

EMN FOCUSED STUDY 2012

Establishing Identity for International Protection: Challenges and Practices

National Contribution from Italy

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.

According to data released by the United Nations High Commissioner for Refugees (UNHCR), in 2011 at least 1,500 people lost their lives attempting to cross the Mediterranean Sea. During the last years, the Mediterranean area has been a nerve center for the reception of forced migrants; more recently, the landings resulting from the conflicts in North Africa, particularly in Tunisia and Libya, have made necessary a unified action by the European institutions.

Absence of valid identity documentation is particularly common in these cases, due to the vicissitudes usually faced by asylum seekers during their voyage to Europe. This is the topic of the present focused study, which will be subject to a comparative Report by the European Commission, prepared in accordance with a new format developed by the EMN to improve its use by policymakers and the public.

The purpose of this study consists in outlining the problems faced by national authorities when establishing the identity of applicants for international protection in the absence of credible documentation. In order to present a comprehensive overview of the legal and procedural aspects at national level, the first two sections offer an in-depth examination of the regulatory framework by tracing the entire process: from the submission of the application to the decision of the Territorial Commission on the granting of international protection. This first part is specifically aimed at highlighting the actual influence of applicant's identification on the status recognition by the relevant authorities. In this regard, a specific section of the second part of the study analyzes the decision process that can lead, if successful, to grant protection to the person entitled to international protection or, in the event of rejection, to the denial of protection and the consequent expulsion.

In this brief introductory remark, it is important to point out that the purpose of public safety authority is not the identification of the asylum seeker, but the attribution of an

identity. At each stage of the proceedings, in fact, it is absolutely forbidden for any authority or public service to contact the diplomatic or consular authorities of the applicant, because of his/her special status (Legislative Decree 286/98 - Consolidated Act on Immigration - art. 2 par. 7). The same rule also applies to: a foreign national whose application has been rejected, but is within the limits provided by law to exercise the right to appeal; a foreign national whose appeal is pending before the Court. Therefore, since neither the criteria for identity verification used in Italy nor the investigative methods applicable in other circumstances can be applied, the result of investigations conducted by police can only lead to a mere attribution of identity, and not to a proper identification. In the present study, however, the two expressions are sometimes used as synonymous in order to facilitate the presentation of the contents.

This procedure for the attribution of identity represents a possible phase of the full process of assessment of the applicant's need of international protection. The procedure, in fact, is initiated only after the submission of the application, in case that the applicant has no identification documents; furthermore, its purpose is not a preliminary examination of the prerequisites for the suitability of the application. Consequently, any delay in the formalization of the application, or in the process of the attribution of identity, constitutes a restriction on the access to a full and fair procedure, which is a fundamental guarantee for the protection of the rights of asylum seekers. This study fits into the overall project of a comparative research which enables to outline the best practices between Member States, in order to make these procedures faster and easier while fully respecting the rights of the applicant, as well as help the authorities involved in the several procedural steps.

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)

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)

Before the transposition of EU law in the Italian legal system, in addition to the constitutional right of asylum (art. 10, par. 3 of the Italian Constitution) and the 1951 Geneva Convention on the Status of Refugees (ratified and implemented in Italy with Law no. 722/54), the only law on asylum was Law no. 39/90 containing provisions on procedures for granting refugee status, as well as art. 19 par. 1 of the Consolidated Act on Immigration (Legislative Decree no. 286/98), which prohibits the expulsion of foreign nationals in case of risk of persecution. The Italian legal system, through the ordinary legislation, has implemented the EU legislation on asylum with various protection measures. Among them:

- Directive 2003/9/EC (transposed by Legislative Decree no. 140 of 2005), laying down minimum standards for the reception of foreign nationals applying for recognition of refugee status in the national territory;
- Directive 2004/83/EC (transposed by Legislative Decree no. 251 of 2007), laying down minimum standards for granting of refugee or international protection status to third country-nationals or stateless persons;
- Directive 2005/85/EC (transposed by Legislative Decree no. 25 of 2008 – then amended by Decree no. 159 of 2008; Law no. 94, 2009; Legislative Decree no. 150 of 2011) laying down minimum standards for procedures in Member States to grant and withdraw refugee status.

The EU law has deeply reformed the national system, so that, although the lack of a comprehensive law on international protection, many regulatory gaps were gradually filled by the provisions of the EU law.

In addition to this legal complexity, it should be noted that Italy, due to its geographical position, represents a major territory of arrival for migration flows from other continents.

As a result of the political crisis in North Africa in early 2011, the total number of landings in Italy has significantly increased compared to the same period of the previous year, involving 62,692 people, 87.2% of whom were male and 7.2% were under the age of 18 years. The growth of arrivals has consequently affected the amount of requests for protection submitted in 2011 (34,115, more than three times as much compared to the previous year), with a significant impact on the Italian reception system.

In most cases, asylum seekers arriving in Italy are without any identification document because of both the political situation in their country of origin and the typology of travel to reach Europe. Therefore, one of the most relevant legal issues is related to the identification of asylum seekers. It must be noted that in their case it is impossible to apply the same criteria for the assessment of personal data used in Italy,

since a large number of applicants come from countries with no system for the registration of births, similar to the one used in western countries. For example, many applicants are able to report only their year of birth, but not the month and day; others, instead, indicate their date of birth based on the Islamic calendar, which is based on the lunar cycles and therefore does not correspond to the Gregorian calendar used in Italy. Therefore, a broader view should be adopted when evaluating the supporting documentation for the attribution of applicants' identity.

As reported by the vast literature on the matter as well as reports from the various organizations involved in first reception activities, lack of identification documents causes a particularly long administrative process. Consequently, the protection measure for the applicant entitled to be granted international protection starts later than it should.

If the applicant holds a passport (or other identity documentation), identification is accomplished by means of this document. If, instead, the asylum applicant does not hold a valid identity documentation, identification is accomplished by means of a self-declaration. Both cases involve a standardized assessment procedure which is performed by the competent Police headquarters. In order to perform such administrative process, the Police headquarters have the power to detain asylum applicants at specific detention centers.

If Yes, please also indicate which of the following factors listed below contribute to the issues. Please support your answers with reference to statistics (e.g. those presented under Question 1.2 below), research or any other sources of information (e.g. media debates, case-law, policy documents, practitioners' views).

- ***The volume of cases where no credible documentation is available to substantiate an applicant's identity is considered to be large and/or growing.***

Yes, the cases are numerous. However, in the absence of a systematic method of data collection, it is not possible to evaluate the incidence of the phenomenon. On this regard, Immigration Offices of the Police Headquarters have not presented any specific report to the Central Authority.

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

Yes, these are complex cases which require an in-depth examination by the Police Headquarters operating in the territory, consisting in the consultation of both national databases and paper documents that may be available.

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

No, a successful outcome is assured, because the implemented administrative procedure always leads to an attribution of identity.

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

No, these are two independent procedures: the attribution of identity of the asylum seeker carried out by the competent Police Headquarters, in fact, is an independent process from the recognition of international protection granted by the competent authority (Territorial Commission).

- *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.*

No, because – as explained in the previous paragraph – there is no connection between the establishment of the applicant's identity and a possible denial of international protection, which, only in the last resort, may lead to an expulsion order, then resulting in the actual return.

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

In Italy there is no list of countries for which the establishment of the applicant's identity is considered particularly difficult.

- *Other (Member) State specific factors*

Nothing to report.

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.

The Central Authority does not collect any statistics relating to the identification of asylum seekers; moreover, personal information required for the procedure of verbalization is not recorded for statistical purposes. The absence of such data, however, is not perceived as a problem, since most of the applicants, being devoid of documents, still need to be subject to identification procedures.

