



Annual Policy Report 2011

**Policy report regarding asylum and migration
Belgium**

**European Migration Network
Belgian Contact Point**

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The EMN Annual Policy Reports are aimed at reflecting the main political developments in the area of migration and asylum at Member State level. (It will be) The task of the (European) Synthesis Report is to compare the findings in order to identify trends and to monitor the political developments in the fields of migration and asylum (in a comparative perspective).

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The Belgian National Contact Point (NCP) is financed both by the Belgian Government and the European Union. The Belgian NCP consists of three partners: the Immigration Office (as part of the Ministry of the Interior), the Office of the Commissioner General on Refugees and Stateless Persons (CGRS) and the Centre for Equal Opportunities and Opposition to Racism (CEOOR).

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EXECUTIVE SUMMARY

This report – the Belgian Policy Report on Asylum and Migration 2011 – gives an overview of developments and changes that have taken place in Belgium in the area of migration and asylum in the reference year. Every National Contact Point (NCP) for the EMN provides a national contribution, which will be clustered and compared in a European synthesis report. The 2011 Policy Report is the 8th Policy analysis report on migration and asylum that was drafted by the Belgian NCP. With the signature of the European Pact on Immigration and Asylum, the structure of the 2011 report has been modified to highlight developments relevant to the EU Pact on Immigration and Asylum. The national reports are used by the European Commission for the tracking method (or “méthode de suivi”) of the Pact; the results of which will be presented to the European Council each year.

In writing this report, use is made of a variety of sources (official documents, newsletters, press articles and information provided by NGOs, etc.) as highlighted in the methodology.

Key developments in 2011

After the Federal parliamentary elections took place in June 2010, the new government was sworn in on 6 December 2011. Ms Maggie De Block (Open-VLD – Flemish Liberals) has been appointed as State Secretary for Asylum and Migration with enlarged competencies, reflecting the common political will of the government to concentrate all aspects of the migration and asylum policy in one cabinet. The coalition agreement of 1 December 2011 manifests the high political priority and public attention for migration and asylum issues and stipulates the main policy priorities for the coming years. The policy papers of the State Secretary, presented in January 2012 to the Federal Parliament, specified these priorities more detailed. Amongst others, the government declared its will to combat fraudulent misuse of procedures for international protection and humanitarian regularizations, accelerating the asylum procedure, introducing a ‘safe countries of origin’-list, reforming the naturalisation law and persisting a more pro-active return policy.

On 16 December 2011, the new Federal government prolonged the temporary provisions concerning restrictions of free access to the labour market for Bulgarian and Romanian workers. The provisions were prolonged until 31 December 2013.

Before the new government was formed, the Federal Parliament took in 2011 the legislative initiative and adopted several draft-bills concerning migration and asylum by shifting ad hoc coalitions of different political parties. These bills concerned amongst others the tightening of the legal rules for family reunification and measures to allay the crisis of the reception capacity for asylum seekers.

In May 2011, the Belgian government responded to the call of the UNHCR to provide resettlement for refugees trapped at the borders with Libya. In July 2011, 25 refugees of Eritrean and Congolese origin were resettled in Belgium.

Concerning legal migration

In July 2011, the acting Federal Government adopted a draft bill concerning the introduction of the European Blue Card (Directive 2009/50/EC). According to the draft bill, the Blue Card will not replace the existing legal rules for high skilled workers (work permit B) but will endorse them. The draft bill will soon be presented to the Parliament for voting.

The Federal Parliament stipulated with the Law of 8 July 2011 (BS 12 September 2011) new rules on family reunification. The law came into force without temporary provisions and is applicable for all applications for family reunification which were still pending on 22 September 2011. The law implemented profound changes in the existing rules.

In its coalition agreement, the new Federal government declared its will to reform substantially the national law on naturalisation.

Concerning jurisdiction, the decision of the European Court of Justice ‘Zambrano vs Belgium’ found wide attention in Belgium and beyond. In its decision of 8th March 2011, the Court stated that Union-rights defeat national law in the case that it limits the execution of important rights of persons connected with their status as citizens of the European Union. The Court qualified the right of a citizen of the EU, the children of Mr. Zambrano, to remain on the territory of a MS as such an important right. This right would be violated if the third-country parents of the children are denied a residence permit and also a labour permit.

Concerning integration policy, the competences of nearly all relevant aspects are assigned to the three communities of the country, which makes it difficult to speak about the national approach. However, one policy decision correlated with the integration of migrants received wide media coverage in Belgium and abroad: On 23 July 2011, the law on ‘banning wardrobes which cover the face completely or largely’ (the so called ‘Burka Ban’) came into force.

Concerning irregular migration, return and border control

The Federal government declared in its coalition agreement its priorities concerning irregular migration. The measures will be aimed on the struggle against fraudulent misuse of legal procedures, on the enforcement of return measures after the end of legal procedures, the strengthening of measures against human trafficking and –exploitation and the principal of regularisation of irregular migrants on the basis of case-to-case decisions only.

The year 2011 was characterized by a further increased influx of immigrants – both legal and irregular – from several Balkan countries and Armenia. In response to this particular migration movement, Belgium designed tailored action plans who implemented amongst others accelerate procedures for asylum seekers from these countries, adapted return- and re-integration programs, increased forced return measures and intensified dialogue with local authorities of the concerned countries.

The authorities continued to carry out prevention and sensitization missions on possible legal migration possibilities and on the risks of irregular migration in several countries of origin.

On 1 December 2011, the Federal Parliament adopted a bill to amend the legal procedures for regularisation on medical grounds (Art. 9ter, Aliens Law). The most significant amendment is the introduction of a so called ‘filter’ to exclude ‘obvious unfounded’ regularisation applications. According to the State Secretary for Asylum and Migration, Maggie De Block (Open VLD), in 2011 Belgium registered for the first time more applications for regularisation on medical grounds than on other humanitarian grounds.

In 2011, 9.509 migrants received a positive decision regarding their regularization application.

The Law of 16 November 2011 created a new legal framework concerning the detention of irregular migrants with children of minor age. In 2011, the authorities extended the capacity of the so called 'housing units', established in 2008 as alternative to the detention of families without legal stay. During the year, 463 persons, including 253 minors were sheltered in housing units, which is a significant rise in comparison with 2010. In spring 2012, five more housing units are expected to be operational.

The former Secretary of State for Asylum and Migration, Melchior Wathelet (CdH) issued on 10 June 2011 a circular, stressing the crucial role of local authorities in enforcing the compliance of issued orders to leave the territory. To support an envisaged increased compliance of orders to leave the territory, the Immigration Office implemented in May 2011 a new internal service, the unit 'Sefor'.

In 2011, 3.358 migrants participated in the **assisted voluntary return programs** (organised by the IOM), in comparison with around 3.000. returnees in 2010. Half of them were failed asylum seekers or people, who withdraw their asylum application. In 2011, the support for voluntary return for asylum seekers originating from those Balkan countries, which are not any longer subjects of visa requirements, has been reduced to cost-free travel costs.

On top of that the Immigration Office organized together with Fedasil in this context regular bus-transfers to the concerning Balkan countries. 512 persons used the service.

The Belgian media reported widely about the situation of irregular transit migrants in the city of Oostende, a major hub to the UK. In reaction to the increased influx of irregular migrants planning to cross the channel, the city authorities introduced an action plan which is carried out by local authorities, the Immigration Office and the Federal Police. The plan includes, amongst others, improved technical equipment securing the port area and more special joint-police operations.

The Belgian authorities refused in 2011 the entry of 2.734 foreigners in comparison with 1.863 foreigners in 2010.

Concerning international protection including asylum

The year 2011 was characterized by a further substantial increase of the number of asylum seekers. More than 32.000 persons applied for asylum in Belgium during the year, which corresponds to an increase of more than 25% compared with 2010. Amongst the different Member States of the European Union, only France and Germany were confronted with a higher absolute number of asylum applications. The saturation of the reception centres for asylum seekers started in 2008, and continued throughout 2009, 2010 and 2011. During the past years several thousands of asylum seekers could not be provided reception in a reception facility.

The government implemented several measures to counter the ongoing crisis in accommodate asylum seekers and the increasing influx of asylum seekers; the Law of 29 December 2010 introduced some changes to the appeals procedure before the Council for Alien Law Litigation. The law contains, among others, clauses regarding the time limit for appeal, modified pro bono rules and fines for manifestly unfounded appeals. Most changes came into force on 10 January 2011. On October 27, 2011 a bill was adopted stipulating that asylum seekers introducing a subsequent asylum application can no longer benefit from material assistance, unless their asylum claim is deemed admissible by the Immigration office. On 24 November 2011, the Parliament adopted another bill, introducing the concept of safe countries of origin into Belgian legislation. The list itself will be implemented in spring 2012.

On operational level the Council for Alien Law Litigation, the CGRS and Fedasil were reinforced and the capacity of the reception facilities further expanded. The measures were partially funded

through the Emergency Measures 2011 of the European Refugee Fund. In 2011, the CGRS was able to increase the number of decisions on asylum applications by 45% compared to 2010. Several dissuasion and prevention campaigns to different Balkan countries were undertaken and the return policy reinforced.

The new Federal government outlined its political aims, amongst other concerning the asylum policy in its coalition agreement (December 2011). The political approach to seek the goals concerning asylum were specified by State Secretary for Asylum and Migration Policy, Ms Maggie De Block in two policy papers, presented to the Parliament in January 2012.

Some asylum and migration key data

	2011	2010	2009
First and multiple asylum applications persons and (cases)	32.730 (25.479)	26.560 (19.941)	22.955 (17.186)
Issued long-term visa to TCN's on following motivations;			
Labour (contractor)	3.492	3.026	2.633
Family reasons	13.717	12.675	13.859
Other reasons	10.910	8.955	9.070
Forced removals *	3.708	3.568	3.791
Assisted Voluntary returns** (IOM + Immigration Office)	3.870	3.088	2.668

*: EU-citizens and Dublin included

** : EU-citizens included

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, each EMN NCP is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data.

The specifications of the report are based on the assessment of previous reports and in particular on the lessons learned from drafting the Synthesis Reports. Like for the Annual Policy Report 2010, they have been adapted to contribute to the factual reporting of the tracking method of the European Pact on Immigration and Asylum and of the relevant elements of the Stockholm Programme and its accompanying Action Plan. To this aim, the Belgium NCP has contributed in December 2010 an annex (Annex A) of the herewith presented Policy Report 2011.

The European Migration Network Annual Report 2011 for Belgium has the three main aims:

- 1) To outline the significant legal, political and administrative developments in 2011 in migration and asylum in Belgium
- 2) To document the state of implementation of EU legislation and the impact of European policy developments at the national level
- 3) To comment on relevant public debates

As in previous years, a Synthesis Report will be compiled, which will summarise and compare the findings from the different national reports, presenting a comparative perspective for policymakers.

1.1 Methodology

This report covers developments in Belgium in the period 1 January 2011 to 31 December 2011. This is the 8th Policy Report of the Belgium NCP, reflecting the most important policy developments in the field of migration and asylum in Belgium during the reporting period. Furthermore events and developments deemed to be significant are presented in a limited scale. A 'significant' event or development was defined as one which had been discussed in the Federal Parliament and had been widely reported in the national media. Finally, the Belgium NCP collected monitoring information on the implementation of the European Pact on Immigration and Asylum and the Stockholm Programme by contacting relevant governmental bodies, responsible for reporting on the various aspect of the Pact and the Stockholm Programme.

The national report was produced following common study specifications developed by the EMN in order to facilitate comparability between the findings from all Member States. It is elaborated on the basis of desk research, including policy papers of the Federal government and factual

information provided by the relevant operative units of the Immigration Office, the CGRS, Fedasil and CEOOR. The major part of figures and statistics were provided by the IO and CGRS. As the research for the Annual Report was completed in February 2012, some data on migration for the year 2011 were not yet available.

1.2 Terms and Definitions

All definitions for technical terms or concepts used in the study are as per the EMN Glossary.

LIST OF ABBREVIATIONS

Aliens Act	Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens
CCE/RvV	The Council for Alien Law Litigation (<i>Raad voor Vreemdelingenbetwisting / Conseil du Contentieux des Etrangers</i>)
BS/MB	Belgian Official Gazette
CEOOR	Centre for Equal Opportunities and Opposition to Racism (<i>Centrum voor gelijkheid van kansen en voor racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme</i>)
CGRS	Office of the Commissioner General for Refugees and Stateless Persons (<i>Commissariaat-generaal voor Vluchtelingen en Staatlozen / Commissariat Général pour les Réfugiés et les Apatrides</i>)
CS	Council of State (<i>Raad van State / Conseil d'Etat</i>)
DG SIE	Directorate-General Statistics and Economic Information (<i>Algemene Directie Statistieken en Economische Informatie / Direction générale Statistiques et Informations économiques</i>)
ECHR	European Convention on Human Rights
FPS	Federal Public Service (<i>Federale Overheidsdienst / Service public fédéral</i>)
HLWG	High Level Working Group, Council of the European Union
IO	Immigration Office (<i>Dienst Vreemdelingenzaken / Office des Etrangers</i>)
IOM	International Organization for Migration
MS	Member State of the European Union
TCN	Third Country National

SPECIFIC TERMS :

Closed centres	Detention centres for irregular migrants, pending their forced return (administrative detention).
Housing units	Private housing units where irregular families with children are accommodated pending their (forced) return. Alternative to their detention in closed centres where a collective regime prevails.
Inburgering	Flemish term for the first steps of the integration process of newcomers.
Open centres	Reception centres for asylum seekers.

2. GENERAL STRUCTURE OF POLITICAL AND LEGAL SYSTEM IN BELGIUM

2.1 General structure of the political system and institutional context

For the general structure of the political system and the institutional context, we largely refer to previous policy reports written within the framework of the EMN. Also, the EMN study “Organisation of Asylum and Migration Policies” provides concise yet comprehensive general information.

