



# **European Migration Network**

## **Belgian Contact Point**

### **Annual Policy Report 2008**

#### **Policy report regarding asylum and migration**

#### **Belgium**

**June 2009**

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 to compare the findings in order to identify trends and monitor the political developments in the field of migration and asylum in a comparative perspective.

More information about the EMN will be available on:

[www.european-migration-network.org](http://www.european-migration-network.org)

The Belgian National Contact Point (NCP) is financed both by the Belgian Government and the European Commission. The Belgian NCP consists of four partners: the Immigration Office (as part of the Ministry of Interior), the Office of the Commissioner General on Refugees and Stateless Persons (CGRS), the Directorate-General Statistics and Economic Information (DG SEI) and the Centre for Equal Opportunities and Opposition to Racism (CEOOR). It can be contacted by e-mail ([Benedikt.Vulsteke@dofi.fgov.be](mailto:Benedikt.Vulsteke@dofi.fgov.be); [Geert.Beirnaert@ibz.fgov.be](mailto:Geert.Beirnaert@ibz.fgov.be); [Severine.Depotter@cntr.be](mailto:Severine.Depotter@cntr.be) or [Nicolas.Perrin@economie.fgov.be](mailto:Nicolas.Perrin@economie.fgov.be)), by phone +32 (0)2 793.92.30 or by letter (address: Belgian Contact Point EMN, Dienst Vreemdelingenzaken, WTC II, Antwerpsesteenweg 59 B, 1000 Brussels).

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## EXECUTIVE SUMMARY

This report – Belgian Policy Report on Asylum and Migration 2008 – gives an overview of developments and changes that have taken place in Belgium in the field of migration and asylum in the reference year. Every National Contact Point for the EMN provides for a national contribution to this so-called Policy Analysis Report. These national contributions will be clustered and compared in a European synthesis report.

In writing this report, use is made of official documents, press articles and information coming from NGOs.

After the difficult political negotiations that followed the 10 June 2007 federal elections, a new federal government came into office in March 2008. For the first time in Belgian history, a separate ‘Minister of Migration and Asylum Policy’ was appointed in the government. The coalition agreed on a common policy declaration, in which important intentions were announced with regard to migration and asylum issues. The criteria for (irregular) migrants to have their stay possibly regularised on the basis of a fixed, specific employment offer, or on the basis of ‘durable social anchoring,’ had to be clarified and was part of the proposed changes. However, these propositions have only been partly implemented, since positions of the coalition partners on the issue of regularisation started to diverge soon after the signature of the declaration. As in 2007, activists multiplied visible actions to keep the issue of regularisation of undocumented migrants at the centre of the political agenda and at the forefront of media attention, in which they receive support from NGOs, trade unions, universities, elected politicians, etc. The coalition government of March 2008 collapsed in late December 2008, and a new coalition, involving exactly the same political parties, was formed in January 2009, which endorsed the same political priorities and programme for the term to come as the previous coalition government.

The issue of detention of families with children in the so-called ‘closed centres’<sup>1</sup> has experienced substantive changes in 2008, with the creation of individual accommodation facilities, where families with children are living pending their removal, without restriction of their freedom. Families are assisted by return coaches of the Immigration Department. For the first time in Belgium, a pilot project ‘resettlement’ has been set up, following the call of the European Union to contribute to the resettlement of Iraqi refugees. It is currently being implemented; the first beneficiaries of the resettlement pilot project will arrive in Belgium in August/September 2009.

The far-reaching reform of the 1980 Aliens Act (approved in 2006 & 2007) reached its last phase in 2008. Additional implementation decrees were approved and/or came into

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<sup>1</sup> Cf. definition in Annex A1.2

force, further harmonising the Belgian asylum and migration policy with provisions enforced by European Directives. In particular, the law of 25 April 2007 (modifying the Aliens Act) came into effect in the first half of 2008. This law, also called “Mammoth II”,<sup>2</sup> was basically the transposition of two European Directives: EU long-term resident status (2003/109/EC) and the right of EU-citizens and their family members to move and reside freely within the territory of the Member States (2004/38/EC).

In addition, the creation, as early as in September 2008, of a new unit ‘Economic Migration’ within the Immigration Department shows that facilitating access of foreign (high-skilled) workers to the Belgian labour market through the already existing but complicated procedures is effectively a priority of the new Minister of Migration and Asylum.

The 2007 & 2008 (partial) data on migration and asylum confirm that legal in-flows of foreigners in Belgium have never been so large, thereby further discrediting the myth of ‘migration stop’ in Belgium. Although the inflow of aliens has reached an unprecedented level, it still mainly consists of EU-citizens. In addition, third-country nationals from certain nationalities quickly disappear from the statistics on numbers of aliens in Belgium (stocks) as they are rapidly entitled to acquire the Belgian nationality. The difficult identification of first, second or third generation migrants in official statistics continues to constitute an obstacle to reliable assessment of the impact of integration and anti-discrimination policies.

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<sup>2</sup> The first set of reforms, a.k.a “Mammoth I” was mainly related to Asylum. The reform was nicknamed “Mammoth I&II” because of its complexity, its far-reaching character and its size. A third set of reforms was also planned (“Mammoth III”).

# 1. Political developments in Belgium

## 1.1. General structure

*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. The report “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.

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,<sup>3</sup> whereas the territory-oriented **Regions** are responsible for ‘non-personal’ issues, such as farming, water policy, housing, public works, energy, transport, environment, land planning and town planning, rural development, nature conservation, credit policy, the supervision of the provinces, municipalities and associations of local authorities and the issuance of work permit to foreigners.

Since March 2008, entry, residence, establishment and removal of foreign nationals are the responsibility of the federal Minister for Migration and Asylum Policy and of the Director-General of the **Immigration Department (ID)**. The latter administration is also in charge of applying the Dublin II Regulation and manages the asylum applicants' residence requirements throughout the asylum procedure.

As a result of law changes in 2006, the **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**, an independent body, has become more than ever the key-player in processing asylum applications.

Since 2006, the **Aliens Litigation Council (ALC)** 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 of the Immigration Department (e.g. decisions on visas, residence permits, etc.).

**Fedasil**, a body under supervision of the federal Minister of Social Integration, is the institution in charge of the reception of asylum seekers in Belgium.

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<sup>3</sup> 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).

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.

## **1.2. General political developments**

Following the federal elections on June 10, 2007, difficulties to agree on a future constitutional reform prevented a federal government from being formed quickly after the elections. An interim government led by Guy Verhofstadt ran until March 20, 2008, when the government led by Yves Leterme (coalition of CD&V / NVA, Open VLD and MR, PS, CdH) took over. For the first time in history, a Minister of Migration and Asylum Policy<sup>4</sup> was appointed in the new governmental team, which possibly means that migration issues are being given increasing importance at federal level. In the governmental declaration of March 2008, which outlines the government's political priorities; a very ambitious chapter on migration is to be found (chapter 10), which (re-)introduces the concept of 'economic migration' in Belgian Migration Policy and which plans quite important modifications of migration legislation.<sup>5</sup> The declaration also includes the announcement that criteria for exceptional regularisation on humanitarian (article 9bis of the Alien Act) or economic – seen in the framework of further economic migration, the current labour shortages and the effects of the imminent lifting up of the restrictions on the free movement of the 'EU-8'- grounds would be clarified. However, no political agreement was reached on the content of that latter Circular or on criteria to be met for regularisation. Negotiations were still ongoing in 2009. As a result of the delay in the implementation of the governmental agreement, militant actions by undocumented migrants and migrants' support networks radicalised and spread in the course of 2008 (demonstrations, occupation of public buildings, hunger strikes). Their objective has been to increase the pressure on the federal government. The coalition government Leterme I (formed in March 2008) resigned in late December 2008 (on the dossier 'Fortis' following demission of the Minister of Justice Jo Vandeurzen). The government was slightly reshuffled, involving the same coalition of political parties as in the previous government, under the leadership of Prime Minister Herman Van Rompuy (CD&V, Christian-democrats). The Minister of Migration and Asylum has remained Annemie Turtelboom (Open-VLD) but the Minister of Interior Patrick Dewael (Open VLD) was replaced by Guido De Padt (Open VLD). But the minister for Migration and Asylum took an initiative and clarified some criteria in an instruction on the 26 of march 2009.. Families with children going to school and staying in Belgium since 5 years, can apply

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<sup>4</sup> The ministerial competences of the new Minister of Migration and Asylum Policy are detailed in the Royal Decree of 14.01.2009 pertaining to the determination of certain ministerial competences (available on line at : <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2009/01/26/111775.pdf> ). The new Minister has authority over the ID, the CGRS and the ALC. The new Minister is also in charge of economic migration; it being understood that an agreement is signed between the Minister of Migration and Asylum Policy and the Minister of Employment with regard to labour law provisions related to economic migration.

<sup>5</sup> Cf. section 2.2. The full text of the government's declaration is available at: <http://premier.fgov.be/files/FRVERKLARINGtiendef-zonder%20voettekst.pdf>

for regularisation if their asylum application has taken over one year and if their children are going at school since September 2007.

### ***1.3. Institutional developments***

As stated above, the appointment of the first Minister of Migration and Asylum in March 2008 is the major institutional development of 2008.

The new 'Economic Migration Service' started on 15.09.2008 within the ID. This new administration unit is entrusted with the task of facilitating the issuance of visa for the purposes of business or employment of third-country nationals. The creation of a separated unit aimed at a better and more rapid service, for both short and long stays. The creation of the service will for instance speed up the inscription of foreigners in the Aliens Register and the issuance of a residence permit to non-EU workers. The Economic Migration Service is also a support service for embassies, municipalities, federal public services and other competent regional administrations to issue visa, residence permits or work permits. The Economic Migration Service also has a helpdesk which informs employers and workers about correct procedures to be followed to employ a foreign worker or to exercise an income generating activity in Belgium.

End 2008, the minister for Migration and Asylum officially appointed three institutions as members of the Belgian Contact Point of the European Migration Network. They were later joined by a fourth institution: the Directorate-General Statistics and Economic Information (from February 2009). The Contact Point, which had existed as a pilot project since 2003, has now been given a new composition: ID, DG SEI, CEOOR and CGRS will from now on collaborate to produce valid statistics and analysis with regard to asylum and migration policies.

## 2. Policy and legislative developments in the area of Migration and Asylum

### 2.1 General structure

For an extensive account of the organisation of Asylum and Migration policies in Belgium, we refer to the EMN Report: “Organisation of Asylum and Migration Policies.” For a brief outline, we refer to section 1.1. The most important development with regard to the organisation of migration policies in Belgium is the very appointment of the first Minister of Migration and Asylum in the federal government. The new Minister is now responsible for the activities of the ID, the CGRS and the ALC, whereas these institutions previously fell under the responsibility of the Minister of Interior.

