, admission is also granted upon submission of merely an identity card, an EU statement³⁹, an expired passport and/or a nationality statement. The Netherlands accepts valid passports, identity cards, and emergency travel documents.

2.2 Methods used in the absence of documentary evidence of identity

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

- (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:

a) Yes. In asylum applications, the language analysis is of importance because it can confirm or deny the origin claimed. The asylum seeker must demonstrate plausibly where he originates from. The Immigration and Naturalisation Service (IND) makes use of language analysis. A language analysis can be carried out with regard to approximately 70 languages. The interviews last approximately one hour and are conducted on site in the presence of the asylum seeker, a civil servant, and an interpreter. The recording is subsequently sent to the Office for Country Information and Language Analysis, where it is examined by a linguist and a language analyst. The language analysis is used to determine the asylum seeker's origin.

b) Language analysis is not obligatory. It is up to the IND official who handles the case to decide whether a language analysis must be arranged. It is a key instrument in asylum applications in which the ethnicity/nationality/origin is doubted and the interview to determine the probable country and or region of origin does not give a decisive answer either. Whether or not a language analysis is used is determined on a case-by-case basis. Occasionally, the court requests that a language analysis must be arranged, but this occurs rarely.

➤ Return of rejected applicants for international protection:

39 In certain cases, the departure from the Netherlands may be effected with the assistance of a EU statement as referred to in the Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (Official Journal C 274, 19/09/1996 p. 18-19, see model M80). This document is issued by the Dutch government if the nationality of the third-country is sufficiently plausible. The assistance of the EU Member State may be requested for the purpose of return to the country of origin, but – in certain cases – also for the purpose of return to another country. The document can also be used as supporting travel document in the transfer to other European countries (A4, 4.2.2 of the Aliens Act Implementation Guidelines 2000).

a) In the context of return, the Repatriation and Departure Service (DT&V) may separately request a language analysis. This occurs approximately a hundred times a year. The function of the language analysis is different in the case of the DT&V; in this case it is to provide clarity about where the third-country national originates from, in order to make it possible to work in a more accurate and focussed manner on the return of the third-country national.

b) It is not obligatory. See under (a) above.

ii) Age assessment to determine probable age

➤ Applicants for international protection:

a) Yes, age assessment is performed if the IND doubts the age claimed by the unaccompanied minor. In this case, the option of a radiological age test is offered to prove the minority claimed.⁴⁰ This is done on the basis of five X rays which are assessed by two radiologists. The only purpose of the test is to try and determine whether the third-country national is of age or under age.

b) There is no obligation to perform age assessment.

➤ Return of rejected applicants for international protection:

No. An age assessment is not performed for the purpose of the return process.

iii) Fingerprints for comparison with National and European databases

National Database

➤ Applicants for international protection:

a) At the initial intake interview, the Aliens Police or the Royal Netherlands Marechaussee take fingerprints and compare these fingerprints with all national and European databases (EURODAC, EU-VIS, VIS, NSIS, OPS, and Havank). The fingerprints taken by the Aliens Police are used by the Central Agency for the Reception of Asylum Seekers (COA) with regard to the obligation of asylum seekers who stay in the asylum seekers' centres to report weekly. Since 2012, the IND has also taken fingerprints at the start of the asylum application for placement on a possible residence permit. Upon the issue of the residence permit, the identity of the asylum seeker is verified on the basis of these fingerprints.

b) The taking of fingerprints is enshrined in law and is applied in all cases.

➤ Return of rejected applicants for international protection:

a) Yes, the Repatriation and Departure Service (DT&V) makes use of the fingerprints taken by the Aliens Police and the Royal Netherlands Marechaussee.

b) This is optional, and will occur only if there is reason to do so.

European databases

➤ Applicants for international protection:

a) Yes. As stated above, the Aliens Police takes the fingerprints and compares them with national and European databases. As far as fingerprints are concerned, EURODAC is the most authoritative database. OPS and Havank are national databases.⁴¹

b) Legal basis.

40 Aliens Act Implementation Guidelines 2000, Chapter C11, paragraph 3.4. See also the Age Testing Protocol, to be consulted at www.overheid.nl

41 Reference to footnote 36

42 The W-card shows the asylum seeker's identity and the reason for his stay in the Netherlands.

43 The Dublin agreement regulates which state within Europe is responsible for handling the asylum application.

44 Work Instructions IND 2011/12

45 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.