The **Federal State** retains powers in several areas, including foreign policy, national defence, justice, finance, social security and the bulk of public health and home affairs. Migration and asylum policies are federal competences. The language-based **Communities** are responsible for culture and issues directly related to individuals and their language, such as aid to people, health and education, integration of foreigners and emancipation of ethno-cultural minorities,¹ whereas the territory-oriented **Regions** are responsible for ‘territorial’ issues, such as farming, water policy, housing, public works, energy, transport, environment, land planning and town planning, rural development, nature conservation, economy & labour market management, the supervision of the provinces, municipalities and associations of local authorities and the issuance of work permit to foreigners.

Entry, residence, establishment and removal of foreign nationals are the responsibility of the federal Minister or State Secretary for Migration and Asylum Policies and his delegate, the Director-General of the **Immigration Office** (IO). The Immigration Office is also in charge of applying the Dublin II Regulation and manages the asylum applicants' residence requirements throughout the asylum procedure. The **Office of the Commissioner General for Refugees and Stateless Persons** (CGRS), an independent body, is the key-player in processing the asylum applications. In December 2011, the new State Secretary² for Asylum, Migration, for Social Integration and Poverty Prevention (*after that: State Secretary for Asylum and Migration*), Ms Maggie De Block (Open-VLD) was sworn in. She is attached to the Minister of Justice, Ms Annemie Turtelboom (Open-VLD). In distinction with her predecessor in office, Mr Melchior Wathelet (CdH), who was attached to the Minister of Employment and Equal Opportunities, Ms De Block is also in charge for the reception of asylum seekers and the national return policy (forced and voluntary return). In this aspect the political decision to concentrate the competences for all aspects of migration and asylum in one cabinet has been implemented into the structure of the new government. According to the coalition agreement of the Federal Government, the State Secretary has to present an annual report on migration and asylum to the Parliament. Between the federal elections of 13 June of 2010 and the forming of the new federal government in December 2011, Mr Wathelet was entrusted with dealing with current affairs.

¹ The repartition of fields of competences is in reality far more complex since some competences have been transferred from one entity to another (e.g. integration was transferred from the French Community to the Walloon Region in Wallonia and to the COCOF in the Brussels-Capital Region).

² In Belgium, ‘State Secretary’ is the title given to deputy ministers.

Since 2007, the Council for Alien Law Litigation (CCE/RvV) has acted as an appeal court competent to hear appeals against decisions of the asylum agencies with regard to the granting of protection status, and against decisions of the Immigration Office (e.g. decisions on visas, residence permits, etc.).

Fedasil, an agency under the supervision of the federal State Secretary for Asylum and Migration, is the institution in charge of the reception of seekers in Belgium. Fedasil acts also as coordinating body for the Belgian policy on assisted voluntary return. Fedasil delegates the practical organisation of the individual return mainly to IOM.

Other relevant bodies in the field of asylum and migration are the Council of State (Belgian Supreme Administrative Court), the Federal Police, the Centre for Equal Opportunities and Opposition to Racism (CEOOR), the Federal Public Service (FPS) Foreign Affairs, the FPS Justice, the FPS Labour and the regional/community Ministries in charge of Integration and of Employment.

2.2 General structure of the legal system

The most relevant law regarding migration and asylum issues in Belgium is the **Law of 15 December 1980** on entry, stay, settlement and removal of foreign nationals³ (further ‘Aliens Act’) which has been modified many times since its adoption. The latest major modifications took place in 2006, by the Law of 15 July 2006 and the Law of 25 April 2007. The Law of 15 December 1980 also governs the asylum procedure and the competencies of the asylum institutions. The **Royal Decree of 8 October 1981** pertaining to entry, stay, settlement and removal of foreign nationals implements the Law of 15 December 1980. It has been modified by the Royal Decree of 27 April 2007. In addition, many directives or internal regulations have been adopted by the administration for the implementation and the interpretation of the Aliens Act and of the Royal Decree of 1981. Other implementing decrees and circular letters organize other matters related to migration law, such as transporters’ sanctions, unaccompanied minors, victims of human trafficking, etc. Foreigners’ access to work is regulated by the [Law of 30 April 1999](#) and its [implementation decree of 9 June 1999](#). Belgium is also a signatory party to the 1951 Geneva *Convention* relating to the Status of *Refugees* and the 1967 Additional Protocol, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1954 Convention Relating to the Status of Stateless Persons and the United Nations Children’s Rights Convention.

The Council for Alien Law Litigation (CCE/RvV)⁴ is an administrative court responsible for individuals-related decisions made in application of the 1980 Aliens Act (administrative decisions related to the stay of foreigners and asylum-seekers). **In the field of asylum**, the ALC is the competent instance to confirm or reform the decisions of the CGRS. Lodging an appeal with the ALC will suspend the execution of the contested decision. That is why the asylum seeker cannot be removed before the Aliens Litigation Council has ruled over his/her case. **In non-asylum issues**, the ALC has more limited competences as it can only annul decisions of the Immigration Office (order to leave the territory, decisions of detention, refusal of family reunification, etc.) because of violation of the rules of procedure. The **Council of State**⁵ (CoS) can intervene in the

³ A consolidated version of the [Law of 1980](#) (FR) and the [Royal Decree of 1981](#)(FR) are accessible on the website of the Immigration Office: <https://dofi.ibz.be>

⁴ Raad voor Vreemdelingenbetwisting/ Conseil du Contentieux des Etrangers, www.rvv-cce.be

⁵ Website: <http://www.raadvst-consetat.be/>

last resort (cassation) against decisions of the ALC. Appeals before the Council of State have no suspensive effect. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits. In case the foreigner/asylum-seeker is administratively detained, an appeal against the detention can be lodged with the **Tribunal of First Instance** and with the **Court of Appeal**, so that the judicial instance can order the immediate release of the detained foreign national, if needed. The **Court of Cassation** (*Hof van Cassatie/Cour de Cassation*) and the **Constitutional Court** are frequently called to rule in cases related to foreign nationals, e.g. cases of breach of the constitutional principle of equality of treatment.

3. GENERAL DEVELOPMENTS RELEVANT TO ASYLUM AND MIGRATION

3.1 General political developments

After the Federal elections took place in June 2010, the new government was sworn in on 6 December 2011. The coalition agreement is founded on a state reform which has also consequences for the national policy on migration and asylum. The criteria for labour migration and the criteria for student migration shall, according to the coalition agreement, become both a competence of the different entities of the country. However, the issuing of visas and residence permits remains for both migration motives in the authority of the federal authorities. The management of two important public funds on the work field, the so called 'Impulse-Fund for Migrant Policy' (IFM/FIPI) and the European Integration Fund will be both transferred to the different Communities.

The coalition agreement ⁶ defines also the policy guidelines concerning migration and asylum. The new government declares amongst others the following priorities on this policy field:

- 1) The government commits to a '*fast and consistent asylum procedure to guaranty a dignified reception of asylum seekers*'. The government intends to limit therefore the time frame of asylum procedures to a maximum of 6 months. In this context, the procedure shall be made more efficient, both with regard to speed of action and quality of the decision making-process. To achieve the goal, a permanent monitor mechanism shall be implemented. The government hopes herewith to eliminate one of the reasons for the overstraining of the reception system for asylum seekers, which is ongoing since 2008.
- 2) The government underlines the exclusive priority for material aid to asylum seekers as stipulated in the so called 'Reception Law' of 12 January 2001. Therefore, the government will draft a plan to organise the geographical allocation of asylum seekers in Belgium and hence the distribution of material aid, provided by local authorities. The plan will be based on voluntary terms but will be transformed in an obligatory one, if the local authorities will not create sufficient reception places
- 3) The government declares that it will implement a list of 'safe countries of origin' concerning asylum seekers as stipulated by the law adopted by the Federal Parliament on 16 November 2011. Asylum seekers originated from these countries will be the subject to an accelerate procedure of 15 days.
- 4) The government declares the high priority of stimulating the return of irregular migrants and failed asylum seekers, with the preference on voluntary return.
- 5) The government declared its firm decision to oppose human trafficking and the enrichment of criminal networks involved in these illegal practices. The government stresses the importance to improve the interdepartmental coordination in combating the phenomenon. Victims of

⁶ Accord de Gouvernement, 1 décembre 2011, [http://premier.be/files/20111206/Accord de Gouvernement 1er decembre 2011.pdf](http://premier.be/files/20111206/Accord_de_Gouvernement_1er_decembre_2011.pdf); Regeerakkoord, 1 december 2011, [http://www.premier.be/files/20111206/Regeerakkoord 1 december 2011.pdf](http://www.premier.be/files/20111206/Regeerakkoord_1_december_2011.pdf)

human trafficking and exploitation shall be better protected and the specialised centres to shelter them shall be legally recognized.

- 6) The government stresses the right of family reunification but declares its will to combat fraudulent abuses of this right. In this context the government expressed its will to implement the new legal rules for family reunification as drafted and voted by the Federal Parliament (BS 12 September 2011).
- 7) Concerning the regularisation of irregular migrants, the government declares that amnesty shall be just granted in case-by-case procedures as stipulated in the law. The administration is to be required to issue decisions within a 6 months term. The procedure for non-accompanied minors shall be improved and the fraudulent practices concerning regularisation on medical grounds shall be opposed more efficiently.
- 8) The government declares its will to reform the nationality law. The current law sees the acquisition of citizenship as a step on the way to integration. The new law will reverse this concept and will stipulate integration-requirements to start a acquisition procedure. Naturalisations granted by a specialised commission of the Parliament remains possible but will become an exception and not a rule. The legal conditions to deprive the Belgian nationality will be also extended.
- 9) The government will ratify the 1961 Convention on the Reduction of Statelessness. The asylum authorities will be in charge to recognize statelessness. The recognition will principally concede the concerned person the right to a temporary residence permit.
- 10) Belgium declares its willingness to further participate in punctual resettlement programs, initiated by the UNHCR.
- 11) Belgium declares its active support of the European mainstreaming process on migration and asylum.

In January 2012, the new State Secretary for Asylum and Migration, Ms Maggie De Block (Open-VLD) outlined in the Parliament her policy papers about migration, asylum and the reception of asylum seekers and other entitled beneficiaries. In her policy papers, the State Secretary specified the planned realisation of the policy aims as described in the coalition agreement. Concerning the ongoing crisis of the reception capacity for asylum seekers, the State Secretary focussed in her policy paper on a mixture of measures, combining amongst others the reduction of the average duration of the stay of beneficiaries, the increase of reception capacities and the stimulating of the outflow out of the reception system.

In May 2011, the UNHCR presented its '*Global Resettlement Solidarity Initiative*', aimed at addressing the resettlement needs arising out of the Libya crisis. UNHCR called on the resettlement countries to provide 8.000 dedicated places for refugees trapped at the borders with Libya. The Belgian government decided to answer the call and in July 2011, 25 refugees of Eritrean and Congolese origin arrived in the country. The refugees were sheltered for a short period in an asylum centre and later on in private accommodation. The concerned persons are individually supported by specialised private service providers, like Caritas. The Belgian resettlement program is coordinated by Fedasil and CGRS.

On initiative of the Minister for Labour, Ms Monica De Coninck, the Council of Ministers of the new Federal Government decided on 16 December 2011 to prolonger the temporary provisions concerning restrictions of free access to the labour market for Bulgarian and Romanian workers. The provisions were prolonged until 31 December 2013.

3.2 Main policy and/or legislative debates

The year 2011 was characterized by several law initiatives by the Federal Parliament motivated by the dragging coalition negotiations, which came eventually to a successful completion in December 2011.

Already in January 2011, a coalition of different political parties voted in the Parliamentary Naturalisation Commission in favour of a proposed tightening of the legal rules for naturalisation by introducing, amongst others, integration-requirements and the exclusion of convicted delinquents of serious crimes from the procedure,

The parliament took again the initiative to tightening the rules for family reunification by a draft bill. The bill was adopted and came into force on 22 September 2011 (cf. chapter 4.2.2).

Further, a coalition of different political parties took the initiative to amend different legal rules concerning migration and asylum: The *'Draft bill to modify the legislation with the aim to allay the asylum-crisis'* was adopted by the specialised commission of the Federal Parliament on 27 October 2011, foreseeing, amongst others, the exclusion of certain categories of asylum seekers from the reception system (asylum seekers from other MS, persons applying the 3rd time for international protection, etc.), the creation of one ministry for asylum and migration and the introduction of a list of safe countries.

On 24 November 2011, a parliamentary majority adopted a draft-bill to implement Directive 2008/115/EC ('Return Directive') into national law. The bill stipulates the preference of voluntary return of irregular migrants and failed asylum seekers towards forced return measures. To enhance the individual preparation of the return, the draft-bill provides the prolongation of the deadline to comply with the order to leave the territory to 30 days after issuing the order in place of 5 days as the current law stipulates. Furthermore the draft-bill plans to introduce a list of safe countries concerning asylum applications.

The new government declared in its coalition agreement its commitment to all these legal initiatives and will implement these provisions.

In July 2011, the acting Federal Government adopted a draft bill concerning the introduction of the European Blue Card according to Directive 2009/50/EC (cf. chapter 4.1.3). According to the draft bill, the Blue Card will not replace the existing legal rules for high skilled workers (work permit B) but will endorse them. The draft bill will soon be presented to the Parliament for voting. On 11 October 2011 the VIS-system became operational. Belgium implemented timely the necessary technical provisions.

In November 2011, the Flemish government presented its MOE (Roma)-plan. The plan aims to facilitate the social integration of newcomers from Central- and East European countries (*MOE*), especially of Roma origin. The plan provides for the next 4 years a budget of 750.000 EUR per annum. The financial means will finance a catalogues of measures as described in detail in the action plan.⁷ Amongst others, the Flemish government intends to increase the participation of this specific group of newcomers in integration programs, increase the school attendance specifically of Roma-children, ameliorate the monitoring of Roma-children in school, stimulate the development of migrant-organizations and employ 15 so called 'neighbouring stewards' in cities with significant Roma population. The role of the 'neighbouring stewards' is described in the action plan as mediators between Roma and other groups of the urban population on grassroot level to ameliorate social cohesion.

