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EMN

Evropska migracijska mreža



EMN FOCUSED STUDY 2012

Establishing Identity for International Protection: Challenges and Practices

National Contribution from Slovenia

November 2012

The study has been prepared by Legal-informational centre for nongovernmental organisations – PIC in cooperation with the National contact point of the European Migration Network in the Republic of Slovenia and the Ministry of the Interior of the Republic of Slovenia.

European Migration Network was established due to the need for exchange of information on all aspects of migrations and for the establishment of common asylum and migration policy. Council Decision 2008/381/EC which provides a legal basis for the establishment of the European Migration Network was adopted on 14 May, 2008.

More information about the European Migration Network is available at: www.emms.si.

***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

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.

For the purposes of this study research has been carried out regarding the Slovenian legislation on establishing of identity in procedures for international protection and the procedures for return of rejected applicants to their countries of origin. For better clarification of the implementation of procedures in action two interviews have been carried out with officials of the authorities, responsible for establishing identity in the respective procedures: Ministry of the Interior (Internal Administrative Affairs, Migration and Naturalisation Directorate) and Centre for Foreigners. In the study the author did not make use of references to the national contribution to the study "Organization of Asylum and Migration policies in Slovenia" from February 2009, since it does not contain a unified and detailed description of procedures for establishing identity and furthermore several amendments have subsequently been made to the International Protection Act¹ and a new Aliens Act² has been enacted.

In the Republic of Slovenia the procedures for establishing identity within the framework of the international protection procedure and the framework of the return procedure differ importantly in regard to their goal. In the international protection procedures establishing of identity is inseparable from the consideration of other claims made by the applicant. An evaluation of his/her statements, including statements regarding identity, may lead to a positive or negative decision regarding

¹ Zakon o mednarodni zaščiti, Official Gazette of the Republic of Slovenia No. 111/2007 and subsequent amendments – **hereafter ZMZ**.

² Zakon o tujcih, Official Gazette of the Republic of Slovenia No. 50/2011 and 57/2011 – **hereafter ZTuj-2**.

his/her application for international protection. On the other hand, in the procedures for return of rejected applicants to the country of origin the goal of establishing identity is to meet the conditions, which are set for the return by the particular country of origin. Merely partially established identity therefore has no influence on the outcome of the return procedure.

The Ministry of the Interior does not record in its statistics information on whether and how the applicant has demonstrated his/her identity. Furthermore, the Police in return procedures do not manage separate statistics for former (rejected) applicants for international protection and other foreigners in the procedure. The exact number of cases related to the issue at hand is therefore not known. Nevertheless, the interviewed officials provided estimations that both in the international protection procedures as well as in the return procedures a great majority of persons do not provide the required personal documents for establishing their identity beyond doubt.

In the Republic of Slovenia identity in the international protection procedures and the return procedures is established through personal documents and other documentation of the foreigner, interview with the foreigner, eventual hits in the EURODAC and SIS databases and occasionally through inquiries made to foreign security authorities. Establishing of identity through other databases based on fingerprints, photographs, iris scans and DNA has so far not been regulated by Slovenian legislation. In the return procedures ZTuj-2 also provides the option for age assessment with an expert, however this option has so far not been employed. A similar provision will henceforth also be introduced into the ZMZ in regard to the international protection procedures.

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

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

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

1.1 The Challenges and Scope of the issue

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

- a) international protection?; and***
- b) the forced return of a rejected applicant to their (presumed) country of origin?***

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

a) Procedures for international protection: Yes. Establishing identity in absence of credible documentation is considered an issue by the responsible authorities. The majority of applicants for international protection do not present to the officials during the procedure personal documents, based on which their identity could be established beyond doubt. Another common issue is that many applicants do not state the exact date of their birth, but can instead only tell their birth year. Also common are cases where it is determined that submitted personal documents are not authentic and cases where it is revealed that the person gave different personal information in previous Slovenian or foreign procedures.

b) Return procedures: Yes. In the procedures for forced return of rejected applicants the absence of credible documentation on identity is the main problem that obstructs return to the country of origin. If the foreigner in the procedure does not possess authentic personal documents the return normally cannot be carried out forcefully, but instead only if his/her cooperation is ensured.