The data used to compile the tables below are taken from Eurostat databases. They refer to the following phenomena, which are analyzed in their entirety: applications for international protection, applications accepted and first instance rejections.

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, topfive nationalities, with numbers for total applicants – see below Table also)										
Total Number of applicants for international protection	14,053	30,145	17,670	10,050	34,115	Top 5 nationalities in 2011: <table border="1"> <tr> <td>Nigeria</td> <td>6.210</td> </tr> <tr> <td>Tunisia</td> <td>4.560</td> </tr> <tr> <td>Ghana</td> <td>3.130</td> </tr> <tr> <td>Mali</td> <td>2.580</td> </tr> <tr> <td>Pakistan</td> <td>2.060</td> </tr> </table>	Nigeria	6.210	Tunisia	4.560	Ghana	3.130	Mali	2.580	Pakistan	2.060
Nigeria	6.210															
Tunisia	4.560															
Ghana	3.130															
Mali	2.580															
Pakistan	2.060															
Number of applicants for whom <u>identity</u> was not documented at the time of application	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										
Number of applicants for whom <u>identity was wholly or partially established</u> during the asylum process thereby allowing the relevant authorities to reach a particular decision on international application	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										

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

(e.g. grant, refuse, defer)																
	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)										
Total Number of <u>Positive Decisions</u>	1,408	9,740	9,065	4,305	7,155	Top 5 nationalities in 2011: <table border="1" style="margin-left: 20px;"> <tr><td>Afghanistan</td><td>860</td></tr> <tr><td>Somalia</td><td>670</td></tr> <tr><td>Pakistan</td><td>605</td></tr> <tr><td>Ivory Coast</td><td>585</td></tr> <tr><td>Nigeria</td><td>495</td></tr> </table>	Afghanistan	860	Somalia	670	Pakistan	605	Ivory Coast	585	Nigeria	495
Afghanistan	860															
Somalia	670															
Pakistan	605															
Ivory Coast	585															
Nigeria	495															
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										
	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)										
Total Number of <u>Negative Decisions</u>	4,908	10,485	13,950	7,015	17,010	Top 5 nationalities in 2011: <table border="1" style="margin-left: 20px;"> <tr><td>Tunisia</td><td>3.260</td></tr> <tr><td>Nigeria</td><td>2.960</td></tr> <tr><td>Ghana</td><td>1.450</td></tr> <tr><td>Mali</td><td>1.235</td></tr> <tr><td>Pakistan</td><td>1.125</td></tr> </table>	Tunisia	3.260	Nigeria	2.960	Ghana	1.450	Mali	1.235	Pakistan	1.125
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Total Number of Negative Decisions	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										

for applicants whose identity was not considered by sufficiently established by the decision-making authorities																
	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)										
Total number of (Forced) ¹ Returns undertaken of all rejected applicants	N.A.	N.A.	N.A.	N.A.	N.A.	<p>In 2011, 6,180 returns were carried out; this figure, however, does not refer only to rejected applicants. The following are the top 5 nationalities subject to coercive return measures as a whole:</p> <table border="1" style="margin-left: 20px;"> <tr><td>Tunisia</td><td>2,775</td></tr> <tr><td>Egypt</td><td>850</td></tr> <tr><td>Albania</td><td>680</td></tr> <tr><td>Morocco</td><td>510</td></tr> <tr><td>Algeria</td><td>165</td></tr> </table>	Tunisia	2,775	Egypt	850	Albania	680	Morocco	510	Algeria	165
Tunisia	2,775															
Egypt	850															
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Algeria	165															
Number of (Forced) ² Returns of rejected applicants whose identity had to be established at the time of return	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										
Number of (Forced) ³ Returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.										

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

¹ While the scope of this Focussed Study (with respect to Returns) includes only the forced return of rejected applicants, it is acknowledged that distinguishing between forced and voluntary returns in official statistics may not be possible. Where possible, do make this distinction.

²Idem.

³Idem.

1.3 Relevant EU and National Legislation

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

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

Where possible, please refer to your National Contribution to the Organisation of Asylum and Migration Policies in the EU, rather than repeating the information here.⁴

Determination of the identity and nationality of an international protection seeker is explicitly regulated by an implementation regulation (Presidential Decree no. 303/2004 of December 2004) which implemented art. 31 and 32 of Law no. 189/2002 and came into force on April 21, 2005. This regulation introduced significant innovations in the field of asylum, among which the most relevant is the establishment of seven identification centers in as many provinces (by decree of the Minister of the Interior), whose management is entrusted to the respective Prefectures. These centers, initially named CID (Centers for Identification) and currently named CARA (Reception Centers for Asylum Seekers), accommodate all those asylum seekers for whom identity verification is needed. Identification of asylum seekers, which is carried out according to the above-mentioned regulations, is an essential and fundamental requisite for the recognition of international protection status.

Submission of an application for international protection is a procedure regulated by art. 6 et seq. of the Legislative Decree no. 25/2008 (implementing the Directive 2005/85/EC), by the Legislative Decree no. 159/08, and by art. 3 et seq. of the Legislative Decree 251/2007 (implementing EU Directive 2004/83/EC). The application must be submitted to a Border Police office as soon as entering the country, or to the competent Police headquarters based on the residence of the applicant. There is no deadline for the submission of applications, therefore both the foreigners who have just entered the country and those who already stay in Italy (either regularly or irregularly) may apply for asylum. Since the asylum application implies the verification of the existence of a subjective right of the applicant, it cannot be rejected as inadmissible by the public safety authorities, that are forced to receive the application and forward it to the competent authorities (the so called "Territorial Commissions", as per art. 3 and 4, par. 1 of Legislative Decree 25/2008 – implementing the EU Directive 2005/85/EC).

Verification of the applicant's identity is part of the procedure of submission and examination of the application. The Police headquarters must verify the identity of the applicant, his/her criminal record and other characteristics deemed necessary. The application's submission to the Police headquarters, in fact, requires a bareheaded, full-face and profile photo, as well as rolled (not plain) fingerprinting of all 10 fingers. Only subsequently the applicant may fill in the C3 form "for the recognition of Refugee Status according to the Geneva Convention". This form is the document

⁴ If however the level of detail is highly relevant, by shedding light on, for example, which elements of identity should be evidenced, what methods can or should be used to do so, what weight is to be given to the outcomes of the use of these methods, etc., it would be useful to insert the information directly in the Template.

which allows the formalization of the asylum application, and contains a series of questions regarding:

- a. the applicant's personal data (name, last name, nationality, date of birth);
- b. personal data of the family (parents, spouse, minor sons);
- c. the travel from the country of origin to Italy;
- d. the reasons of the escape from the country of origin.

Together with the form, the applicant may submit a written summary of his/her personal history. The C3 form may be completed in the applicant's mother tongue or in any other language allowing his/her free and full expression. During the entire process, even after completing the C3 form (art. 31, par. 1 of the Legislative Decree 25/08), the asylum seeker may submit additional memoirs and documents to the Territorial Commission for the recognition of international protection (the competent body for the examination of the applications).