⁷ Download of the Flemish MOE(Roma)-action plan (only in Dutch) :

http://www.inburgering.be/inburgering/sites/www.inburgering.be.inburgering/files/actieplan_MOE.pdf

During the year 2011, the Flemish political parties N-VA and Open-VLD repeatedly demanded an increase of forced removal measures. The coalition-agreement of December 2011 stipulated the preference of voluntary return but underlined also its willingness enforcing the removal of irregular migrants.

The Attorney Generals of the different courts in Belgium open traditionally the new judicial year with speeches concerning the evolution of the judicial system. In Antwerp, however, the Attorney General, Mr Yves Liégeois and the Advocate General, Mr Piet Van den Bon, used the opportunity to criticize the national migration policy and its alleged consequences for the constitutional state. Mr Liégeois described the migration flux to Belgium “excessive” and complained about the “total failure of the migration policy”, which would overstrain the social security systems and “the end of democracy (*would*) event”. Both top magistrates described the new legal laws on family reunification as “merely symbolic”. Political remarks of magistrates are rather rare and therefore the speeches of Mr Liégeois and Mr Van den Bon received nationwide attention but met a divided response by different political parties.

On 21 September 2011, Mr Liégeois, Mr Van den Bon and three other officials of the court in Antwerp were heard by the Federal Parliament. On this occasion, the magistrates repeated their criticism towards the national migration policy.

Other media-relevant topics in 2011 with regard to asylum and migration were the new measures to prevent irregular migration of the city of Oostende (cf. chapter 5.1.2) and the increased influx of East-European immigrants to Belgium. With regard to the latter topic, the mayor of Ghent, Daniël Termont, found wide media attention with several public appeals to the Federal government to support his city, which is more than any other affected by this new immigration movement: the local authorities registered during the last years about 10.000 new inhabitants, moved from several East-European countries to the city. According to the municipality, 5.000 of the new inhabitants are Bulgarian citizens and again 5.000 are Roma from either Bulgaria or Romania. Ghent, a city of about 240.000 inhabitants, is alarmed because a high percentage of this specific group of inhabitants is beneficiary of social welfare contributions. The local authorities assumed in this context a large-scale abuse of the status as entrepreneur, which gives the right to register.

According to a study of the Flemish umbrella organisation for entrepreneurs and SME's, published in 2011,⁸ the number of Polish, Bulgarian and Romanian entrepreneurs rose in Belgium during the last 10 years by 240%. However, according to the study, these data do not stand for an economic empowerment of this group of EU-citizens in Belgium: 42% of the Bulgarian and Romanian entrepreneurs had no income whatsoever originated from their official activities while registered as entrepreneurs for three years. Therefore the study assumes that a high percentage of this group uses the status of entrepreneur a cover for irregular work and/or an application for a residence permit.

In 2011, the public Flemish TV-service ‘Canvas’ broadcasted a documentary serial in four parts about the reasons of the massive influx of Bulgarian citizens to the city of Ghent. There is no other city in Belgium, which is equally affected of the movement of East-European citizens.

3.3 Broader developments in asylum and migration

⁸ Anton Van Assche (UNIZO), Niet-Belgische ondernemers in België (*Non-Belgian Entrepreneurs in Belgium*), September 2011

On 12 July 2011, the Parliamentarian Commission on the Aging of the Population presented its 10th annual report putting a focus, amongst others on the effects of migration on the ageing of the Belgian population.⁹ According to the report, the percentage of the expending on social security will rise till 2060 to a massive 30.9% of the GNP. However, the rise is expected 0.5% less than calculated in the report of 2010. The Commission based its slightly more optimistic prognosis on new data indicating a more positive migration balance and an expected rise in births especially among migrant populations. The Commission expects in consequence a rise in the active work force in Belgium. Concerning the net migration balance, the report expects a decrease from 63.800 persons in 2010 to 24.300 persons in 2030. For 2060; the Commission estimates again a slight increase of the net migration balance to about 32.600 persons. With regard to the population ageing, the Commission expects an increase of the age category above 65 years from 17.2% in 2010 to 22.2% in 2030 and to 24.8% in 2060.

On the very same day, the OECD presented its annual 'International Migration Outlook 2011'. Amongst other results, the publication highlights for Belgium the high unemployment rate for young immigrants of 35%, which is after Spain (44%) and together with Sweden (also 35%) the highest among the OECD-member states.¹⁰ However, the report recorded a slight rise in the participation of women migrants on the Belgian labour market between 2008 and 2010 of 2.04% (OECD-average=1.09%).¹¹ The report mentions further the 28% increase of the foreign-born population in Belgium between the years 2000 and 2009.¹²

3.4 Institutional developments

In the framework of the formation of a Federal Government, Ms Maggie De Block (Open-VLD – Flemish Liberals) has been appointed as State Secretary for Asylum and Migration and sworn in on 6 December 2011. In distinction from her predecessor in office, Mr Melchior Wathelet, Ms De Block is also in charge for the reception of asylum seekers and the national return policy (forced and voluntary return). In this aspect the political decision to concentrate the competences for all aspects of migration and asylum in one cabinet has been implemented into the structure of the new government. According to the coalition agreement of the Federal Government, the State Secretary has to present an annual report on migration and asylum to the Parliament.

On 2 September 2011, the Belgian Foreign Service appointed Mr Claude Rijmenans as the new ambassador for Migration and Asylum. Ambassador Rijmenans will play a crucial role in coming negotiations for readmission agreements with third countries and will liaise with the European Institutions and the key International Organisations.

⁹ Conseil Supérieur des Finances, Comité d'Etude sur le Vieillessement, Rapport 2011, (http://www.plan.be/admin/uploaded/201107120843500.Rapport_CEV_FR.pdf); Hoge Raad van Financiën, Studiecommissie voor de vergrijzing, jaarlijks verslag 2011 (http://www.plan.be/admin/uploaded/201107120844080.Rapport_CEV_NL.pdf)

¹⁰ Time of reference: third quarter of 2010, OECD, International Migration Outlook 2011, p. 81

¹¹ Ibid.

¹² Ibid, Figure I.5, p. 55. The OECD average: +37%. However, the increase in some neighbouring countries like the Netherlands (+9%) and France (+14%) accounted significant lower.

4. LEGAL IMMIGRATION AND INTEGRATION

4.1. Economic migration

4.1.1 Specific context

“Belgium’s modest labour migration regime consists mainly of demand-driven case-by-case granting of temporary work permits. (...) Given the fact that Belgium has a significant labour reserve of both unemployed Belgians and unemployed immigrants, there is little enthusiasm to go beyond modest demand-driven labour migration.”¹³

The coalition agreement of the new Federal Government implements the regionalisation of the authority to stipulate legal rules concerning the labour cards A and B and the permits for freelancers. Workers with labour cards A, issued by one of the entities may also work on grounds of this permission in the other entities of the country. Freelancers, who received work permissions in one of the entities, may perform his/her services also in the other entities. However, the registered office may not be established in another entity. The coalition agreement introduces the transfer of several labour programs to the entities, like the programs for the social economy. Additionally, the entities and the communities will gain the authority to allow subcontracted labour in their public and local services. It will be also possible to make use of subcontracted labour in the employment programs of the entities.

From 2008 on the service “Economic Migration” is operational within the Immigration Office. This service, with the task to facilitate procedures for foreigners whose project is economically interesting and avoids that foreign workers are hampered by administrative slow down, continued its activities during 2011.

Concerning labour shortages, each region in Belgium composes its own list of bottleneck occupations, which consists of lists with specific occupations regardless of which sectors they are part of. In that process, the social partners (employer and employee organisations) are involved. Both Wallonia and Flanders use similar methods to detect the bottleneck occupations. The regional employment offices begin by drafting a list of occupations for which it is hard to find a suitable candidate, according to certain technical criteria. The list of obtained occupations is then examined by a technical group of labour market specialists (experienced vacancy consultants and economists of the employment office) who select the bottleneck occupations and add possible other ones that did not come up in the initial list. Next, the list is sent to sector specialists of the employment office, and in Flanders also to sector organisations of social partners to validate the list and add information. Finally, sub-regional offices are consulted to adjust the list to the sub-regional situation. The lists are updated annually.

4.1.2 Developments within the national perspective

¹³ Satisfying Labour Demand through Migration in Belgium, Study of the Belgian Contact Point of the European Migration Network, August 2010, p. 7, accessible at the websites: <http://emn.intrasoft-intl.com/html/index.html>, and www.emnbelgium.be

The Royal Decree of 13 March 2011¹⁴ adapted the existing law on employment of foreign workers and made it conform to recent legal developments of the residence law: Since longer time family reunification is in Belgium possible not only for spouses but also for other legally recognized forms of partnership. The legal rules for labour cards were in this aspect not in conformity with the residence law. According to the EU Directive 2004/38, family members of EU-citizens are exempted from the labour card obligation. So far, the law stipulated ‘legal stay’ as precondition for the issuing of labour cards, which had the consequence that the concerned persons could begin to work only after registration on the National Register. The new Royal Decree eliminates this restriction.

The Royal Decree of 19 June 2011¹⁵ indexed the minimum income of professional athletes and coaches from third countries, required for issuing a work permit B without a previous labour market research. According to the Royal Decree the minimum income for this group of labour migrants is fixed on 70.800 EUR gross per annum.

In 2011, the Belgian authorities issued 3.492 long-term visas for remunerated activities. In 2010 the authorities issued 3.026 such visas.

4.1.3 Developments from the EU perspective

On initiative of the Minister for Labour, Ms Monica De Coninck, the Council of Ministers of the new Federal Government decided on 16 December 2011 to prolonger the temporary provisions concerning restrictions of free access to the labour market for Bulgarian and Romanian workers. The provisions were prolonged until 31 December 2013. However, the Royal Decree of 8 January 2012 eased for Bulgarian and Romanian citizens the procedure for obtaining residence permits in Belgium. Before January 2012, Bulgarian and Romanian workers possessing the labour permit B could apply for the residence card A only (validity of 12 months, renewable in the case labour permit B is still valid). The Royal Decree mainstreams the procedures for Bulgarians and Romanians with other EU-citizens in the sense that the concerned persons may immediately apply for a residence permit, type E. However, the existence of a labour permit B is still precondition for the application.

In July 2011, the acting Federal Government adopted a draft bill concerning the introduction of the European Blue Card (Directive 2009/50/EC). According to the draft bill, the Blue Card will not replace the existing legal rules for high skilled workers (work permit B) but will endorse them. The new legal rules implement a dual administrative system respecting the different competences of the entities and the federal authorities: the different entities confer a temporary labour permit to the contracting employer before the Immigration Office issues a residence permit for the employee and his family. In comparison with the work permit B, the Blue Card shall grant the status of a long term residence after 5 years legal stay in the EU and 2 years in Belgium. The requirements for issuing a Blue Card are diploma of higher education and minimum annual income of 49.995 EUR gross (in comparison with work permit B: 36.000 EUR). The minimum annual income will be adapted annually. The Blue Card will be issued for 13 months, renewable for another 13 months and after that for 3 years. In the case the employee changes his/her

¹⁴ [Royal Decree 13 March 2011](#)

¹⁵ Royal Decree 19 June 2011 ([Dutch/French](#))

employment, the permit has to be renewed. The draft bill will soon be presented to the Parliament for voting.

4.2 Family Reunification

4.2.1 Specific context

According to the national law, a third-country national who wants to let his/her spouse, legal partner or children come to Belgium for family formation or reunion, has to prove that he/she has 'sufficient' and adequate housing to accommodate the family members¹⁶ and that he/she has a health insurance covering the risks of the family members in Belgium. The condition of 'sufficient' housing is defined by the Royal Decree of 8 October 1981, which links the definition on the standards set by the different local Housing Codes. Before the decision of the Council of State of 26 February 2010 (cf. chapter 4.2.2), it was sufficient for the applicant to present an attestation of the concerning municipality that his/her housing was conform to the elementary security-, health- and quality-conditions described by the local Housing Codes. The national law stipulates the existence of a 'stable relationship' as additional requirement for family reunification. The burden of proof of a 'stable relationship' is defined by the Royal Decree of 17 May 2007. In its decision of 26 February 2010, the Council of State defeated this definition.

4.2.2 Developments within the national perspective

The Federal Parliament stipulated with the Law of 8 July 2011 (BS 12 September 2011) new rules on family reunification. The law came into force without temporary provisions and is applicable for all applications for family reunification which were still pending on 22 September 2011. The law implemented profound changes in the existing rules namely:

For family member/partner of Belgian citizens (according to Art. 40ter of the Law of 15 December 1980):

- Parents of a legal-age Belgian citizen have no right to family reunification anymore
- Parents of an underage Belgian citizen have the right of family reunification, which was beforehand only possible in the frame of a regularisation procedure. There is no preconditions concerning work or meeting the costs.
- The spouse/husband, the partner or the children, with whom a Belgian citizen wish to reunify, have to be older than 21 years of age.
- A Belgian citizen who apply for family reunification must have means corresponding to at least 120% of the legal monthly subsistence minimum for the head of the household (currently 1.026,91 EUR, 120%= 1.232,29 EUR).¹⁷ The subsistence minimum may not be originating form social welfare benefits. However, the minimum may originate from unemployment benefits under the precondition that the concerned person is able to demonstrate that he/she is looking actively for employment.

¹⁶ Art. 10 and 10bis of the Law of 15 December 1980. This condition is not applicable to family reunifications between Belgian citizens and other EU-citizens.

¹⁷ Information in English about the Belgian system of subsistence minimum and its different categories are accessible at the website of the Programmatory Public Service 'Social Integration': <http://misis.be/en/public-social-welfare-centers/equivalent-living-wages>

- The Belgian citizen must have adequate housing and health insurance for the persons he apply to reunify with.
- The preconditions for family reunification with unmarried partners on grounds of ‘stable relationship’ are tightened: a ‘stable relationship’ has to be proved for the duration of at least 2 years in place of 1 year before the law amendment.
- The control period under provision for family reunification increased from 2 to 3 years.