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.***

a) Procedures for international protection: Yes. The Ministry of the interior (**hereafter: the Ministry**) does not manage statistical data on how many applicants for international protection submit credible personal documents during the application or later in the procedure. However, in opinion of the interviewed official of the Ministry the majority of applicants do not submit such documents and their identity therefore cannot be ascertained.

b) Return procedures: Yes. This information is also not recorded in official statistics, however according to the interviewed official of the Centre for Foreigners in great majority of cases the identity of a rejected applicant in the return procedure is not evidenced by a credible personal document.

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

a) Procedures for international protection: According to the interview with the official of the Ministry this is not the case, except when authenticity of documents needs to be investigated. With the legislative introduction of age assessment with an expert additional resources will also be needed for these procedures.

b) Return procedures: Yes. According to the interviewed official of the Centre for

Foreigners that is definitely so. Establishing of identity represents a large portion of the activities of the Centre.

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

a) Procedures for international protection: Yes, however they usually at least partially contribute to the evaluation of the applicant's claim regarding his/her identity. As explained by the official of the Ministry, the claimed identity of the applicant can be to a certain degree confirmed or dismissed based on additional measures, particularly the interview with the applicant, however the identity can only be established beyond doubt with a submission of a personal document.

b) Return procedures: Yes. As explained by the interviewed official of the Centre for Foreigners, in most cases the procedures for establishing identity are not successful.

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

No. According to the official of the Ministry in principle the fact that identity was not established does not influence the decision-making process in the sense that a decision could not be issued.

➤ ***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. According to the official of the Centre for Foreigners forced return to the country of origin of persons, whose identity is not evidenced with a personal document, is in most cases not possible.

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

(i) The interviewed official of the Ministry pointed out Somalia and Nigeria. Most persons, who come from Somalia, during the procedure claim they have never even had personal documents. Furthermore, even if they do possess a passport, its authenticity is questionable. In case of Nigeria it has lately been discovered that a large number of applicants have submitted during the procedure a falsified or counterfeited passport.

(ii) The interviewed official of the Centre for Foreigners has stated that according to their experience the majority of the worlds' countries are problematic in the sense that they set the requirements for accepting returned persons too high and they do not help in the return procedures carried out by the Slovene authorities. There are however exceptions that actively cooperate in the return procedures – these are for example Ukraine, Turkey, Moldavia, Serbia, Montenegro and Macedonia. However, in these cases the return is also not possible if the foreigner does not have personal documents and rejects any kind of cooperation in the procedure.

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

If there is evidence present in regard to the rejected applicant that prior to his/her arrival to the Republic of Slovenia he/she was in the Republic of Croatia, he/she is returned to the Republic of Croatia pursuant to the readmission agreement³ and not to the country of origin. In these cases establishing (confirmation) of a person's identity is not required. Only if the return to the Republic of Croatia under the readmission agreement is not successful the procedure for the return to the country of origin is started.

There are no other factors specific for the Republic of Slovenia.

³ Sporazum med Vlado Republike Slovenije in Vlado Republike Hrvaške o izročitvi in prevzemu oseb, katerih vstop ali prebivanje je nezakonito, Official Gazette of the Republic of Slovenia No. 8/2006.

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	434	260	202	246	358	This is the number of applications that were submitted in a particular year. Top countries of origin in 2011 were Afghanistan (83), Turkey (48), Tunisia (26), Pakistan (22) and Somalia (18).
Number of applicants for whom <u>identity</u> was not documented at the time of application	-	-	-	-	-	Data not available / not recorded in official statistics
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)	-	-	-	-	-	Data not available / not recorded in official statistics

EMN Focussed Study 2012:
Establishing Identity for International Protection: Challenges and Practices

Total Number of <u>Positive Decisions</u>	9	4	20	23	24	-
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application	-	-	-	-	-	Data not available / not recorded in official statistics
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities	-	-	-	-	-	Data not available / not recorded in official statistics
Total Number of <u>Negative Decisions</u>	276	145	89	55	78	This is only the number of negative decisions made on the merits of the case, not also including dismissals and stopped procedures.
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	-	-	-	-	-	Data not available / not recorded in official statistics
Total Number of Negative Decisions for applicants whose identity was not considered sufficiently established by the decision-making authorities	-	-	-	-	-	Data not available / not recorded in official statistics