46 EMN Report: Practical Measures for Reducing Irregular Migration in the Netherlands. April 2012, p. 17.

➤ Return of rejected applicants for international protection:

- a) Yes.
- b) Only if there is reason to do so.

iv) Photograph for comparison with National and European databases

National Database

➤ Applicants for international protection:

- a) Yes. At the start of the asylum procedure, making a photograph of the asylum seeker is standard procedure. This photograph is entered into the EDISON VRD system. The photograph is also placed on the temporary or permanent residence permit.⁴² Nothing else is done with the photograph, unless a case gives cause for this. In that case, the Immigration and Naturalisation Service (IND) conducts a photo-comparison test. This test is hardly ever carried out, as there is little material for comparison. Nothing has been laid down in law. The decision about using this option is made on a case-by-case basis.
- b) The method is standard procedure in the asylum procedure.

➤ Return of rejected applicants for international protection:

- a) No.
- b) No.

European databases

➤ Applicants for international protection:

- a) No, although it sometimes occurs in Dublin cases⁴³ that a request for information about a specific person is received. In that case, photographs are sent to the requesting Member State for comparison, but this occurs only in cases where fingerprints are not available. This happens about 10 to 15 times a year.
- b) No

➤ Return of rejected applicants for international protection:

- a) No. Photograph comparison is not used for the purpose of return process.
- b) No.

v) Iris scans for comparison with National and European databases

➤ Applicants for international protection:

- a) No.
- b) No.

➤ Return of rejected applicants for international protection:

- a) No, this instrument is not used for the purpose of the return process
- b) No

vi) DNA analysis

➤ Applicants for international protection:

- a) In the asylum procedure, DNA analyses are used only for family members of the asylum seeker who wish to be joined with him, in order to determine the biological descent and for an indication of whether an actual family relationship exists.⁴⁴ The option of this analysis is not offered; the initiative is left to the asylum seeker. If the result is positive, the analysis is paid by

the Immigration and Naturalisation Service (IND).

b) No.

➤ Return of rejected applicants for international protection:

a) No, this instrument is not used for the purpose of the return process

b) No.

vii) Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)⁴⁵

➤ Applicants for international protection:

a) Yes. The interview to determine the probable country and or region of origin by means of the Country of Origin Information System (HIS) is to be conducted if the third-country national failed to submit any travel documents or identity documents in order to substantiate his application, or if the third-country national is otherwise undocumented. This interview may support the asylum account, which the asylum seeker is asked to give during the detailed interview. The interview to determine the probable country and or region of origin on the basis of the HIS is composed of very precise topographical and ethnological questions and, if applicable, questions about religion and/or sexual orientation, insofar as relevant. There is no set list of questions; the employee poses questions as applicable. At this stage, the Immigration and Naturalisation Service (IND) may, for instance, also consult public sources, social media, and the Internet, in order to obtain additional information. In this way the IND verifies the facts. The information obtained from the interview to determine the probable country and or region of origin may be submitted for verification to the Regional Information Centres or the country specialists.

The detailed interview centres on the reasons for requesting asylum. On the basis of the asylum account, detailed questions are asked about the experiences of the asylum seeker and why he has left the country of origin. A lawyer or an employee of the Dutch Council for Refugees may be present at this interview, and the events put forward are further investigated. If desired, the IND may submit questions to the country specialists and linguists of the Office for Country Information and Language Analysis for verification of the facts. If the identity claimed is doubted, the asylum seeker is confronted with his incorrect or minimum knowledge of his origin claimed and he is given the opportunity to react on this during the detailed interview.

b) No, there is no obligation to use this method.

➤ Return of rejected applicants for international protection:

Yes. Optionally, at the discretion of the probable country of origin, the third-country national must present himself to the diplomatic representation for an interview in order to establish his identity and/or nationality (Section 1.4). The supervisor of the Repatriation and Departure Service (DT&V) conducts departure interviews with the third-country national in order to realise his return and to obtain additional information about identity and nationality.

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

➤ Applicants for international protection:

a) The Minister of Foreign Affairs compiles country reports which give essential information about countries where many asylum seekers originate from. This information is important to the Immigration and Naturalisation Service (IND) in the decision-making process. The country report includes, for instance, country-specific information about the issue of documents, the type of documents that can be expected from a country, and the extent to which the asylum seeker may be blamed for not being able to provide proof of identity. (Decision Methodology

in Section 3.2.1.) Above, reference has been made to the possibility of a person-specific report. The investigation by the Ministry of Foreign Affairs for the purpose of a person-specific report is aimed specifically at the case of the individual asylum seeker. However, such a report can be compiled only in respect of a limited number of countries.

The Medical Advisors Office may be consulted for medical advice, which includes advice about the treatment options in the country of origin.

b) Person-specific reports and medical examinations are optional. The country reports are freely available and may be used in the decision-making process, if necessary.