For family member/partner of TCN’s with unlimited residence permit (according to Art. 10 of the Law of 15 December 1980):

- TCN’s have to be in the possession of an unlimited residence permit since at least one year.
- Like Belgian citizens, TCN’s who apply for family reunification must have means corresponding to at least 120% of the legal monthly subsistence minimum for the head of the household following same preconditions. Also the preconditions of ‘stable relationship’, adequate housing and health insurance follow the same legal rules. However, the last two preconditions are not applicable for recognized refugees in case that the family bounds already existed before arrival in Belgium and the application took place within one year after the recognition as refugee.
- In the case that the concerned spouses and partners of TCN’s are originating from countries with visa requirement for entering Belgium, it is not any more possible to apply first for visa of short stay in order to change the visa status later on. It becomes obligatory for this particular group of person to apply in the authorized Belgian embassies or consulates for a visa with the aim of family reunification respectively the aim to marry or to enter legal cohabitation.
- The spouse/husband, the partner or the children, with whom a TCN wish to reunify, will receive only after a period of maximum 5 months an attestation of registration.
- The time frame for the procession of applications is reduced from 9 to 6 months (renewable to two times 3 months).
- In the case of refusal or withdrawal of the residence permit of family members of TCN’s with unlimited stay, the cost of repatriation may be brought to account under certain preconditions.

For family members/partner of TCN’s without unlimited residence permit mainly the same legal rules in force as described for TCN’s with unlimited residence permit. However, an important exception is the provision that the more favourable legal rules for family reunification as stipulated by the historical but still existing bilateral labour-migration agreements with certain countries of origin¹⁸ are not applicable any more.

The new Federal government confirmed its willingness to fully implement the law. The new law received criticism by several lobby groups and political parties, based on varied grounds. In December 2011, the Federal Ombudsman criticized in a report the lack of transitional provisions in the new law and therefore the implementation of the new rules on pending procedures. According to the Ombudsman, more than 3.000 pending applications are therefore subdued to unequal legal conditions.¹⁹

¹⁸ Bilateral agreements of the 1960s and 1970s between Belgium and Morocco, Turkey, Algeria, Tunisia and former Yugoslavia.

¹⁹ Federal Ombudsman, Transitional Provisions Family Reunification. intermediate report, 4th quarter 2011 (15 December 2011), download (NL): https://1070.fedimbo.belgium.be/sites/1070.fedimbo.belgium.be/files/explorer/Tussentijds_verslag_2011-

In 2011, the Belgian authorities issued 13.717 long-term visas for family reasons. The Immigration Office reports a sharp increase of the number of denied applications for long-term visa for family reasons since the new legal rules came into force. Between January and September 2011, the percentage of denied applications varied between 23.8% (minimum) and 37.6% (maximum) per month. The data of denied applications have been in October 2011, 44.5%, in November, 41.5% and in December 41.7%.

4.2.3 Developments from the EU perspective

The above mentioned new legal rules with regards to family reunification concern mainly Belgian and TCN citizens. The new law stipulates in Art. 40bis of the Law of 15 December 1980 some additional preliminary conditions for family reunification of other EU-citizens than Belgians. Amongst others, the preconditions for family reunification with unmarried partners on grounds of ‘stable relationship’ are tightened in the same mode as for Belgian citizens: a ‘stable relationship’ has to be proved for the duration of at least 2 years in place of 1 year before the law amendment. The EU-citizen and his/her partner have to be both older than 21 years of age in order to apply for reunification. The period, during which the concerned authorities may control if the preconditions are observed, are prolonged from 2 to 3 years.²⁰

The new legal rules on family reunification stipulated different legal rules for Belgian citizens and EU-citizens. This fact is seen by the Belgian Equality Body CEOOR as an example of “reversed discrimination” i.e. less favourable legal conditions for own citizens in comparison with other EU-citizens. In December 2011, CEOOR discussed this problematic with legal experts in a colloquium.²¹

On 8 March 2011, the European Court of Justice pronounced its sentence in the ‘Zambrano-Case’. According to the judgement, Belgium may not refuse a residence permit for third-country parents of under age Belgian children. Belgium has to grant these parents also a work permit. Ruiz Zambrano is a Columbian citizen and father of two Belgian children. Neither he nor his spouse received a residence permit in Belgium. The authorities refused as well the regularisation application of the couple as their application for a residence permit in the framework of a family-reunification procedure. Against the latter decision, Mr. Zambrano lodged an appeal, which is still pending and received therefore the document ‘Annex 35’. Mr. Zambrano worked for several years in a Belgian enterprise, which paid social insurance contributions. During an inspection at the enterprise, the social inspection qualified his employment as infringement of the national rules concerning labour cards. Indeed, according to Belgian jurisdiction, an application for a residence permit of a third-national parent of a Belgian child cannot be seen as ‘legal stay’ like the rules concerning labour cards demand. Further, the Belgian authorities refused in this case unemployment benefits for Mr. Zambrano, because of the illegal character of his employment.

[NL.pdf](#) ; download (FR):

http://www.mediateurfederal.be/sites/1070.fedimbo.belgium.be/files/rapport_intermediaire_2011-fr.pdf

²⁰ Family members of EU-student form an exception. For this specific group the control period remains to be two years.

²¹ The documentation of this colloquium with the title ‘Belgians – second class European citizens?’ is accessible at: <http://www.diversite.be/?action=onderdeel&onderdeel=283&titel=Belgen+tweedederangs+EU-burgers+%3F>

Mr. Zambrano filed a law suit at the Brussels labour court, which addressed several prejudicial questions at the European Court of Justice.

In its decision, the Court stated that Union-rights defeat national law in the case that it limits the execution of important rights of persons connected with their status as citizens of the European Union. The Court qualified the right of a citizen of the EU, the children of Mr. Zambrano, to remain on the territory of a MS as such an important right.²² This right would be violated if the third-country parents of the children are denied of a residence permit and also a labour permit.

4.3 Other legal migration

4.3.1 Specific context

Circular Letter pertaining to Long Term Resident status

In recent years, a series of laws and royal decrees fully transpose the Council Directive 2003/109/CE on the status of third-country nationals who are Long Term Residents.²³ In order to assist municipalities to apply these legal provisions, the Minister of Home Affairs issued a Circular Letter pertaining to the status of Long Term Resident (LTR), on 14 July 2009.²⁴ The evaluation process of the circular letter is under way.²⁵ As to access of LTR to the Belgian labour market, they can obtain a work permit B for the so-called bottleneck occupations through a simplified procedure (same provisions as for Bulgarian and Romanian nationals) from 01.01.2009. After one year employment in Belgium, LTR are authorised to be employed in any occupation, without restrictions. When transition measures applying to the access of Bulgarian and Romanian nationals to the Belgian labour market will be lifted (on 31.12.2013), no restrictions will apply anymore to the access of LTR to the Belgian labour market upon their first entry in Belgium.²⁶

4.3.2 Developments within the national perspective

Since 2007, the entitled authorities reported about low numbers of newly issued residence permits D (Long Term Resident Status). The reason is the introduction of electronic residence cards in

²² According to Title II, article 20.2.a) of the Consolidated version the Treaty on the Functioning of the European Union ([2010/C83/01](#))

²³ Law of 25.04.2007, modifying the law of 15.12.1980; Royal Decree of 22.07.2008 modifying the royal decree of 08.10.1981; royal decree implementing certain provisions of the law of 15.12.1980; royal decree of 23.12.2008 modifying the royal decree of 09.06.1999 implementing the law of 30.04.2008 pertaining to the employment of migrant workers. Cf. Annex: Transposition of EU legislation.

²⁴ Omzendbrief van 14 Juli 2009 betreffende de status van langdurig ingezetene B.S.11/08/2009 http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf / Circulaire du 14 juillet 2009 relative au statut de résident de longue durée (M.B. 11/08/2009) http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf

²⁵ See: Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie- en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

²⁶ http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit/bijzondere_categorieen_arbeidskaart-b/langdurig_ingezetenen.htm?SMSESSION=NO

2007 (card B) with a validity of 5 years. In 2012, these cards will expire and the administration expects a sharp increase of issued residence permits D.

In 2011, the Belgian authorities issued 6.694 long-term visas for educational reasons. This is almost exactly the same number as for 2010, when a total of 6.776 visas for educational reasons were issued.

4.3.3 Developments from the EU perspective

Concerning foreign students, the national legislation is in conformity with Council Directive 2004/114/EC. The government has decided to amend the concerning law with more favourable provisions. The text of these provisions (art. 4 § 2) has been submitted to the European Commission.

With regard to student migration of TCN's to Belgium, the Federal government has stipulated the subsistence minimum for the academic year 2011-2012 to 588 EUR per month. Applicants for student-visa have to present a proof of available subsistence minimum.

4.4 Integration

4.4.1 Specific context

In the 1980s, the competences for all aspects of integration in Belgium were assigned to the three communities, the French, the German and the Flemish community. In the bilingual Brussels-Capital Region, the competences for integration of the Flemish community were handed over to the Flemish Community Commission and of the French community to the French Community Commission, both created in 1989. In the **Flemish Community** and the **Flemish Region**, integration policy has taken form in the actual Integration Act. The Flemish government is accountable for the design, implementation and evaluation of integration policies. The Flemish policies are designed to achieve '*full-fledged social participation of newcomers*'. Integration is defined as 'an interactive process in which the government proposes a specific programme to foreigners, a programme that on the one hand enables the foreigners to internalise the new social surroundings and on the other contributes to an acceptance of the foreigners as full citizens by society, with the aim of attaining full-fledged social participation of these persons'. In the **French Community** and the **Walloon Region**, the French Community has designed its authority on integration policy to the French Community Commission in Brussels and to the Walloon Region. In Wallonia, the Decree of 4 July 1996 and its amendment, the Decree of 30 April 2009²⁷, set the legal frame for the integration policy but transferred a central element of the policy, the development of social cohesion plans, to the French Community (Art. 1, 6°). The law mandates in its Article 5 the implementation of the integration policy to seven regional integration centres, subsidised by the Walloon government. The integration centres, federated in the DISCRI-

²⁷ Décret wallon du 30 avril 2009 modifiant le décret du 4 juillet 1996 relatif à l'intégration des personnes étrangères ou d'origine étrangère (M.B. 22 May 2009, p. 38456), available at: <http://wallex.wallonie.be/index.php?doc=14418&rev=14995-8406>

network,²⁸ are providing support in cultural, social and economical participation. The Decree of 30 April 2009 reformulated and enlarged the missions of the regional integration centres. Additionally, the integration centres are instructed to find synergies with the local Social Cohesion Plans.

The Federal government still retained limited competences concerning few integration programs, mainly supporting the integration policies of the different communities. As a consequence, different authorities maintain different integration policies and programs. Therefore no Belgian integration policy as such exists but different policy options are taken at the different community levels.

With regard to integration of asylum seekers and irregular migrants with children in reception centres, language courses are organised in some federal reception centres, whereas non-profit organisations and adult education institutions can enrol asylum seekers and sometimes irregular migrants to their courses, including language or literacy courses. Schooling is mandatory for all children under 18. Classes with adapted curriculum and teaching methods, called the “bridging classes” (French Community) or the “reception classes” (Flemish Community), are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes, when their language and learning skills allow them to keep the pace of the class. In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. These activities can range from cooking classes with neighbours, to visits of the federal Parliament. Since 2001, *Fedasil* provides a special budget for financing the programme “neighbourhood initiatives” in federal reception centres. Like in previous years, Fedasil, CGRS and other authorities organised several events on the occasion of the World Refugee Day 2011 for both asylum seekers and the interested public.

4.4.2 Developments within the national perspective

As mentioned before, the competences for all aspects of integration in Belgium were assigned to the three communities, which make it difficult to speak about the national perspective.

However, one policy development had impact on national level and found wide media attention in Belgium and abroad: On 23 July 2011, the law on “banning wardrobes which cover the face completely or largely” (the so called ‘Burka-Ban’) came into force.²⁹ Persons who wear such wardrobes in public might be punished by fines between 15 EUR and 25 EUR and imprisonment between 1 day and 7 days. The law excluded wardrobes which are obliged by other laws (e.g. crash helmets, protective clothes for drainers, etc.) and provides also exceptions for certain festivities (e.g. carnival).

The Flemish government adopted on 1 July 2011, the new ‘Education Decree XXI’. In article IV, 48³⁰, it is clearly indicated that access to adult-education will be linked to a legal stay in Belgium. The authorized administration has published a guideline for schools and potential course participants on documents which will be accepted as proof for legal stay.³¹ In previous years, also irregular migrants were able to register for the courses of the Flemish system of

²⁸ The DISCRI (=Le Dispositif de concertation et d’appui aux Centres Régionaux d’Intégration) network replaced in 2009 the former FéCRI (=Fédération des Centres Régionaux pour l’Intégration des personnes étrangères ou d’origine étrangère)-network.

²⁹ Law of 1 June 2011 ([Dutch/French](#))

³⁰ [BS 30 August 2011](#)

³¹ <http://www.ond.vlaanderen.be/volwassenenonderwijs/directies/cursistenadministratie.htm>

subsidised adult education (CVO's). In September 2011, the Flemish government published its concept note on integration and civic integration (the so called '*Inburgering*') aiming on a more efficient and effective policy. The note reaffirms the central role of the local authorities in implementing the Flemish integration policy and intends a fundamental reform of the existing integration sector. The note formulate as final aims of the reform process that the results of the Flemish integration sector will be more in accordance with the defined aims of the governmental policy, that the sector improves its efficiency and will ameliorate its accessibility, visibility, professionalism and customer-friendliness. On 29 November 2011, the Flemish Parliament organized a hearing with key stakeholders concerning the reform plan of the Flemish government.

Concerning the French-speaking community of Belgium, no policy developments concerning integration were reported.