### 2.2 General context

As outlined above, migration and asylum policies constituted an important chapter of the political agreement that followed the formation of the new federal government in March 2008. The main elements contained in the governmental agreement of 18 March 2008 are listed hereafter:<sup>6</sup>

1. Among the criteria for exceptional regularisation, the application field of the ‘length of procedure’ criterion will be extended to appeals heard by the Council of State and/or procedures resorting to the former Article 9ter of the Aliens Law,<sup>7</sup> whereas previously it only applied to the examination of asylum claims.<sup>8</sup>
2. A new regularisation criterion will be introduced: ‘durable social anchoring’ (*duurzame sociale verankering / ancrage sociale durable*). This means that elements like knowledge of the language, education and work experience, integration, willingness to work, etc. could be taken into account in the assessment of a regularisation claim. Local authorities and/or other competent services could be asked to certify or give its opinion on the ‘durable social anchoring’ (or part of its constitutive dimensions) of the claimant.
3. The government will discuss with the Regions and the social partners the possibility for economic migration (temporary permits followed by permanent permits). This could help fill vacancies in occupations coping with labour shortages. This new ‘economic migration policy’ will have to take into account 1) the current stocks of unemployed workers available on the labour market and 2) the effects of a possible

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<sup>6</sup> Source: Accord du gouvernement conclu entre les négociateurs de CD&V, MR, PS, Open Vld, cdH, Mars 2008, <http://premier.fgov.be/files/FRVERKLARINGtendef-zonder%20voettekst.pdf>

<sup>7</sup> Regularisation possible after 4 years (people with children) or 5 years (people without children) of procedure.

<sup>8</sup> Regularisation is possible after 3 years (people with children) or 4 years (people without children) of procedure.

4. Regularisation of persons who have been staying illegally in Belgium since 31 March 2007 at least and who can prove they have a serious, specific job offer or are acquiring or have acquired the status of self-employed. They will be allowed to exceptionally and concomitantly acquire a work permit and a residence permit. Regularisation will be performed on an individual basis.
5. The government will see to the correct application of the Alien Law that was modified in 2006-2007, among others with regard to the timing of the procedures. Work permits will be issued to asylum seekers whose claim is still being examined 6 months after it was introduced.
6. An additional criterion for family reunification will be introduced: the sponsor will have to prove – prior to family reunification – that he/she has sufficient and regular resources to maintain family members, in an independent, sufficient and sustainable fashion.
7. Stricter criteria will be introduced for acquisition of Belgian citizenship. Acquisition of nationality will only be possible for foreign nationals registered in the Population Register or in the Foreigners' Register. Acquisition of nationality by declaration remains unchanged but new conditions will apply to acquisition of nationality by naturalisation: holder of a residence permit with unlimited validity, uninterrupted legal residence in Belgium for five years and evidence of the applicant's 'will to integrate.'
8. The government will strictly apply current rules for removal. With regard to foreigners who received a return decision, priority will be given to voluntary return (either assisted or not) before strict application of rules for forced return. Alternatives will be found to the administrative detention of families with children in detention facilities. Families will only be detained either in the perspective of forced return or following failed attempt to collaboration between the Immigration Department and the illegal family, and in any case for only a very limited period of time.
9. A procedure to grant the status of 'stateless person' will be developed by the government. The Office of the Commissioner General for Refugees and Stateless will be the instance granting the status. Stateless people who are granted the official status of 'stateless' will be entitled to a permanent resident permit in Belgium.

Migration related political debates were dominated by discussions on the proposed changes of policy, with a focus on the drafting of the announced Circular Letter (*Ministeriële Omznenbrief / Circulaire ministérielle*) that should clarify criteria to be applied for individual regularisations. In the absence of concrete decisions starting implementing the proposed changes and/or starting modifying the legislation, insecurity and agitation rose among undocumented migrants and civil society organisations during the whole year and well into 2009, reaching its peaks in several hunger strikes, occupation of churches and of empty buildings, or even suicide threats made by undocumented migrants who climbed on building cranes.

## **2.3 Policy and legislative developments**

### **2.3.1. Control and Monitoring of Immigration**

On 01.01.2008, the **number of foreigners legally residing in Belgium** reached the historic level of 971,000 foreigners. The absolute number of foreigners has been rising steadily since 2002. Around 68% of them are EU citizens (66% from EU 25 and 68% from EU 27, with Bulgaria and Romania).<sup>9</sup> Similarly, the **number of entries of foreigners** reached a record high in 2007: about 110.000 entries, of which more than 50% concerned EU nationals. The final numbers for 2008 not being available yet, indications show that the growth continues.

The number of **undocumented migrants intercepted by the police** (multiple interceptions included) on the Belgian territory was decreasing from 2004 (about 22,000) to 2007 (14,300). It increased in 2008 (16,070 foreigners intercepted by the police without valid documents), whereas the number of refused foreigners at the border continued to drop in 2007 (1,232 in 2007 as compared to 5,781 in 2000).<sup>10</sup> In 2008, 73% of the undocumented migrants intercepted by the police on the Belgian territory only received a removal order (not followed by removal measures). 14% of them were administratively detained (the number remains stable over the period 2001-2008); whereas the number of migrants being submitted to immediate return after interception by the police has decreased (13% of the total in 2007). About 60% of the interceptions of undocumented migrants concerned nationals from Asian countries (India, Iraq, Iran, Afghanistan, etc.). In 2008, for the first time, the largest group of intercepted undocumented migrants by nationality was constituted of Algerians, followed by Moroccans. In 2008, 3,644 forced returns<sup>11</sup> took place as compared to 4,311 in 2007. This can be partly explained by the decrease in numbers of removals of Bulgarian and Romanian undocumented migrants. Since 01.01.2007 and the accession of Bulgaria and Romania to the EU, forced return of undocumented Romanian and Bulgarian nationals is only applied if they have been found guilty of doing illegal work or for 'reasons of public order' (criminal activity).

With regard to **Romanian and Bulgarian nationals**, on 05.12.2008, the Belgian government approved the proposal of Royal Decree of the federal Minister of Employment, which will prolong the transition period prior to full opening of the Belgian employment market to Romanian and Bulgarian nationals, of three years. Possibly until 31.12.2011, Romanian and Bulgarian workers will have to continue to apply for a work

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<sup>9</sup> Source : Population Register/ Directorate-General Statistics and Economic Information ; Calculations : Centre pour l'égalité des chances et la lutte contre le racisme

<sup>10</sup> Source : Immigration Department ; calculations : Centre pour l'égalité des chances et la lutte contre le racisme

<sup>11</sup> 'Rapatriements' (FR) or 'repatriating' (NL), excluding the number of refusals at the border (1,232 in 2007) and excluding the number of assisted voluntary returns (2,593 in 2007).

permit B prior to accessing the Belgian labour market.<sup>12</sup> Despite these restrictions, facilitating measures have been enforced for EU nationals of the new MS who are seeking employment in the so-called “bottleneck” or “shortage” occupations.

A minor change with respect to control and monitoring of immigration is the decision of the Ministry of the Brussels Capital-Region, at the request of the ID, not to issue work permits C anymore to **claimants of medical regularisation (art. 9ter)** whose claim was assessed ‘receivable’ but who are still waiting for the definitive decision. The Region used to issue work permit to that category of migrant on the basis of article 17.3° of the Royal decree of 09.06.1999. The two other regional administrations in charge of employment matters however did not share the Brussels interpretation of the Decree and have never issued work permit to claimants of medical regularisation.<sup>13</sup>

With respect to sponsored types of migration (student migration, short stays, family reunification), a **database encompassing all sponsors** who signed a letter of consent inducing liability for a dependant person, in accordance with requirements found in articles 3bis (short stay) and 60 (students) of the law of 15.12.1980, and in accordance with family reunification provisions for unmarried partners, is under construction. The aim of the database is to combat fraudulent practices and to facilitate reimbursement to the State of public expenditures originated by the dependent third-country national.

Following the conclusive end of the pilot phase, the **issuance of electronic ID cards to non-Belgian citizens** aged 12+<sup>14</sup> was generalised to all municipalities in Belgium by end October 2008. The introduction of electronic ID-cards for non-Belgian citizens seeks to address 1) fraudulent practices and criminality; 2) equal treatment of Belgian and non-Belgian citizens alike; 3) international developments and European regulations.<sup>15</sup> Electronic Cards for foreigners aged 12+ issued by the Belgian municipalities meet the conditions laid down in the European regulation. In all issued e-ID cards, it will be possible to add biometric data (picture and fingerprints), which will be realised as soon as the common technical specifications are defined and adopted by the European Union.

According to the ID, the phenomenon of moving from sheer illegal migration towards pseudo-legal migration was yet again noticed in 2008. This phenomenon is observed the most clearly with regard to abuse of marriage-related residence statuses. The fight against **abuses of the right to family formation/reunification** was yet again a priority in the control of immigration and fraud prevention in 2008. The law of 25 April 2007 modifying the Aliens Act created new means for combating abuses; these provisions

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<sup>12</sup> An opposite strategy was applied to nationals of the 8 EU Member States that have entered the EU in 2004: all restrictions to freedom of movement for workers were lifted in spring 2009 (cf. infra ‘Economic Migration’).

<sup>13</sup> Migrants who are granted regularisation for a limited period in time, on humanitarian or medical grounds, are entitled to a work permit C. Permanent regularised migrants are exempted of applying for a work permit.

<sup>14</sup> In 2009, a pilot project of electronic ID cards for non-Belgian children (under 12) will be started and generalised if proven conclusive. Belgian children already have electronic ID cards.

<sup>15</sup> Règlement européen n° 1030/2002 tel que modifié par le Règlement n° 380/2008 qui élabore un modèle uniforme de titres de séjour

came into force on 01.06.2008. Up to three years after married partners received the right to stay in Belgium, the ID can retrieve the residence permit if one does not comply anymore with the residence conditions stipulated in the Aliens Act. In the two first years after the reunification or family formation, the fact that both partners do not live physically together anymore is sufficient to retrieve the residence permit. In the course of the third year, a negative opinion of the Public Prosecutor with regard to the marriage is sufficient to end the right of stay. After three years, a judicial instance has to rule the annulment of the marriage before the residence permit can be retrieved. The government sought to encourage and enhance cooperation between departments, among others by the creation of a interdepartmental working group within the Federal Public Service Justice in 2007 (involving all key-actors, such as the Procurators-General and the Prosecutor's Offices, municipal civil servants in charge of marriages, the ID and the FPS Foreign Affairs). In October 2008, the working group produced a detailed scenario of 94 pages with respect to the combat against marriages of convenience, which will be used by the college of the Procurators General to draft clear guidelines for all Public Prosecutor's Offices.<sup>16</sup> Until now, discrepancies have been observed between local authorities in the approach and administrative procedures they apply with regard to family reunification. As to the quantitative dimension of the phenomenon of abuse of existing rights, accurate figures are lacking. The Immigration department witnessed an important increase in the number of requests of information from local authorities suspecting past or future marriages of convenience. The number of cases that led to an inquiry can help estimate, although incompletely, the scope of the phenomenon. Thanks to better cooperation between departments and thanks to the priority given to the issue by the Public Prosecutor's Offices, the number of inquiries had risen by 42% in 2007. In the first nine months of 2008, the Bureau Investigation of the immigration department investigated 5,030 cases of possible future abuse and 1,778 alleged cases of contracted marriages of convenience.<sup>17</sup> However, comparison with previous figures shows that the number of administrative investigations of planned marriages of convenience is stagnating. This might show that other ways are being explored to obtain a residence permit, such as registered domestic partnerships, which are also potentially exposed to abuse. On 01.06.2008 the law of 25.04.2007 came into force, which transposed Directive 2004/38/EC into Belgian legislation. Since then, a foreigner can go to the competent municipal civil servant of his place of residence, legally register a domestic partnership with a Belgian citizen, a EU citizen or another foreigner in possession of a residence permit valid for more than three months, and thereby be entitled to family reunification. Reports have been made to the ID that the acquisition of a residence permit through legal partnerships has been fraudulently used, including cases of people who attempted to contract a marriage of convenience, failed and tried to declare a domestic partnership instead. The legislation that penalises attempts to contract, as well as contracted, marriages of convenience will be extended to abuse of registered domestic partnerships, with possible annulment of the contract and penal sanctions in case of proven abuse. Following a proposal by the Minister of Justice, penal judges ordering the annulment of a marriage or partnership of complaisance will be able to impose loss of the Belgian citizenship if appropriate.