Rights and duties of asylum seekers are regulated by Art. 10, 11 and 26 of the Legislative Decree 25/08 implementing the EU Directive 2005/85/EC. The asylum seeker has the duty to submit to the Police Headquarters all of his/her documents pertaining to the application for international protection, including the passport, as well as the declaration and documentation regarding his/her age, social condition, identity, citizenship, countries and places where he/she had recently resided and any previous asylum application (such documents may include ID cards, safe-conducts, visas, certificates, party cards, etc.). Applicants' active participation to the procedure is guaranteed both by art. 11, par. 1 of the Legislative Decree no. 25/2008, implementing EU Directive 2005/85/EC (subsequently amended by Legislative Decree no. 159/2008, Law no. 94/2009 and Legislative Decree no 150/2011) and by art. 3 of the Legislative Decree No. 251/2007, implementing the EU directive 2004/83/EC. Lack of evidence, however, must not be a reason for the rejection of the application.

We must underline that, for the whole length of the procedure, the Italian authorities are forbidden from trying to contact the diplomatic or consular representations of the asylum seeker's country of origin. Such provision applies to both asylum seekers staying at a CARA or other reception centers, as well as those who are detained at a CIE (Center for Identification and Expulsion) as per art. 21 of the Legislative Decree 25/08, while awaiting the beginning of the procedure.

The biometric fingerprint system named AFIS (Automatic Fingerprint Identification System) used for the Forensic Police database, was introduced in 1996 and is automatically updated from every single office equipped with a fingerprint reader. Fingerprints of all third-country nationals submitting an application for international protection are inserted in the system, in order to allow an immediate comparison with the Eurodac central database – which was established by the EC Regulation no. 2725/2000 and is operative since January 2003. This database contains information on all the asylum seekers in the EU Member States. The AFIS system allows the authorities to quickly retrieve previous fingerprinting and the related reason, as well as determine the existence of multiple aliases. The Ministry of Interior Investigation System (SDI) is then used to verify the identity of all the possible aliases. The entire investigation process requires the evaluation by an inspector.

Subsequently, the Police Headquarters contacts the Dublin Unit of the Ministry of Interior, which is in charge of evaluating if Italy is the competent country to examine the asylum application in accordance with the Dublin regulation. A third-country

national who applies for asylum in the Italian territory, even if subject to the verifications of the so-called “Dublin procedure”, is granted the juridical status of “asylum seeker” (with the related rights and duties). If the verification carried out by the Dublin Unit is positive, and if there is no need for detention at a CIE or accommodation at a CARA, the applicant will be invited to go back to the Police Headquarters to be issued a special residence permit valid for 90 days (which is renewable until the decision by the competent Territorial Commission), as well as to be told the date of his/her hearing before the Territorial Commission. If an asylum applicant is sent to a CARA or a CIE, instead of a temporary residence permit, he/she will be issued a personal document showing his/her personal data and juridical status. The application and the supporting documentation may be submitted to the competent Territorial Commission only after the Police Headquarters has carried out the necessary verifications. Contrary to other phases of the procedure, according to the Legislative Decree 25/2008 implementing the EU Directive 2005/85/EC, the verification phase has no fixed terms or deadlines.

The personal hearing with the competent Territorial Commission is a right of the applicant, who also has the obligation to personally appear at the hearing when summoned (art. 11, par. 1 and art. 12, par. 2 of the Legislative Decree 25/08 implementing the EU Directive 2005/85/EC); moreover, the hearing can take place only after the applicant’s identity has been verified. Subsequently, within 3 days, the Territorial Commission will take one of the following decisions: recognition of the refugee status (valid for 5 years and renewable); recognition of the subsidiary protection status (valid for 3 years and renewable); rejection of the application (resulting in the competent Police Headquarters inviting the applicant to leave the national territory as soon as possible); rejection of the application, but in this case, after an assessment of the real dangerousness of the return of the applicant to his/her country of origin, the Territorial Commission will ask the competent Police Headquarters to issue a special residence permit for humanitarian protection reasons (valid for one year and renewable). Art. 8, par. 2 of the Legislative Decree no. 25/2008 provides for that each single asylum application must be individually, objectively and impartially evaluated on the basis of an adequate assessment - pursuant to the provisions of the Legislative Decree no. 251/07, implementing the EU Directive 2004/83/EC).

Composition and jurisdiction of the authorities in charge of examining asylum applications are regulated by Section I, art. 4 and 5 of the Legislative Decree no. 25/08 implementing the EU Directive 2005/85/EC, as amended by the Legislative Decree no. 159 of October 3, 2008. The Territorial Commission is made up of an official of the Prefecture (who will act as president of the Commission), a Police officer, a representative of a territorial body appointed by the Conference for State-Cities and Local Autonomies, and a representative of the UNHCR. The Territorial Commission is not in charge of determining the applicants’ identity, but the existence of the necessary prerequisites to be granted international protection. The current laws, in fact, require that public safety Authorities verify in advance the identity and nationality of the applicant. According to Art. 3 of the Legislative Decree no. 251/2007 implementing the EU Directive 2004/83/EC, if some aspects of the applicants’ declarations are not supported by documentary evidence, they are considered true when the competent Territorial Commission deems that:

a) the applicant has made every reasonable effort to substantiate his/her application;

- b) the applicant has produced all the relevant facts in his/her possession and provided a proper explanation of the lack of any other significant elements;
- c) the applicant's statements can be considered coherent and plausible, and not inconsistent with the general and specific information relevant to his/her case which are at disposal;
- d) the applicant has submitted his/her application for international protection at the earliest possible time, unless he/she proves the existence of a justifiable reason for delaying it;
- e) the applicant, in general, is found to be credible.

In this regard, verification of the applicant's identity may partially fall under the competence of the Territorial Commission itself. We must remember, however, that the examination of the application carried out by the Commission is mainly focused on its suitability (by verifying the conditions which caused the applicant's escape from his/her country of origin) and truthfulness (intended as the absence of contradictions and discrepancies in the applicant's statements).

Moreover, with a Decree of January 23, 2012, the court of Rome confirmed that a foreign citizen cannot be denied the right to travel documents due to provision of false personal information before the recognition of international protection, because such recognition by the competent Territorial Commission, as well as the resulting issuance of a residence permit by the Police Headquarters, provides him/her with a definite identity.

In conclusion of this section, it is worth quoting the decision no. 2311/09 of the Court of Appeal of Rome, regarding the appeal of an Ivory Coast citizen who had not been granted protection. The Court of First Instance of Rome had originally rejected the recourse not only because the foreigner was ineligible for political asylum (as per Art. 10 of the Italian Constitution, which states that "The foreigner who is denied in his/her own country the real exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law"), but mainly because he had not provided evidence of his identity or country of origin, "since the certificates, documents and photocopies submitted to the court were not sufficient". The Court of Appeal of Rome, however, allowed the appeal and overturned the previous decision, which was considered unfounded, because it was based "on the rejection of an element (asylum seeker's identity) which was already ascertained by both the Ministry of Interior and the Territorial Commission of Rome, and was never disputed by the parties". Moreover, the decision confirmed that "the current laws require that both the public safety authorities and the Territorial Commissions entrusted to decide on the applications for international protection must first ascertain the applicant's identity and nationality".

The case of minors

Protection of family unity is a fundamental principle of our legal system, which is provided for by our Constitution, both for Italian and foreign citizens, in harmony with International and EU law. With regard to asylum procedures, from this principle of protection of family unity it follows that:

1. the application submitted by a parent is automatically extended to his/her unmarried minor children who are in the national territory together with their parent at the time of the submission (art. 6, par. 3, Legislative Decree 25/2008 implementing the EU Directive 2005/85/EC);

2. the hearing of the accompanied minor will take place in the presence of the parent holding parental rights, or his/her legal guardian;
3. the competent Territorial Commission, in order to properly evaluate the application for international protection, may require the audition of other family members of the applicant.