Total number of (Forced) ⁴ <u>Returns undertaken</u> of all rejected applicants	-	-	-	-	-	Data not available / not recorded in official statistics
Number of (Forced) ⁵ Returns of rejected applicants whose identity had to be established at the time of return	-	-	-	-	-	Data not available / not recorded in official statistics
Number of (Forced) ⁶ Returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin	-	-	-	-	-	Data not available / not recorded in official statistics

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

⁵ Idem.

⁶ Idem.

1.3 Relevant EU and National Legislation

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

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

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

The procedure for establishing identity in the procedure for international protection is partially defined in the ZMZ, which transposes into national law the European Directives 2003/9/EC, 2003/86/EC, 2004/83/EC and 2005/85/EC.

Article 36 sets out the preliminary procedure, i.e. the procedure in which the foreigner expresses to the officials of the Republic of Slovenia his/her intent to apply for international protection. Pursuant to the said article the identity of the foreigner, who has expressed an intent, and the route of his/her arrival to the Republic of Slovenia is established by the Police in the preliminary procedure. This is so even if the person submits the intent directly in the Asylum Home – in this case the responsible official notifies the Police about the submitted intent and the Police then carry out the procedure of establishing identity and route of arrival.

The methods for establishing identity by the Police are set out in the Police Act⁸ and the Rules on police powers⁹. In practice the Police establish the identity of the foreigner based on personal documents, other items carried on his person and based on his/her statements. The data can be verified with foreign security authorities, in practice especially with the authorities of the Republic of Croatia, in case it is suspected that the person has already applied for international protection there. The Police automatically check the personal data of the applicant (name, surname, details of birth) in the SIS, the national database of offences and other records of the Police. The law also provides for the nonobligatory option of fingerprinting, however this is mostly not carried out in practice unless the person is suspected of committing a criminal offence. If the fingerprints are taken the Police cannot compare them directly with the database of fingerprinted persons, instead the fingerprints are sent to the Sector for criminal technical science within the particular Police Directorate, which then carries out the analysis and reports on an eventual hit in the database.

For verification of authenticity of personal documents the Police can employ the national portal PORLIS, which combines access to iFADO and PRADO databases, GWK database Switzerland, DOKIS database of the Bavarian Police, ARGUS database and the Slovenian database of personal documents. The portal received first prize at the 2011 national selection of good practices in the Police. In case the Police suspect the personal document is forged it is sent for analysis to the Sector for

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

⁸ Zakon o policiji, Official Gazette of the Republic of Slovenia No. 49/1998 and subsequent amendments.

⁹ Pravilnik o policijskih pooblastilih, Official Gazette of the Republic of Slovenia No. 40/2006 and 56/2008.

criminal technical science of the Criminal Police Sector. In more demanding cases the document is then turned over to the National forensic laboratory, which works as an independent organizational unit of the General Police Directorate. The National forensic laboratory carries out the analysis and compares the document with the document databases (the access to databases is the same as for the Police at Police Stations except for the access to iFADO database, which is wider). Despite the analysis being carried out the authenticity or falsity of the document in most cases cannot be confirmed beyond doubt.

Once the Police procedure is complete the subsequent procedure, including establishing of identity, is pursuant to the ZMZ carried out by the officials of the Ministry of the Interior (Internal Administrative Affairs, Migration and Naturalisation Directorate).

Pursuant to Article 39 of the ZMZ prior to the submission of the asylum application the official of the Ministry of the Interior photographs and takes the fingerprints of the person submitting the intent with the aim of establishment and verification of identity and implementation of Directives 2003/343/EC, 2000/2725/EC and 2008/767/EC. During the asylum application the official of the Ministry of the Interior asks the applicant questions concerning his/her identity (Paragraph 1 of Article 43 and Paragraph 2 of Article 119 of the ZMZ). Article 88 of the ZMZ provides that the applicant must cooperate in the process of establishing identity. During the application the official calls upon the applicant to submit by a specified deadline, not shorter than 15 days, evidence of his/her identity and all evidence that supports his application (Paragraph 1 of Article 43 of the ZMZ).