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<sup>16</sup> Cf. <http://www.dsb-spc.be/Newsletter/newsletter03-fr-full.html#mariages>

<sup>17</sup> Beleidsnota, November 2008.

With regard to the **use of DNA testing to prove alleged family relationships**, some improvements are planned in 2009 or took place in 2008: the number of Belgian diplomatic posts that can perform DNA tests has been increased to 32; the most rapid and lightest method (blood sample obtained from a heel or finger stick) will be applied by all diplomatic posts from January 2009.<sup>18</sup>

The **law of 25.04.2007 which transposes provisions of the EU Directive 2004/38/EC** (freedom of movement of EU nationals and their family members) **and EU Directive 2003/109/EC** (status of Long Term Resident) into Belgian legislation has come into force since 01.06.2008. Four Royal Decrees implementing these legislative modifications were passed in 2008 (two Royal Decrees of 07.05.2008 and two Royal Decrees of 22.07.2008). As stipulated in the Royal Decree of 22.07.2008 modifying the Royal Decree of 08.10.1981,<sup>19</sup> in the Royal Decree of 22.07.2008 implementing the law of 15.12.1980,<sup>20</sup> and in the instruction of 01.09.2008 addressed to all municipal administrations, the **status of Long Term Residents** came into force in Belgium from 08.09.2008. The legal provisions open the possibility for third-country nationals to acquire the status of LTR in Belgium<sup>21</sup> or to have their LTR status, acquired in another MS, recognised in Belgium. Family reunification conditions for LTR were adapted in accordance with the provisions of EU Directive 2003/109/EC (cf. infra, Family Reunification). The royal decrees implementing the provisions applicable to EU nationals were passed on 07.05.2008; they were followed by instructions (of 23.05.2008) to the municipalities and training of the municipal civil servants. The Circular Letter of 23.05.2008 gives further details on the procedure to be followed with **EU-citizens and their family members** following the modification of articles 40 & 40 bis of the 1980 Alien Act.<sup>22</sup> No more residence permits are issued to EU citizens, who receive a 'Registration Certificate' from the local authorities of their municipality of residence in Belgium, at their arrival. EU citizens are immediately registered by the local authorities, without waiting for the result of the residence control procedure (visit of the local policeman at the address of residence of the newly registered resident). Municipalities have received extended competences with respect to the right of freedom of movement of EU citizens. They have received the competence to rule on the right to free movement of certain categories of EU citizens residing on their territory:

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<sup>18</sup> Rapport Migration 2008, CEOOR, p.117.

<sup>19</sup> Arrêté royal du 22 juillet 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers

<sup>20</sup> Arrêté royal du 22 juillet 2008 fixant certaines modalités d'exécution de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers

<sup>21</sup> A third-country national is entitled to obtain LTR status 1) if he is authorised to reside in Belgium for an unlimited period of time; 2) if he can prove that he has stayed legally and without interruption in Belgium for the 5 years preceding his demand; 3) if he has a health insurance in Belgium and sufficient regular and stable income to address his needs and the needs of his family so that he would not become an unreasonable charge for the public authorities.

<sup>22</sup> [http://www.foyer.be/?lang=nl&pageb=article&id\\_article=5866](http://www.foyer.be/?lang=nl&pageb=article&id_article=5866)

- EU citizens who are there for less than three months (municipalities issue a “**declaration of presence**”<sup>23</sup>)
- EU citizens who have come to Belgium to work (self-employment or salaried work) or to study (municipalities issue a “**registration certificate**”)
- For certain EU Citizens who do not have an economic activity in Belgium, or for certain categories of their family members, municipalities can also register their legal stay

However, for a number of additional categories, the ID still takes the final decision with respect to the issuance of a ‘certificate of registration’:

- EU job seekers
- EU citizens who come to Belgium but do not have an economic activity
- Registered partners of EU citizens
- Major children or sponsored parents of EU citizens

Although extended competences were given to municipalities in the perspective of simplifying administrative procedures for EU citizens, in some large cities and municipalities, the new procedure and the priority that was given to rapid registration of EU citizens and their family members has allegedly had side effects on the processing of residence permits applications by third-country nationals (with examples of 6 months waiting time for issuance of residence permits)<sup>24</sup>

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<sup>23</sup> *Déclaration de presence / melding van aanwezigheid*

<sup>24</sup> CEOOR (2009) Migration Report 2008, p. 112

## 2.3.2 Refugee Protection and Asylum

### Asylum applications

Whereas the number of asylum applications<sup>25</sup> was decreasing from 2005 to 2007, it increased (with 10.2%) in 2008 (12,252 applications). According to the CGRS, this increase is mainly due to multiple asylum applications (around 27% of the persons who claimed asylum in Belgium in 2008 had already claimed asylum at least once). Still according to the CGRS, the overall majority of these multiple applications would not be based on new elements or objective fear for persecution, but would rather be made in the perspective of benefiting from reception conditions. 8,921 first applications were registered in 2008. Most people who claimed asylum in 2008 were from Russia (13%), Iraq (8%) and Afghanistan (7%), followed by Guinea, Iran, RD Congo, Serbia and Kosovo, Armenia and Cameroun (each with 3-5%). The length of the procedure, as well as the number of backlog applications treated by the CGRS (5,248 on 31.12.2008), has been considerably improved. Two thirds of the applicants received a definitive decision of the CGRS within 6 months. 2,143 applicants (i.e. 3,032 people) were granted refugee status in the terms of the Geneva Convention in 2008.<sup>26</sup> In addition, 394 applicants (i.e. 475 people)<sup>27</sup> received subsidiary protection in the terms of the Directive 2004/83/EC. About 28% of the total number of claimants effectively received protection, which is an increase as compared to 2007 (20.4%).

In 2008, in terms of asylum policy and its main realisation, priority was given to the re-organisation of the asylum agencies (the CGRS and the ALC) which are in charge of the new asylum procedure that came into force on 01.06.2007. The government has also set a number of priorities for 2009:<sup>28</sup> the stress lays on the efficiency of the 'new' asylum procedure, the Belgian contribution to the harmonisation of Asylum policy at EU level and the adoption of further legislative changes to transpose EU Directives.

### Subsidiary protection

The status of subsidiary protection which has been enforced in Belgium since 10.10.2006 gives right to temporary residence permits of one year, after five years a permanent residence permit is granted. At each renewal of the residence permit, the CGRS has to check whether the fear for inhuman treatment or blind violence in the home country is still justified. In 2008, the ID granted the one year residence permit to all individuals benefiting of subsidiary protection, after a positive opinion of the CGRS.

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<sup>25</sup> In the statistics published by the Immigration Department and the CGRS, only the main applicant is taken into account. In some cases, one application equals several people (families, single parent and minor child(-ren), etc.)

<sup>26</sup> They were mainly people from Russia (332), Iraq (273), Guinea (214), Serbia and Kosovo (144), Rwanda (122) and the Democratic Republic of Congo (107), followed by Afghanistan, Sri Lanka, China and Syria.

<sup>27</sup> They were mainly people from Iraq (229), Afghanistan (79), Somalia (39), Sudan (12) and the Democratic Republic of Congo (10)

<sup>28</sup> Algemene beleidsnota / Note de politique générale de la ministre de la Politique de migrations et d'asile / van de minister van Migratie- en Asielbeleid, Parlementair jaar 2008-2009 (20.11.2008)

## **Stateless persons**

The priority of the government in 2009 is the adoption of the legislative text that will regulate the status of ‘stateless person’ and will determine which rights will be granted to people meeting these criteria.<sup>29</sup> In its governmental agreement of March 2008, the federal government announced that the CGRS would be made competent to lay down the criteria and conditions for being granted the status of ‘stateless person.’

## **Reception conditions**

From September 2008 on, the federal reception centres for asylum seekers reached complete saturation (with an occupation rate of about 95% in August 2008),<sup>30</sup> which triggered the so-called ‘*crise de l’accueil/opvangscrisis*’ (crisis of the reception of asylum seekers). The causes of the lack of places in reception centres for asylum seekers are manifold and are not directly related to variations in the in-flows of asylum seekers. Since the modification of the asylum procedure in 2007, only in kind support is granted to asylum seekers when awaiting a decision on their asylum claim. They are accommodated in collective facilities for the first four month of their procedure (the so-called ‘open centres’ i.e. the reception centres for asylum seekers managed by the federal agency ‘Fedasil’). After four months, some of them are then offered accommodation in individual reception structures if collective life is not appropriate from them. When the CGRS rules on their asylum claim, rejected asylum seekers and recognised refugees do not automatically leave these reception centres. Some appeal the decision, some claim regularisation, many experience difficulties in finding affordable housing on the private rental market, others are caught in a limbo between the moment in-kind assistance by Fedasil stops and the moment minimal income or other financial assistance is granted to them by the CPAS/OCMW (Public Centres for Social Aid).<sup>31</sup> In addition, undocumented children who have the right to material assistance in accordance with provisions stipulated in the Royal Decree of 24.06.2004 can be granted material aid, i.e. accommodation in one of the federal reception centers for asylum-seekers, together with their family, under certain conditions<sup>32</sup> Parents are accommodated in the reception centers alongside their child if their presence is necessary to his/her development. By the end of 2006, about 6.4% (828 residents) of the occupied places in federal reception centers for asylum seekers were taken up by undocumented families. Since 2007, reception centers run by the Belgian Red Cross have also welcomed undocumented children with their families. Furthermore, although the new asylum procedure that entered into force in June 2007 is shortening the duration of the claims’ examination, previous stocks of asylum claims have to be treated according to previous legal provisions. Finally, it is highly probable that rumors that a new ‘regularization campaign’

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<sup>29</sup> Algemene beleidsnota / Note de politique générale de la ministre de la Politique de migrations et d’asile / van de minister van Migratie- en asielbeleid, Parlementair jaar 2008-2009 (20.11.2008)

<sup>30</sup> It represents more than 15,000 residents. In 2007, the occupation rate was about 70%.