Any asylum seeker, therefore, may personally submit his/her application for international protection to the competent office, with the exception of minors accompanied by a parent.

In these cases, the applicant must produce documents proving his/her family relationship with the minor child. In the absence of a valid birth certificate or if there is a discrepancy between the names on the minor's birth certificate and the documents provided by the parent, the Police Headquarters usually require the latter to undertake a DNA test in order to prove his/her parental relationship with the child. This custom is endorsed by a Presidential Decree (334/2004) establishing that "in the absence of a recognized authority or in case of alleged unreliability of the documents issued by the local authority, [...] the diplomatic or consular Representations shall issue certificates [...] based on tests believed to be necessary, at the expense of those concerned". However, since the applicant cannot contact these representations by virtue of his/her juridical status, he/she has to prove the family relationship by undertaking a DNA test. As per the Decree, this test is at the expense of the family. Some third sector organizations, however, provide the applicants who must carry out this procedure with special funds, for the granting of which there is a specific waiting list.

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.⁵

The general rules on expulsion, like those on refusal, do not apply to applicants for international protection (except in quite exceptional and residual cases), in order to give effect to the principle that an applicant is entitled to remain in the State territory until a decision is taken by the competent authority (art. 7 of the Legislative Decree 25/08, implementing the EU Directive 2005/85/EC). In fact, according to Article 19, par. 1 of the Legislative Decree 286/98, in no case it is possible to arrange the expulsion or refoulement to a country where the foreign national risks being persecuted for reasons of race, sex, language, nationality, religion, political opinion, personal and social conditions, or would risk being sent to another country where he/she is not protected from persecution. This absolute prohibition of removal, based on the non-refoulement provision under the Geneva Convention and in accordance with Art. 3 of the ECHR on the prohibition of torture, also includes the prohibition of indirect refoulement, i.e. the prohibition of removing the foreign citizen to a country "where he/she would risk being sent to another country where he/she is not protected

⁵Idem.

from persecution”.

However, the identification of the applicant is carried out before the application is examined. Therefore, any denial takes place only after the identity of the applicant has been verified; this procedure is performed as soon as the foreign national has applied for international protection. Consequently, according to the current legislation, repatriating a rejected applicant whose identity has not been determined is not possible.

Denial of international protection

As previously stated, on the basis of individual assessments, at the end of the investigation the Territorial Commission may adopt a decision of denial of international protection. In 2011, out of the total number of decisions, first instance rejections were 70.4%, whereas last instance rejections were 78.8% (Source: Eurostat).

No protection can be granted (Art. 12, Legislative Decree 251/07 - implementing the EU Directive 2004/83/EC):

- when there are reasonable grounds for believing that the foreign citizen constitutes a danger to state security or public order and safety (having been convicted by final judgment for crimes under Art. 407, par. 2, letter a) of the Code of Criminal Procedure):

- when the applicant is guilty of acts contrary to the purposes and principles of the United Nations;

- when the application is manifestly unfounded, i.e. it does not have any connection with the requirements for its submission or has been submitted only to delay or prevent the execution of expulsion or refoulement.

As regards the first reason for denial – namely the applicant’s dangerousness to the State and community safety – an interpretation in accordance with the Geneva Convention and the Asylum Qualification Directive (implemented by the Legislative Decree no. 251/2007) requires to consider the actual social dangerousness of the subject before rejecting his/her application and thus carrying out an expulsion which would violate the principle of non-refoulement. Forced return, therefore, can be established only after considering all possible alternatives.

The negative outcome of the hearing, and the subsequent decision not to recognize the international protection, does not exhaust the resources of the applicant to obtain the protection required. In fact, he/she may file an appeal to the ordinary court of the provincial capital of the district of the court of appeal where the Territorial Committee that adopted the decision has its office.

If in the last instance the appeal is not approved, the Police Commissioner gives the rejected applicant notice to leave the country. If the foreign citizen decides not to leave Italy within the established period, he/she shall be considered irregular and, as such, may be expelled.

Expulsion

In the Italian legislation, expulsion is laid down in Art. 13 of the Legislative Decree 286/98. It consists in an expulsion order for the foreign national already living in the country, which is issued either by the Prefect (when the alien has avoided border controls or his/her residence permit has expired for more than 60 days), or by the judge (who issues such order as a security measure or as an alternative to detention)

or by the Ministry of Interior (for reasons of public order and State security). In Italy, according to the Eurostat data, in 2011 a total of 29,505 irregular foreign nationals were expelled. In any case, it is always possible to appeal to the ordinary courts against the expulsion order (art. 13, par. 8 of the Legislative Decree 286/98), according to the provisions of art. 18 of the Legislative Decree no. 150/2011. It is also possible to appeal against the expulsion decree issued by the Minister of the Interior to the Regional Administrative Court of Lazio, Rome office (art. 13, par. 11, Legislative Decree 286/98).

In Italy, expulsion is ordered by the Police Commissioner and carried out by the police with accompaniment to the borders (the so-called forced accompaniment) only in specific cases (Art. 13, par. 4 of Legislative Decree 286/98):

- a) if the alien is considered a danger to public order or safety;
- b) if there is risk of escape (defined by par. 4-bis of art. 13 as risk – evaluated case-by-case by the Prefect – that the alien would evade the voluntary execution of the expulsion order, on the basis of at least one of the following circumstances: lack of a valid passport, lack of documentation concerning the availability of housing, previous statement or declaration of false personal details, failure to comply with guarantee measures or re-entry ban);
- c) if the application for a residence permit was rejected as manifestly unfounded or fraudulent;
- d) if, without a justified reason, the alien has not respected the deadline for voluntary return, or has not asked for it;
- e) if the alien has violated even only one of the guarantee measures laid out by the Police in case of granting of the deadline for voluntary return, or as alternatives to detention;
- f) in the event of expulsion as a security measure or as an alternative to detention (Articles 15 and 16 of the Legislative Decree no. 286/98), as well as in other circumstances in which the foreign citizen's expulsion was ordered as a punishment for a crime or as a result of it.

In all cases other than those for which the order of immediate accompaniment is issued, expulsion contains the injunction to leave the territory of the State with the instructions for the travel and for the self presentation to the Border Police office (Art. 13, par. 6, Legislative Decree 286/98). This is usually the case of rejected applicants for international protection, for whom an expulsion order with accompaniment to the borders is rarely issued.

Assisted Voluntary Return

In the absence of the above-mentioned conditions for the immediate accompaniment to the borders, a foreign national who has been issued an expulsion order may request the Prefect to be granted a period for voluntary departure as a form of implementation of the expulsion itself, with assisted voluntary return programs (Par. 5, Art. 13, Legislative Decree 286/98). The police must previously inform the foreign national of this possibility. The assisted voluntary return does not exclusively consist in the return travel to the country of origin, but includes preparatory activities to departure, the return travel, the reception on arrival and, finally, various reintegration programs at final destination.

In the Italian legal system, the first law which formally provided for the assisted

return program was the so-called “Turco-Napolitano” (no. 286/98), which regarded the victims of trafficking. Such measure was then extended by the “Bossi-Fini” Law (no. 189/2002) to other categories, such as humanitarian cases, asylum seekers, refugees, but also people who have withdrawn their request for asylum or have been denied refugee status or another form of temporary protection. In August 2011, on the basis of a judgment of the Luxembourg Court of Justice which reduced the coercive impact resulting from the assimilation of irregular presence to a crime, the Decree Law no. 89 extended the assisted voluntary return to irregular foreign nationals (with some exceptions), if the subject obtains from the Police office a term of 7 to 30 days to return to his/her country of origin.