➤ Return of rejected applicants for international protection:

In July 2008, the person-specific approach was introduced. This is a working procedure in which the Repatriation and Departure Service (DT&V) and the police cooperate in order to realise the return of criminal third-country nationals and third-country nationals causing nuisance. The essence of the approach is to fully investigate all possible leads that may result in the establishment of the identity and nationality of the third-country national.⁴⁶

Through the intermediary of the so-called Immigration Liaison Officers (ILOs) investigations abroad can be conducted. ILOs are officers of the Immigration and Naturalisation Service (IND) and the Royal Netherlands Marechaussee stationed abroad. The Ministry also assigns task forces abroad which – instead of, or in cooperation with, the diplomatic representation of the country of origin – establish the nationality of the asylum seeker who has exhausted the procedure for international protection, and/or which grants consent to entry to the territory of the country concerned.

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.

In the asylum procedure, it is important that the asylum seeker makes credible statements during the initial interview and the detailed interview. The statements referred to here are claims about factual circumstances such as identity, nationality, ethnicity, sexual orientation, medical condition, and religious conviction. If the Immigration and Naturalisation Service (IND) considers it necessary to verify the factual circumstances for the purpose of making a decision on the asylum application, it has various instruments at its disposal. The decision regarding the instrument to be used is made on a case-by-case basis. Practice has shown, however, that consulting the Country of Origin Information System (HIS) and the language analysis are important instruments in sufficiently demonstrating the credibility of these facts and the asylum account. The interview to determine the probable country and or region of origin produces quick results and is inexpensive. The language analysis is accurate, and the highest judicial body in the Netherlands has ruled that (just like the person-specific reports) it is an expert opinion that may be relied upon by the IND in its decision-making process. It may provide clarity both in the asylum application and in cases of removal.

The Office for Country Information and Language Analysis of the IND conducted a study among the group of asylum seekers who fall under the regularization settlement of 2007, the Settlement of the Legacy of the Former Aliens Act 2000. People who had already undergone a language analysis still submitted identifying documents after many years. In this study, the results of the language analyses were compared to the identifying documents submitted. Out of the 124 cases, 120 cases appeared to tally. In the four cases that did not tally, the persons concerned merely had birth certificates from Sierra Leone, which does not say that they had actually lived there. These four recordings were subsequently sent to an independent party abroad, which arrived at the same conclusion as the Office for Country Information and Language Analysis of the IND. It could not be established that these four persons originated from the Sierra Leone region or that the birth certificates belonged to the third-country nationals.



Section 3

Decision-making Process

(National Contribution: Maximum 3 pages)

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.⁴⁷

Section 1.4 already explained that the Aliens Police, the Seaport Police, and the Royal Netherlands Marechaussee have the power to determine an identity. The Identification and Labelling Protocol (PIL) includes the procedure that must be followed in this context.

The methods mentioned in Section 2.2 pertain primarily to the decision-making process in the asylum procedure, and not all of these methods are used by the above-mentioned police branches or the Royal Netherlands Marechaussee. As stated above, these documents focus initially on the official documents described in the PIL. In the absence thereof, the organisations will start from the asylum seeker's own statements.

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.

Yes, a hierarchy in sources exists for the determination of identity. The Identification and Labelling Protocol (PIL) includes a table representing eight levels. These levels are determined on the basis of whether specific documents have been submitted or not. A third-country national may be registered on the basis of these different levels. The purpose is to establish the identity at the highest possible PIL level.⁴⁸ The highest identification level is formed by an official identifying personal data document (i.e. a national passport or an EU identity document), in combination with an official non-identifying personal data document (e.g. a birth certificate or marriage certificate). If these documents are absent and the identification is based solely on the asylum seeker's own statement, this results in a lower level in the hierarchy.

⁴⁷ 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.

⁴⁸ PIL, Appendix 6.

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

No.

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 decision on an asylum application has two potential results: the application is either granted or rejected.

The issue of whether the asylum seeker possesses documents to establish his identity – identity document or otherwise – does indeed influence the assessment of the asylum application. The decision on the asylum application is made in accordance with an established decision methodology. According to this methodology, the credibility and relevance of the asylum seeker’s statement is tested. Several elements are important in the assessment of credibility. One of these elements is whether the asylum seeker possesses travel documents or identity documents (Section 31(2)(f) of the Aliens Act 2000).

If it is established that the absence of documents can be attributed to the asylum seeker, the statements of the asylum seeker will have to contain strong elements of positive and convincing persuasion.