<sup>31</sup> If asylum seekers are granted refugee status (and hence permanent residence), they are entitled to social housing and financial support of the local OCMW/CPAS.

<sup>32</sup> Material support is only granted to 1) minors, 2) living in Belgium, 3) with their parents, 4) residing illegally on the Belgian territory, 5) whose needs have been investigated by a Public Centre for Social Aid, 6) whose parents are impeded to look after their children because of the family's material situation

would be launched (cf. 2.2. general context) prevented certain refused asylum seekers from leaving the accommodation centers on a voluntary basis. These combined trends made reception centers and local initiatives reach their saturation level.<sup>33</sup> In November 2008, emergency measures were taken to make beds available for the new-coming asylum-seekers: 1) beds in emergency shelters were made available (according to the law of 12.01.2007 pertaining to the reception conditions of asylum seekers, emergency accommodation can be offered for up to max.10 days); 2) in-kind support for those who were granted international protection within a reasonable timeframe was terminated (they have to leave the Fedasil accommodation centres within 2 months after the positive decision or within 6 weeks for the local reception initiatives);<sup>34</sup> asylum-seekers with long-during procedures (five years and four years for families with children, including appeals) will receive state benefits (provided by the *CPAS/OCMW*) instead of depending on Fedasil.<sup>35</sup> A key-element in the crisis of the reception of asylum seekers in Belgium is the articulation of the in-kind support system for asylum seekers provided by Fedasil with the regular social aid system provided by the Public Centres for Social Aid (*CPAS/OCMW*). Each system has limited resources, which explains why financial responsibility of new categories of people in need and/or asylum seekers is seen as a heavy burden.

### **Resettlement**

Following the call of 27.11.2008 by the Council of the EU to resettle 10,000 Iraqi people who fled to Syria and Jordan, the engagement of Belgium in resettlement programmes was under consideration. In February 2009, the Belgian Minister of Migration and Asylum, accompanied by the Dutch Minister responsible for these issues, visited Kenya in order to observe how the Dutch government selected and organised the resettlement of extremely fragile asylum seekers. The government decided in March 2009 to launch a pilot project and resettle 50 Iraqi women and families by August 2009, with the perspective of possibly developing a national policy on resettlement in the long term. Priority is given to single mothers; religious minorities; victims of torture and people with a serious trauma or medical needs. The first annual open call for projects of the programming 2008-2013 of the European Refugee Funds for Belgium<sup>36</sup> included two action lines: resettlement and interpretation. With regard to resettlement, co-financing (50% max.) will be granted to selected initiatives by public services or non-profit

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<sup>33</sup> In 2007, administrative profiles of migrants accommodated in reception centers and local initiatives were manifold: 5,707 residents were migrants claiming asylum (41%); 5,019 residents were refused asylum-seekers seeking appeal (36%); 1,004 residents were recognised refugees who had been granted a residence permit and were to receive financial aid (7%); 1,036 residents were illegal families with minors (8%); 617 residents were asylum-seekers whose claim was dismissed but who still had the right to material aid for a transitory period (4%); 484 residents were asylum-seekers whose claim was dismissed but who had been granted a prolongation of their stay because of medical reasons or voluntary return scheme (4%). (Source: Belgium/ Fedasil (2008) Annual report 2007).

<sup>34</sup> [Instructie van 29/8/2008 aan grootschalige open asielcentra en instructie van 24/10/2008 aan de NGO's](#)

<sup>35</sup> This latter measure is a one-shot measure for asylum seekers meeting the conditions on 21.11.2008. [instructie van 21/11/2008 betreffende de opheffing van de verplichte plaats van inschrijving van sommige categorieën van bewoners & instructie van 3/12/2008 betreffende de gevolgen op het recht op maatschappelijke integratie bij een OCMW](#)

<sup>36</sup> Published in the Belgian Monitor on 30.04.2009, by Fedasil (Federal agency for the reception of asylum seekers)

organisations. The pilot projects will aim at supporting the resettlement of the selected single women and families who fled Iraq to seek refuge in Syria and Jordan, or in refugee camps in Palestine.

### **Genital Mutilation**

A special procedure to guarantee full protection to girls or women who are exposed to a risk of genital mutilation (in Belgium or abroad) or who underwent genital mutilation and have suffered from a trauma, was set up by the CGRS in April 2008. Most of the women and girls at risk of genital mutilation come from Guinea. These women, and the parents of under-aged girls at risk, are entitled to receive refugee status because of the fear for genital mutilation. The continuing presence of an element of risk of genital mutilation will be closely monitored by the CGRS in the future. The protection status will be withdrawn if it is proven that genital mutilation was performed or that there is no risk of genital mutilation anymore. Parents of minor girls in particular will be informed that genital mutilation is a criminal offence under Belgian law and that the granting of the refugee status on the ground of fear for genital mutilation entails a specific follow-up procedure (yearly examinations by a doctor and sending of a medical attest to the CGRS, presence of the minors at risk at the their parents' hearings, etc.)

### **Asylum seekers in procedure entitled to work permit C after 6 months**

Upon proposal of the federal Minister of Employment and Equal Opportunities, the federal government approved an implementation decree regulating access of asylum seekers to the Belgian labour market. This decree partially transposes the European Reception Conditions Directive. Asylum seekers who have not received a negative decision of the CGRS 6 months after the lodging of their asylum application, are entitled to apply for a work permit C. The work permit C is valid for any kind of employment, with any employer; its validity is directly dependent on the residence permit of the worker.<sup>37</sup>

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<sup>37</sup> Cf. press release of the Ministers' Council of 03.04.2009:  
<http://www.presscenter.org/repository/news/9c9/fr/9c95f74bf3acdba1684300fec47ef625-fr.pdf>

### 2.3.3 Unaccompanied Minors and other vulnerable groups

#### Asylum applications

The CGRS registered 521 asylum applications from unaccompanied minors in 2008 (as compared to 519 in 2007). About 70% of these unaccompanied minors claiming asylum are boys and 30% girls. Five nationalities (Afghanistan, Guinea, Democratic Republic of Congo, Iraq and Russia) make up for about 47 % of the applications. In 2008, 41.7% of the unaccompanied minors seeking asylum were granted international protection (refugee status or subsidiary protection), which is a considerably higher percentage than in 2007 (26.9%).

#### Social rights of unaccompanied minors

From 01.01.2008, some categories of unaccompanied minors have been granted access to the national health insurance system.<sup>38</sup> Unaccompanied minors who are recognised as such by the Guardian Office of the Federal Public Service Justice are entitled to receive health insurance if they have been going to school on a regular basis for at least three consecutive months. Younger minors have to be enrolled in pre-school education, or be known by the public services for newborn and infant care (*Kind en Gezin* in the Flemish Community, *ONE* in the French Community and *Dienst für kind und Familie* in the German Community).

#### Administrative detention of families: a new approach

In 2008, the Minister of Migration and Asylum declared that undocumented families with children would not be sent to administrative detention centres (the so-called closed centres) anymore from 01.10.2008. Developing alternatives to detaining children in those facilities had become a priority of the new government. On 01.10.2008 a pilot project involving the coaching of undocumented families with children started, inspired by coaching projects from Sweden and Australia. From 01.10.2008, families with children staying illegally in Belgium that have been arrested by the police and are awaiting their removal have been accommodated in private single family houses or apartments, without any restriction of their freedom of movement. However, they are assisted by a 'return-coach' whose role is to help understand the nature of their current situation in Belgium, and why they should cooperate to their identification and to their (forced or voluntary) return. The coaches work together with the IOM with regard to possible assisted voluntary returns.<sup>39</sup> Legal aid is provided to families without a lawyer. Although the policy is that detention should be avoided as much as possible, no legal interdiction of administratively detaining families with children has been enforced. Some categories of undocumented families with children will continue to be detained in closed centres: 1) families without valid documents who are refused at an external border will therefore continue to be detained in the closed centres situated at border crossing points; 2) families who do not cooperate and go back to the illegality will be detained in closed centres the next time they are arrested by the police; 3) undocumented families who are intercepted

<sup>38</sup> Circular Letter 2008/198 of 09.05.2008, enforced since 01.01.2008.

<sup>39</sup> [Commissieverslag CRIV 52 COM 321](#)

at the border and apply for asylum at the border are detained for the whole duration of the examination of their claim. The pilot project will be submitted to evaluation and permanent improvement. The number of families with children who were detained in closed centres each year was estimated at about 120. The single family houses and apartments (13 in total) are managed by the ID.

According to figures from the ID, 137 families with children were detained in closed centres from January 2008 to December 2008 (which accounts for 270 detained children in 2008). Most of these families with children were from Russia (28.47%), Serbia (13.13%), Macedonia, Brazil (4.38%), Afghanistan and Kosovo (3.6%).<sup>40</sup> In 2008, the average duration of the stay of the 115 families who were detained in the closed centres was 3 weeks.

### **Protection of the rights of the child**

In a ruling dating from 2008, the ALC confirmed that article 12 of the Convention on the rights of the child was directly applicable in Belgium. Article 12 of the Convention on the rights of the child stipulates that children able of having their own opinion have the right of being heard in any administrative or judiciary procedure that concerns them. That right had been resorted to by an undocumented family claiming regularisation in Belgium.<sup>41</sup>

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<sup>40</sup> Source : Immigration Department ; calculations : Centre pour l'égalité des chances et la lutte contre le racisme (Rapport annuel Migration 2008, p. 131.)

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[http://www.foyer.be/?lang=nl&pageb=newsletter&news=Juridische%20nieuwsbrief%20Foyer&date\\_letter=sent:%2030/06/2008#pos4](http://www.foyer.be/?lang=nl&pageb=newsletter&news=Juridische%20nieuwsbrief%20Foyer&date_letter=sent:%2030/06/2008#pos4)

### 2.3.4 Economic Migration

The overall majority of the new work permits B and A issued in 2008 to **foreign salaried workers** were issued to citizens from the EU-8 (75% of the 24,980)<sup>42</sup>, followed to a far lesser extent by Asia (14%, mainly Indians) and America (5%).

#### **Freedom of movement inside the EU**

In spring 2009, the government confirmed that all restrictions placed upon EU nationals from the countries who accessed the EU in 2004 (EU 8, excl. Malta and Cyprus) will be lifted from 01.05.2009. They will be entitled to seek and take employment in Belgium without a work permit or any specific condition. Restrictions still apply on Romanian and Bulgarian nationals, possibly until 2011.