On the basis of Paragraph 2 of Article 43 of the ZMZ the provisions of ZTuj-2 apply *mutatis mutandis* in regard to establishing the identity of the applicant. However, this law does not contain precise provisions on the process of establishing identity either. One provision that is relevant is Paragraph 1 of Article 97 of the ZTuj-2, which provides that an alien may prove his/her identity by means of a foreign travel document, identity card or other suitable document which is prescribed in the alien's country and which proves the identity of the alien, an alien's passport, an alien's residence permit issued as a stand-alone document, or another public document issued by a state authority which includes a photograph and on the basis of which it is possible to establish his/her identity.

Pursuant to Article 51 of the ZMZ establishing of identity is also one of the grounds on which movement of the applicants may be restricted. However, in accordance with the case law this option is limited, so that the sole fact a person came to the Republic of Slovenia without documents, which can demonstrate identity according to ZTuj-2, does not suffice for restriction of movement, instead in those cases doubt as to the applicant's claimed identity needs to be substantiated with reasonable grounds as well. (This position was confirmed by the Supreme Court of the Republic of Slovenia several times and is conveyed in judgments No. I Up 30/2010, I Up 35/2010, I Up 46/2010 and Up 65/2011).

Furthermore, in the framework of the provisions of the ZMZ on the rejection of an application in an accelerated procedure as manifestly unfounded (transposed from Paragraph 4 of Article 23 of the 2005/85/EC Directive) several reasons for such

rejection are related to the question of identity. Article 55 of the ZMZ provides that the responsible authority may among other reasons reject the application in an accelerated procedure as manifestly unfounded if:

- the applicant refuses to have his fingerprints or photograph taken;
- the applicant has based his application on false identity or forged documents or has withheld relevant information or documents with respect to his identity or nationality;
- the applicant has intentionally destroyed or disposed of a travel document, personal document with a photograph demonstrating his identity or nationality, or another document containing a photograph that could have helped establish his identity or nationality;
- the applicant has intentionally destroyed or disposed of other documentation (documents, tickets, certificates etc.) that could bear significance in establishing his/her identity, nationality or eligibility for obtaining international protection;
- the applicant, in spite of his/her assurance, without reasonable cause failed to submit documentation and data regarding his/her identity by the set deadline;
- the applicant has filed another application for asylum stating different personal data without reasonable cause;
- the applicant has withheld the fact that he/she has already filed an application in another state, particularly in case of him/her using false personal data.

ZMZ also sets confirmed identity as a requirement for enjoyment of certain rights of the applicants for international protection. Only applicants, whose identity has been established with one of the documents listed by the ZTuj-2, have the right to relocate to private accommodation even in the absence of well-founded medical or other reasons (Paragraph 2 of Article 83 of the ZMZ). Furthermore, only applicants whose identity has been established beyond doubt have the right to apply for a work permit after nine months since the start of the procedure (Paragraph 1 of Article 85 of the ZMZ).

ZMZ also mentions establishing of identity in special provisions on procedures with minors, where it provides that in the procedures with unaccompanied minors the child's identity needs to be established and the process for finding his/her parents or other relatives started as soon as possible.

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.¹⁰

Some provisions in regard to this can be found in the ZTuj-2.

Paragraph 2 of Article 90 of the ZTuj-2 provides that an alien accommodated in the

¹⁰ Idem.

Centre for Foreigners is obliged to cooperate with the Police in establishing his/her identity. Paragraph 1 of the same article defines more precisely that an alien must enable access by the competent authorities to all available evidence and submit all documentation and certificates he/she possesses, which may be relevant for the procedure.

Pursuant to Article 95 of the ZTuj-2 the Police can in certain listed cases try to establish identity of the alien even against his/her will – among other cases if he/she is accommodated in the Centre for Foreigners, if the he/she cannot demonstrate or prove his/her identity or if it is necessary for establishing his/her nationality.