4.4.3 Developments from the EU perspective

In November 2012, the Flemish government presented its MOE (Roma)-plan. The plan aims to facilitate the social integration of newcomers from Central- and East European countries (*MOE*), especially of Roma origin. The plan provides for the next 4 years a budget of 750.000 EUR per annum. The financial means will finance a catalogues of measures as described in detail in the action plan.³² Amongst others, the Flemish government intends to increase the participation of this specific group of newcomers in integration programs, increase the school attendance specifically of Roma-children, ameliorate the monitoring of Roma-children in school, stimulate the development of migrant-organizations and employ 15 so called 'neighbouring stewards' in cities with significant Roma population. The role of the 'neighbouring stewards' is described in the action plan as mediators between Roma and other groups of the urban population on grassroot level to ameliorate social cohesion.

4.5 Citizenship and Naturalisation

4.5.1 Specific context

The coalition agreement of 1 December 2011, announced a reform of the conditions for acquiring the Belgian nationality. The current law sees the acquisition of citizenship as a step on the way to integration. The new law will reverse this concept and will stipulate integration-requirements to start an acquisition procedure. Naturalisations granted by a specialised commission of the Parliament remains possible but will become an exception and not a rule. The legal conditions to deprive the Belgian nationality will be also extended.

In the government's declaration pertaining to its general policy orientation of 13 October 2009, a reform of the conditions for acquiring the Belgian nationality was announced, as well as modified conditions for applying for naturalisation. However, the federal elections of 13 June 2010 brought the proposed draft bill to a temporal end.

³² Download of the Flemish MOE(Roma)-action plan (only in Dutch) :
http://www.inburgering.be/inburgering/sites/www.inburgering.be.inburgering/files/actieplan_MOE.pdf

At the moment there are three legal ways for third-country nationals to receive the Belgian citizenship:

1) Via the naturalisation procedure, executed by the 'Parliamentarian Commission for Naturalisation'. The precondition for lodging an application is a legal stay in the country for at least 3 years. The Parliamentarian Commission may add further conditions like proof of integration, etc. The procedure is not a subjective right but a measure of favour which therefore exclude the possibility of appeal. There is no legal processing time for the application set but the average processing time is 2-3 years. About 50% of the applications were answered positively by the Commission. On 18 January 2011, a political majority was found in the 'Parliamentarian Commission for Naturalisation' concerning new internal rules to grant naturalisation. Among other conditions, the internal rules require from applicants evidences of integration. Convictions for criminal acts, fraud and also for serious traffic violations will lead to a rejection of the applications.

2) Via the declaration of citizenship: A third country national or a European citizen may adapt the Belgian citizenship by a declaration made at the municipality where he/she has residence. This procedure is a subjective right for those who fulfill the legal (main) preconditions: minimum of 18 years of age, no convictions for "serious crimes" and a minimum legal residence of 7 years. It is possible to appeal a negative decision.

3) Via adjudgement for minors, born by Belgian parents or by other parents of other nationalities under certain precondition that they live for the third generation in Belgium. For children of parents of other nationalities, living in Belgium for the second generation is adjudgement of the Belgian nationality possible, if the parents wish to do so under the precondition that they live for a minimum of 10 years legally in Belgium.

4.5.2 Developments within the national perspective

According to the 'Parliamentarian Commission for Naturalisation', the announcement of new internal rules to process applications for naturalisation has led in 2011 to a significant increase of new applications. However, the Commission provided no actual data.

As mentioned before, the coalition agreement of 1 December 2011, announced a reform of the conditions for acquiring the Belgian nationality. However, so far no draft-bill has been published.

5 IRREGULAR IMMIGRATION AND RETURN

5.1 Irregular Immigration

5.1.1 Specific context

The new Federal government outlined its policy concerning irregular migration in its coalition agreement and the policy papers of the State Secretary for Asylum and Migration. The government focuses on the enforcement of return measures after the end of legal migration- and asylum procedures, the strengthening of measures against human trafficking and –exploitation, the fight against fraudulent practices and the principal of regularisation of irregular migrant only on a case-by-basis.

5.1.2 Developments within the national perspective

In 2011, Belgium registered an increased influx of legal and irregular immigrants from Serbia, FYROM, Kosovo, Armenia and Bosnia and Herzegovina. Belgium developed in 2010 and 2011 an action plan for this particular group of migrants. The plan includes an accelerate procession of asylum application, the active, tailored suited promotion of voluntary return schemes and reintegration programmes, increased forced return measures and an intensified dialogue with local authorities of the concerned countries. In the framework of this action plan, in 2011 the Immigration Office carried out 10 prevention missions to Serbia, Albania, Bosnia and Herzegovina and Macedonia. The State Secretary for Asylum and Migration led one of these missions.

In 2011, the Belgian authorities organized and supported campaigns in Guinea (Conakry), aimed to inform the young urban population in Conakry, Kankan and Labé about the probability of successful asylum applications and the risks of irregular migration. Belgium decided in 2011 to support the corresponding IOM-project '*Campagne d'information et de sensibilisation sur la migration clandestine en Guinée*' until June 2012. Therefore 30.000 EUR were allocated. Additionally, Belgium financed (20.000 EUR) in the DR Congo four prevention projects, carried out by the local NGO '*AfricAction en Tarmac des Auteurs*'. The projects were mainly theatre performances followed by public debates about the risks of irregular migration, possibilities of legal migration and daily life in Belgium. The performances and debates took place between March and April 2011 at N'Djili and Masina.

The city of Oostende presented on 19 September 2011 its 'Action Plan Transit-Migration'. In recent years Oostende is confronted with a rising influx of irregular migrants, planning to travel further to the UK via the port of the city. According to the action plan, the railway police will increase its presence in the city and the Federal police agreed on participating at specific police operations with material and manpower of its federal reserve. The Immigration Office will be present at special police operations to support the police in the pre-identification of irregular migrants and to facilitate possible removals. The action plan intends to provide also the modernisation of the optical observation system of the harbour and the installation of additional enclosures to improve the shielding of the Schengen-Zone of the ferry terminals. The ferry terminal receives an additional guarding post on its parking lot, manned at least between 5 p.m. to

6 a.m. Additionally, Senator and chairman of the port of Oostende, Johan Vande Lanotte (sp-a) will present together with Senators from the political parties CD&V, N-VA and Open VLD a draft bill to the parliament which intends to make the irregular entering of harbour zones punishable by up to 2 years of imprisonment. According to Senator Vande Lanotte, the draft-bill is supported by all Flemish political parties except the Greens (Groen!).

Regularisation of irregular migrants

The last regularisation program in Belgium took place between 15 September and 15 December 2009 and the applications were mainly processed in 2010 and 2011. In 2010, about 24.000 persons were regularized. In 2011, 9.509 persons were regularized.

The Program Law of 29 December 2010 clearly stipulates that the government envisages in the future only case-by-case regularisation. The decision-making process on individual applications should be completed within 6 months. The coalition agreement of December 2011 confirmed explicitly these intentions. On 1 December 2011, the Federal Parliament adopted a bill to amend the legal procedures for regularisation on medical grounds (Art. 9ter). The most significant amendment is the introduction of a so called 'filter' to exclude 'obvious unfounded' regularisation applications. The bill defines 'obviously unfounded applications' as applications based on medical reasons, which are not serious enough to legitimize regularization and which are aimed on the continuity of the material reception or financial support of the applicant.

According to the State Secretary for Asylum and Migration, Maggie De Block (Open VLD), in 2011 Belgium registered for the first time more applications for regularisation on medical grounds than on so called humanitarian grounds. On the 1st October 2011, the entitled authorities registered 31.261 regularisation applications from which 11.236 were on medical grounds.

Irregular migrants: families with children of minor age

In October 2008, the Minister for Migration and Asylum Policy decided to end the detention of irregular migrants with children of minor age and assigned them to alternative residences, the so called 'housing units'. Therefore, individual houses and apartments were provided for the temporary stay of concerning irregular migrants with children of minor age. Formally, these families are detained in the housing units but have in practice certain liberties of movement. The legal status of the housing units is stipulated by the Royal Decree of 14 May 2009.³³ In the housing units, the concerned families are accompanied during their stay by supporting officers (coaches), appointed by the IO. In September 2011, the capacity of the housing units was extended with the commissioning of three more units in the city of Tielt. In spring 2012, five more housing units are expected to be operational at two other locations. During the year 2011, 463 persons (including 253 minors) were supported in housing units, which is a significant rise in comparison with 2010 (221 persons) and 2009 (206 persons). Between the start of the housing unit project in October 2008 till the end of January 2012, a total of 288 families with 525 children of minor age were supported in the different units. 122 of these families actually left Belgium, including voluntary return, Dublin-cases and forced return measures. 69 other families absconded from the housing units and 87 further families left the units on legal basis, mostly because of a change of residence status. In 2011, the average duration of stay in the housing units has been 23 days. Several NGO's have visiting rights to the housing units and the IO organises regular meetings with these NGO's.

³³ Royal Decree of 14 May 2009; download: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2009051406&table_name=wet

In spite of the fact that the authorized minister decided in 2008 not to detain families with children of minor age any more, the measure remained possible. The Law of 16 November 2011 (BS/MB 17 February 2012)³⁴ created in this context eventually a legal frame. The law limits the possibilities of detention of the vulnerable group of families with minor children to two situations, stipulated as following:

- 1) Families with children of minor age, whose access to the territory is refused on grounds of defined criteria,³⁵ may be detained for an as short as possible period and only in facilities in the border region adapted to the special needs of families. The detention has to be as aim the removal of the concerned persons from the territory.
- 2) Families with children of minor age without legal stay and already living on the state-territory are generally³⁶ allowed to remain in their own private housing. The family is obliged to fulfil certain preconditions, listed in an individual agreement between the family and the IO. In the case that the family has no own private housing to its disposal, may be detained in a facility adapted to the special needs of families with minor-age children. In the case that the family disrespect the agreed preconditions, the concerned persons may still be detained in a regular detention facility.

Like in the case of the housing units, all concerned persons will be assisted by a supporting officer (coach), appointed by the IO. In 2012 a specific infrastructure adapted to the special needs for families with children of minor age will become operational in one detention facility. The measure and the Law of 16 November 2011 are responding to the ECHR judgement '*Muskhadzhiyeva and others vs. Belgium*' (19 January 2010).³⁷

The Immigration Office and Fedasil signed in 2010 a collaboration agreement concerning an assistance programme for families with children, which staying irregular in Belgium but being entitled to be sheltered in reception centres according to the Royal Decree of 24 June 2004. The agreement has been implemented in March 2011. The program consists out of up to four steps. In step one, the concerning families are invited to a meeting with officials of the IO and Fedasil in which they are briefed about the different remaining legal possibilities and in which graduated return-schemes are elaborated. In step two, the concerning family has three months time to make a decision in favour of one of the presented return schemes. In step three the application for the scheme will be submitted and processed with priority. In the case the family refused a voluntary return scheme or the application for a voluntary return programme was refused, the family will be transferred in a forth step to a housing unit.

³⁴ Law of 16 November 2011 (BS/MB 17 February 2012). Download NL: http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2012-02-17&numac=2012000080&caller=summary

Download FR: http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2012-02-17&numac=2012000080&caller=summary

³⁵ Criteria: a) being not in the possession of documents allowing the access to the territory, b) inadequate means of living, being not able to explain the purpose of travelling;

³⁶ They are not allowed staying in their private housing in the case that one of the concerned persons a) is seen as a danger for the national security or the public order, b) is blacklisted on the access to Schengen-list, c) is seen as a danger for the international relations of Belgium

³⁷ Cf. BE NCP, Policy Report 2010, p. 38

5.1.3 Developments from the EU perspective

The Federal authorities organized several projects in countries of origin to prevent irregular migration to Belgium and other European countries. In 2011, such projects were carried out in Serbia, Macedonia, Kosovo, Guinea (Conakry), the Russian Federation, DR Congo and Brazil. These missions include radio broadcastings and the distribution of leaflets, both informing about the risks of irregular migration.

In 2011, different housing units were visited by delegations from Norway, Bosnia and Herzegovina, the Netherlands and Romania.

5.2 Return

5.2.1 Specific context

Policy on Forced Return

Since many years the concerned national authorities record a substantial mismatch between the number of issued orders to leave the territory and the actual compliance of such orders. The two ‘Vermeersch Commissions’ (1998-1999 and 2004-2005), in charge to recommend rules concerning forced return, stressed already in 2005 this mismatch. After transposing the return directive in national law and the completion of the last regularisation program for irregular migrants in 2011, the government undertakes measures aimed to increase the number of persons who comply with an issued order to leave the territory. Several political parties stressed in 2011 repeatedly that an increase in forced returns of irregular migrants is necessary. The coalition agreement explicitly stresses the willingness to increase the return of irregular migrants and failed asylum seekers and the policy paper of the State Secretary stated in January 2012 that, “...a maximal interest will be focussed on return, voluntarily if it is possible, forced if it is necessary.”

Assisted Voluntary Return (AVR) – policy

The legal basis for AVR is Art. 54 of the so-called ‘Reception Act’ of 2007 (Law of 12 January 2007). However, the provision has still to be implemented through a Royal Decree. This has not been done in the course of 2011, due to the lack of governmental backing. In consequence, AVR-policy in Belgium is still based only on a very general legal framework. The Law of 2007 and article 62 of the founding law of *Fedasil* (Law of 19 July 1991) assigned this federal authority as coordinating agency for implementing AVR-programs. The political responsibility for developing policies concerning such programs belongs to the State Secretary for Asylum and Migration, Ms. Maggie De Block. The means for AVR-programs are allocated to the annual *Fedasil* budget. For 2012, a budget of 5.424.05 EUR is approved but currently under review.

The Belgian authorities conceive AVR-programs as instruments of social assistance to migrants willing to return but hindered in doing so by practical and administrative obstacles. To achieve this goal, two main policy objectives were identified; the 1) elaboration of the reintegration assistance packages to facilitate a durable return and the 2) development of a coherent policy to inform the potential target group.

The political responsibility for developing policies concerning forced return belongs as well to the State Secretary for Asylum and Migration, while the Immigration Office is the implementing agency.