#### **Economic migration in the governmental agreement**

On the one hand, despite the content of the federal government's declaration of March 2008, which let believe that regularisation on the basis of a solid employment offer could be envisaged in certain circumstances, no agreement on that issue was reached in 2008. On the other hand, economic migration, in the sense of opening up the Belgian labour market to legal foreign labour force in function of internal labour market needs, was still in the government's pipeline in 2008. The creation of the Economic Migration Service within the ID in September 2008 was the first measure of the new Minister of Migration and Asylum with respect to Economic Migration (cf. supra, institutional changes). In November 2008, a first seminar targeting cities and municipalities was organised, among other in the perspective of encouraging economic migrants to register faster with their local authorities. In a second seminar, employers and businesses were informed of the regulations and procedures for employing foreign workers.

At the present time, in principle only workers from countries with which Belgium has a bilateral agreement can be entitled to a work permit B, but there are numerous exceptions and exemptions. Despite the negative effects of the global financial crisis that began to be felt on the labour market at the start of 2009, the idea of resorting to and/or facilitating economic migration still benefits from the support of the employers' organisations (e.g. UNIZO, FEB-BOV) and of members of the government.<sup>43</sup>

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<sup>42</sup> Source : FPS Employment, Labour and Social Dialogue

<sup>43</sup> Cf. <http://www.annemieturteboom.be/content/slechts-75-van-de-openstaande-vacatures-chemiesector-raakt-ingevoeld>; <http://www.annemieturteboom.be/content/economische-migratie-kan-zware-arbeidsdruk-zorgsector-helpen-verlichten>; Centre pour l'égalité des chances et la lutte contre le racisme / Fondation Roi Baudouin (2009) Quelle migration économique pour la Belgique, pp. 23-24 ([http://www.diversite.be/?action=publicatie\\_detail&id=76&thema=4](http://www.diversite.be/?action=publicatie_detail&id=76&thema=4))

### **Foreign posted workers**

The Belgian regulations for foreign workers posted in Belgium have been adapted to the European legislation. The Royal Decree of 23.04.2008 modifies article 2. 14 of the Royal Decree of 09.06.1999. Before the legislative modification, third-country workers could be posted in Belgium without the prerequisite of a work permit only if they had been working in another EU country for the foreign company for 6 months. This condition has now been lifted. The worker can be posted in Belgium by his company from his first day of work in another EU country. Residence permit conditions have also been adapted: the third-country detached worker needs a residence permit in the EU country that sends him/her which is valid for the duration of his posting only. According to the LIMOSA database, which centralises data obtained through mandatory declaration of foreign employers posting workers in Belgium, 224,905 postings<sup>44</sup> of foreign workers in Belgium were registered in 2008. Companies established in the Netherlands, France, Germany, Poland and Luxembourg constitute the main foreign employers posting workers in Belgium.

### **Access to the Belgian labour market of Long Term Residents (LTR)**

Since Belgium did not transpose Directive 2003/109/EC in time, provisory measures are in application for the access to the Belgian labour market of third-country nationals who were granted the LTR status in another Member State. At their arrival, LTR can be employed in the so-called 'bottleneck occupations', with a work permit B. After one year in employment, they are entitled to a residence permit on the basis of salaried employment and can be employed in any type of occupation.

### **Joined Conferences on Economic Migration (KBF-CEOOR)**

In partnership with the King Baudouin Foundation, the Centre for Equal Opportunities and Opposition to Racism organised a cycle of three conferences on economic migration in 2008. Each conference was dedicated to one dimension of economic migration: the point of view of the country of destination (labour market needs, employers' and workers' organisations), the point of view of the country of origin (migration & development, brain drain, remittances) and the point of view of the migrants themselves (rights and expectations).<sup>45</sup> A full report of the conferences was published in 2009.<sup>46</sup>

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<sup>44</sup> One posting can cover a group of workers

<sup>45</sup> A brief summary of the proceedings and the participants' main points can be consulted in : Centre pour l'égalité des chances et la lutte contre le racisme (2009) *Rapport migration 2008*, pp. 157-9.

<sup>46</sup> It can be downloaded from the CEOOR's website:

[http://www.diversite.be/?action=publicatie\\_detail&id=76&thema=4](http://www.diversite.be/?action=publicatie_detail&id=76&thema=4)

## 2.3.5 Family Reunification

### Statistics

The number of people coming to Belgium for the purpose of family reunification could, until recently, only be estimated on the basis of the number of long stay visas delivered by the FPS Foreign Affairs for that purpose and on the basis of the work flow within the Immigration Department.<sup>47</sup> The absolute number of visas D (long stay) issued for the purpose of family reunification has increased steadily from 2004 (9,468)<sup>48</sup> to 2008 (13,916) with the exception of a small decrease in 2007 (11,616 as compared to 12,053 in 2006).<sup>49</sup> In addition, the proportion of visas D issued for family reunification represents now 52% of the total of visas D in 2008 (as compared to 50% in 2007).<sup>50</sup> Since March 2008, all municipalities have to register the reasons for migration, together with other information concerning the registered individual, in the National Register. From the test data extracted for 2008, it appears that about 30,000 people came to Belgium in the framework of family reunification in 2008. Moroccans (17%) and Turks (7%) are the main beneficiaries of family reunification, followed by people from Romania, Poland and the Netherlands.

### Transposition of Directive 2004/38/EC and 2003/109/EC

The law of 25.04.2007 modifying the law of 15.12.1980 and transposing Directive 2004/38/EC (freedom of movement of EU nationals and their family) and Directive 2003/109/EC (status of Long-Term Resident in the EU) has come into force since 01.06.2008. The royal decrees implementing the **provisions applicable to EU nationals** were passed on 07.05.2008; they were followed by instructions (of 23.05.2008) to the municipalities and training of the municipal civil servants.

- EU nationals and their family members will be entitled to a conditional right of stay<sup>51</sup> for a period of three years; that right can be retrieved if they do not meet the conditions of stay anymore or if they constitute an unreasonable burden for the social security (in their third year of residence of Belgium, retrieval of their right is only possible if they have been found guilty of fraudulent practices).

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<sup>47</sup> These data do not cover nationals of all countries of origin, since nationals of countries who are not required to apply for a visa are not included in these figures. Reasons for staying in Belgium have recently been included in the registered variables of the National Register. In the future, figures that are representative of the whole foreign population could be published.

<sup>48</sup> Source: ID

<sup>49</sup> These figures do not include visas D delivered for adoption (283 in 2008), family reunification with a student (243), or reunification in the framework of a registered domestic partnership (130)

<sup>50</sup> Moroccans (3,908) and Turks (1,443) are the main beneficiaries of visas D for family reunification, followed by people from Cameroun (419), India (387), Ghana (379), Congo DRC (373), Algeria (361), Tunisia (294), Pakistan (291) and Thailand (282). The time required for processing an application for a visa D for the purpose of family reunification is reasonable, yet longer than for visas issued for other purposes: 50% of the applications are processed in 12 weeks and less (90% of the applications are processed within 56 weeks following the application).

<sup>51</sup> No residence permit is delivered when they enter the Belgian territory. They receive a 'Certificate of registration' from the local authorities of their municipality of residence (cf. supra, control and monitoring of immigration).

- Unmarried partners of EU nationals will benefit from an equal right to family reunification.
- Family members of Belgian nationals follow the same rules as family members of EU nationals, with the exception of parents of Belgian nationals, for whom additional guarantees (sufficient income of the sponsor) are required.

Family members of **long-term residents (who acquired their status in Belgium)** are submitted to the same procedure and conditions for family reunification as family members of third-country nationals who are authorised to reside on the Belgian territory for an unlimited duration.

Family members of third-country nationals **who were granted the long-term resident status by another Member State** and who are authorised to reside on the Belgian territory are submitted to the same procedure and conditions for family reunification as family members of third-country nationals who are authorised to reside on the Belgian territory for a limited duration. However, if the family has already been formed in the first Member State, the evidence of adequate housing will not be required from the sponsor. Also, if the sponsor does not have sufficient income to provide for his/her family member as required in certain specific situations (disabled major child), personal income of the family member will also be taken into account.

#### **Additional conditions for family reunification with third-country national to be introduced**

Family reunification with non-EU nationals will be submitted to additional conditions, as foreseen in the governmental agreement of March 2008, which will be introduced by legislative change (introduction of a condition of regular and sufficient income if the sponsor is a third-country national, and possible introduction of a condition of integration, as foreseen in Directive 2003/86/EC, which entails the signature of cooperation agreements with the Regions/Communities who are competent for the integration of foreigners).<sup>52</sup>

#### **Ruling of the Constitutional Court**

On 26.02.2008, the Belgian Constitutional Court issued a negative ruling on the Law of 15.09.2006 modifying the Act of 15.12.1980 on entry, stay, establishment and removal of foreigners.<sup>53</sup> A number of legal provisions were suspended from the day the ruling was published in the Belgian Monitor:

- Family reunification with children from a polygamous marriage is also possible under the conditions stipulated in article 10 of the Alien Act (prior to the ruling, family reunification was granted by decision of the Minister only in those specific cases).
- Parents of an unaccompanied minor, who has been granted refugee status in accordance with the Geneva Convention, can benefit from family reunification with

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<sup>52</sup> An overview of the different conditions imposed to family members coming to live in Belgium (family reunification and family formation) is given in section 3.2 'Debates issues in the implementation of EU legislation.'

<sup>53</sup> Cour constitutionnelle, Arrêt nr. 2008-095

their child without being obliged to show evidence that the minor sponsor has adequate housing or has a health insurance.

## 2.3.6 Other legal migration

### **Student migration**

Student migration is the second category of migration when looking at the number of long-term visas (more than 90 days, visas D) issued by the FPS Foreign Affairs:<sup>54</sup> they represent more or less 25% of the total in 2008 (26,829 visas issued), just after family reunification (about the half of the visas).<sup>55</sup> For some nationalities, student visas represent a high proportion of the delivered long-term visas (more than 40% of the issued long-term visas for the USA, Canada, Brazil for instance). The large increase in number of student visas delivered to Cameroonesse students is remarkable; it has been established that certain of these student visas have been acquired in a fraudulent manner. Among the various types of long-stay visas, the probability of refusal is also the highest for student visas.

### **Policy priorities as regards student migration**

For the academic year 2008-2009, the minimum income required for a third-country national who wants to start up full-time higher education in Belgium is 558€ per month. In 2008, the government pledged to modify the Alien Act of 15.12.1980 in order to transpose Directive 2004/114/EC (third-country students, trainees or volunteers).<sup>56</sup> A project of proposition of law was drafted to transpose EU provisions applicable to third-country students, taking into account the Bologna process. The project of proposition was submitted to the three Ministers in charge of Education (higher education is a competence of the communities). The draft will be further discussed in a working group before being sent to the Administrative Supreme Court for its opinion and to Parliament for voting. In addition, the fight against abuse of the student status by third-country nationals and the fight against forgery will be further reinforced. One civil servant of the ID is sent each year to the Belgian diplomatic offices in Kinshasa and Casablanca to issue student visas; the government announced that the number of civil servants entrusted with the same task will be increased.

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<sup>54</sup> These data do not cover nationals of all countries of origin, since nationals of countries who are not required to apply for a visa are not included in these figures. Reasons for staying in Belgium have recently been included in the registered variables of the National Register. In the future, figures that are representative of the whole foreign population could be published.