As described under the previous question, Paragraph 1 of Article 97 of the ZTuj-2 defines which documents can be used by an alien to demonstrate his/her identity. Furthermore, Paragraph 2 of Article 97 of the ZTuj-2 provides that an alien must at the request of a Police officer present a document proving his/her identity. A fine of EUR 400 may be imposed upon the alien if he/she fails to do so upon the Police officer's request (Article 144 of the ZTuj-2).

Furthermore, Paragraph 4 of Article 82 of the ZTuj-2 sets out an optional measure of establishing the age of an alien. Pursuant to the said article, in case a minor's identity is not confirmed and doubt exists whether he/she is indeed a minor the Police may try to establish the age of the person with the help of experts. Based on an expert opinion the Police issue a declaratory decision on the age of the person. The alien may appeal against the declaratory decision within eight days since the decision has been served. The decision on the appeal is taken by the Ministry of the Interior.

Lastly it has to be mentioned that unestablished identity can be a ground for restriction of movement and accommodation of an alien in the Centre for Foreigners with a maximum duration of six months (Article 76 of the ZTuj-2). Restriction of movement and accommodation in the Centre for Foreigners can be extended for a further period of six months in case the alien fails to cooperate in the return procedure, or there is a delay in the acquisition of required documentation from third countries, or due to a pending procedure of establishing identity, if it is reasonable to expect that it will be possible to return the alien in that period (Paragraph 1 of Article 79 of the ZTuj-2).

1.4 The institutional framework at national level

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

In the procedure from the submission of the intent for international protection until the submission of the application for international protection the responsible authority for establishing of identity is the Police. With the submission of the application the responsibility for establishing of identity is shifted to the officials of the Internal Administrative Affairs, Migration and Naturalisation Directorate of the Ministry of the Interior (**hereafter: the Directorate**).

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 responsibility for forced returns of foreigners, including establishing of identity, is held by the Police and it is carried out by the Centre for Foreigners, which is a part of the Uniformed Police Directorate. The same authority also carries out restrictions of movement and accommodations of foreigners in the Centre.

Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?¹¹

No, there is no such authority in the Republic of Slovenia.

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 stated above, in the preliminary asylum procedure the Police is responsible for establishing identity, and this data is later also available to the officials of the Directorate, who administer the procedure for international protection.

In regard to establishing the applicant's identity, the Directorate can also turn to the Police later in the procedure. In practice the Directorate most often employs the help of the National forensic laboratory in cases of determining of authenticity of personal documents. According to the interviewed official of the Ministry this is done in most cases when an applicant in the procedure presents personal documents.

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.)?

Officials of the Directorate, who administer the international protection procedure and are responsible for establishing identity, are not authorized for direct access to European databases.

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?

Two persons of the Directorate are authorized for access to the EURODAC database. The database is accessed in all cases following the submission of the application and this data is then available to officials in the case file. SIS database may be accessed by the Police and the Directorate can request the data from them (an official can ask for it directly with a letter to the Police). Furthermore, the data from the SIS database is usually already in the asylum file from the preliminary police procedure. Access to VIS can also be carried out by the Police, however this only comes into consideration if a person holds a visa, so it is usually not relevant when establishing identity in the international protection procedures.

¹¹ This may be a separate body (as in Norway) or a unit within a relevant authority.

Section 2

Methods for Establishing Identity

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

2.1 Definition and Documents required for establishing identity

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

a) The definition of identity is not directly defined in law. However, as already mentioned, Paragraph 1 of Article 97 of the ZTuj-2 provides that an alien may prove his/her identity by means of a foreign travel document, identity card or other suitable document which is prescribed in the alien's country and which proves the identity of the alien, an alien's passport, an alien's residence permit issued as a stand-alone document, or another public document issued by a state authority which includes a photograph and on the basis of which it is possible to establish his/her identity. Only if a person demonstrates his/her identity with such original document is his/her identity considered to be established beyond doubt.

b) The same definition from ZTuj-2 is in force in return procedures. However, in practice the only relevant question in these procedures is, whether the identity and therefore return of the person is acknowledged by the country of origin.