Existing AVR - programs

The implementation body for AVR-programs is Fedasil, the federal authority in charge for the reception of asylum seekers.

The structure of the programs remained in 2011 unchanged and consists out of three different possibilities:

- 1) The basic AVR-program, which organizes the return travel and provides a financial aid of 250 EUR per capita, which is paid at the moment of return. This program, called REAB, is carried out by IOM on behalf of Fedasil.
- 2) Complementary to the REAB-program, reintegration assistance after return can be requested. The reintegration aid amounts to 700 EUR per capita (350 EUR for minors) and is organized by IOM and Caritas on behalf of Fedasil. Both partners cooperate with their local representations in countries of return, which decides after consultation with the returnees about the investment of the means in individual tailored reintegration measures.
- 3) With the support of the European Return Fund, the reintegration assistances can be increased for a maximum of 500 returnees in 2011 up to total of 2.200 EUR per capita. The additional maximal 1.500 EUR is intended to support start-ups of micro-businesses, to support the access to the local labour market by wage-supplements or to finance projects intended to support vulnerable groups.

5.2.2 Developments within the national perspective

The former State Secretary for Asylum and Migration Policy, Melchior Wathelet (CdH) issued on 10 June 2011 a circular concerning the intended reduction in the mismatch between issued orders to leave the territory and the actual compliance of such orders. The circular, directed to the Mayors of the country, reminded the local authorities, especially the police services, on their crucial role in enforcing issued orders to leave the countries. The circular pointed also to the necessity of an improved exchange of information between the concerned authorities. To support an envisaged increased compliance of orders to leave the territory, the Immigration Office implemented in May 2011 a new internal service, the unit 'Sefor' ('**S**ensitization, **F**ollow-up and **R**eturn'). The task of Sefor is to support local authorities in the effective removal of persons who received an order to leave the territory. Sefor fulfils this task via training of competent local civil servants and police officers, via liaison officers in four large cities of the country and via two specialised websites: The website www.sefor.be provides information about assistance in return on the concerned people itself and the password protected website www.gemcom.be to provide local authorities with necessary forms and other information.

In 2011, 4.230 migrants signed-in voluntarily in the national REAB-program and 3.358 of these persons actually returned in this framework, which is a significant increase in comparison with 2.957 returnees in 2010. Half of the returnees, or 1.683 persons were failed asylum seekers or people, who withdraw their asylum application. The number of persons of this specific group of returnees increased within the last three years with about 20%. The other half of the voluntary returnees in 2011, were persons who stayed in Belgium irregularly. Complementary to the aid provided by the REAB-program, the two service providers IOM and Caritas supported during the year 1.265 returnees with further re-integration assistance.

In 2011, the support of voluntary return measures for asylum seekers originating from those Balkan countries, which are not any longer subjects of visa requirements, has been reduced to cost-free travel costs. In November and December 2011, the Immigration Office organized

together with Fedasil in this context weekly bus-transfers to the concerning Balkan countries. The service is still available in 2012. Precondition for using the service is to withdraw a possible ongoing asylum application and being holder of valid travel documents. In 2011, 548 persons used this specific service. The number of these persons are additional to the before mentioned persons returned in the framework of the national REAB-program.

Concerning forced return measures, including Dublin-II cases, the authorities returned in 2011 a total of 3.708 persons.

Fedasil launched in 2011 a specialized website in [English](#), [Dutch](#) and [French](#) to improve the information-providing about assisted voluntary return. The prime target group of the website are social services.

The concerned authorities initiated in 2011 several other programs to improve the national policy on voluntary return: 1) In 2011, the first target-group orientated return projects came into force. These projects intend to adapt the existing projects to the special needs of specific groups of returnees. In this context, the first project concerned returnees to Armenia with kidney diseases and intend to secure the continuity of their medical treatment after the return. 2) The authorities elaborate a guideline to inform asylum seekers about the possibilities of voluntary return on three central occasions of their stay in the reception system: their intake, the moment of a possible refusal of an asylum claim and at the end of their stay in the reception system. 3) In the framework of the Sefor-project (cf. below), Fedasil and the Immigration Office organized in 2011 first training sessions to inform local authorities about AVR-programs.

As described above, 'Sefor' is a centralised service of the IO responsible for the follow-up of all files concerning the order to leave the territory. In cases that concerned TCN's apply for a legal stay after receiving an order to leave the territory, 'Sefor' contacts the authorized IO-service which treats the application and request priority-procession of the application. Via the new website www.sefor.be, 'Sefor' informs in 22 languages concerned and/or interested TCN's and other social assistant services about the consequences of an 'order to leave the territory' and the possibilities for voluntary return. 'Sefor' is co-financed by the European Return Fund. Sefor intends also to coordinate and interlink voluntary and forced return more efficiently. With regards to forced return, the Immigration Office initiated in 2011 a project to follow-up more effectively so called orders to leave the territory. In the case, individuals do not obey such orders, Sefor tries actively to identify and localize these persons with the aim to removal.

The Federal government drafted a new Circular (Circular of 10 June 2011 concerning the authority of Mayors with regard to removal of Third Country Nationals)³⁸ to inform Belgian mayors about the national removal policy and the role of the local authorities in it. The circular stipulated also relevant new instructions for the local authorities. TCN's have for example the obligation to sign an order to leave the territory at the local commune where they are living. The circular oblige these communes to inform at such occasions the concerned TCN about removal procedures and the possibilities for voluntary return. Additionally, the municipality has the obligation to transfer an identification-form about the concerned TCN to 'Sefor'. The concerned TCN has to leave the country principally independently and must inform the municipality about date and destination of his/her return and has additionally provide the municipality with a copy of his/her return-ticket. The municipality has the duty to transfer this information to 'Sefor'. In the case a TCN does not provide him/herself to the local authorities after issuing an order to leave the territory or the date of the order has elapsed, the municipality has to initiate a control of the

³⁸ Circular of 10 June 2011 ([Dutch/French](#))

dwelling of the concerned TCN, carried out by the local police. The municipality is obliged to verify if the concerned TCN left his/her place of residence and has to send a concerning report to 'Sefor'.

In 2011, the political decision was made to implement a so called 'open return centre'. In such centre failed asylum seekers will be transferred with the aim to elaborate in collaboration with the concerned persons and different partners an effective and individual project of return. This project has to be elaborated in the course of 30 days.

5.2.3 Developments from the EU perspective

According to the Immigration Office, the transposition of the return directive will have direct impact on the number of non-admission reports (Art. 96 CAAS), which is expected to increase. In 2011, such reports were just issued in single cases, mostly with regard to the Netherlands and Germany. However, Belgium agreed with France to use the provisions of the Council Directive 2001/40/EC more often concerning Algerian and Vietnamese citizens.

With regard to the expulsion of irregular migrants to other Member States, Belgium maintains bilateral collaboration agreements with France, Luxembourg, the Netherlands, Germany, Switzerland and Spain. With the exception of the Benelux and Switzerland (3 days), the agreements indicate no deadlines, in which a requested acceptance has to be announced by the partner. The deadline concerning the Benelux and Switzerland is respected. The precondition for acceptance requests stipulates amongst others, that the concerned irregular migrant did not leave the concerning country more than 6 months ago.

Belgium fully cooperates in the framework of Dublin-II and responds to EURODAC-hits within 14 days. Without EURODAC-hits, Belgium responds within one month. Belgium also participates in the exchange of biometric data via EURODAC.

During the year, Belgium participated in four joint return flights: one of the flights, with the destination Kinshasa/DRC and Lagos/Nigeria was organized by Belgium itself and the three other flights were organized by different MS or Frontex.

Additionally, the Belgian authorities cooperated in the framework of the EURINT-project with the Netherlands. The aim of the project is to elaborate a common approach concerning the identification of irregular migrants from several countries of origin (Nepal, Azerbaijan, Armenia and Pakistan). Again in cooperation with the Netherlands, Belgium participated in the MEDOCO-project, concerning information exchange on the health care situation in countries of origin.

The Directive 2011/51/EU³⁹ extend the scope of the beneficiaries of international protection as stipulated by the Directive 2003/109/EU⁴⁰ to refugee- and subsidiary protection status. Since 2008, TCN's lived in a MS for longer time received easier access to long-term residence status in another MS. Belgium transposed the status of 'long-term residence' according to 2003/109/EU by article 15bis-20 of the Aliens Act. Persons with recognized refugee- or subsidiary status were however excluded from this status. 2011/51/EU now abrogated this exclusion.

³⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:132:0001:0004:EN:PDF>

⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF>

Belgium participated in the framework of the ‘Indicative Collaboration Programme Morocco 2010-2013’, carried out by IOM. In this framework and financially supported by Belgium and Switzerland, IOM implemented the project ‘*Retour volontaire assisté de migrants irréguliers au Maroc et de réinsertion dans leur pays d’origine*’ (duration: 13 May 2011 – 12 May 2012). The project aims on the voluntary return and the reintegration of up to 500 irregular migrants, originated from Sub-Saharan countries and stranded in Morocco, in their countries of origin.

5.3 Actions against human trafficking

5.3.1 Specific context

Since more than 15 years Belgium has experience with a multidisciplinary approach by specialised authorities in combating trafficking in human beings. The Law of 10 August 2005 stipulates a distinction between the crimes of human trafficking and the smuggling of people and defines abuse and types of exploitation. The law introduced also several categories of aggravating circumstances. Furthermore, the recognition as victim of human trafficking is legally possible before a judgement is pronounced and even at the moment a criminal investigation starts. However, the willingness of the victim to cooperate with the authorities is a precondition for granting the status. The victims are sheltered in specialised care centres. Specialised legal assistance⁴¹ is both granted to EU citizens and to third-country nationals under three preconditions: willingness to cooperate with the judiciary, acceptance of guidance by a specialised centre for victims of human trafficking and the willingness to suspend contacts with alleged offenders.

In July 2008, the Federal government drafted the National Action Plan against Trafficking in Human Beings 2008-2011 and defined policy goals in 5 different thematic areas: 1) legal realm; 2) prevention; 3) victim-assistance; 4) investigation and prosecution and 5) data collection. The plan aims amongst others to the development of a national, coordinated strategy on combating the criminal phenomenon and to improve interdisciplinary data collection and information exchange. At the moment of writing, the Federal government drafts the ‘National Action Plan against Trafficking in Human Beings 2011-2015’, following the ex post facto principle and therefore in force from the beginning of 2012.

The Belgian government has not yet officially appointed a National Rapporteur on Human Trafficking. However the Centre for Equal Opportunities and Opposition to Racism (CEOOR) fulfils de facto this role. Since 1996, the CEOOR publishes independent annual reports on trafficking in and smuggling of human beings.⁴² Complimentary, the Federal government presents a biennial report to the parliament on the enforcement of measures to combat human trafficking in Belgium. These reports are drafted by the Department of Criminal Policy, which has an autonomous status within the Ministry of Justice.

⁴¹ Cost-free legal assistance is in any case granted.

⁴² CEOOR, Rapport annuel 2010 sur la traite et le trafic des êtres humains. Lutter contre la fraude sociale, c’est prévenir la traite des êtres humains (October 2011), http://www.diversite.be/?action=publicatie_detail&id=135&thema=5&select_page=216 (available also in Dutch)

5.3.2 Developments within the national perspective

The Federal Government declared in its coalition agreement its firm decision to oppose illegal practices like the enrichment of criminal networks involved in the exploitation of irregular workers and therefore mentioned the liability of the concerning employers. It also explicitly mentioned its willingness to intensify the fight against human trafficking. The government stresses the importance to improve the interdepartmental coordination in combating the phenomenon. Victims of human trafficking and exploitation shall be better protected and the specialised centres to shelter them shall be legally recognized. On 5 January 2010, the workgroup 'Human Trafficking' of the Belgian Senate (2nd chamber of the Federal Parliament) met for its constitutive meeting. The workgroup organised seven hearings of key stakeholders with regard to human trafficking in Belgium: the unit 'Human Trafficking' of the CEOOR, specialised law-enforcement- judiciary- and prosecution- services, the Ministry of Justice, experts of the Social Inspection-services and the Immigration Office and specialized centres for victims of human trafficking. On 4 May 2010, the final report of the parliamentary workgroup was published. The CEOOR advised during the hearing of the workgroup⁴³ and again in its 'Annual Report on Trafficking in and Smuggling of Human Beings' amongst others the amelioration of the legal status of victims.⁴⁴ The question of the legal status of victims was also part of the assessment of the impact of the multidisciplinary Circular of 26 September 2008. The topic remains virulent and will be part of the new action plan of the Federal government. As part as the assessments mixed focus groups took place were finalized in 2011. On the occasion of a hearing of the parliamentary workgroup in February 2011, a judge focussed the attention on the problematic of the removal of human organs as aggravating case of human trafficking. In direct response to the hearing, a draft-bill was elaborated addressing this specific crime.

On 1 July 2011 came the new social criminal law in force. Even if the law is not directly addressing the problematic of human trafficking, it has implications for the persecution of the phenomenon: for example does the new law confirms and specifies the rights of social inspectors, especially concerning their access to work areas and private housing. The new law introduces also four categories of infringements with corresponding sanctions. In the category collecting the most serious infringements, some offences may have direct links with human trafficking. Another legal development concerns directly the battle against human trafficking. The new article 134quinquies of the new Municipality Law, approved by the two chambers of the Parliament in May respectively June 2011, stipulates for the mayors certain police-authorities concerning human trafficking: according to the new law, the mayors are entitled to close down an institution/organisation in the case of clear indications that the location is/was used for smuggling and/or trafficking of human beings. The preventive action is legally limited on a maximum of 6 months.

The Immigration Office continued in 2011 its collaboration project with the Brazilian authorities, implemented in 2010. The project aims to organize in Brasilia common prevention- and awareness rising campaigns in order to combat human trafficking and aggravated forms of human smuggling of Brazilian citizens.