<sup>55</sup> Source: Database 'visas' of the FPS Foreign Affairs

<sup>56</sup> Algemene beleidsnota / Note de politique générale de la ministre de la Politique de migrations et d'asile / van de minister van Migratie- en Asielbeleid, Parlementair jaar 2008-2009 (20.11.2008)

## 2.3.7 Integration

### Integration in the Flemish Region

By decision of the Flemish government of 12.09.2008,<sup>57</sup> administrative fines will replace the penal sanctions imposed on third-country nationals who were obliged to take part in the Flemish integration programme and who did not fulfil their duty. From 01.01.2009, certain categories of third-country nationals can receive fines:

- people who are under the obligation of taking part in the Flemish integration programme: fines from 50 to 5000 € for not complying with their obligation;
- people who voluntarily start to take part in the Flemish integration programme (they signed an integration contract after 01.01.2009) but who prematurely stop their primary programme (social orientation course and Dutch language course) in an unrightful manner: 150€ fine

The fines cannot be imposed on people residing in one of the municipalities of the Brussels Capital-Region (where the Flemish integration programme is also available), on people who signed an integration contract before 01.01.2009, on people who are obliged to take part by the Public Centre for Social Aid (because the latter can retrieve the financial and/or material aid if the person do not fulfil the obligation) and on people who are obliged to take part by the VDAB (i.e. the Flemish Public Employment Office; because the latter can sanction the person through retrieval of unemployment benefits). The fines are enforced by civil servants of the Flemish agency competent for integration.

### Integration in the Walloon Region

In the Walloon Region, two decrees pertaining to social cohesion plans in Wallonia were passed on 05.11.2008 by the Walloon Parliament, and two implementing decrees were promulgated by the Walloon government.<sup>58</sup> The ‘Social cohesion plan of cities and municipalities in Wallonia’<sup>59</sup> is a regional policy aiming at supporting municipalities seeking to promote social cohesion on their territory. Social cohesion is hereby defined as all processes contributing to ensure equal opportunities, equal treatment, access to fundamental rights and to economic, social and cultural welfare to all individuals and groups in society, regardless of ethnic or national origin, cultural or religious identity, sexual orientation, social status, age, etc. The local social cohesion plans will be oriented

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<sup>57</sup> “boetebesluit voor inburgering” - BVR van 12/9/2008 verschenen op 4/12/2008 in het Belgisch Staatsblad

<sup>58</sup> 1) Décret du 6 novembre 2008 relatif au Plan de cohésion sociale dans les villes et communes de Wallonie, pour les matières dont l’exercice a été transféré de la Communauté française (M.B. 26/11/2008) ;  
2) Décret du 6 novembre 2008 relatif au Plan de cohésion sociale dans les villes et communes de Wallonie M.B. 26/11/2008) ;

1) Arrêté du Gouvernement wallon du 12 décembre 2008 portant exécution du décret du 6 novembre 2008 relatif au Plan de cohésion sociale dans les villes et communes de Wallonie, pour les matières dont l’exercice a été transféré de la Communauté française (M.B. 23/12/2008) ;

2) Arrêté du Gouvernement wallon du 12 décembre 2008 portant exécution du décret du 6 novembre 2008 relatif au Plan de cohésion sociale dans les villes et communes de Wallonie (M.B. 23/12/2008).

<sup>59</sup> Detailed information is available at:

[http://cohesionsociale.wallonie.be/spip/rubrique.php?id\\_rubrique=173](http://cohesionsociale.wallonie.be/spip/rubrique.php?id_rubrique=173)

at the local promotion of fundamental rights and economic and social rights (right to a decent income, right to health care and social care, right to decent housing and healthy environment, right to work, right to training, right to cultural and social well-being) and pursue the objectives of development and combat against all forms of poverty, precarity and insecurity. All actions will be set up alongside four main axes: occupational and social integration, access to decent housing, access to health and treatment of addictions, intensification of community relations (incl. inter-generation and inter-cultural relations).<sup>60</sup> Municipalities setting up a social cohesion plan will have to articulate their initiatives with the local integration plans drafted by the regional integration centres in Wallonia (seven centres spread out on the whole Walloon territory).

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<sup>60</sup> For the purpose of the regional social cohesion policy, the Walloon Institute of Statistics created a synthesis indicator of access to fundamental rights (composed of quantitative variables that are indicative of access to fundamental rights and economic and social rights) to which a risk factor is added (the risk factor is calculated on the basis of the number of single parents, the number of isolated elderly people and the number of asylum seekers). For a detailed account of the calculation method, see: [http://cohesionsociale.wallonie.be/spip/IMG/doc/Annexe\\_3\\_AGW\\_PCS-CF -  
Liste finalisee des variables.doc](http://cohesionsociale.wallonie.be/spip/IMG/doc/Annexe_3_AGW_PCS-CF_-_Liste_finalisee_des_variables.doc)

## 2.3.8 Citizenship and Naturalisation

### Statistics

The number of foreigners who acquired the Belgian nationality showed a respectable increase in 2007 (with a total in 2007 of about 35,000), but is considerably lower than the peaks observed in 2000-2001 (about 60,000). 24% of those who acquired the Belgian nationality in 2007 were Moroccan nationals, followed by European citizens from outside the EU (incl. Turkey); 8% of those who acquired the Belgian nationality in 2007 were Turkish nationals. The national origin of people acquiring the Belgian nationality tends to become more diverse, even though the largest group of 'new Belgians' is still from North-Africa.<sup>61</sup>

### Policy priorities

In the governmental agreement of 2008, the government expressed its intention to modify the legislation (the so-called Code of the Belgian Nationality) in order to make it more 'neutral' in terms of migration. Concretely, the government intends to limit the nationality acquisition to those people registered in the Population Register or the Foreigners' Register. This means that major foreign children of Belgian parents, the former residing in a foreign country and the latter residing in Belgium, will not be entitled to acquire the Belgian nationality anymore. However, the number of persons who benefited from that possibility in the past has not been closely monitored. It is thus unclear whether these people used acquisition of nationality to migrate to Belgium. In addition, the acquisition of the Belgian nationality by means of 'naturalisation' will be only possible for those who are in possession of a residence permit of unlimited duration, who have resided legally on the territory without interruption for at least five years and who can prove their 'will to integrate' by a certificate issued by the competent local authorities or by a mandated office. At the time of writing this report, no legislative change had been made yet.

### Constitutional Court ruling

In 24.04.2008, the Constitutional Court rendered its opinion<sup>62</sup> about the exception in the Belgian legislation to the general rule that children born on the Belgian territory automatically receive the Belgian nationality if not doing so would mean that they would be stateless. Since December 2006, the Belgian nationality is not granted to children in that situation if the child can receive another nationality by a simple administrative act by the parents at their embassy. The Constitutional Court ruled that the exception was not an infringement of fundamental rights guaranteed by the Constitution and by several international conventions as long as it does not represent an insurmountable obstacle for the child to receive a given nationality.

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<sup>61</sup> Centrum voor Gelijkheid van Kansen en voor Racismebestrijding (2009) Jaarverslag Migratie 2008

<sup>62</sup> Grondwettelijk Hof, arrest nr. 73/2008 van 24 april 2008,

[http://www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=2008-05-15&numac=2008201509#top](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=2008-05-15&numac=2008201509#top)

### 2.3.9 Illegal immigration

#### **The Case Rothman Salazar**

In summer 2008, public outcry followed the arrestment of a 19 year-old Ecuadorian who had been living illegally with his family and going to school in Belgium since 2002. The young man was arrested as he was celebrating his birthday with friends, making much noise, and was controlled by the police. The young man was sent to a closed centre and used all appeal possibilities (ALC, appeal against the detention decision, appeal with the Council of State, etc.) against his detention and removal, without success. He was forcibly returned to Ecuador by the end of August 2009, where he was accommodated by distant relatives. M. Salazar came back to Belgium with a legal student visa in September. His solicitor criticized the rigid attitude of the ID because according to him his client met the conditions for receiving a student visa when he was already in Belgium. Despite the emotional reactions in the media, the ID underlined in a press release that no infringement of his rights had taken place and that the ID had only strictly applied the existing legislation.<sup>63</sup>

#### **Statistics on regularisations**

The Minister of Migration and Asylum (prior to March 2008: the Minister of Interior) continues to exercise her discretionary powers in matters of regularisation. The ID regularises individuals, on a one by one basis, on the ground of lengthy asylum procedure, on medical grounds (article 9ter) or on (other) humanitarian grounds (article 9bis). Almost 20,000 claims<sup>64</sup> of regularisation were made in 2008 (which is more than asylum claims), and around 22,500 decisions were taken by the ID with respect to regularisation claims introduced in 2008 or before 2008.

#### **Regularisation on the political agenda**

Despite the announcement by the government (cf. governmental agreement) that criteria for exceptional regularisation on humanitarian and/or economic ground would be further clarified and defined, no political agreement was reached on these issues in 2008. As a result, many organisations supporting undocumented migrants, as well as individuals awaiting a decision about their regularisation claim, complained about the legal insecurity that results from the lack of legal framework given to the promises contained in the governmental agreement. Also, militant actions by undocumented migrants and migrants' support networks radicalised and spread in the course of 2008 (demonstrations, occupation of public buildings or empty buildings, hunger strikes of a length of 45 days up to 87 days, undocumented migrants climbing on construction cranes, etc.) in order to put pressure on the federal government. On 6.11.2008, the federal mediator ('federale ombudsman') called the Minister of Asylum and Migration to give clear guidelines to the ID for the processing of regularisation claims. On the basis of complaints of various

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<sup>63</sup> cf.

<http://www.dofi.fgov.be/nl/publicaties/persmededelingen/2008/Communique%C3%A9%20Rothman%20Salazar%20NL%20BIS.pdf>

<sup>64</sup> Centre pour l'égalité des chances et la lutte contre le racisme (2009) Rapport Migration 2008, pp. 72-75.

organisations, the federal mediator condemned the practice of issuing ‘certificates of immatriculation’ (model A) to hunger strikers. That administrative document, valid for three months, is in principle not to be extended unless a claim is being examined. The mediator advised the municipal authorities to automatically extend the hunger strikers’ documents until a motivated decision is taken about their regularisation claim.<sup>65</sup> Negotiations on regularisation criteria/measures were still ongoing in 2009.<sup>66</sup> However, in March 2009, some measures were taken by the Minister of Asylum and Migration.

### **New instructions for regularisation of certain categories of undocumented migrants**

On 26.03.2009, the Minister of Migration and Asylum instructed the Belgian Immigration Department to add specific situations to those cases of « urgent humanitarian nature » which give right to a residence permit in accordance with art. 9 and art. 9bis of the Aliens Act of 15/12/1980.<sup>67</sup> Families, with school going children, who were refused asylum or whose claim is still pending, can be entitled to a residence permit if they fulfil the following conditions:

- The family has been residing in Belgium for at least five years without interruption; they introduced their asylum claim before June 1, 2007 and the examination of their claim lasted for at least one year;
- The children have been going to school at least since September 1, 2007

Critics say these measures do not solve the problem of the thousands of other undocumented migrants who do not meet these criteria.