Although the attributable absence of documents in itself cannot result in a rejection of the asylum application, the burden of proof that lies with the asylum seeker – with respect to arguing convincingly that he needs protection if the circumstance arises – is greater. In concrete terms this implies that the asylum seeker will have to be even more convincing in his statements than would be the case if the absence of documents cannot be attributed to the asylum seeker.

Conversely, if the absence of documents indeed *cannot* be attributed to the asylum seeker, the burden of proof on the asylum seeker will not be greater. The assessment will, of course, be facilitated if the asylum seeker possesses travel documents or identity documents. This does, however, not make any difference to the substantive assessment of the asylum account.

In general, the outcome of the establishment of identity will not result in a deferred decision on the asylum application.

*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?*

It is true that establishing identity is very important in making a decision, but if identity cannot be established this will not automatically lead to a rejection of the asylum application. As pointed out above, the fact that an asylum seeker originates from a specific country or a specific region or belongs to a specific ethnic group may in itself be a reason to grant a permit.

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 authorities of the country of origin refuse to grant a travel document despite the efforts of an asylum seeker, the IOM, and the Repatriation and Departure Service (DT&V), the DT&V may recommend the IND to grant a no-fault permit. Such a permit is only granted to third-country nationals about whom no doubts exist with regard to identity and nationality.⁴⁹

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

Yes

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 application for a travel document or a replacement travel document is submitted to the authorities of the country of origin in writing by registered post or by courier. It is possible that the authorities wish to speak to the third-country national, either in person or by telephone, in the context of the establishment of identity. In that case, the Repatriation and Departure Service (DT&V) will plan a presentation (in person or by telephone).

Section 4

Conclusions

(National Contribution: Maximum 2 pages)

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

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?

Establishing identity plays a major role both in the asylum procedure and in the return process. This report indicates that a substantial portion (circa 80%) of the asylum seekers arrive in the Netherlands without documents. This poses challenges to the implementing authorities, such as the Immigration and Naturalisation Service (IND) and the Repatriation and Departure Service (DT&V), in the performance of their duties.

Various cooperating organisations are involved in the establishment of the identity. The official ‘determination’ of an identity is reserved for the Aliens Police, the Seaport Police, and the Royal Netherlands Marechaussee. Only these authorities have the power to determine an identity with regard to asylum seekers who cannot prove their identity with an identifying document. This will enable the relevant person to participate in Dutch social and economic life, and to be registered in the foreign national's record.

In addition, a number of organisations, including the IND and the DT&V, have the power to ‘identify’. The identity investigation conducted by the IND is used primarily for the substantive assessment of the asylum application and the question of admission. The IND will consequently have to answer questions such as: Is this person the person he claims to be? Is he a refugee or not, and should he receive international protection or subsidiary protection on this

ground or not?

Additional investigations by the DT&V are intended in the first place for the return process. Such investigations are consequently used to prepare the asylum seeker – who has exhausted the procedure for international protection – for return to his country of origin.

As far as the admission of asylum seekers is concerned, the establishment of the identity plays primarily a role in the assessment of the credibility of the statements (establishing the truth). With regard to the establishment of a refugee status, however, the motto ‘the benefit of the doubt’ is an important starting point. This also has an impact on the meaning of the establishment of the identity in the overall assessment of the asylum account. Doubts about specific personal data, for instance, do not necessarily preclude the granting of a permit. The attributable absence of documents does, however, put the asylum seeker in a position whereby his statements must contain strong elements of positive and convincing persuasion. In such a case, more importance will consequently be attached to the statement of the asylum seeker.

Doubts about identity may play a role at a later stage in the admission process and, if applicable, in naturalisation. This became evident, for instance, in the Settlement of the Legacy of the Former Aliens Act, when doubts about identity existed with regard to a substantial portion of the group who qualified for a permit pursuant to this regulation. The absence of documentation may also play a role, once again, in the assessment of the application for naturalisation.

The DT&V, the service that – in the Netherlands – is charged with the return of asylum seekers who have exhausted the procedure for international protection, also puts much effort into obtaining the necessary travel documents. These efforts do not, by any means, always yield the desired results. The figures provided by the DT&V show, for instance, that – in 2011 – out of the 4,340 requests for the issue of travel documents or replacement travel documents, no answers were received from the authorities of the country of origin in 1,985 cases.

Out of the various instruments used in cases involving an absence of documentation, a language analysis is regarded as a useful tool to determine the origin with a large degree of certainty. The reliability of the instrument was furthermore demonstrated by a study in which the results of language analyses were compared to the identifying documents that had been submitted later on.

In the area of document investigation, the Netherlands has several expertise centres; the decision to which centre the document will be submitted is determined by the nature of the document.