⁴³ Belgische Senaat/Sénat de Belgique, Mensenhandel/Traite des êtres humains, Verslag/Rapport, 4 May 2010, p. 16

⁴⁴ CEOOR, Jaarverslag Mensenhandel/Mensensmokkel 2009. In een shijn van wettelijkheid (October 2010), p. 6, http://www.cntr.be/?action=publicatie_detail&id=124&thema=2&select_page=216. For more information on the topic of the legal status of victims see P. Le Cocq and C. Meulders, 'Le statut des victimes de la traite des êtres humains', in Ch.-E. Clesse et al., *Traite des êtres humains-Mensenhandel-Mensensmokkel*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Charte, 2010, pp.77-80.

In the past, the prosecution authorities were confronted with different cases of human trafficking and serious maltreatment of service staff of foreign diplomats. In 2008, for example, the raid of the labour inspection in a renowned hotel in Brussels, where 17 service persons were liberated from effective enslaver in which they were forced by members of an Arabic royal family, received wide public attention. However, an effective prosecution was herby like in similar cases, made impossible by the diplomatic immunity of the offenders. To counter such cases, the government integrated a specific section on 'victims of trafficking working for diplomatic personnel' into the Ministerial Circular of 26 September 2008, stipulating a multidisciplinary cooperation to guaranty first of all an effective protection of the victims. In 2010 and 2011 an evaluation of the circular of 2008 found place. The evaluation-document recommends amongst others a simplification of the information given by the circular, which was found to specific to be user-friendly. According to the evaluation report, there is a need for tailor-made information instruments for the different actors in combating human-trafficking on the field. Further a better clarification of the status as victim of human-trafficking is recommended.

5.3.3 Developments from the EU perspective

Crucial elements of the 'Employer Sanctions Directive' already exist in the national law. Article 13 of the Law of 30 April 1999 stipulates that the costs for the removal of irregular migrants, who are arrested by the police or the social inspection for irregular work, are claimed at the employer who employed the concerned persons. The employer has to reimburse both the accommodation costs before the removal and the actual removal costs (transport to the country of origin). The current law stipulates the obligation for employers to apply for a labour authorisation before employing a foreign worker.

The draft bill to finalize the transposition of the Directive stipulates sanctions and measures against employers of irregular migrants. The employer shall also be obliged to verify the existence of a valid residence permit of a foreign worker. Additional to the already existing fines and sanctions, the concerning employers shall also be obliged to reimburse wages of irregular employees plus all connected costs. Also contractual partners employing irregular workers via subcontracting shall be liable.

The 'German Institute for Human Rights' published in June 2011 a study on 'Domestic Workers in Diplomats' Households' in 8 MS including Belgium.⁴⁵ According to the study, in the end of 2010, around 500 private domestic workers and 200 members of service staff worked in Belgium in private households of diplomats. In 2009, the Protocol department of the Foreign Affairs Office received around 50 complaints concerning rights violations of this specific labour-force.

⁴⁵ A. Kartusch, Domestic Workers in Diplomats' Households. Rights Violations and Access to Justice in the Context of Diplomatic Immunity, download: http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/domestic_workers_in_diplomats_households_03.pdf

6. BORDER CONTROL

6.1 Control and surveillance at external borders

6.1.1 Specific context

In Belgium, the IO is in charge of managing the External Borders Fund (2007-2013). The IO receives the EU subventions, selects the supported projects and distributes subventions to operational project partners. The IO therefore developed management and control systems and has prepared multiannual programmes as a basis for the annual work programmes. The principal operational partners concerning the EBF are the SPF Foreign Affairs, the Federal Police and the SPF Home Affairs. The EBF enabled Belgium to realize different projects during the last year. Actions were launched corresponding to priority 1 (*Support for the further gradual establishment of the common integrated border management system as regards the check on person at and the surveillance of the external borders*), priority 3 (*Support of the issuing of visas and the tackling of illegal immigration*), priority 4 (*Support for the establishment of IT systems required for implementation of the Community legal instruments in the field of external borders and visas*) and finally corresponding to priority 5 (*Support for effective and efficient application of relevant Community legal instruments in the field of external borders and visa*). There are no actions under priority 2 (*support for the development and implementation of the national components of a European Surveillance System for the external borders and of a permanent European Patrol Network at the southern maritime borders of the EU Member States*)

6.1.2 Developments within the national perspective

With the assistance the External Borders Fund (EBF) the Belgian authorities implemented in 2011 several projects to improve the control and surveillance of the external borders. The Federal Police purchased and installed 28 additional scanners for passports and biometric visa for the different border posts. The border guard was enabled to carry out four missions to third countries, more specific to Ghana (Accra) and to Guinea (Conakry). Additionally, the border guard carried out four exchange missions to other Schengen airports in different member states.

The Federal Governmental Service for Foreign Affairs installed in 2011 with the support of the EBF 50 additional biometric scanning devices in several diplomatic representations worldwide and at a one diplomatic post in Belgium itself. Foreign Affairs also contracted a varying number of local field workers in Cameroon, Senegal, Ivory Coast and Ecuador. The duty of these field-workers is to control on the ground and on demand of the specific diplomatic post the authenticity of documents mandatory for Visa-applications.

With respect to foreigners being refused entry at the border, the authorities in charge refused in 2011 the entry of 2.734 foreigners. This is an increase of 47% compared to last year (1.863).

6.1.3 Developments from the EU perspective

The IT-department of the FPS Interior developed and implemented the software for the national VIS (Belvis), fully compatible with the Central VIS (C-VIS).

6.2.3 Developments from the EU perspective

The competent Belgian embassy for Guinea (Conakry) is situated in Senegal (Dakar). To treat Visa-applications from Guinea, Belgium maintains in collaboration with the French embassy in Conakry a visa office. From the beginning of 2012 a Belgian visa expert will work for this visa office situated in the French embassy.

Cooperation with FRONTEX

The Belgian Federal Police participated in several joint missions organised by Frontex, like Poseidon, Indalo, Minerva and Hermes.

7. INTERNATIONAL PROTECTION, INCLUDING ASYLUM

7.1 Specific context

In 2008 almost 16.000 persons (about 12.252 cases) were registered as an asylum applicant. In 2009 there were more than 22.000 asylum applicants (17.186 cases). For 2010 there were 26.560 asylum applicants registered in Belgium (19.941 cases). The number of asylum applications continued to increase in 2011. In 2011 32.270 asylum applications (25.479 cases) were registered in Belgium. This corresponds to an increase of more than 21% compared to 2010.

The saturation of the reception centres for asylum seekers started in 2008, and continued throughout 2009, 2010 and 2011. During the past years several thousands of asylum seekers could not be provided reception in a reception facility. In some cases the instance responsible for reception, Fedasil, was sentenced by Court rulings for neglecting the legal right to shelter asylum seekers and other eligible persons.

7.2 Developments within the national perspective

Important trend: increased number of asylum applications and countries of origin

The number of asylum applications in Belgium has seen a sharp increase in 2011, even compared to the already high numbers in 2009 and 2010. In absolute terms only France, Germany and Italy were confronted with a higher number of asylum applications. Almost for all the important countries of origin of asylum applicants applying for asylum in the EU; Belgium is among the top 4 of countries of destination. When we compare the number of asylum applicants per million inhabitants, Belgium registers now about 5 times more applicants than the EU-27 average.

Nevertheless, regarding countries of origin, the asylum influx in Belgium is somewhat different compared to the other member states. In 2011 there were a lot of applications lodged by persons from *Guinea* (2425 persons or 2134 cases). France is the only other member state in the EU-27 with a relative high number of asylum applications from that country. The influx from most countries of the *Balkan* region remains very high compared to most other member states. For 2011 Belgium has the highest number of asylum applicants in the EU-27 from Albania (1290 persons or 809 cases) and Bosnia –Herzegovina (540 persons or 286 cases) Also the number of asylum applications from Kosovo (2320 persons or 1458 cases), Serbia (1995 persons or 1109 cases), Macedonia (1320 persons or 819 cases) and Armenia (910 persons or 691 cases) is very high compared to the asylum influx from these countries in most other EU-member states. During the last months of 2011 especially the rise in the number of asylum applications from Albania was remarkable. For October Albania became abruptly the most important country of origin; representing 13% of all asylum claims launched in Belgium during the month October (575 persons or 342 cases for October). In November and in December there were yet a lot less applications from Albania, but the number was still significant.

Also for asylum seekers from *Afghanistan* (3195 persons or 2.758 cases) and *Iraq* (2210 persons or 1948 cases) Belgium has become one of the most important countries of destination in the

European Union. The high quality of the asylum system and assessment, compared to some other Member States, could be seen as more favourable by asylum seekers. But also the lengthy procedure and the fact that Belgium already hosts large Diasporas are considered as factors of importance.

Measures to counter the reception- and asylum crisis on a legislative level:

Adjustments to the procedure before the Council for Alien Law Litigation (appeal body)

The law of 29 December 2010⁴⁶ introduced some changes to the appeals procedure before the Council for Alien Law Litigation. The law contains - among other things - clauses regarding the time limit for appeal, modified pro bono rules and fines for manifestly unfounded appeals. Most changes came into force on 10 January 2011.

Safe country of origin and subsequent asylum applications

There were a lot of public and parliamentary debates regarding the asylum crisis in 2011 and the abuse of the asylum procedure by people seeking to improve their standard of living. Due to the lack of a new government⁴⁷ until December 2011, some important legislative changes were initiated by the Parliament. On October 27, 2011 a bill was adopted stipulating that asylum seekers introducing a subsequent asylum application can no longer benefit from material assistance, unless their asylum claim is deemed admissible by the Immigration office. Another bill adopted by the Parliament on November, 24 2011 introduced the concept of safe countries of origin into Belgian legislation. These bills were adopted within the framework of the transposition of the European Return Directive 2008/11/3G (see below: Developments from the EU-perspective).

The objective of these bills is to address the problem of unfounded asylum applications (e.g. the high influx from certain Balkan countries following the visa liberalization). The idea is to substantially accelerate the asylum procedure for these cases, and thus lowering the pressure on the reception structures. The bills will become into force before the end of March 2012.

Measures to counter the reception- and asylum crisis on an operational level:

The Belgian government responded to the crises with a variety of measures. To tackle the high influx several *dissuasion/prevention campaigns* were undertaken to different Balkan countries. In parallel, the *return policy* (both assisted voluntary return and forced return) was reinforced.

Further on, the asylum instances organised targeted actions to treat the asylum applications of certain countries in a prioritized way and sometimes applying the LIFO (Last-In-First-Out) principle.

Finally, the reinforcement of the capacities of the asylum instances led to a higher number of decisions. In 2011, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) recruited nearly 100 persons *extra personnel* consisting mainly of protection officers (case workers). This reinforcement was partially funded through the Emergency Measures 2011 of the European Refugee Fund. Last year, the Immigration Department transferred 19,368 asylum dossiers to the CGRS for examination. The CGRS made 16,828 asylum decisions in 2011⁴⁸, which is an increase of 45 % compared to 2010 and of 87 % compared to 2009. Due to

⁴⁶ [Wet van 29 december 2010 houdende diverse bepalingen \(II\) artikel 35-45](#)

⁴⁷ Until December 5, 2011, there was a care-taking government; this since the federal elections of June 13, 2010.

⁴⁸ cases, not persons

the new staff who was recruited by the CGRS in the first half of 2011, the increase of the number of decisions was particularly noteworthy in the last trimester, with a monthly average of 1,600 decisions.

Also the Appeal Board (Council for Alien Law Litigation) and the Reception agency (Fedasil) were reinforced. And the reception structures were further extended (more than 7300 places were created between 2009 and the end of 2011).

Coalition Agreement regarding asylum

On December 5, the new government Di Rupo I was formed. In the Coalition Agreement⁴⁹ it is stated that Belgium has the duty to ensure protection for those in need of international protection. On the other hand the Coalition Agreement also stresses on countering the asylum and reception crisis and the abuse of the asylum system by people not in need of international protection. The government declared that it will implement a list of ‘safe countries of origin’ concerning asylum seekers as stipulated by the law adopted by the Federal Parliament, and multiple applications will be discouraged. The Coalition Agreement of the new government is further emphasizing on the efficiency of the asylum process and the reduction of the duration of the asylum procedure. Contrary to the previous situation one state secretary (Miss Maggie De Block) became competent for the asylum policy, covering all aspects on asylum including reception and return. These engagements of the Coalition Agreement were confirmed by the Policy paper on Asylum and Migration of Miss Maggie De Block. This paper was presented in the Parliament on 11 January 2012; The Policy paper on the Reception of Asylum Seekers was presented on 17 January 2012.⁵⁰ This last Policy paper is suggesting 4 clusters of measures to counter the reception crisis: reduction of the length of stay in the reception facilities, temporary enlargement of the reception capacity, taking measures to reduce the number of asylum applications and improvement of the outflow and return policy.

New information brochures for asylum seekers and protection officers

The CGRS has launched several brochures following a reflection process on quality management with regard to the processing of asylum applications.

As a follow up to the drafting of a “Deontological code for the work of interpreters and translators” the CGRS launched a code of good practices regarding the interview. This charter will serve as the protection officers’ code of conduct.

The brochure ‘Women, girls and asylum in Belgium’ was drawn up for female asylum seekers and does not only contain information about the asylum procedure itself, but it also treats other more specific themes such as health, the issue of equality between men and women, violence within the family, the problem of female genital mutilation and human trafficking. In order to reach out to as many female asylum seekers as possible, the brochure was translated in nine languages: Albanian, English, Arabic, French, Dutch, Pashto, Peul, Russian and Serbian. This project was co-financed under the 2009 national ERF programme.

Remarkable national case law regarding asylum and reception

⁴⁹ <http://www.dekamer.be/kvvcr/index.cfm?language=nl>

⁵⁰ http://www.dekamer.be/kvvcr/showpage.cfm?section=/pri/budget&language=nl&rightmenu=right_pri&story=2012-notes.xml

Court Decision on exclusion of refugee status

On January 13, 2011; the Council for Alien Law Litigation found that the Office of the Commissioner General for Refugees and Stateless Persons was not allowed to exclude a Moroccan asylum seeker in accordance with the 1 F exclusion clause of the Geneva Refugee Convention. The Council for Alien Law Litigation made reference at the B&D case vs Germany⁵¹ In this judgment of the Court of Justice it was stated that the mere fact that a person is a member of a terrorist organization does not automatically mean that the person must be excluded from refugee status.