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<sup>65</sup> Les médiateurs fédéraux, Rapport et recommandations du médiateur fédéral à l’issue de l’examen des réclamations 085GF1373/08GF1414/08IN2256, Bruxelles, le 6 novembre 2008 & [http://www.foyer.be/?lang=nl&pageb=newsletter&news=Juridische%20nieuwsbrief%20Foyer&date\\_letter=sent:%2024/11/2008](http://www.foyer.be/?lang=nl&pageb=newsletter&news=Juridische%20nieuwsbrief%20Foyer&date_letter=sent:%2024/11/2008)

<sup>66</sup> The discussion is still ongoing as to how regularisation criteria can be formalised in such a manner that enough flexibility remains to take into account social and international situations. The Minister holds the opinion that no regulatory text can ever cover each and every individual situation. Humanitarian situations are, by definition, difficult to specify and an exhaustive account is not possible. The starting point must be the rule that, refusing to regularize an alien cannot be contrary to the provisions of the ECHR or be contrary to the Council of State’s constant case-law.

<sup>67</sup> Ministre des Migrations et de l’Asile, Instruction relative à l’application de l’ancien article 9, alinéa 3 et de l’article 9bis de la loi du 15 décembre 1980, [http://www.dofi.fgov.be/fr/20090326%20-%20Instructies%20van%20de%20minister%20inzake%20art%209bis\\_Fr.pdf](http://www.dofi.fgov.be/fr/20090326%20-%20Instructies%20van%20de%20minister%20inzake%20art%209bis_Fr.pdf)

### **Ruling by the Aliens Litigation Council**

On 31.07.2008, the ALC<sup>68</sup> ruled that regularisation claims involving protection of the individual's fundamental rights had to be investigated by the ID and be the subject of a motivated decision before the ID could issue a removal decision to the claimant<sup>69</sup> (as it is the case for claimants who motivate their regularisation claim by a the unreasonable length of their asylum procedure). Following the ruling, the ID announced that it would first investigate possible infringement of the claimant's fundamental rights in case of forced removal (such as infringement of article 3 and 8 of the ECHR) before issuing a removal order (*Bevel om het grondgebied te verlaten / Ordre de quitter le territoire*) to that category of claimants.

### **Regularisation on medical grounds: ruling by the Constitutional Court**

On 26.06.2008, the Constitutional Court ruled<sup>70</sup> that if it is not possible to verify within the regularisation's administrative procedure if an individual claiming regularisation on medical ground effectively has access to health care in his/her country of origin or country of residence, it should be resorted to the subsidiary protection procedure in order to do so, so that article 3 of the ECHR be respected. Overall, the Court ruled that the differences of treatment between individuals claiming asylum and individuals claiming regularisation on medical ground were justified. Individuals who are refused regularisation on medical ground but who cannot be forcibly removed because that would be an infringement of article 3 of the ECHR, are not entitled to a provisory residence permit nor to state benefits.<sup>71</sup>

### **Prevention of illegal immigration**

In 2008, preventive actions were launched by the ID to stop illegal migration fluxes from specific third countries. A budget of 100,000 €(in 2008) and 300,000 €(in 2009) will be dedicated to prevention projects and information campaigns in Senegal, Cameroun and India. These projects are implemented by the IOM.

### **Research on the social position of regularised migrants**

The research 'Before & After', requested by the Centre for equal opportunities and opposition to racism with approval & collaboration of the PPS Social Integration and the Minister of Home Affairs, compared the socio-economic position of individuals who were regularised on the basis of the law of 22.12.1999 (law passed in the framework of the last regularisation campaign in Belgium in 2000) before their regularisation with their situation after their regularisation.<sup>72</sup> The research encompassed quantitative data from a sample of 577 regularised individuals, and qualitative data collected through interviews with 116 individuals from the sample. Results show that the social situation of these

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<sup>68</sup> Raad voor Vreemdelingenbetwistingen, arrest 14.731 van 31.07.2008 & arrest 14.727 van 31.07.2008, <http://www.vmc.be/vreemdelingenrecht/detailrechtspraak.aspx?id=6174> & <http://www.vmc.be/vreemdelingenrecht/detailrechtspraak.aspx?id=6176>

<sup>69</sup> The ID issued an Order to Leave the Territory to people claiming regularisation on humanitarian ground, while their claim was still pending.

<sup>70</sup> Cour Constitutionnelle, arrêt n°95/2008, 26 juin 2008.

<sup>71</sup> Cf. issue of non-removable undocumented migrants.

<sup>72</sup> The research is available at [http://www.diversite.be/?action=publicatie\\_detail&id=47&thema=4](http://www.diversite.be/?action=publicatie_detail&id=47&thema=4)

individuals before and after their regularisation was extremely diverse prior to acquiring legal stay, and further evolved in very different ways after their regularisation. Among individuals who are employed and are not dependent on state benefits after their regularisation, one can find rejected asylum seekers who had had an occupational activity (legal or not) in Belgium before their regularisation, as well as people who never resorted to international protection but had worked illegally. Among people alternating employment and unemployment, the biggest group is composed of rejected asylum seekers who had never worked before their regularisation. Among those who are living on state benefits, one can find rejected asylum seekers as well as people who never asked international protection and are unqualified and single. Individual characteristics as well as opportunities offered by the host society are paramount to understand the variety of trajectories of these people.

### **Incidents in closed centres in 2008**

Some severe incidents took place in closed centres in 2008, among which rebellion including an attempted arson.

## **2.3.10. Action against human trafficking**

### **Policy priorities**

Following recommendations from the Interdepartmental Cell for the Coordination of the Combat against human trafficking and smuggling in human beings, the government is currently focusing on two issues: 1) specific attention given to unaccompanied minors and 2) specific attention given to domestic personnel employed at diplomatic posts. With regard to unaccompanied minors, victim protection will be granted in the future regardless of whether the victim cooperates with the judiciary; and an action group seeking to implement recent recommendations to reduce the risk of child trafficking will be set up. With regard to economic exploitation of domestic workers employed by diplomats, the present conditions to receiving victim protection (cooperation with the judiciary) are not adapted to these specific cases because they sometimes involve diplomats benefiting from legal immunity. Therefore, the protection of the victim in those specific cases will be conditioned by cooperation with the labour tribunal (civil law) and by decision of the auditor of the labour tribunal.

### **Legislative texts**

The provisions of the Aliens act transposing EU Directive 2004/81/EC (residence permit issued to third country nationals who are victims of human trafficking) have come into force since 01.06.2007. On 31.10.2008, the new Circular Letter of 26.09.2008 organising the multi-disciplinary cooperation between all actors involved in the protection of victims of human trafficking and severe forms of smuggling in human beings,<sup>73</sup> was published in the Belgian Monitor. The Circular Letter seeks to enhance efficiency in the protection of victims.

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<sup>73</sup> Omzendbrief van 26 september 2008 inzake de invoering van een multidisciplinaire samenwerking met betrekking tot de slachtoffers van mensenhandel en/of van bepaalde zwaardere vormen van mensensmokkel (B.S. 31.10.2008, 57934)

### **2.3.11 Return Migration**

#### **Voluntary assisted return**

The number of assisted voluntary return performed in the framework of the REAB programme of the IOM had dropped in 2007 (2,593 in 2007 as compared to 2,811 in 2006 and 3,755 in 2005). In 2008, 2,669 assisted returns took place in Belgium. In 2008, encouraging returns of undocumented migrants through the IOM programme has remained a priority of the government.<sup>74</sup>

#### **Return and readmission agreements**

With regard to voluntary or forced return, the government has pledged to continue its efforts through proactive collaboration between Fedasil, the police and the municipal authorities on the one hand, and through efficient cooperation with competent administrations such as the FPS Justice and the FPS Foreign Affairs.<sup>75</sup> With respect to readmission agreements, in addition to its participation in European negotiations, Belgium has finalised negotiations on behalf of the Benelux countries with Armenia (an Agreement was signed on 03.06.2009). Efforts to sign, on behalf of the Benelux countries, an implementation protocol to the European readmission agreement with Russia ended in November 2008, with positive results (the protocol could be signed by fall 2009). Similar negotiations will be started by the Belgian ID with Ukraine and the Balkan countries in 2009. Also, Memorandums of Understanding (MoU) were signed with Vietnam, Guinea and Ecuador. At the end of the year, negotiations also started with Brazil. Similar negotiations for administrative return agreements will start in 2009 with Iran, Iraq and Nigeria. Reinforced collaboration with the UK is also envisaged in order to better fight illegal immigration and transit migration to that country.

#### **Return Directive**

The Directive on return of illegal immigrants adopted by the European Parliament on 18.06.2008 will have to be transposed into Belgian legislation. Provisions of the directive are limiting the rights of undocumented migrants more than the present federal legislation does. For instance, standard removal orders (OQT/BGV), which are issued to undocumented migrants intercepted by the police and rejected asylum seekers, are not accompanied by an interdiction of entry. The maximum duration of administrative detention of undocumented migrants in order to proceed to their removal is five months in Belgium (and possibly 8 months for special cases related to public order and national security). The Minister of Migration and Asylum declared that Belgium would not prolong that maximum duration of detention, despite the fact that the new return directive would allow such change.

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<sup>74</sup> Algemene beleidsnota / Note de politique générale de la ministre de la Politique de migrations et d'asile / van de minister van Migratie- en asielbeleid, Parlementair jaar 2008-2009 (20.11.2008)

<sup>75</sup> Algemene beleidsnota / Note de politique générale de la ministre de la Politique de migrations et d'asile / van de minister van Migratie- en asielbeleid, Parlementair jaar 2008-2009 (20.11.2008)

## 2.3.12 Other policy areas/topics

### **Ruling of the Administrative Supreme Court (Council of State) pertaining to internal regulations in detention facilities**

In its ruling of 10.12.2008, the Council of State suspended several provisions<sup>76</sup> of the Royal Decree of 02.08.2002 pertaining to the internal regulations applied in detention centres for undocumented migrants (the so-called ‘closed centres’).<sup>77</sup> Among the suspended articles of the decree were provisions organising an insufficiently justified difference of treatment for undocumented migrants detained in the closed centres situated next to and in the international airport of Zaventem; and provisions pertaining to correspondence, visits and access to the media of detained undocumented migrants, which were according to the ruling of the Council more restrictive than provisions in application in criminal detention facilities.

### **Right of appeal (against administrative detention decision, detention conditions and removal decisions)**

In its ruling of 27.05.2008,<sup>78</sup> the Belgian Constitutional Court ruled that the maximum timeframe of 24 hours stipulated in the Aliens Act to appeal the implementation of a removal or (border) refoulement decision was not reasonably justified with regard to the consequences the implementation of such decisions could have for the foreigner. The targeted provision will be enforced until 30.06.2009, date from which new legal provisions shall come into force. The Constitutional Court also immediately suspended the provision according to which refused asylum seekers have only 15 days to lodge an appeal with the ALC (the normal timeframe for appeal is usually one month). It also suspended the provision that commanded direct enforcement of an appealed decision in the absence of a decision by the ALC within 72 hours (the appeal procedure lost its suspensive effect, which meant that the removal decision could be implemented by the Immigration Department, the targeted provisions will have to be modified by 30.06.2009.