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 accordance with Art. 26 of the Legislative Decree no. 25 of January 28, 2008 implementing the EU Directive 2005/85/EC, the Border Police Office and the Police Headquarters are competent to receive asylum applications. The Police Headquarters of the place of residence is responsible for establishing the identity of every asylum applicant.

In case of particularly complex investigations (as mentioned in the previous paragraph), the applicant is invited to stay at the Reception Centers for Asylum Seekers (CARA), which were created in 2008 for the purpose of establishing the personal identity. Art. 20 of the Legislative Decree no. 25 of January 28, 2008 lays down the circumstances in which the applicant for international protection may be sent to one of the 8 CARA distributed throughout the national territory (whose current total capacity amounts to 3,747 people):

- a) if it is necessary to verify or establish his/her identity or nationality in case he/she is not in possession of travel or identity documents, or has presented false or forged documents upon his/her arrival in the State;
- b) if he/she submitted the application after being stopped for evasion or attempted evasion of border controls, or immediately afterwards;
- c) if he/she submitted the application after being stopped in conditions of irregular stay.

Detainment at the reception centers is mandatory in the cases provided for by law. It is not possible, in fact, to appeal against the decision ordering the detainment in a

CARA.

The Procedures Directive and its implementation Decree have established the “priority” cases which involve streamlined procedures, while continuing to ensure the necessary assessment of the application. This is the case of the applicants being ordered to stay at the CARA, according to Art. 20 of the Procedures Decree (Legislative Decree 25/2008).

Reception at the CARA is not provided by the law if the applicant has documents allowing to determine his/her identity (e.g. a valid travel document, but also any other identity document) or in case he/she promptly declares the use of false documents to enter the country.

The hypothesis of the above-mentioned letter a) – which is of particular interest for this study – is exclusively aimed at establishing the applicant’s identity and does not represent a “priority” case. Reception at the CARA - following the hypothesis described by letter a) - must therefore be applied only for the time strictly necessary to the identification procedures (up to a maximum of 20 days, but could be much less than that); in any case, the identification procedures must be accomplished before the application examination. After this period, the applicant is issued a residence permit for asylum application which has a validity of three months and is renewable until the completion of the procedure (art. 20, par. 3).

In all other cases, asylum seekers can be accommodated at the reception centers “for a period not exceeding thirty-five days”.

Article 20, par. 1 lays down the general principle according to which an applicant can not be detained simply because his/her application is under process. According to the conditions and limitations provided for by law, the CARA are not a detention but a reception measure. Reception at the CARA (Art. 20, Par. 4) does not affect the privacy of the applicant – apart from the rules of behaviour of the center. According to such rules, the applicant has the right to leave the center during the daytime; only in cases where the applicant needs to leave for longer or different periods of time than usual (e.g. at night), he/she needs to be authorized for temporary leave by the local Prefect.

A variety of situations (such as cases of: advanced age; pregnancy; presence of physical and psychological problems related to sexual violence, torture or mistreatment; disease) receive adequate assistance. The case of unaccompanied minors is different, because the law establishes that they cannot be sent to the CARA, not even for the determination of their identity, but in specific age-appropriate facilities. A legal guardian is appointed for minor’s protection, until a decision is taken by the Territorial Commission.

Detention of an applicant for international protection in an Identification and Expulsion Centre (CIE), is a different scenario. Detention in these centers, in fact, although not representing a custodial sentence, totally affects the personal freedom which Art. 13 of the Italian Constitution recognizes as a fundamental human right, also for foreigners living in the territory of the State in both regular and irregular conditions. For this reason such restriction, i.e. the detention at a CIE, must be ratified by the judicial authority.

The applicant for international protection must be detained in an Identification and Expulsion Centre in the event that he/she has already been issued an expulsion order

or refoulement measure; the same procedure applies if the application for international protection has been submitted after the conviction for one of the crimes specified in art. 380 paragraphs 1 and 2 of the Code of Criminal Procedure, or for crimes related to drugs, sexual freedom, aiding and abetting irregular immigration and emigration, or crimes involving the recruitment of people for prostitution or minors to be used in illegal activities. Furthermore, foreigners in the conditions provided for by Art. 1, par. F of the Geneva Convention (i.e. those having committed crimes against peace, war crimes or crimes against humanity, or having committed a serious non-political crime outside the hosting country or those being guilty of acts contrary to the purposes and principles of the United Nations) must also be detained in the CIE. The Article 21 of the Legislative Decree 25/08 implementing the EU Directive 2005/85/EC, as amended by Legislative Decree 159/2008, addresses the cases (which are strictly laid down) where asylum seekers are detained in a CIE. If the applicant is already detained, the Police commissioner requests an extension of the detention from the monocratic judge for a maximum period of 30 days – if this is necessary for the completion of the asylum process. Furthermore, according to art. 28, par. 2, this kind of application is given priority: therefore, the competent Commission shall conduct the hearing within 7 days after receiving the documentation and the related decision is expected to be issued within the next 2 days.

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 national authority responsible for such procedure is the Police; more specifically, the Immigration Office of the competent Police Headquarters.

Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?⁶

In Italy, central bodies may manage and coordinate the overall activities, but cannot supervise the single cases.

The Department of Public Safety is the competent central body within the Ministry of Interior and deals with:

- implementation of the Public Order and Safety policy;
- technical and operational coordination of the Police Forces;
- direction and administration of the State Police;
- direction and management of technical support, also for the general needs of the Ministry of Interior.

According to the criteria of organization and procedures established by the law no. 121/81, the Department is organized into Directorates and Offices of the same level, which also have inter-service relations.

Within the Department, the Central Directorate of Immigration and Border Police and, in particular, the Immigration and Border Police Service are competent for:

- activities of the Border Police

⁶ This may be a separate body (as in Norway) or a unit within a relevant authority.

- air and sea port security
- measures undertaken by public safety authorities concerning foreigners' residence
- intervention in proceedings relating to the granting of citizenship, the recognition of the right of asylum and refugee status.

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

The Immigration and Border Police Service is subdivided into two departments:

- the first department coordinates and plans all the activities of the 9 areas of Border Police, which in turn coordinate 18 sectors and 35 air and sea ports.
- the second department coordinates all activities related to residence permits and supports some of the procedures regarding visas, citizenship and asylum. It also coordinates the 103 Immigration Offices of the Police Headquarters.

Despite the existence of a Central Authority, the determination of identity of asylum applicants and rejected applicants waiting to be returned pertains to the competent Police headquarters.

If Yes:

- Has the centre developed its own database / reference base for

➤ genuine documents?

➤ false documents?

The CED - Data processing center is the joint database which provides information support for operational and investigative activities conducted by the Police Forces and performs the classification, analysis and evaluation of information and data relevant to the protection of public order and safety. The Police Forces access this service through the Interagency Information System of the Central Directorate of the Criminal Police. The CED is connected in real time with other electronic centers of the Police Forces. The SDI - System of Investigation is operational since 2011: it facilitates access to the joint database from the terminals of all operational and investigative bodies, including all the 103 Italian Police Headquarters. The system also allows to access external databases, thus providing a significant amount of information.

- Does it make use of the database iFADO (iPRADO)⁷ for checking false ID documents?

⁷[PRADO](#) Public register of authentic identity and travel documents online

The Police Forces do not make use of the iFADO (iPRADO) database yet. At present, these checks are based on the official document database SIDAF of the Scientific Police Service, which allows the scanning of machine-readable passports and the consequent reading of the ICAO code (security code); it also allows to examine the details of passport pictures (by using infrared or ultraviolet radiation as well as the zoom function), and compare them with the centralized archive.