The Office of the Commissioner General for Refugees and stateless persons contested the courts decision by introducing an appeal at the Council of State

Constitutional Court has no problem with modifications Reception Act

Since January 10, 2010, the right to material aid is limited at some points for some categories of asylum seekers and other foreigners. On July, 27, 2011, The Constitutional Court rejected an appeal for annulment of the amendment that restricted the reception. The Court considered that the restriction was not disproportionate considering the abuse of the procedure and the saturation of the reception facilities.⁵²

7.3 Developments from the EU perspective**Transposition Return Directive (and introduction of the concept of safe country of origin into national legislation)**

As mentioned above the Parliament reformed the asylum procedure by introducing the concept of safe country of origin (cf. Article 30 and 31 of Council Directive 2005/85/EC). The bill was adopted by the Parliament on 24 November 2011. Further-on this bill regulates the partial transposition of the European Return Directive 2008/11/EG. A previous bill that was voted on 27 October 2011 had already provided in the implementation of the majority of the provisions in the Return Directive. This bill also introduces a formalized return program and stipulates that voluntary return is preferred over forced return.

Resettlement: Arrival of 25 Eritrean and Congolese refugees from ex Libya.

There was an urgent resettlement programme of 25 refugees out of the Shousha camp (Tunisia) following the situation in Libya, and to facilitate their early integration into Belgian society. Belgium thus responded to the call of the UN High Commissioner for Refugees (UNHCR) for the EU member states to resettle African refugees ex Libya. When the uprising in Libya broke out the 25 refugees found temporary refuge in Tunisia, but they were in urgent need of resettlement to a third country. Following a decision reached by the Inner Cabinet in March 2011, Melchior Wathelet, State Secretary for Migration and Asylum Policy, authorized the transfer of 25 refugees to Belgium. The Office of the Commissioner General for Refugees and Stateless Persons (CGRS) selected 6 families and some isolated persons among the cases submitted by the UNHCR. All are Eritrean or Congolese nationals. The Office of the UN High Commissioner for Refugees assisted the Tunisian authorities with the organization of a temporary refuge in the Shousha refugee camp, near the Libyan border.

⁵¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0057:EN:HTML>

⁵² [GwH arrest 2011 nr. 135](#)

Officials from Fedasil were at the airport to welcome the 25 Eritrean and Congolese refugees. After a short stay in a reception centre, they followed an integration course (housing, language, school, work...) before settling for good in our country.

The resettlement of 25 refugees in Belgium was made possible by EU funding through the European Refugee Fund (ERF). This was the second time in the past few years that Belgium responds to an international call to resettle refugees from conflict areas. In 2009, 47 refugees from Iraq were resettled in Belgium.

Other EU and International cooperation in 2011

- In the field of asylum the CGRS has participated in the following projects: In the autumn of 2011 Cedoca (the COI department of the CGRS) has conducted a joint fact finding mission with France and Switzerland to Guinea. Belgium has the last years seen a large influx in asylum seekers from Guinea, including an important number of unaccompanied minors (250). The Joint FFM should help in covering the existing information needs.

- The CGRS has since 2007 participated in the ERF-co- financed project 'European Country of Sponsorship'. The CGRS is sponsor and thus provides for expertise on Algeria, DR Congo and Georgia; and is also involved in establishing Guidelines for Fact Finding Missions. The ECS project runs until the end of 2011, but EASO will be able to build on the ECS-results.

- Since 2010 the Belgian asylum authority (the Office for the Commissioner General for Refugees and Stateless Persons) is assisting the Burundi asylum authority (ONPRA) in setting-up an asylum system. The CGRS has sent some of their experts who provide training to their Burundi counterparts by using the different modules of the European Asylum Curriculum (EAC). These training sessions continued in 2011 and the project, which is financed through the Belgian Development Cooperation, will most probably be prolonged in 2012.

- Belgium provides support to the Greek Action Plan on Asylum Reform and Migration Management. An expert on the management on European Funds implementing the General Programme 'Solidarity and Management of Migration Flows' has already assisted the Greek authorities. A number of Belgian experts have been taken up in the Asylum Intervention Pool and the EAC Expert Pool

- A Belgian COI expert has been seconded to the EASO to write the first EASO COI report on Afghanistan.

Case-law on asylum from the European Court of Human Rights relevant for Belgium:

MSS (21 January 2011)⁵³

The case M.S.S. vs Belgium and Greece concerns an Afghan asylum seeker who lodged an asylum application in Belgium. Based on the Dublin II Regulation, Belgium sent him back to Greece, the country through which he had irregularly entered the EU. In Greece he was placed in detention twice, during which he was, according to the European Court for Human Rights, subjected to degrading detention circumstances. After his release, he was abandoned to live on the streets. The Court ruled that both the detention circumstances and the living circumstances were a violation of Art. 3 of the European Convention on Human Rights.

⁵³ [EHRM arrest nr. 30696/09](#)

According to the Court, Belgium was not allowed to transfer the applicant, because it should have been aware of the structural shortcomings in the asylum procedure and of the systematic problems in the detention and reception of asylum seekers in Greece.

Since 2010 the Dublin transfers to Greece were already suspended, so the natural mutual trust in asylum procedures in other member states had already come to an end; but this was highlighted by this MSS ruling of the ECHR; putting the Dublin II regulation under pressure.

This ruling of the Court was in Belgium welcomed by some, but criticized by others. There can be argued that the richer western European countries should take their responsibility instead of shifting up their responsibility to overburdened Southern European member states.⁵⁴ But when taking into account that the number of asylum applications in Belgium is higher compared to the number of asylum applications in Greece one could raise some questions. Also, not everybody agrees that an asylum applicant as such (not a refugee) should be considered as a member of a vulnerable group as stated by the Court. In his separate opinion in *M.S.S*, Judge Sajo, states this is not the case.⁵⁵

A court decision by the grand chamber of the Council for Alien Law Litigation had to bring its procedures in accordance with the *M.S.S.* ruling; amount other things regarding the effective remedy.

Kanagaratnam and others vs Belgium (13 December 2011)

On December, 13, 2011 the judgment of the European Court of Human Rights was published on the case *Kanagaratnam and others v. Belgium*⁵⁶.

Ms. Kanagaratnam and her three children, Sri Lankan nationals of Tamil origin, applied for asylum upon their arrival in Brussels airport, having transited through Congo. After their first asylum application had been rejected, they lodged a second asylum application and were eventually granted refugee status.

In 2009, the family was held for almost four months in a detention centre for irregular migrants pending their removal. The Court found that the detention of a mother and her three minor children in centre 127 bis amounted to inhuman and degrading treatment contrary to Article 3 ECHR with regard to the children.

⁵⁴ <http://strasbourgoobservers.com/2011/02/24/m-s-s-v-belgium-and-greece-2-the-impact-on-eu-asylum-law/>

⁵⁵ <http://strasbourgoobservers.com/2011/02/10/m-s-s-v-belgium-and-greece-when-is-a-group-vulnerable/>

⁵⁶ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=896885&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

8. UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

8.1 Specific context

In 2010, the topic of unaccompanied minors was set on the agenda of the Belgian EU Presidency. Belgium had established a task force on unaccompanied minors, which published its final report in 2010. The work of this task force resulted in a series of recommendations concerning detection, identification and protection of unaccompanied minors.

8.2 Developments within the national perspective

On September 12, 2011, an Act regarding the granting of residence permits to unaccompanied minors has been adopted. This Act is amending the Aliens Act⁵⁷ and provides greater legal certainty for unaccompanied minors who are no asylum seekers. This law became enforceable on December 8, 2011. The Act is fixing the stipulations regarding residence applications and is providing guidance on the search for durable solutions. Previously, this was settled by a circular which has now been repealed.

The number of unaccompanied minors applying for asylum rose sharply in 2011. In 2011 2040 asylum applications of unaccompanied minors were registered; of which up till now 1478 can be considered as a minor after the age determination test. This is a strong increase compared to 1081 in 2010 (860 after age determination test), and 935 (711 after age determination test) in 2009. Almost half of the asylum applications by unaccompanied minors in 2011 were Afghans.

There are specific reception facilities for unaccompanied minors. When arriving the first reception for UM's occurs in so-called Observation and Orientation Centres (OOCs) where a test aimed at age determination takes place. In a second phase unaccompanied minors are referred to specific collective reception facilities where a specialised team of coaches and educators provide support.

Due to the strong increase of unaccompanied minors applying for asylum in 2011 and due to problems with the outflow of unaccompanied minors who have obtained a status these specialised reception structures for unaccompanied minors came more and more under pressure. Not every unaccompanied minor could be hosted in the appropriate reception facilities. This situation forced Fedasil to rapidly enlarge the reception capacity for unaccompanied minors.

8.3 Developments from the EU perspective

The qualification directive (2011/95/EU), published on December, 20, 2011 aims to improve the situation and reception for unaccompanied minors in reception countries. The Belgian legislation is already largely in compliance with these amendments for what concerns unaccompanied minors.

⁵⁷ Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

9. GLOBAL APPROACH TO MIGRATION

9.1 Specific context

Belgium recognizes that the phenomenon of migration and asylum has to be seen in global perspectives. Therefore, Belgium continued in 2011 its efforts to develop migration and development-programs in collaboration with different countries of origin. In this context, Belgium formulated several main policy goals for its projects. The concerning projects should 1) contribute to the reflections about the causes of migration from the countries of origin, 2) develop reintegration tools after voluntary return, including the support of the economical reintegration of the returnees, 3) contribute to the fight against irregular migration by ameliorate the economical situation in countries of origin, 4) reinforce the local authorities in charge of the management of migration flows, 5) organise in cooperation with other MS information and awareness rising campaigns with particular focus on voluntary groups amongst potential migrants.

9.2 Developments within the national perspective

Supporting the Rabat Process on Migration and Development, Belgium negotiated in 2011 with the Moroccan government aiming on the renewing of the bilateral agreement on social security rights. The bilateral agreement provides equal treatment of Moroccans and Belgian nationals in terms of social security rights and obligations as well as maintenance of rights being acquired (portability). The negotiations are ongoing.

The Belgian Cooperation Development Department maintains a specific budget line to co-finance (up to 85%) projects and programs from associations of migrant Diasporas who wish to contribute to the development of their countries of origin. In 2011, an annual tranche of 425.000 EUR was paid to the “Benelux Afro Centre” (BAC) and another annual tranche of 425.000 EUR was paid to “Cap Santé”, as part of the total amount (1.250.000 EUR) respectively granted for the period 2010-2012. The first (BAC) project aims at supporting the national coordination of NGOs in the health sector and coordinating it at the provincial level in the Democratic Republic of the Congo (DRC). The second (Cap Santé) project contributes to improving the access to health care for the population of Cabinda in the DRC. Besides the above mentioned co-financing, negotiations have been developed with the “Federation of Associations of Migrants for the Development of Central Africa” (FAMIDAC) with a view to initiate a new 3 year project. In this regard, the federation of associations of Diasporas can emerge as a way to bring more resources together to obtain financing. Subject to approval of an increased “migration & development” budget line, the impact of such initiatives might have a stronger impact in development in countries of origin.

Furthermore, the Belgian Development Department continued to support the fourth implementation phase of the MIDA Great Lakes Programme, aiming on encouraging the mobility of the skills and resources of the Diaspora in response to local development needs. In 2011, 1.000.000 EUR were provided as part of the global amount (3.822.000 EUR) allocated for the period 2009-2012. In June 2011, the MIDA Programme organized a meeting to evaluate the situation of the 24 projects after one year of implementation. Also in June, MIDA organized the Steering Committee in Brussels with the representative of the Belgian Cooperation, representatives of the partner Embassies as well as representative from the Diaspora who presented the state of implementation of the projects.

The King Baudouin Foundation awarded a total of 172.879 EUR for 26 projects selected under the second edition of the call "Migrants, actors of solidarity" with a view to developing the capacity of migrants' organizations and the Diaspora to carry out initiatives that promote civic engagement of migrants in Belgium. Besides financial support, the initiators of the projects selected benefit from a methodological support. The majority of projects were initiated by groups of migrants from Central Africa.

In 2011, the Belgian Government reconfirmed support of the Belgian Investment Company for Developing Countries (BIO)'s mission aiming at supporting the private sector in developing and emerging countries to enable them to gain access to growth and sustainable development. In this regard, new funds were committed within the framework of its development cooperation policy. Additional information is accessible on <http://www.bio-invest.be/en/about-us/mission.html>. The "Overall Coordination of Migrants for development – Direction Belgium & Countries in the South" supported during the year the Organizations for International Solidarity of Migrants (OSIM Mapping) & invited organizations to participate in sessions on 10 December 2011 to inventory such organizations and create an interactive file between the EU and the African Diaspora

9.3 Developments from the EU perspective

In 2011, Belgium participated actively in the implementation of the mobility partnership with Georgia. The project, which was initiated by the Immigration Office in collaboration with its equivalents in the Netherlands, the Czech Republic and Poland, is supported on the Georgian side by the Foreign Affairs and the National Register. Belgian experts of Fedasil and the Immigration Office participated in the framework of the project in the field of supporting (assisted) voluntary returns, facilitating the reintegration of vulnerable groups and supporting the readmission by ameliorate the monitoring of immigration flows. Belgium also participates in the mobility partnership with Armenia.

In 2011, Belgium provided together with 11 other governments (including 7 MS) financial contributions to the core budget of the Global Forum on Migration and Development (GFMD).

Between March 2010 and March 2011, the Belgian asylum authority (CGRS) carried out practical and theoretical training sessions for protection officers of the asylum authorities of Burundi. The CGRS allocated for the project a budget of 18.599 EUR.