In a ruling dating of 17.12.2008,<sup>79</sup> the Council of State suspended the Ministerial Decree of 23.09.2002 pertaining to the rules regulating the Commission for Complaints in detention centres for undocumented migrants.

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<sup>76</sup> Articles 2, 21, 29, 35, 36, 72, 98,3°, 115 and 127.

<sup>77</sup> Conseil d’Etat, arrêt du 10 décembre 2008.

<sup>78</sup> Cour Constitutionnelle, arrêt n°81/2008 du 27 mai 2008, paragraphe B.68.1

<sup>79</sup> Conseil d’Etat, arrêt n°188.931 of 17.12.2008.

### **Transit zone Brussels Airport**

Until 2007, undocumented migrants were sometimes placed in the transit zone of Brussels Airport, pending their repatriation. This is a practice often criticised by human rights organisations. On 24 January 2008 the European Court on Human Rights condemned the Belgian federal State for infringement of articles 5 (right to freedom and security) and 3 (torture, inhumane or humiliating treatment) of the European Convention on Human Rights in the case opposing MM. Riad and Idiab to the Belgian State.<sup>80</sup> The plaintiffs were two Palestinians living in Lebanon who arrived at Brussels Airport and saw their asylum application refused. They were detained pending their repatriation. Their lawyer lodged an application for their release which was eventually granted by the court. Instead of being released they were transferred to the transit zone of Brussels Airport pending their removal from Belgium. The European Court came to the conclusion that releasing a person in the transit zone could be regarded as a detention, which fed legal insecurity because it lacked valid judicial basis, that living conditions in the transit zone were humiliating and inhumane. The Belgian State was ordered to pay 15,000 € damages to each plaintiff. Since the condemnation by the European Court of Human Rights, no implementation of judiciary release decisions in the transit zone of the Brussels Airport has taken place.

### **European Funds**

Amongst the four financial Funds ‘Solidarity and Management of Migration Flows’, the ID is the responsible authority managing the External Border Fund (2007-2013) and the Return Fund (2008-2013). The Refugee Fund is managed by Fedasil. The federal budget 2009 will cover the first expenses, pending the transfer of the European subsidies. The multi-annual programmes were established, allowing the selection and co-financing of concrete projects on an annual basis. For projects financed by the External Border Fund, the FPS Foreign Affairs, the FPS Home Affaires and the federal police will be the main partners. The Return Fund will be co-managed with Fedasil, and with international organisations and NGOs participating in annual calls for projects. The multi-annual framework programme will allow investing large amounts of money in border safety, consular cooperation with regard to visas, ICT projects, assisted voluntary return projects, reintegration projects in the country of origin, humanisation of detention facilities for undocumented migrants.

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<sup>80</sup> European Court of Human Rights, Judgment 24 January 2008, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=828022&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

### **Statistical regulation**

Regulation (EC) No 862/2007 on Community statistics on migration and international protection has come into force on 01.01.2008. In order to see to the implementation of the European regulation, a work group within the Directorate-General Statistics and Economic Information (FPS Economy) has been created. In addition, the official appointment of the Belgian EMN National Contact Point by the Minister of Migration and Asylum confirmed the role given the NCP in the improvement and production of trustworthy statistics related to migration.

### **Social welfare rights for permanently established foreigners**

On 12.12.2007, the Constitutional Court ruled in a judgement<sup>81</sup> that the law of 27.02.1987 pertaining to welfare benefits for disabled people contradicts the Belgian Constitution and the European Convention on Human Rights because established foreign residents<sup>82</sup> are not included in the categories of people entitled to these welfare benefits.<sup>83</sup>

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<sup>81</sup> Belgium/Arrest van het Grondwettelijk Hof (12.12.2007).

<sup>82</sup> i.e. foreigners who are registered in the Population Register and are in possession of a residence permit of unlimited duration can apply for the status of 'established foreigner' in Belgium. That administrative status is not exactly similar to that of non-EU LTR.

<sup>83</sup> Grondwettelijk Hof, arrest van 12.12.2007. More information available at: <http://www.vmc.be/vreemdelingenrecht/detail.aspx?id=5496> (18.09.2008). However, in the Flemish Community, the *Vlaams Agentschap Personen met een Handicap (VAPH)* [Flemish Disabled People Agency] recently adopted special measures to allow disabled children of asylum-seekers that do not have a permanent residence permit to benefit nonetheless from certain services and health care provisions.

## 3. Implementation of EU legislation

### 3.1. Progress in 2008

As compared to new legal provisions that were promulgated in 2006 and in 2007, the year 2008 was relatively poor in new legal developments. Most of the legal developments that did occur in 2008 (promulgation of Royal Decrees, legal provisions coming into force, etc.) constituted the prolongation of the 2006/2007 reform of the Aliens Act, which was the combined result of the will of the coalition government to launch a more humane and realistic migration and asylum policy on the one hand, and the obligation to transpose a number of European Directives into Belgian law (Directives 2003/86/EC, 2004/81/EC, 2004/83/EC, 2005/85/EC, 2004/38/EC, 2003/109/EC and 2003/9/EC).<sup>84</sup> Indeed, the second part of the reform of the Aliens Act, (a.k.a 'Mammoth II') came into force on 1 June 2008 and enforced provisions related to free movement of EU citizens and family reunification with EU-citizens and Belgians (articles 40 and al. of the Aliens' Act, transposing Directive 2004/38/CE), and to Long Term Residents (articles 15bis and al. of the Aliens Act, transposing Directive 2003/109/CE). The new provisions are extendedly reported on in section 2 (cf. supra).

### 3.2. Debates issues in the implementation of EU legislation

#### **Debate on the imposition of further conditions on the right to family reunification**

Over the last five years or so, all Belgian political parties have agreed to multiply the number of conditions to fulfil in order to enjoy the right to family reunification, within the limits allowed by the European legislative context. All share the opinion that family reunification needs to be more strictly controlled, not the least because it now constitutes the most important legal route of migration of third-country nationals, in terms of legal in-flows' figures. However, the multiplication of conditions required prior to family reunification has sometimes led to effective contradictions and administrative impossibility to have a given condition properly fulfilled. In its 2008 Migration Report, the CEOOR outlined the different conditions imposed for family reunification and pinpointed the present administrative difficulties to their implementation by the competent services:

- *Condition of adequate housing*: this condition has been introduced in the federal legislation recently (2006 reform of the Alien Act); it gives the responsibility to municipalities to control the conformity of the housing of sponsors with the regional regulations pertaining to salubrity, security and habitability of dwellings situated on their regional territory.<sup>85</sup> In reality, control practices by municipalities were not

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<sup>84</sup> Cf. Policy Report 2007.

<sup>85</sup> The provision entered into force in June 2007. The royal decree of 27.04.2007 (Belgium/ Arrêté royal du 27.04.2007 mod. l'AR du 08.10.1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des

homogenous and this housing condition has to be met by the sponsor prior to the arrival of the family members, which can lead to an additional financial burden.

- Condition of health insurance: the affiliation to a public health insurance scheme (*mutualité/mutualiteit*) is only possible when the foreigner is registered in the National Register; the affiliation takes retroactive effect (back to the first day of the semester when the conditions for affiliation were met). Imposing that health risks of family members are insured in Belgium at the time of their arrival means that family members have to be covered by an extra private health insurance for the period between their arrival and their official affiliation to a public health insurance scheme.<sup>86</sup>
- Condition of resources: this condition has been introduced but the question remains what type of income is taken into account. If social security benefits are not taken into account, this could amount to discrimination on the basis of wealth.
- Condition of integration: the major difficulty in introducing such a condition is that integration is a competence of the Regions and communities. It has not been implemented yet but is mentioned in the governmental declaration.

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étrangers). stipulates that housing is qualified as 'adequate' if the municipality certifies in writing that the housing unit occupied by the sponsor fulfils all security and sanitary requirements enforced in each Region by the regional Housing Code.

<sup>86</sup> From 2008, the ID applies more flexible rules to assess the evidence of health insurance affiliation brought forward by certain categories of sponsors when resorting to family reunification. Third-country nationals with a residence permit of limited or unlimited duration, economically non-active EU citizens and Belgian nationals who want to let their foreign parents come to Belgium have to provide evidence that their health insurance covers their risks and the risks of their family members. The ID will accept certificates from the health insurance organisation (*mutualiteit/mutualité*) providing evidence that the sponsor is insured as well as his/her family members, or evidence that the sponsor has contracted an extra health insurance for him/herself and his/her family members in Belgium.

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# ANNEX: Methodology, terms and definitions

## A1.1 Methodology

This study was produced by the EMN Belgian National Contact Point. Press articles, annual reports and various productions by specialised civil society organisations were used to make an overview of all important (as defined in the specifications) political and legal developments with regard to Asylum and Migration. Statistics available at the time of writing the report were used (population statistics could not be included in this report). Information was verified within the four organisations that constitute the BE NCP of the EMN: the ID, the CGRS, the DG SEI and the CEOOR.

Because they were important developments and because they give an additional meaning to prior debates or decisions, certain measures or major changes dating of 2009 were also included in this 2008 Policy Report. In contrast, in certain areas where there was no major modification or no major political debate, nothing has been reported.

With respect to possible reservation with regard to accuracy of figures presented in this report, please bear in mind that all figures included in this Policy Report are reliable, within the limits of their validity (sometimes, proxy-data had to be used, e.g. figures on motives of migration).

## A1.2 Terms and definition

### LIST OF ABBREVIATIONS

Aliens Act	Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens
ALC	Aliens Litigation Council ( <i>Raad voor Vreemdelingenbetwistingen / Conseil du Contentieux des Etrangers</i> )
ID	Immigration Department ( <i>Dienst Vreemdelingenzaken / Office des Etrangers</i> )
CS	Council of State ( <i>Raad van State / Conseil d'Etat</i> )
CGRS	Office of the Commissioner General for Refugees and Stateless Persons ( <i>Commissariaat-generaal voor de Vluchtelingen en de Staatlozen / Commissariat Général pour les Réfugiés et les Apatrides</i> )
ECHR	European Convention on Human Rights
FPS	Federal Public Service ( <i>Federale Overheidsdienst / Service public fédéral</i> )

CEOOR Centre for Equal Opportunities and Opposition to Racism (*Centrum voor gelijkheid van kansen en voor racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme*)

DG SIE Directorate-General Statistics and Economic Information (*Algemene Directie Statistieken en Economische Informatie / Direction générale Statistiques et Informations économiques*)

SPECIFIC TERMS :

Closed centres Detention centres for undocumented migrants, pending their forced return to their country of origin (administrative detention)

'Rapatriements' (FR) / 'repatriering' (NL) Implementation of a Forced return decision