- *Does it make use of the EDISON⁸ system?* Yes.
- *Does its tasks involve:*
 - *Advisory services?* Yes.
 - *Development of Methods?* Yes.
 - *Training of frontline officers?* Yes.
 - *Support with difficult cases?* Yes.

Does it have a forensic document unit? Yes.

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.)?

Yes. In particular, the Scientific Police is the central authority for the completion of police investigations and crime prevention, when special skills are required in the field of biology, chemistry, physics and fingerprinting. The central office, namely the Scientific Police Service, supervises and coordinates the decentralized offices in the territory: Interregional and Regional Cabinets, Provincial Cabinets and Signaling and Documentation Offices (“Posti di Segnalamento e Documentazione”).

Eurodac

By a circular of January 2003, the Department of Public Safety informed and instructed the local Police Offices about the imminent entry into force of the Eurodac Regulation. With regard to Eurodac, the procedure applied in Italy for the treatment of the data is divided into two distinct phases. The first stage is entirely carried out by the Department of Public Safety of the Ministry of Interior (in particular through the Police headquarters and the Scientific Police Service) and involves: submission and reception of asylum applications; collection of the necessary information (including mug shots and checks on the national archives); admissibility assessment of the applications and their submission to the Commission for the Recognition of Refugee Status; transmission of data to the Eurodac central database and, in case of confirmation, to the Dublin Unit.

The Central Directorate for Immigration and Border Police of the Department of Public Safety issues directives on both technical-operational and legal matters; upon request of the Dublin Unit, it also carries out the necessary verifications on possible crimes committed by the foreign national or the regularity of his/her stay on the national territory.

The second phase is carried out by the Department for Civil Liberties and Immigration of the Ministry of Interior, which performs the procedure of

⁸ EDISON Travel Documents System

acceptance/refusal of the applications, according to the Dublin Convention. Upon request of the Immigration Office at the Police Headquarters, the Provincial Cabinet of the Scientific Police takes the applicant's mug shot and fingerprints for his/her inclusion in the AFIS (Automated Fingerprint Identification System) and Eurodac databases. The mug shot and fingerprints are then sent to the Regional Cabinet of the Scientific Police, which verifies their technical quality and insert them in the AFIS database as well as, if required by the Provincial Cabinet, in the Eurodac one. The delivery is carried out by the Scientific Police Service of the Department of Public Safety, which is designated as the only National Access Point in Italy for the interchange of data with the central unit, located in Brussels.

In case of positive comparison results, the central unit forwards the fingerprints to the competent Cabinet of Scientific Police, for the confirmation of the correspondence with the fingerprints already stored in the database. Following such confirmation, the competent Police Headquarters forwards the application for asylum (and the related documentation) to both the competent Territorial Commission for the Recognition of Refugee Status, and the Dublin Unit at the Department for Civil Liberties and Immigration of the Ministry of Interior – which handles the contact and the exchange of information with other corresponding national offices in order to identify the Member State competent to decide on the request for asylum.

VIS

The use of the Visa Information System (VIS) involves both the Ministry of Foreign Affairs and the Ministry of Interior. The Ministry of Foreign Affairs is committed to updating the Italian "World Visa Network" in order to interface it with the VIS. At present the VIS, which will be progressively implemented, is operational only in relation to North African countries. The Ministry of Interior has also developed an information solution to connect to the central system VIS through a national interface – the Visa Section System of the Ministry of Interior (I-VIS) – which connects with the Immigration Offices of the Police Headquarters and the Border Police offices. The I-VIS system costs 6 million euro. The new information system will have both issuance and control functions at 114 sea border crossings and 53 air border crossings, and only control functions at 103 Immigration Offices of the Police Headquarters and 11 Offices at internal land crossings.

SIS

The Schengen Information System (SIS) is used by all the Italian Police forces for territorial and border control. According to data from the Ministry of Interior (European Fund for External Borders 2007/2013 - Annual Programme 2011), Italy contributes with more than 11 million records out of the total 31 million records stored in the database; each year, final users make over 36 million queries to the system.

The technological structure of the Italian section of the SIS is integrated with that of the pre-existing Data Processing Centre (CED) of the Department of Public Safety. This section is under the authority of the Ministry of Interior and its activities involve the Ministry of Justice and the Ministry of Foreign Affairs (i.e. diplomatic representations). It collaborates with the SIRENE (Supplementary Information Request at National Entry) Office, which is under the authority of the Department of Public Safety, Central Directorate of Criminal Police. This is an operational structure involving the staff of the three Police forces (State Police, Carabinieri, Guardia di

Finanza) and working 24 hours a day.

There is a close cooperation between the SIRENE Offices and the Ministry of Justice, which established the Schengen Unit within the Department of Judicial Affairs, Office II. The SIRENE Division cooperates with this Unit in facing problems concerning active or passive reports which require a pronouncement by the Ministry itself or the competent judicial authority.

The new SIS II system will become operational in the first quarter of 2013, while the SIRENE II software is currently being developed.

Section 2

Methods for Establishing Identity

(National Contribution: Maximum 8 pages)

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

2.1 Definition and Documents required for establishing identity

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

The national legal system does not provide for a specific legal definition of identity of applicants for asylum or rejected applicants for international protection awaiting return measures. In general, the term “identity” refers to a set of distinctive signs (name, nickname, etc.) identifying a subject in terms of both material existence as well as civil and legal conditions.

It is worth mentioning, however, that the Italian legal system contains a clear definition of “identity documents”, meaning by this expression all those documents that:

- contain a picture;
- have been issued by the competent authority in Italy or other countries;
- are on paper, magnetic or electronic support.

The main purpose of the identity document is to demonstrate the identity of its owner, according to the Presidential Decree no. 445 of 2000, art. 1 “Definitions”, par. 1 d).

The Legislative Decree no. 140 of May 30, 2005, art. 4, par. 3 (implementing the Directive 2003/9/EC) establishes that neither the personal documentation regarding the status of asylum seeker within the identification centers, nor the residence permit for international protection, certify the identity of the applicant. It is attested, however, by the residence permits for asylum or subsidiary protection, which are issued by the Police headquarters on the basis of the decision taken by the Territorial Commission.

What types of documents and other information do authorities in your (Member) State accept as (contributing to) establishing the identity for applicants of international protection? For example:

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

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

The Italian legislation establishes that the applicant for international protection may provide his/her identity even in the absence of any eligible identity document. The Legislative Decree n. 251 of 2007, implementing the EU Directive 2004/83/EC, establishes that the applicant is required to produce all the statements and documents in his/her possession regarding his/her age, social status (including that of his/her relatives, if it is relevant to identification), identity, nationality, countries and places where he/she had previously stayed. In these cases (but also when the foreigner produces a valid passport) the Police headquarters (Questura) takes his/her mug shot and fingerprints, and attributes the identity provided by the applicant – which is deemed valid until proven otherwise (i.e. in case of his/her presence in the database with a different identity). On the basis of these verifications, the applicant is issued a residence permit for “asylum application”, with which he/she can request to be recorded at the Registry Office and be issued an identity card not valid for foreign travel.

The Territorial Commissions for asylum (the competent bodies for the assessment of applications for international protection) are also responsible for assessing the reliability of specific foreign documents. Moreover, they are not obliged to comply with the conditions imposed by law on the use of such certificates and/or documents (legalization or *apostille*).