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.

In international protection procedures the officials accept all documents and other information that may contribute to the confirmation of a person's identity. The Directorate does not have a set hierarchy of different types of personal documents, instead their relevancy is evaluated on a case to case basis. Copies may also represent proof of an applicant's identity. However, the identity is only considered established beyond doubt if a person presents one of the documents from Article 97 of ZTuj-2 in original.

The authenticity of documents such as birth or marriage certificates is also regularly examined with the help of the National forensic laboratory.

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.

According to the official of the Centre for Foreigners the requirements differ greatly from country to country. In the most rigorous cases only a valid passport and no other personal document is accepted, therefore the scope of recognized documents is narrower than the one defined in Article 97 of the ZTuj-2.

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:

Special expert analysis of the language has so far not been used, however the official who administers the procedure may in the course of the personal interview ask particular questions with the aim to clear up these circumstances. In practice this is especially relevant in extreme cases, when for example the person does not even speak the language of the ethnic group he/she allegedly belongs to.

➤ Return of rejected applicants for international protection:

No.

ii) Age assessment to determine probable age?¹²

¹² EMN NCPs are asked to update the information provided through the EMN Comparative EU Study on Unaccompanied Minors. EMN (2010), *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors*, European Migration Network, May 2010. The EMN Synthesis Report, as well as the 22 National Reports upon which the synthesis is based, are available from <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=115>.

➤ Applicants for international protection:

Age assessment has so far not been used, however this procedure will be introduced with an amendment to the ZMZ, which is currently (October 2012) in legislative process. According to the proposed amendment to the ZMZ, the procedure will be nonobligatory and the official will be able to carry it out in case of doubt regarding the actual age of the applicant claiming to be an unaccompanied minor. The age will be determined on the basis of an examination by a medical expert. If the unaccompanied minor and his/her legal representative will not consent to the procedure for age assessment of an unaccompanied minor without providing reasonable grounds for their refusal, the unaccompanied minor will in respect to the consideration of his/her application be regarded as an adult.

➤ Return of rejected applicants for international protection:

The option does exist in the ZTuj-2, however it has so far not been used in practice. The measure is nonobligatory. According to the official of the Centre for Foreigners age assessment on its own cannot contribute to the success of the forced return of foreigners to their country of origin.

iii) Fingerprints for comparison with National and European databases?

National Database

➤ Applicants for international protection:

No, a national database of fingerprints, which could be used for this purpose, does not exist.

➤ Return of rejected applicants for international protection:

No, a national database of fingerprints, which could be used for this purpose, does not exist.

European databases

➤ Applicants for international protection:

After the submission of the application for international protection, the fingerprints taken from an applicant are entered into the EURODAC database and compared with the existing fingerprints in the database. Pursuant to Article 39 of the ZMZ (see above) this procedure is obligatory.

A hit in the EURODAC database can influence the procedure of establishing identity particularly in cases, where it is revealed that the person has already been entered into the database with different personal data than he/she gave in the Republic of Slovenia, which raises doubts about his/her identity.

➤ Return of rejected applicants for international protection:

In the return procedure of a rejected applicant the Police have access to the data that the Directorate has acquired from the EURODAC database. The Police usually do not carry out additional inquiries into the EURODAC database since there is no need for it.

iv) Photograph for comparison with National and European databases?

National Database

➤ Applicants for international protection:

No, a national database of photographs, which could be used for this purpose, does not exist.

➤ Return of rejected applicants for international protection:

No, a national database of photographs, which could be used for this purpose, does not exist.

European databases

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

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

National Database

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

European databases

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

vi) DNA analysis?

➤ Applicants for international protection:

No, a database for establishing identity does not exist, however DNA analysis has been used a couple of times in the last years for the purpose of establishing family relationship between applicants for international protection.

➤ 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)?¹³

➤ Applicants for international protection:

Yes. In case individual elements of identity are not otherwise evidenced, the officials during the personal interview in practice often ask questions with the aim of establishing whether the applicant's claims regarding his/her country or region of origin, ethnic or religious affiliation etc. are true. For example, the applicants may be asked to describe the flag of their country, or to describe the town they are from and the like. This measure is not defined in the law, is therefore not obligatory and is a matter of each individual decision maker.