If a foreigner being granted international protection applies for family reunification but cannot provide official documentary evidence of the family relationship due to his status, the absence of a recognized authority or the alleged unreliability of the documents issued by the local authority, the Italian diplomatic or consular representations shall issue the certificates based on verifications deemed necessary (and performed at the expense of the concerned subjects). Family relations may also be attested by documents issued by international bodies which are deemed suitable by the Ministry of Foreign Affairs. According to the law, in any case, rejection of an application for family reunification can not be based solely on documentary evidence.

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.

When the applicant for international protection has to leave the country because his/her application has been refused, or he/she has renounced such protection, police authorities require the diplomatic or consular representation of the country of origin to issue a valid document for the return of the applicant.

In case this is not possible, the foreign national can not be removed and his/her identity continues to be attested by the documents issued by the Italian authorities.

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 mostcases 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:

Yes, standard practice.

Return of failed applicants for international protection:

Yes, standard practice.

ii) Age assessment to determine probable age⁹

➤ Applicants for international protection:

Only in case of applicants claiming to be less than 18 years old, when this is not evident.

➤ Return of failed applicants for international protection:

Only in case of applicants claiming to be less than 18 years old, when this is not evident.

iii) Fingerprints for comparison with National and European databases

National Database

➤ Applicants for international protection:

Yes, standard practice.

➤ Return of failed applicants for international protection:

Yes, standard practice.

European databases

➤ Applicants for international protection:

Yes, standard practice.

⁹ EMN NCPs are asked to update the information provided through the *EMN Comparative EU Study on Unaccompanied Minors*. Add reference and link.

- Return of failed applicants for international protection:
Yes, standard practice.

iv) Photograph for comparison with National and European databases

National Database

- Applicants for international protection:
Yes, standard practice.
- Return of failed applicants for international protection:
Yes, standard practice.

European databases

- Applicants for international protection:
Yes, standard practice.
- Return of failed applicants for international protection:
Yes, standard practice.

v) Iris scans for comparison with National and European databases

National Database

- Applicants for international protection:
Not yet. For more details on future use, refer to the next section.
- Return of failed applicants for international protection:
Not yet. For more details on future use, refer to the next section.

European databases

- Applicants for international protection:
Not yet. For more details on future use, refer to the next section.
- Return of failed applicants for international protection:
Not yet. For more details on future use, refer to the next section.

vi) DNA analysis

- Applicants for international protection:
Only in rare cases, when determining family relations is necessary for family reunification or cohesion. Such analysis is never compulsory and is at the expense of the foreign national.
- Return of failed applicants for international protection:
No.

vii) Interviews to determine probable country and or region of origin

- Applicants for international protection:
Yes, standard practice.
- Return of failed applicants for international protection:
Yes, standard practice.

viii) Other (please describe, e.g. co-operations with third countries)

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

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.

There is not a hierarchy of methods used. Moreover, there is no scientific literature demonstrating the effectiveness of the various survey instruments. It should be noted, however, that Italy, although not yet using iris scanning as a standard procedure for the attribution of the identity of asylum seekers, is about to implement some pilot projects in several Italian Police headquarters, which will be equipped with special scanners for biometric recognition. For more details on the survey methods used and their impact on decision-making process, refer to Section 3.1.

Section 3

Decision-making Process

(National Contribution: Maximum 3 pages)

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

3.1 Status and weight of different methods to determine identity

On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.¹⁰

The main method to establish the identity of an asylum seeker is by taking his/her mug shot and fingerprints. Fingerprinting, together with a self-declaration of identity by the applicant (which, sometimes, is supported by documents), is a key element of the identification process. Language analysis aimed at determining the applicant's geographical origin, as well as the use of accurate interviews, are also very important factors to determine the applicant's identity. Even if carried out on a second phase of the investigation, these methods are no less important than mug shots and fingerprints. All these methods, therefore, are not given different weights; their purpose is not the identification of the asylum seeker (a quite unrealistic objective, due to the prohibition of contacting the consular authorities of his/her country of origin), but the attribution of identity. This may lead, for example, to the creation of multiple aliases.

Other methods, like the DNA test and the minor age verification, are used in very specific cases (in order to verify family relationships or begin a possible procedure for the reception of unaccompanied minors) and are not part of the ordinary procedures carried out by the Police Headquarters.

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.

As outlined above, the Police Headquarters is in charge of attributing an identity to the applicant for international protection; afterwards, it will forward the documentation to the competent Territorial Commission for the decision on the granting of international

¹⁰Member 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.

protection. If the document produced by the applicant is considered valid by the Police Headquarters, the forwarded application contains an attestation of ownership of the identity document. If, instead, the applicant does not produce any document, in the C3 form it is reported that his/her identity is self-professed. In any case, after mug shot and fingerprints are taken, the foreign national is recorded in the Police database.

It must be noted, however, that during the hearing before the competent Territorial Commission, foreign applicants often declare different personal details compared to those provided at the Police Headquarters. Therefore, the decision of the Territorial Commission on the granting of international protection is issued on the basis of the new personal details. With the implementation of the new Vestanet online database, each Commission is now able to insert the applicant's data autonomously and in real time. Responding to a specific need of the Territorial Commissions, the new database allows the Commissions to modify the applicant's personal details, and retrieve the original ones recorded at the Police Headquarters. The Police Headquarters, when summoning the applicant to notify him/her of the decision, will take new mug shots and fingerprints of the foreign citizen to be recorded, together with his/her new personal details.

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

Nothing to report.

3.2 Decisions taken by competent authorities on basis of outcomes of identity establishment

3.2.1 For the consideration of the application for international protection

What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken? For example, does the outcome of identity establishment influence a recommendation to "grant international protection," "refuse international protection," "defer decision"?

The identification process carried out by the Public Safety Authorities is a mandatory requirement for the examination of the international protection application by the competent Territorial Commission for the recognition of refugee or subsidiary protection status. In particular, the identification process allows the applicant's hearing before the Territorial Commission, which will decide on the application for protection. During the hearing, the applicant will be asked the same questions contained in the C3 form, in order to better understand the reasons for his/her escape from the country of origin and why he/she cannot return in safety. Only after carrying out this interview, the competent authorities will take a preliminary decision on the suitability of the application.

The Commission may suspend or postpone the hearing for various reasons, such as the need to obtain additional documentation. This new documentation, however, can only be used to determine the applicant's need for protection, and not his/her identity. Therefore, identity verification does not interfere directly with the Territorial

Commission's decision.

The Police Headquarters is not in charge of verifying if lack of proper identity documents or their possible alteration interfere with the Commission's decision. Its role, instead, consists in providing a connection between the applicant and the Territorial Commission, ascertaining that the applicant is duly informed about his/her rights and duties, and establishing the dates and appointments, in order to let him/her finalize the procedure. The Police Headquarters practically takes care of the whole process, from the time of the application's submission until the acquisition of the response. It is the Police Headquarters, in fact, that within the next 3 days from the hearing notifies the Territorial Commission's decision, which may consist in:

- granting refugee status;
- granting subsidiary protection status, in case the applicant may be subject to serious threats upon return to the country of origin;
- refusing refugee or subsidiary protection status, but due to serious humanitarian reasons, requesting the Police Headquarters to issue a special residence permit for humanitarian reasons;
- refusing refugee status, thus rejecting the application;
- rejecting the application as manifestly unfounded, in the absence of any grounds for the granting of refugee status, i.e. when it appears that the application has been submitted in order to delay or prevent the execution of an expulsion or return (refoulement) order.

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?

Refusal of international protection is not related to the applicant's identity verification, but is based solely on his/her statements during the hearing. The applicant, in fact, when submitting the application for international protection, may provide false personal details which can be rectified subsequently, during the hearing. The Commission's final decision is based on these last declarations (in particular those regarding nationality and ethnicity), which are also indicated in the residence permit itself.

In case the person concerned has been granted protection on the basis of false statements, to the extent that his/her credibility may be undermined, after the due verification these statements may cause revocation or termination of international protection (pursuant to art. 9 of the Legislative Decree no. 251/07 – implementing the EU Directive 2004/83/EC). On this regard, article 5, paragraph 1 of the Legislative Decree no. 25/2008 implementing the EU Directive 2005/85/EC, establishes that the National Commission for the Right of Asylum, which is the body in charge of management and coordination of the seven Territorial Commissions on the Italian territory, also has the power of revocation or termination of international protection.

For the granting of international protection, Territorial Commissions give more weight to other factors (like gender and geographical origin) than the determination of the applicant's identity. Victims of gender-related persecution, in fact, are expressly protected by the law, with the recognition of different forms of protection. Verification of the geographical origin – which, however, has a decisive importance for the purpose of identity establishment – requires that the asylum seeker have supporting

documentary evidence. It should be noted, however, that in almost all cases the applicant does not hold valid travel documents attesting his/her origin. As it is known, traffickers force migrants to live underground by seizing the documents in their possession or by requiring them to eliminate such documents before the departure. The initial assessment of the country of origin, therefore, is carried out through linguistic analysis during the hearing.

Nationality, however, can influence the evaluation of a case depending on the description made by the concerned applicant during the hearing, with regard to the risks of persecution which he/she has reason to fear in his/her country of origin, and from which, by fleeing, he/she requires protection (i.e. asylum) to the Italian authorities. On this regard, reports on the countries of origin (COI - Country of Origin Information), which contain an updated, detailed, historical, chronological, social and political representation of the presumed or stated country of origin, are of extreme importance.

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 previously stated, the procedure for the attribution of identity is carried out before the Territorial Commission decides on the recognition of international protection. Therefore, no specific checks are carried out after a denial, as it is supposed that identification already took place during the preliminary administrative procedure. However, there are critical issues concerning the actual return of the foreign national such as, for example, the difficulty in obtaining from the diplomatic-consular authorities of the country of origin a valid document for foreign travel. In particular, this problem involves countries with which Italy has not signed specific readmission agreements. Such critical issues, if not properly addressed, can undermine the effectiveness of any return decision.

The administrative expulsion measure becomes effective, at the expiration of the deadline to appeal, only if the foreign national does not voluntarily leave the country despite not having filed an appeal, or if he/she has filed an appeal but the suspension of the measure has been rejected. Following the entry into force of the Law no. 129/2011 (implementing the Directive on Returns), expulsion with accompaniment to the border is applicable only in specific cases, whereas voluntary return is preferable.

Moreover, it is worth mentioning that the Italian legislation provides for an additional form of protection, compared to the international one, defined as humanitarian protection. Humanitarian protection is provided for by the Consolidated Act on Immigration (art. 5, par. 6 of the Legislative Decree 286/98) and is referred to by art. 32, par. 3 of the Legislative Decree 25/08, for the purposes of its enforcement in the procedures for granting asylum. Based on this provision, when the application for international protection is rejected but the applicant is deemed exposed to risk, due to serious humanitarian reasons, the Territorial Commission has the right to forward the documents to the Police Commissioner for the issuance of a residence permit for humanitarian protection.

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.

In case the request for international protection is denied, or the applicant renounced such protection, he/she must leave the national territory. Police authorities will contact the diplomatic-consular representation of the applicant’s country of origin, requesting a document valid for foreign travel. In case this is not possible, the identity of the foreign citizen continues to be attested by the documents issued by the Italian authorities, but he/she cannot be returned. Therefore, the problems that arise are similar to those relating to the return of an irregular immigrant without a valid document. In this case of absence of identity documentation, the return measure can be carried out only if the consular authorities of the foreign citizen’s country of origin recognize him/her as their citizen, thus confirming his/her identity.

According to the Eurostat archives, in 2011 the returns of irregular third-country nationals amounted to 6,180, representing 20.9% of the total amount of foreigners found to be irregularly staying in the Italian territory. The available statistical data do not allow to establish how many of these migrants have become irregular citizens as a result of a denial of international protection. It should be emphasized, however, that the precarious conditions that generally affect the lives of asylum seekers become even worse for those who file an appeal, due to the uncertainty of the right of residence as well as the suspension of support and reception measures. Various extensive studies have been conducted on this subject, in Italy, among which a research conducted in 2007 by some voluntary organizations committed to assisting refugees and asylum seekers in the Lazio region, coordinated by the network “Human Rights” of the Centers for Voluntary Service in Lazio Cesv and Spes. The survey led to the publication of a report entitled “*Presenze Trasparenti. Ricerca sulle condizioni e i bisogni delle persone a cui è stato negato la status di rifugiato*” (“Transparent Presences. Research on the conditions and needs of people who have been denied refugee status”), which highlighted the discomfort of these migrants, who are out-and-out “transparent presences”, whose only reference point is represented by humanitarian organizations which provide them with the needed assistance.

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?

Despite the lack of an organic law on asylum, the Italian legislation has increasingly implemented numerous protection measures from the EU legislation concerning international protection.

The existing laws explicitly require the Public Safety authority to ascertain the identity and nationality of the applicant, whose application can not be rejected solely because of the absence of documentary evidence. The identification procedure conducted by the Police is a necessary prerequisite for the examination of the application for international protection by the Territorial Commission competent for the recognition of refugee or subsidiary protection status. The Police headquarters also provide a connection between the applicant and the Territorial Commission, so that the process can be finalized in full compliance with the current legislation.

Therefore, establishing the identity of the applicant, while being a necessary prerequisite for the beginning of the procedure, has no direct influence on the assessment of the suitability of the application for international protection by the competent authorities. As highlighted in the section regarding the decision procedure, other factors (such as gender or geographical origin) are of far greater importance for the granting of refugee status.

Within the national context, attribution of identity for the purpose of international protection is certainly an important factor, which in almost all cases is characterized by the absence of suitable identification documents produced by the applicant. In this regard, the introduction of new technology tools has led to faster acquisition and processing of biometric data based on increasingly sophisticated databases. Furthermore, both the technical and operational cooperation and the mutual assistance between police forces of EU Member States are very useful, since they enable a regular exchange of information and best practices, making the identification procedures easier.

The massive waves of landings in Southern Italy (temporarily interrupted in 2010 due to the controversial policy of expulsions at sea), and the subsequent arrival of thousands of migrants, including many asylum seekers, has led the authorities to operate in an emergency context. Forced migration flows are, by their very nature, difficult to foresee, because they depend on a broader geopolitical balance. For this reason, it is critical that the procedures to assign the identity of asylum seekers be standardized and effective.

It is important, however, that the issue of the identification of applicants for international protection – although worthy of in-depth examination – does not lay aside the real issues related to the asylum system in Europe, such as: the diversity of different reception or detention systems; applicants' difficulties in accessing judicial protection; finally, the fragmentation of the various integration measures aimed at facilitating the processes of social inclusion of refugees. In a climate that increasingly threatens to fuel scaremongering (due to the combined effect of the crisis and the trend of migration flows from North Africa), it is essential to avoid criminalization of asylum seekers. Improving and streamlining of identification procedures must therefore be intended as a way to rapidly implement the protection of asylum seekers'

rights. Only by improving the administrative practices adopted by the competent authorities it will be possible to ensure – to those who require it – access to the recognition of the right of asylum and appropriate evaluation of applications, in accordance with the standards of international law.