In practice, establishing of identity through a personal interview is usually inseparable from establishing of credibility of the applicant's claims on reasons for international protection.

➤ Return of rejected applicants for international protection:

Yes. The officials of the Centre for Foreigners regularly communicate with the accommodated foreigners. The purpose of these discussions is establishing the circumstances of the case, presenting to the foreigner the available options and eventually assuring cooperation of the foreigner with acquiring the documentation or with the procedure of confirming his/her identity by an authority of the country of origin (see below).

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

➤ Applicants for international protection:

No, there are no other methods beside the ones described.

¹³ 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.

➤ Return of rejected applicants for international protection:

Return to the country of origin of a rejected applicant who does not possess required personal documents can also be attained, in case of his/her cooperation, with a procedure of confirming his identity by an embassy, consulate or other authority of the country of origin. On the grounds of a completed form or conducted interview with the foreigner the authority of the country of origin checks the data in its national records. If the identity is confirmed, the authority of the country of origin issues the required travel document for return. The practice differs from country to country however countries normally refuse cooperation in such procedures unless an express consent of the foreigner for cooperation in the procedure is given.

In this context it has to be added that in practice the main lever that may eventually lead to establishing of identity of a person without personal documents is restriction of movement in the Centre for Foreigners. The possibility of further restriction of movement (in maximum duration of one year) can coerce the foreigner into cooperation with officials in the return procedure either by acquiring required personal documents or by consenting to establish the identity via the authorities of his/her country. This mechanism is not directly set out in the law and its systematic use could be contentious, considering that restriction of movement represents one of the most serious infringements of human rights.

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.

a) International protection procedures: As explained, the identity of persons in international protection procedures is established on the basis of their documentation and on the basis of interviews. Certain useful information may also be acquired from the EURODAC and SIS databases, however the identity can in fact only be confirmed beyond doubt on the basis of personal documents listed in the law. Special measures such as checking of other fingerprint databases, databases of photographs, iris scans and DNA are so far not set out in Slovenian law. In practice the officials make use of all the regular methods of establishing identity that are available and no special hierarchy is set between them. The employment of the interview and different types of questions that may be relevant for establishing identity of the applicant are left to each individual decision maker. Hereafter the procedure for age assessment will also be introduced and will presumably be used restrictively, in cases when certain doubt that the applicant is indeed a minor will be demonstrated.

b) Return procedures: Considering that the national authorities in return procedures are dependent on the requirements of particular countries of origin, the only relevant methods are acquisition of personal documents and establishing of identity by the authorities of the country of origin. In both cases cooperation of the foreigner is normally required for the success of the procedure. Other methods such as age assessment may be important for example due to special provisions on the rights of

minors in the procedure, however they do not influence the success of the return procedure. The Police in the return procedures therefore also use all available methods of establishing identity and there is no special hierarchy or order set between them.

Section 3

Decision-making Process

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

3.1 Status and weight of different methods to determine identity

On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.¹⁴

As explained under previous question, there are no special rules in place concerning relationship between different methods.

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.

No, there is no special grading system in place. As explained, the identity in international protection procedures is established on a case to case basis taking into consideration all circumstances of the case, and it is only viewed as established beyond doubt if required personal documents have been submitted. On the other hand, in return procedures the only relevant question is whether the identity has been established in a way required by the country of origin.

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

No, according to the knowledge of the interviewed persons of the Ministry of the Interior and the Centre for Foreigners, there are no such plans.

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

¹⁴ 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.

recommendation to “grant international protection,” “refuse international protection,” “defer decision”?

As explained above, in Slovenian asylum procedure identity is being established by the same person who passes the final decision, therefore no special recommendation is passed in regard to it. An evaluation of the applicant's claims on identity in connection with the evaluation of his/her other claims directly influences the decision on the matter (negative or positive).

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 fact that the identity of the applicant has not been established beyond doubt does not on itself hinder eventual recognition of international protection status. Likewise, the fact that the identity has been established beyond doubt does not lead on itself to the acquisition of status. The question of identity influences the final decision only in the sense of evaluation of credibility of the applicant's statements while taking into account all specific circumstances of the case. If it turns out during the procedure that personal data presented by the applicant is false, this can increase the chances for rejection of the application. This will be the case particularly if the false data on identity is connected with the reasons for international protection claimed by the applicant (e.g. country or region of origin, ethnic affiliation). Presenting of false data on identity can also lead to the rejection of the application in an accelerated procedure (Section 1.3. above).

In opinion of the interviewed official of the Ministry of the Interior persons, who demonstrate their identity with a valid personal document, and persons, who do not present any personal documents however their statements are entirely consistent, are in the same position regarding their chances of acquiring a status.

In case there is a doubt regarding the identity of the person (e.g. because he/she gave different data in different procedures) it is stated in the decision (positive or negative) before his/her name that this is a "person, who claims to be ..." or a "person, who gave personal data ...". If status is awarded, personal documents are also issued to the person under the personal data he/she stated in the international protection procedure, regardless of the fact that he/she has perhaps not demonstrated it with officially recognized personal documents.

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 explained, in the Republic of Slovenia the same authority establishes identity in the return procedure and makes decisions regarding the return itself (this is the Centre for Foreigners). By establishing the identity in a way required by the country of origin the option of return is enabled.

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

When the rejection of the application for international protection becomes final, the documentation from the asylum file is not turned to the Police which administer the return procedure. Police is only informed of the conclusion of the matter with a letter containing personal data of the rejected applicant, information on whether the person falls under one of the vulnerable categories of persons and some other basic data regarding the matter. Even in case the file contains the applicant's personal documents or other documentation concerning his/her identity, this is not turned over to the Police automatically. However, it can be sent to the Police in case the Police subsequently make a request for it.

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, in the return procedure the officials can in cooperation with the foreigner subsequently acquire his/her personal documents, that he/she did not present during the international protection procedure, or confirm his/her identity via the officials of the country of origin.

Section 4 Conclusions

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 of identity in the absence of credible documentation is considered an issue from the point of view of state authorities both in the international protection procedures as well as in the return procedures for rejected applicants. This is because persons in procedures only very rarely present required personal documents for establishing their identity beyond doubt.

In Slovenian procedures establishing of identity is not separated from the rest of the procedure. Both in the international protection procedure as well as in the return procedure it is administered by the same officials, who decide on the main issue, in a uniformed procedure. Only a few detailed provisions on the process of establishing identity are contained in the law, otherwise the matter is covered only in broad terms. Likewise, the use of individual methods, their order and hierarchy and the evaluation of results are not precisely provided in bylaws or guidelines of responsible authorities to their officials.

The state authorities can make use of particular measures that can partially confirm the individual's identity in the absence of personal documents. These measures are the evaluation of other applicant's documentation, interview with questions, based on which the applicant's claims on identity can be confirmed or dismissed (particularly on geographic, ethnic and religious origin), access to records, which in essence are not intended for establishing identity (particularly EURODAC and SIS) and age assessment with an expert (in international protection procedures only starting with the ZMZ amendments on). These measures are mostly useful in international protection procedures, where every finding of this kind can facilitate the decision on the credibility of the applicant's story. On the other hand, in return procedures the listed measures are generally not relevant, since the requirements for return set by the countries of origin are normally higher.

For now additional measures that could lead to establishing of identity beyond doubt (national databases based on fingerprints, photographs and other characteristics) do not exist. Considering the small size of the country and a relatively low number of migrants and asylum seekers in procedures it would be necessary to evaluate, before potential introduction of such measures, if, and to what degree, it could contribute to the establishing of identity of persons in procedures.

Monitoring of the issue in the Republic of Slovenia is made more difficult due to the fact that the information on whether identity has or has not been established in the international protection procedure is not statistically recorded. Furthermore, monitoring of the issue is also made more difficult in return procedures due to the fact that it is not statistically recorded, which foreigners in return procedures have

previously been in an international protection procedure. A change of practice in regard to monitoring of statistical data could influence a better understanding of the matter in the future.